CHAPTER I

THE IMMIGRATION CONSEQUENCES OF CRIMINAL ACTIVITY*

A. INTRODUCTION

Immigration law has changed a lot in recent years and changes all the time. You should NOT assume that everything you read in this Chapter is up-to-date or accurate. You should ALWAYS make sure the laws mentioned here are correct. You can make sure the laws are correct by looking at the sources listed in Appendices A–D. You can find Appendices A–D at the end of the Chapter. Each ***immigration court*** case is different. An attorney might better understand important differences in your case and can help you with your case. So, it is ALWAYS best to consult with an attorney. If you do not have access to an attorney, you should ask a family member or trusted friend to consult with an agency listed in Appendix D. Appendix D can be found at the end of this Chapter. The agencies can help you get in touch with an attorney or some other professional who might be able to assist you with your immigration case. Many of the agencies listed in Appendix D provide free or low-cost legal services. This Chapter and its contents are not meant to replace the advice of an attorney.

Some of you may be prisoners who are still serving prison sentences for criminal **convictions**. Some of you may be detained[1] by the ***Department of Homeland Security ("DHS")***.[2] If you are not a United States citizen ("non-USC") and the United States ("U.S.") government has not yet approached you about your ***immigration status***,[3] it still may happen later. It is very likely that an immigration officer will reach out to you. You should read this Chapter to get ready for that moment.

The government places people in immigration court proceedings for many reasons. We mention some of these reasons in this Chapter. The Chapter's biggest focus is on prisoners who are facing or will face ***removal proceedings***[4] because of criminal convictions. Even if you are a ***legal permanent resident ("LPR")***[5] or

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[1] Immigration detention is not the same as imprisonment. Imprisonment is a criminal punishment, whereas immigration detention is not considered a criminal matter, even though some immigration detainees are detained in prisons. *See* Conditions of Confinement in Immigration Facilities, *available at* https://www.aclu.org/files/pdfs/prison/unsr_briefing_materials.pdf (last visited Dec. 22, 2017). Because immigration detention is a civil matter, immigration detainees do not have the same rights as criminal prisoners. *See* Part E of this Chapter, which describes detention in detail.

[2] In March 2003, the U.S. Immigration and Naturalization Services ("INS"), which used to be part of the U.S. Department of Justice, was restructured. As a result, INS no longer exists. In 2003, the Department of Homeland Security ("DHS") was created. Three new agencies were also created within DHS. These agencies took over the functions of the former INS. The United States Citizenship and Immigration Services ("USCIS") is responsible for the administration of immigration services, including permanent residence, naturalization, asylum, and other duties. *See* U.S. Citizenship and Immigration Services, *available at* https://www.uscis.gov/ (last visited Dec. 22, 2017). U.S. Immigration and Customs Enforcement ("ICE") was created to serve the investigative and enforcement functions of the former INS (including deportation and intelligence). The attorneys representing the government in immigration proceedings are part of ICE and are called assistant chief counsel. U.S. Customs investigators, the Federal Protective Service, and the Federal Air Marshal Service are all also part of ICE. *See* U.S. Immigration and Customs Enforcement: What We Do, *available at* https://www.ice.gov/overview (last visited Dec. 22, 2017). U.S. Customs and Border Protection ("CBP") was created and took over the border functions of the INS, including border patrol and customs inspection. *See* How ICE, DHS, and USCIS Work Together, *available at* https://www.us-immigration.com/us-immigration-news/us-immigration/how-ice-dhs-and-uscis-work-together/ (last visited Dec. 22, 2017); *See* U.S. Customs and Border Protection, *available at* https://www.cbp.gov (last visited Dec. 22, 2017).

[3] Immigration status is whether you have certain documents which allow you to stay in the U.S. Part B of this Chapter discusses how you can determine your immigration status.

[4] This Chapter was written for people who have been or may be placed in removal proceedings. Removal proceedings were referred to as "exclusion" or "deportation" proceedings before April 1, 1997. Removal is the process by which the government forces a non-USC to leave the U.S. Throughout the text, we will sometimes use the word "deportation" instead of "removal," but the legal proceedings are technically called "removal proceedings." So, keep in mind that if you face deportation, you will be placed in "removal proceedings." *See* Clinical Legal–Chapter 1: Removal Proceedings, *available at* https://cliniclegal.org/sites/default/files/ch_1_clinic_representing_clients_in_imm_court.pdf (last visited Dec. 22, 2017).

[5] We will also refer to people who have LPR status as "LPRs." *See* Appendix A at the end of this Chapter.

have other legal status in the United States, you can still face removal proceedings and ***deportation***.[6] You can still face removal proceedings because of criminal convictions even if you have a child who is a ***United States citizen*** ***("USC")***. You can still face removal proceedings because of criminal convictions even if you have been in the U.S. for many years. You can still face removal proceedings because of criminal convictions even if you have worked legally and paid federal income taxes.[7] The only people in the U.S. who cannot be deported are USCs or nationals.[8]

In this Chapter, "INA" means the Immigration and Nationality Act;[9] the corresponding "U.S.C." citations are also in the footnotes. U.S.C. citations mean the United States Code, a collection of all United States federal laws. All cases are followed by their appropriate citation. This chapter is broken down into several Parts:

- **Part B** explains how to determine your immigration status in the U.S. and how this status may affect your ability to stay in the U.S.
- **Part C** discusses the differences between ***inadmissibility*** and ***deportability***. It also includes information about criminal convictions and their effect on your immigration status in the U.S.
- **Part D** describes how the government places non-USCs in removal proceedings.
- **Part E** describes ***immigration detention***. It includes information about non-USCs who are subject to ***mandatory detention***. Part E also goes over the ***bond hearing*** process for those who are not subject to mandatory detention and are otherwise eligible for ***bond***.
- **Part F** outlines ***forms of relief*** from deportation (forms of relief are ways that you might be able to stay in the U.S.). Part F will explain how you apply for each form of relief. It will also explain what you must prove to the judge for that form of relief and the types of ***evidence*** you should be ready to present.
- **Part G** walks you through the process of removal proceedings from start to finish, what you can expect during the proceedings, and how the government initiates them.
- **Part H** explains how the immigration judge makes a final decision in your immigration case. It also explains what you can do to appeal or reopen your immigration case if you are not happy with the result and meet the legal requirements to do so.
- **Part I** provides an outline for applying for reentry into the U.S. after your deportation has been ordered and describes the serious consequences that result from ***illegal reentry*** into the U.S.

Four Appendices follow Part I:

- **Appendix A** is a glossary that defines many key terms found in this text. These terms appear in ***bold italics*** the first time they are used.
- **Appendix B** has a list of various immigration forms and applications that you may have to fill out at some point in this process.
- **Appendix C** is a list of useful websites that will help you research your immigration case.
- **Appendix D** has a list of providers of legal services (some free and some not) in and around the New York area.[10]

B. DETERMINING YOUR IMMIGRATION STATUS

First, you should determine your immigration status in the U.S. If you already know your immigration status, you can skip this Part and move on to Part C of this Chapter. Part C describes the differences between inadmissibility and deportability.

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[6] Who Can Be Deported?, *available at* https://www.miracoalition.org/enforcement/deportation (last visited Dec. 22, 2017).
[7] Naturalized citizens that submitted fraudulent citizenship applications may still be deported, however. Who Can Be Deported?, *available at* https://www.miracoalition.org/enforcement/deportation (last visited Dec. 22, 2017).
[8] U.S. nationals are people born in American Samoa or Swains Island. *See* Immigration Terms and Definitions Involving Aliens, *available at* https://www.irs.gov/individuals/international-taxpayers/immigration-terms-and-definitions-involving-aliens (last visited Dec. 22, 2017).
[9] Immigration and Nationality Act ("INA"), ch. 477, 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. §§ 1101–1537 (2012)).
[10] A list of free or low-cost legal service providers can also be found on the U.S. Department of Justice Executive Office for Immigration Review ("EOIR") website, *available at* http://www.usdoj.gov/eoir/probono/states.htm (last visited July 7, 2017).

1. Types of Legal Immigration Status

This Section discusses types of immigration statuses. Types of immigration statuses include United States citizenship ("derivative" and "acquired"), legal permanent residency status, asylee/refugee status, ***parolee status***, and temporary protected status. This Section also explains ***visas***.

(a) United States Citizenship[11]

There are several kinds of U.S. citizenship. Types of U.S. citizenship include citizenship by birth, citizenship by naturalization (meaning you applied for and were granted U.S. citizenship by the government after fulfilling certain requirements), ***derivative citizenship***, and ***acquired citizenship***.[12] The following questions may help you determine whether you are a USC:[13]

(1) Were you born in the U.S. or one of its territories?[14]
(2) Were either of your parents born in the U.S.?
(3) Were any of your grandparents born in the U.S.?
(4) Did either of your parents become a USC before you turned eighteen (18) years old?

(i) *Derivative Citizenship*

Derivative citizenship means that you "derive" citizenship through your parent(s), who have been naturalized.[15] The laws regarding derivative citizenship are complex and are different depending on when you were born and when your parent(s) became USCs.

If you turned 18 on or after February 27, 2001, then you would need to fulfill **all** of these requirements in order to obtain derivative citizenship:[16] (1) one of your parents became a naturalized USC, (2) you were under 18 at the time that your parent naturalized, (3) you were an LPR at that time, and (4) you lived in the custody of the parent that naturalized.[17]

(ii) *Acquired Citizenship*

If you were born outside of the U.S. and either of your parents were a USC when you were born, then you may have acquired U.S. citizenship at the time of your birth.[18]

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[11] The law regarding U.S. citizenship can be complicated. You should consult an attorney if you believe you might be a USC. If you were born in the U.S. (and are not the child of a foreign diplomat), you are most likely a USC.
[12] The following link has updated information on different ways to acquire citizenship. U.S. Citizenship, *available at* https://www.uscis.gov/us-citizenship (last visited on Jan. 7, 2017).
[13] You are not necessarily a USC even if you answer "yes" to any of these questions, but you should investigate each of the possibilities before making any assumptions about your immigration status.
[14] You may also be a USC if you were born on a ship or vessel while at a U.S. port, harbor, bay or sea, if you were born within a certain number of miles from the U.S. in U.S. territorial waters, or if you were born within U.S. airspace. *See* 7 FAM 1113 Not Included in the Meaning of "In the United States," *available at* https://fam.state.gov/FAM/07FAM/07FAM1110.html#M1113 (last visited Dec. 22, 2017).
[15] Citizenship through Parents, *available at* https://www.uscis.gov/us-citizenship/citizenship-through-parents (last visited Dec. 22, 2017).
[16] If you turned 18 years old before February 27, 2001, the new law does not apply to you. The law applies prospectively only. This means that the new law only applies in the future for people who turned 18 years old after the laws went into effect. Before February 27, 2001, the laws regarding derivative citizenship were much more complicated, and you may have to meet many more requirements. You should consult an attorney if you turned 18 years old before February 27, 2001 and believe you might be a USC. *See* Child Citizenship Act of 2000 - Sections 320 and 322 of the INA, *available at* https://travel.state.gov/content/travel/en/legal-considerations/us-citizenship-laws-policies/child-citizenship-act.html (last visited Dec. 22, 2017).
[17] This parent must also live with and have legal custody of you. *See* Citizenship through Parents, *available at* https://www.uscis.gov/us-citizenship/citizenship-through-parents (last visited Dec. 22, 2017).
[18] This may still be true if neither of your parents was born in the U.S., but at least one of your grandparents was. This is a complicated area of immigration law. You should discuss the possibility that you have acquired citizenship with an immigration attorney if you suspect that any of this applies to you. *See* Chapter 4 – Automatic Acquisition of Citizenship After Birth (INA 320), *available at* https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter4.html (last visited Dec. 22, 2017).

(iii) *Determine Your Citizenship and Tell the Right People*

If you think you might be a USC, you should tell your immigration judge during your immigration court proceedings that you think you might be a USC. You should also consult with an attorney or someone who may be able to help you with your citizenship claim. After you consult with them, they should work with you to obtain the evidence you will need to prove that you are a USC.[19] This is very important for immigration court proceedings because USCs cannot be deported by the U.S. government.[20] USCs also are protected by U.S. law and have Constitutional rights. If none of the above applied to you, then you are probably not a USC. You should keep reading to see if you are an LPR or have another kind of legal status in the U.S.[21]

(b) Legal Permanent Residency or "LPR" Status

People with LPR status have the right to live and work in the U.S. People with LPR status can apply for certain family members (such as spouses and children) to live in the U.S.[22] LPRs can also travel to and from the U.S. without permission, but they must apply for a reentry permit for trips that last longer than one year.[23] An LPR may apply to become a USC after five years.[24] If you travel outside of the U.S. for more than six months, you can affect your citizenship application. You can prove that you are an LPR by showing **any** of the following documents:

(1) green card/resident alien card,
(2) I-51 stamp in foreign passport, or
(3) I-94 Arrival/Departure Record with a photo and stamp of "Temporary Evidence of Permanent Resident Status, I-551."

You probably have LPR status if you have a ***green card***[25] or a ***resident alien card***. You are also considered an LPR even if you did not enter the U.S. as an LPR if you "adjusted your status" or applied to be an LPR. This Part applies to you if you fit any of those situations. Even if your green card expires, your LPR status does not. You should still apply to renew your green card.[26] In other words, if you are an LPR and never

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[19] If you are not yet in removal proceedings, you should contact your deportation officer and tell him or her you think you might be a USC.

[20] Who Can Be Deported?, *available at* https://www.miracoalition.org/enforcement/deportation (last visited Dec. 22, 2017). Even if you make a claim that you are a USC, you should still apply for other forms of relief. Just because you think you have a strong claim for citizenship, it does not mean that a judge will agree and decide in your favor. *See* Part F of this Chapter to determine the forms of relief for which you should apply.

[21] According to the INA, everyone present in the U.S. is either a "national" as defined in INA § 101(a)(22); 8 U.S.C. § 1101(a)(22) (2012), or an "alien" as defined in INA § 101(a)(3); 8 U.S.C. § 1101(a)(3) (2012). Alien means "any person not a citizen or national of the U.S."

[22] *See* Your Rights and Responsibilities as a Lawful Permanent Resident, *available at* http://ilw.com/articles/2004,1129-guide.pdf (last visited Dec. 22, 2017). Note that under Title IV of the Adam Walsh Act, 42 U.S.C. §§ 16901–62 (2012), any U.S. citizen or lawful permanent resident who has been convicted of a "specified offense against a minor" may not file a certain type of family-based immigration petition for any beneficiary, regardless of age. INA § 204(a)(1); 8 U.S.C. § 1154(a)(1)(A)(viii)(I) (2012).

[23] If you are an LPR and leave the U.S. for more than a year, you may be deemed to have abandoned your immigration status. *See* How Permanent is Permanent Residence?: Abandonment of LPR Status, *available at* https://cliniclegal.org/sites/default/files/Abandonment%20of%20LPR%20Status.pdf (last visited Dec. 22, 2017).

[24] INA: Act 316 - Requirements as to Residence, Good Moral Character, Attachment to the Principles of the Constitution, and Favorable Disposition to the United States, *available at* https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9898.html (last visited Dec. 22, 2017). If you obtained your LPR status through marriage to a USC and were married for three years at the time your spouse petitioned for you, you may be eligible to apply for naturalization three years after obtaining your LPR status. Therefore, the waiting period may be shorter for LPRs who obtained their status through marriage. Chapter 3 – Spouses of U.S. Citizens Residing in the United States, *available at* https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartG-Chapter3.html (last visited Dec. 22, 2017).

[25] Green cards don't have to be green. They have been issued in many different colors in the past. It does not make a difference what color your green card is. *See* History of the Green Card, *available at* https://citizenpath.com/history-green-card/ (last visited Dec. 22, 2017).

[26] In the past, green cards did not have expiration dates on them, but now they do. The expiration date is usually 10 years after the card is issued. Even after the card expires, your status as an LPR does not expire. If your green card has expired, you can file an application to renew it. *See* Don't Let That Green Card Date Sneak Up On You, *available at* https://www.us-immigration.com/blog/dont-let-that-green-card-expiration-date-sneak-up-on-you (last visited Dec. 22, 2017). However, if you have

commit a crime, then you always have the right to live, work, and travel in and out of the U.S.

One exception is if you got your green card through marriage. If your marriage to a USC occurred less than two years before you applied for your green card, you received a green card for conditional permanent residency. Green cards for conditional permanent residency are valid for only two years from the date you got the green card. If you have one of these kinds of green cards and you never lifted the condition (you did not apply for LPR status toward the end of the two-year period), then you do not have LPR status and this Subsection does not apply to you. However, if you are the immigrant spouse of a U.S. citizen and your spouse died during the conditional period, you may be eligible for LPR status.[27]

Your LPR status can be taken away. If you are an LPR and commit (or have committed) certain types of crimes, you may face deportation and your LPR status may be taken away.[28] However, even if you do face deportation because of a criminal conviction, you may be eligible for a form of relief. You may be allowed to remain in the U.S if you are eligible for a form of relief.[29]

(c) Asylee/Refugee Status

You can apply to the U.S. government for ***asylee*** or ***refugee*** status. To receive asylee or refugee status, you must show that there is a likelihood that your life or freedom would be in danger in your ***home country*** "because of ... race, religion, nationality, membership in a particular social group, or political opinion."[30] This means that you must show that you are being persecuted[31] because of your membership or participation in one or more of these categories. You are only a refugee if you were referred to the U.S. Refugee Admissions Program (USRAP) *before* you came to the U.S. If you were approved by USRAP, the program would have helped you with travel plans and given you a loan for your travel to the U.S.[32] An asylee is different. An asylee first enters the U.S. either legally or illegally and is later granted ***asylum***.[33] Both refugees and asylees can apply for ***adjustment of status*** to LPR status after they have lived in the U.S. for one year.

You may be eligible for asylum even if the harm or threats to your safety come from non-government actors.[34] If you claim persecution by a non-government actor, you must provide enough proof to show that your government is unwilling or unable to control the given group. More specifically, you would need to submit proof showing what your country and government are like. This can consist of official reports, news articles, declarations by experts, or other sources. Because violent crime occurs in all countries, even those with stable governments, you must prove to the court that the harm or threat meets the specific definition of asylum.

(i) *Application for Asylee Status*

If you are a non-citizen, you can apply for asylee status by filing ***Form I-589***, Application for Asylum

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any criminal convictions, you should consult an attorney before you file the application to find out about any consequences you may face by filing the application. *See* Section D(3) of this Chapter, which explains the consequences of filling out immigration applications if you have criminal convictions.

[27] Widow(er), *available at* https://www.uscis.gov/greencard/widower (last visited Dec. 22, 2017).

[28] Criminal convictions are not the only way to lose your LPR status. INA: Act 237 - General Classes of Deportable Aliens, *available at* https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-5684.html#0-0-0-246 (last visited Dec. 22, 2017); INA § 237; 8 U.S.C § 1227 (2012). Assisting other immigrants to enter the U.S., using false documents, or pretending to be a USC are some of the other ways in which you can lose your LPR status. *See* Maintaining Permanent Residence, *available at* https://www.uscis.gov/green-card/after-green-card-granted/maintaining-permanent-residence (last visited Dec. 22, 2017).

[29] *See* Part F of this Chapter for more information about applying for and obtaining relief from deportation.

[30] INA § 241(b)(3)(A); 8 U.S.C. § 1231(b)(3)(A) (2012).

[31] In immigration law, "'persecution' means punishment for political, religious, or other reasons that our country does not recognize as legitimate." Qudus v. INS, No. 97-2815, 1998 U.S. App. LEXIS 2139 (7th Cir. Feb. 10, 1998); Osaghae v. INS, 942 F.2d 1160, 1163 (7th Cir. 1991).

[32] Refugees, *available at* https://www.uscis.gov/humanitarian/refugees-asylum/refugees (last visited Dec. 22, 2017).

[33] Asylum is granted under INA § 208; 8 U.S.C. § 1158 (2012).

[34] *See* Navas v. INS, 217 F.3d 646, 655–56 (9th Cir. 2000) ("In order to establish eligibility for asylum on the basis of past persecution, an applicant must show . . . [persecution that] is committed by the government or forces the government is either 'unable or unwilling' to control.")

and for ***Withholding of Removal***. You must apply at the appropriate Immigration Service Center within one year of arrival in the U.S.[35] Your immigration status does not matter for your asylum application. It doesn't matter for your asylum application whether you are in the U.S. legally or illegally.[36] You may still be eligible to apply for asylum after the deadline if something new happens that greatly changed whether you can apply for asylum or extraordinary circumstances directly affected your failure to file within one year. These may include certain changes in your ***home country conditions***, certain changes in your own circumstances, or other events.[37]

The decision to grant asylum is a ***discretionary matter***, meaning the judge has the power to decide whether or not to grant it. You, the applicant, have to prove that you have good reason to fear being harmed in your country. The judge will consider the totality of circumstances and your actions. This means he will look at all different factors in your life and your case.[38] The judge will also look to humanitarian concerns, such as your age or poor health.[39] Unfortunately, your chance to obtain asylum could depend solely on who judges your case. Judges in different cities and even within the same courthouse examine cases differently and end up granting asylum in different situations.

(ii) *Criminal Status and Eligibility*

If you have been convicted of a crime, you may still be able to apply for asylum. However, depending on the crime, you may be barred from receiving asylum. You are barred from receiving asylee status if you have been convicted of an ***aggravated felony***[40] in the United States.[41] You must disclose any criminal history on ***Form I-589***, Application for Asylum and for Withholding of Removal. You must also disclose any criminal history at the asylum interview. Failure to disclose such information may result in your asylum claim being referred to the Immigration Court or in a fine.[42]

(d) Parolee Status

Parolees are people the U.S. government has allowed to physically enter the country for different humanitarian reasons. These reasons include, but are not limited to, illness or home country conditions.[43] Sometimes the government sets a specific time for parolees to remain in the U.S. Other times, the government allows parolees to stay in the U.S. indefinitely. In that case, a parolee's status would not expire, much like LPR status. But parolee status can be taken away for a variety of reasons, including criminal convictions.[44] Some parolees can apply for adjustment of status after one year.[45]

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[35] *See* Questions and Answers: Asylum Eligibility and Applications, *available at* https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-and-answers-asylum-eligibility-and-applications (last visited Dec. 22, 2017).
[36] INA § 208(a); 8 U.S.C. § 1158(a) (2012).
[37] INA § 208(a)(2); 8 U.S.C. § 1158(a)(2) (2012). *See* 8 C.F.R. § 208.4(a) (2017) (listing some examples of circumstances that may be considered changed or extraordinary).
[38] *See* Kalubi v. Ashcroft, 364 F.3d 1134, 1141 (9th Cir. 2004) (describing how a court must consider discretionary factors such as likelihood of future persecution, separation from spouse, and disability, explaining the weight given to each); In re Pula, 19 I. & N. Dec. 467, 471–72 (BIA 1987) (describing factors to be taken into consideration such as whether the alien passed through any other countries, arrived in the United States directly from his country, whether orderly procedures were available to help him in any country he passed through, or any attempts to seek asylum before coming to the U.S.), *superseded by regulation in part*, 8 C.F.R. § 208.15 (1999), *as recognized in* Andriasian v. INS, 180 F.3d 1033, 1043–44 (9th Cir. 1999) (recognizing that neither asylum officers nor judges have discretion to grant asylum where a third country in which the applicant had "firmly resettled" has offered to accept the applicant and the applicant would not face fear of persecution in that country).
[39] In re Pula, 19 I. & N. Dec. 467, 473–74 (BIA 1987).
[40] *See* INA § 101(a)(43); 8 U.S.C. § 1101(a)(43) (2012) for the definition of aggravated felony. *See* Part C of this Chapter for a discussion of what kinds of crimes are considered aggravated felonies.
[41] INA §§ 208(b)(2)(A)(ii), 241(b)(3)(B)(ii); 8 U.S.C. §§ 1158(b)(2)(A)(ii), 1231(b)(3)(B)(ii) (2012).
[42] *See* Questions related to: "asylum," *available at* https://my.uscis.gov/helpcenter/search?q=asylum&tag=tag_search (last visited Dec. 22, 2017).
[43] *See* Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States, *available at* https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states (last visited Dec. 22, 2017).
[44] 8 C.F.R. § 212.5(e)(2)(i) (2017); Ordaz-Machado v. Rivkind, 669 F. Supp. 1068, 1070 (S.D. Fla. 1987) (finding that parolee status could be revoked after parolee pled guilty to drug possession, even though parolee later challenged the legality of that guilty plea).
[45] Adjustment of status will be discussed as a form of relief from deportation in Part F of this Chapter, but, for the purposes of this

(e) Temporary Protected Status ("TPS")[46]

Temporary Protected Status ("TPS") is a form of temporary lawful status granted by the President of the U.S. ("President") to people from certain countries[47] to which it would be dangerous to return. Examples of these dangerous situations are armed conflict, environmental disasters, or other extraordinary and temporary conditions.[48] The President reviews the conditions for which TPS was granted on a yearly basis. If he determines that those dangerous situations no longer exist, the TPS of that country expires and people with TPS from that particular country may face deportation.[49]

(f) Visas[50]

Visas are granted to non-USCs by a U.S. consul. Visas give a person permission to come to a U.S. port or inspection point to apply to be admitted to the U.S.[51] Visas are given for a specific purpose and a specific period of time. Visas grant a legal right to be in the U.S.[52] For example, non-USCs who come into the U.S. with a non-immigrant visa may have a student or visitor visa for a specific period of time. If the purpose or time of your visa expires, you have overstayed your visa and no longer have legal status in the U.S.[53] For example, if you come to the U.S. with a student visa and you are no longer a student, then your status has expired and you are now illegally present in the U.S. You have no legal right to remain in the U.S., so the government can initiate removal proceedings against you. If you are a ***visa overstay***, it does not matter whether you have been convicted of any crimes—the government can still deport you.[54]

If you are a victim of human trafficking, you may apply for a visa for "T nonimmigrant status" by filling out ***Form I-914***.[55] The visa allows you to stay and work in the U.S. for four years. You may apply for LPR status after that.

If you were the victim of a qualifying crime in the U.S. and you helped authorities with your case (including providing information or appearing in court), you may apply for a visa for "U nonimmigrant status." To apply, you should fill out ***Form I-918***. Qualifying crimes include domestic violence, prostitution, sexual assault, and stalking. This visa allows you to stay in the U.S, and you can apply for LPR status after

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Part, it means that a parolee can apply for permanent status in the U.S. after one year. *See* Adjustment of Status, *available at* https://www.uscis.gov/green-card/green-card-processes-and-procedures/adjustment-status (last visited Dec. 22, 2017). If you were once considered a parolee but have already adjusted your status to LPR status, you are now considered an LPR and should read Section B(1)(b) about LPR status.

[46] INA § 244; 8 U.S.C. § 1254(a) (2012).

[47] As of 2017, countries that are designated for TPS include, but are not limited to: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, and Yemen. For the most updated list, please visit Temporary Protected Status, *available at* https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Dec. 22, 2017). Please note that in November 2017, the Trump Administration announced that it would terminate TPS designations for Nicaragua and Haiti. These terminations will be delayed by a period of months. This means that noncitizen individuals with TPS status must seek to remain in the United States under another immigration status or leave the United States.

[48] *See* Temporary Protected Status, *available at* https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Dec. 22, 2017).

[49] *See* Temporary Protected Status, *available at* https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Dec. 22, 2017).

[50] Immigrant visas are defined in 8 U.S.C. § 1101(a)(16) (2012).

[51] INA § 221(a); 8 U.S.C. § 1201(a) (2012) (discussing the issuance of visas). Visas do not necessarily constitute permission to come into the U.S. Instead, they actually give a person permission to travel to the U.S. and apply for admission at the border. An immigration officer at the border who disagrees with the consular's determination that the visa-holder should be allowed into the U.S. can deny this person entrance into the U.S. This rarely happens but is nevertheless important to note. *See* Frequently Asked Questions, *available at* http://www.ustraveldocs.com/lb/lb-gen-faq.asp (last visited Dec. 22, 2017).

[52] INA § 221(c); 8 U.S.C. § 1201(c) (2012) (discussing the period of validity for visas).

[53] Under INA § 222(g); 8 U.S.C. § 1202(g) (2012), a non-immigrant visa is void as soon as the non-immigrant alien "remain[s] in the United States beyond the period of stay authorized by the Attorney General." Aliens affected by this provision are precluded from seeking a new non-immigrant visa anywhere other than in their country of nationality, except under "extraordinary circumstances." This Chapter refers to these people as "visa overstays."

[54] However, your criminal conviction or deportation can affect your ability to return to the U.S. in the future.

[55] For information about T visa eligibility, please visit Victims of Human Trafficking: T Nonimmigrant Status, *available at* https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status (last visited Dec. 22, 2017).

three years.[56]

2. Entry Without Inspection ("EWI")[57]

You are in the U.S. without the proper documents if you have not been legally admitted to the U.S. Without proper documents, you may be detained at one of the U.S. borders or other inspection points at any time. This Chapter refers this type of entry into the U.S. as ***entry without inspection ("EWI")***. Many people who face removal proceedings entered the U.S. without inspection. People who enter the U.S. without inspection are removable on that fact alone. Entering without inspection includes crossing a U.S. border without being detected, using someone else's passport to enter the U.S., or using someone else's documentation to enter the U.S. Like visa overstays, EWIs can be deported simply because they have no legal status in the U.S.[58]

At this point, you should know your immigration status in the U.S. Next, you should determine whether the government has the legal "grounds" or reasons to make you leave the United States. Part C below covers this topic.

C. TWO GROUNDS FOR REMOVAL: INADMISSIBILITY AND DEPORTABILITY

You may face removal proceedings based on inadmissibility or deportability grounds.[59] If you are found either ***inadmissible*** or ***deportable***, you will be deported. You may still be ***deportable*** even if you are lawfully present in the U.S. at the time DHS starts removal proceedings against you. You also may be deportable because of a criminal conviction (see below for information on what counts as a criminal conviction). You may be ***inadmissible*** if you are found to be unlawfully present in the U.S., if you have entered without inspection, or if you are stopped while trying to enter the U.S. (at a border, port, or inspection point).[60]

People without any legal status (EWIs) are considered inadmissible. Although LPRs have legal status, they also can be found to be inadmissible if stopped while attempting to reenter the U.S. after a trip out of the country.[61] You may be inadmissible if you have a ***deferred inspection appointment***[62] or are in a DHS ***detention center*** after attempting to enter the U.S. illegally (or reenter the U.S. if you are an LPR). If you are in prison, you are probably deportable even though you were legally present in the U.S at the time DHS began removal proceedings against you.

First, you should understand how a conviction is defined for immigration purposes. The definition of ***conviction*** for immigration purposes is different from the definition in criminal law. Criminal acts may be

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[56] For information about U visa eligibility and how to apply, please visit Victims of Criminal Activity: U Nonimmigrant Status, *available at* https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status (last visited Dec. 22, 2017).

[57] Note that EWI is not actually an official immigration status. *See* Entry Without Inspection (EWI) and Family Unity Waiver in a Nutshell, *available at* http://immigrationforum.org/blog/entry-without-inspection-ewi-and-family-unity-waiver-in-a-nutshell/ (last visited Dec. 22, 2017).

[58] EWIs were never legally admitted into the U.S., whereas visa overstays had legal status at some point.

[59] The difference between deportability and inadmissibility may seem small, but the category you fall into will determine which forms of relief are available to you.

[60] *See* Grounds of Inadmissibility and Deportability Related to Crimes, *available at* https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/2012_Oct_grounds-deport-admiss.pdf (last visited Aug. 14, 2017).

[61] Every time you travel abroad and attempt to reenter the U.S., you are asking the government for permission to be readmitted into the U.S.

[62] A deferred inspection appointment is an appointment at your local DHS office in which DHS will continue the interview it began at the airport or inspection point. DHS usually takes your green card and passport from you in anticipation of your removal proceedings. At the deferred inspection appointment, DHS will generally give you the Notice to Appear ("NTA") that will begin the removal proceedings against you. *See* Deferred Inspection, *available at* https://www.cbp.gov/contact/deferred-inspection/overview-deferred-inspection (last visited Aug. 14, 2017). *See* Part G of this Chapter, which discusses the NTA in greater detail.

convictions under immigration law even if they are not convictions under criminal law.[63] Read the following Section to find out what is considered a conviction for immigration purposes.

1. Criminal Convictions

(a) What Is a Criminal Conviction?

In removal proceedings, the term conviction means that a court entered a formal judgment of guilt in your case. If a formal judgment has not yet been entered, you may still have a "conviction" if:

(1) A judge or a jury found you guilty, you entered a plea of guilty or nolo contendere,[64] or you admitted sufficient facts to warrant a finding of guilt, **and**
(2) The judge ordered some form of punishment, penalty, fine, community service, or restraint on your liberty to be imposed.[65]

In other words, if you were found guilty or you admitted sufficient facts of your guilt and you were punished in some way, you probably have a conviction for the purposes of your immigration court proceedings.

Since the definition of conviction changed in 1996, courts have been deciding which criminal convictions count for immigration purposes. Some convictions are no longer considered convictions in criminal court but are still considered convictions in removal proceedings. For example, the following are considered convictions for immigration purposes:

(1) "Deferred adjudications" are convictions that "specialized courts" give (such as drug courts and domestic violence courts) where a judge accepts the defendant's plea and orders treatment. Upon completion of this treatment, the judge vacates or reduces the defendant's original plea. The conviction is vacated or reduced for criminal purposes. However, the initial plea combined with the judge's order to attend a program is still considered a conviction for immigration purposes.[66]
(2) The Second Circuit has held that an ***expungement*** of a non-drug offense may be a conviction for immigration purposes.[67]
(3) Convictions that are vacated only because of ***rehabilitation*** or immigration hardships, rather than because of procedural or substantive defects in the underlying criminal proceedings, may still be considered convictions for immigration purposes.[68]

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[63] INA § 212(a)(2)(A)(i)(II); 8 U.S.C. § 1182(a)(2)(A)(i)(II) (2012) ("any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of . . . any law . . . relating to a controlled substance is . . . inadmissible.").

[64] Nolo contendere literally means "no contest." Black's Law Dictionary 1074 (8th ed. 2005). This plea is technically not an admission of guilt, but it is enough of an admission to subject the defendant to criminal punishment and to warrant immigration consequences.

[65] INA § 101(a)(48); 8 U.S.C. § 1101(a)(48) (2012).

[66] *See* In re Salazar-Regino, 23 I. & N. Dec. 223, 227–34 (BIA 2002) (deciding that state rehabilitative expungements shall be considered convictions for immigration purposes). Some state specialized courts have gotten around this harsh interpretation of "conviction" by developing "pre-plea diversion programs" that require the usual completion of treatment, but instead of vacating the original plea upon completion of treatment, the court does not require you to initially plead guilty, so the court's judgment is not enough to count as a "conviction" for immigration purposes. States with pre-plea diversion programs include Connecticut, New Jersey, and Vermont. Many cities and counties—such as Cook County, Illinois and Seattle, Washington—have their own pre-plea diversion programs.

[67] Mugalli v. Ashcroft, 258 F.3d 52, 62 (2d Cir. 2001) (examining the effect of the New York State Certificate of Relief from Disabilities provision on the immigration consequences of a criminal conviction).

[68] In re Christopher Pickering, 23 I. & N. Dec. 621, 624 (BIA 2003) (declaring that a Canadian court's order quashing a conviction still counts as a conviction for immigration purposes and distinguishing between convictions that are vacated for rehabilitative or immigration reasons and those that are vacated for procedural or substantive reasons; a conviction that was vacated for rehabilitative or immigration reasons remains a conviction for immigration purposes), *rev'd on other grounds*, 465 F.3d 263 (6th Cir. 2006); Sansui v. Gonzales, 474 F.3d 341, 347 (6th Cir. 2007) (holding that petitioner who committed property theft and then paid a fine in lieu of a court appearance could be removed as an alien convicted of a crime of moral turpitude within five years of his admission and could not have his theft conviction vacated through a writ of coram nobis without a "colorable legal basis"); Saleh v. Gonzales, 495 F.3d 17, 21 (2d. Cir. 2007) (holding that an alien remains convicted of a removable offense for federal immigration purposes when the conviction is vacated simply to aid the alien in

The following are **not** considered convictions in removal proceedings:

(1) Youthful offender adjudications (as defined by Federal law).[69]
(2) A conviction that a trial or appeals court vacates because it was legally defective,[70] and
(3) A disorderly conduct violation.[71]

(b) How Do I Know if I Have Any Criminal Convictions?

It is important that you know when and how many times you have been arrested. This is important because any arrest in your record needs to be analyzed to determine if it is a conviction for immigration purposes. You, your attorney, or a trusted friend should obtain ***certificates of disposition***[72] or a comprehensive ***rap sheet***.[73] You can obtain certificates of disposition from the criminal courts where you were convicted. These documents will give you information about what happened in your criminal court proceedings and will tell you what your convictions and punishments were. Once you know and understand this information, you can determine what immigration consequences you might face.

Your rap sheet and certificates of disposition will also help you figure out what forms of relief may be available to you. Some criminal convictions bar (or stop) you from getting certain forms of relief. The following may also play a role in determining the forms of relief available to you: (1) your criminal sentence or punishment (how much jail time the judge ordered you to serve, even if it was suspended); (2) the ***maximum penalty*** possible for your conviction (how much jail time the judge could have ordered you to serve, even if you received less); (3) and whether you were given a suspended sentence or parole.[74]

You should discuss the immigration consequences of a criminal conviction with your criminal defense attorney if you have a pending criminal case. Make sure that he or she understands how your criminal court case may affect your ability to remain in the U.S. Because criminal law is different from immigration law, some criminal defense attorneys are unaware of the severe consequences of criminal convictions on immigration court hearings.[75] You should also speak to a criminal lawyer if you find that a certain conviction

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avoiding negative immigration consequences).

[69] In re Devison-Charles, 22 I. & N. Dec. 1362, 1368–73 (BIA 2000) (finding that declaration of juvenile delinquency does not count as a conviction for immigration purposes); In re Ramirez-Rivero, 18 I. & N. Dec. 135, 137 (BIA 1981) (holding that juvenile adjudications do not count as convictions for immigration purposes). *But see* Wallace v. Gonzales, 463 F.3d 135, 139 (2d Cir. 2006) (finding that a youth's propensity to violate the law, demonstrated by multiple convictions, can be considered for immigration purposes when determining whether an alien merits discretionary relief in applying for a change of status); Garcia v. INS, 239 F.3d 409, 412–13 (1st Cir. 2001) (considering a theft offense four days before petitioner's 18th birthday as a conviction for immigration purposes).

[70] In re Rodriguez-Ruiz, 22 I. & N. Dec. 1378, 1380 (BIA 2000) (holding that a conviction vacated under Article 440 of the New York Criminal Procedure Law, which was not a state rehabilitative statute, was no longer a conviction for immigration removal purposes); In re Sirhan, 13 I. & N. Dec. 592, 599 (BIA 1970) (discussing the validity of the California Superior Court's vacating of narcotics convictions through a writ of coram nobis, thus terminating deportation proceedings because the underlying conviction no longer existed).

[71] While certain actions will not impact removal proceedings, they could make it difficult to later become an LPR or USC. *See* Good Moral Character, *available at* https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF.html (last visited. Dec. 22, 2017). For that reason, you should consult with a lawyer to make sure that you qualify for citizenship or a green card before you apply.

[72] In New York, a certificate of disposition is an official court document that contains the Court Seal and indicates the disposition (or what determination the judge made) of a criminal case. Certificate of Disposition, *available at* https://www.nycourts.gov/courthelp/Criminal/CD.shtml (last visited Dec. 22, 2017). This document may have a different name in other states. If your criminal court case occurred in a state outside of New York, you should obtain the equivalent court document that indicates the result of your case.

[73] The Legal Action Center, *available at* https://lac.org/ (last visited Jan. 7, 2017), can help you obtain your rap sheet if you are unable to do so on your own. The following website describes the process of obtaining and cleaning up a rap sheet in New York State: How to Get and Clean Up Your New York State Rap Sheet, *available at* http://lac.org/wp-content/uploads/2014/12/Your_New_York_State_Rap_Sheet_2013.pdf (last visited Jan. 7, 2017). Appendix D at the end of this Chapter includes more resources and websites, most of which will be helpful nationwide.

[74] Section N.4: Sentence, *available* at https://www.ilrc.org/sites/default/files/resources/n.4-sentence_solutions.pdf (last visited Dec. 22, 2017).

[75] Anything you say during your immigration court proceedings can be used against you in your pending criminal case. United States v. Solano-Godines, 120 F.3d 957, 961 (9th Cir. 1997). Therefore, if you are in immigration court and your criminal court proceedings are not complete, you should discuss your case with your criminal defense attorney before making any admissions of

will permanently bar you from any immigration relief, just in case that the criminal lawyers can do anything about the conviction.

2. Deportability[76]

A conviction in one of the following categories of crimes make you deportable. This does not necessarily mean you will be deported. You may avoid deportation if you qualify for one of the forms of relief described in Part F of this Chapter.

(a) Aggravated Felony

If convicted of an aggravated felony, you are (1) ineligible for most forms of relief and (2) you will be subjected to mandatory detention.[77] The term "aggravated felony" is a term in immigration law. It has no connection to the definition of "felony" in state or federal criminal law. Even if your criminal conviction was not called a "felony" under state law, it may still be an aggravated felony in immigration proceedings. For example, some state misdemeanor convictions are considered aggravated felonies under immigration law.[78] However, sometimes a felony conviction in a state court is not considered an aggravated felony.[79] Furthermore, many crimes become aggravated felonies if the sentence imposed is for one year or more, even if it is a suspended sentence. It is important to know what your convictions are for *and* the length of your sentence.[80] Other crimes may be aggravated felonies no matter what the sentence was.

(i) *What is an aggravated felony?*

An aggravated felony is defined in the INA.[81] Examples of aggravated felonies are:

(1) ***Crimes of violence*** for which the penalty was at least one year;[82]
  (a) If physical force was used, the crime may be considered a ***crime of violence***. If physical force

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guilt. If, however, you have already been convicted of a crime, you should not deny your guilt during your immigration court proceedings. Judges are more likely to grant relief to people who admit that they have done wrong in the past but have improved their lives or have been rehabilitated. Part F of this Chapter discusses the importance of rehabilitation for obtaining certain forms of relief.

[76] The burden is on the government to prove deportability (unless you have never been legally admitted to the U.S.). If you are facing removal as a lawful resident who has been admitted into the U.S., the burden is on the government to prove "by clear and convincing evidence" (meaning enough evidence to show that the thing is substantially more likely than not) that you are deportable. Woodby v. INS, 385 U.S. 276, 277 (1966). This is not a very difficult burden for the government to overcome, however. To establish deportability, the government can use any official criminal court records to prove that you have been convicted of criminal violations. *See* Santapaola v. Ashcroft, 249 F. Supp. 2d 181, 189–90 (D. Conn. 2003) for a list of documents that can be used as a record of conviction. If your crimes fall in the group of deportable crimes, the government will begin removal proceedings. For more information about the procedural steps of immigration court proceedings (especially removal proceedings), *see* Part G of this Chapter, which goes through the process from beginning to end.

[77] *See* Aggravated Felonies: An Overview, *available at* https://www.americanimmigrationcouncil.org/research/aggravated-felonies-overview (last visited Aug. 14, 2017). Mandatory detention will be discussed in greater detail in Part E of this Chapter.

[78] An example is United States v. Graham, 169 F.3d 787, 793 (3d Cir. 1999), which held that a state misdemeanor conviction for petit larceny, carrying a maximum sentence of one year, constituted an aggravated felony under INA § 101(a)(43)(G); 8 U.S.C. § 1101(a)(43)(G) (2012). Since the decision in Graham, other Circuit courts have come to similar conclusions. *See* United States v. Cordoza-Estrada, 385 F.3d 56, 58–59 (1st Cir. 2004) (holding that a misdemeanor assault conviction constituted an aggravated felony); Guerrero-Perez v. INS, 242 F.3d 727, 737 (7th Cir. 2001) (holding that a misdemeanor sexual abuse conviction constituted an aggravated felony); United States v. Saenz-Mendoza, 287 F.3d 1011, 1014 (10th Cir. 2002) (holding that a misdemeanor child abuse conviction constituted an aggravated felony).

[79] Section N.4: Sentence, *available* at https://www.ilrc.org/sites/default/files/resources/n.4-sentence_solutions.pdf (last visited Dec. 22, 2017).

[80] 8 U.S.C. § 1101 (2012). The relevant sentence is *not* the sentence which *could* have been imposed, but instead the *actual* sentence you were given. *See* Ahmed v. Att'y Gen. of the United States, 212 Fed. App'x. 133, 135 (3d Cir. 2007) (instructing courts to look to the sentence imposed). However, in a case where you are originally sentenced to probation and then resentenced after a probation violation, the court will treat the modified sentence as the sentence originally imposed for immigration purposes.

[81] INA § 101(a)(43); 8 U.S.C. § 1101(a)(43) (2012).

[82] Crimes of violence are offenses that have as an element the use, attempted use, or threatened use of physical force against another person or property of another. Vargas-Sarmiento v. United States Dep't of Justice, 448 F.3d 159, 165 (2d Cir. 2006). A crime of violence can also be any other offense that is a felony and by its nature involves a risk that physical force may be used against the person or property of another in the process of committing the offense.

most likely could have been used in committing the crime, the crime may also be considered a ***crime of violence***. Either way, the crime may be considered an aggravated felony.[83]

(2) Murder;
(3) Rape;
(4) Sexual abuse of a minor;[84]
(5) Drug trafficking;
  (a) The law on what counts as drug trafficking is still changing.
  (b) The following are both considered aggravated felonies:
    - A felony drug sale; or
    - A felony drug possession with intent to sell.
  (c) The Supreme Court has held that a first-time felony drug possession in state court—without intent to sell—is not an aggravated felony.[85]
  (d) A first-time misdemeanor possession is also not an aggravated felony.[86]
  (e) It is not clear whether two or more misdemeanor possessions can be considered aggravated felonies.[87]
  (f) It is not clear whether misdemeanor sales can be considered aggravated felonies.
(6) Firearms trafficking;[88]
(7) Theft or burglary for which the penalty is at least one year in prison;[89]

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[83] A few recent decisions have offered additional indications of what is included in the definition of crimes of violence. *See* United States v. Franco-Fernandez, 511 F.3d 768, 770–71 (7th Cir. 2008) (holding that the abduction of a child by a parent did not qualify as a "crime of violence" under Illinois law because the abduction of a child by a parent does not generally involve restraint against the child's will or involve violence or threat of violence); Estrada-Rodriguez v. Mukasey, 512 F.3d 517, 520–21 (9th Cir. 2007) (holding that resisting arrest under Arizona law was an "aggravated felony" because the elements for conviction included a component of physical violence or the threat of physical violence).

[84] Sexual abuse of a minor can be a felony or misdemeanor under criminal law but either one could be defined as an aggravated felony for immigration purposes. The Second, Third, Fifth, Seventh, and Eleventh Circuits have used the definition of "sexual abuse" found at 18 U.S.C. § 3509(a)(8) (2012), under which misdemeanors could be defined as aggravated felonies. The Ninth Circuit has rejected this approach, using the definition of "sexual abuse of a minor" found at 18 U.S.C. § 2243 (2012), which excludes indecent exposure offenses, includes a four-year age-span gap, and criminalizes only sexual contact with children sixteen years or younger. Estrada-Esponoza v. Mukasey, 546 F.3d 1147, 1152 (9th Cir. 2008) (finding that "it is more plausible that Congress intended the 'aggravated felony' of 'sexual abuse of a minor' to incorporate the definition of 'sexual abuse of a minor' in 18 U.S.C. § 2243 … rather than the definition of 'sexual abuse' found in 18 U.S.C. § 3509"). For example, under the Ninth Circuit approach, the fact that a 19 year old had sex with a 16 year old would not be enough, in and of itself, to be an aggravated felony for immigration purposes. Depending on the state statute, state sex offenses involving a minor may not be considered "sexual abuse of a minor." *See, e.g.*, Rebilas v. Keisler, 506 F.3d 1161, 1164–65 (9th Cir. 2007) (holding that the Arizona state offense of attempted public sexual indecency to a minor did not qualify as an "aggravated felony" because the defendant could be arrested and convicted for behavior the minor was unaware of and finding the Arizona definition overly broad compared to the federal definition of sexual abuse of a minor).

[85] Lopez v. Gonzales, 127 S. Ct 625, 633, 166 L. Ed. 2d 462, 474 (2006) (holding that where the drug possession offense is a felony under state law but only a misdemeanor under the Federal Controlled Substances Act, the possession is not an aggravated felony). *But see* Storeby v. Unites States, No. 8:02-cr-65-T-24TBM, 2007 U.S. Dist. LEXIS 39494, at *5 (M.D. Fla. May 31, 2007) (unpublished) (holding that Lopez does not apply retroactively to cases on collateral review).

[86] *See* Lopez v. Gonzales, 127 S. Ct 625, 633, 166 L. Ed. 2d 462, 474 (2006); *see also* Gonzales-Gomez v. Achim, 441 F.3d 532, 535 (7th Cir. 2006) (holding that states may not reclassify misdemeanors as aggravated felonies in order to banish immigrants); Arce-Vences v. Mukasey, 512 F.3d 167, 170 (5th Cir. 2007) (holding that a single charge of possession of marijuana is not an aggravated felony).

[87] One District Court found that multiple misdemeanor possessions qualified as an aggravated felony for the purposes of sentencing. Though the question was not reached, the interpretation of an aggravated felony will most likely be the same in the removal context. United States v. Castro-Coell, 474 F. Supp. 2d 853, 864 (S.D. Tex. 2007) (holding that two state misdemeanor drug offenses could qualify as an aggravated felony); *see also* United States v. Lopez- Molina, 494 F. Supp. 2d 517, 520 (W.D. Tex. 2007) (finding that under the Court's decision in Lopez v. Gonzales, 127 S. Ct. 625, 166 L. Ed. 2d 462 (2006), the crime at issue, repeated drug possession, could be treated as drug trafficking for the purposes of immigration proceedings). *But see* In re Carachuri-Rosendo, 24 I. & N. Dec. 382, 393–94 (BIA 2007) ("[A]bsent controlling authority regarding the 'recidivist possession' issue, an alien's State conviction for simple possession of a controlled substance will not be considered an aggravated felony conviction on the basis of recidivism unless the alien's status as a recidivist drug offender was either admitted by the alien or determined by a judge or jury in connection with a prosecution for that simple possession offense.") For more information or practical advice on how to defend yourself in removal proceedings involving this area of law, visit the New York State Defenders Association (NYSDA) website, which contains a variety of practice advisories. NYSDA Immigrant Defense Project, *available at* http://www.immdefense.org/resources-criminal-defenders/ (last visited Jan. 7, 2017), or call the Immigrant Defense Project at 212-725-6422.

[88] The trafficking of illegal firearms is considered an aggravated felony. 8 U.S.C. § 1101(a)(43)(C) (2012).

[89] Regardless of whether the conviction was a misdemeanor or a felony, both types of theft or burglary are considered aggravated

(8) Child pornography;
(9) Prostitution business;[90]
(10) Crime of fraud or deceit[91] or tax evasion if the loss to the victim[92] exceeds $10,000;[93]
(11) Some types of money laundering in excess of $10,000;
(12) ***Failure to appear*** for service of sentence;[94]
(13) Crime related to commercial bribery;[95]
(14) Crime relating to obstruction of justice, perjury, subornation (encouragement) of perjury, or bribery of a witness, where the penalty imposed is one year or more in prison (felony or misdemeanor);
(15) Smuggling aliens;[96]
(16) Conviction related to failure to appear before a court on a felony charge that could result in a sentence of two or more years; or
(17) An attempt or conspiracy to commit any of the above.

(b) Other Offenses That Could Make You Deportable

The following are other crimes that could make you deportable, although they are not aggravated felonies.[97]

(i) *Controlled Substance Offenses*

You may be deportable if you have been convicted of a ***controlled substance offense***. The exception is a conviction for a single offense involving possession of thirty grams or less of marijuana for your own use.[98] You also may be deportable if convicted of a conspiracy or an attempt to possess, distribute, or manufacture a controlled substance.[99]

(ii) *Crime Involving Moral Turpitude*[100]

A ***crime involving moral turpitude*** (***"CIMT"***) is a crime that is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general."[101] CIMTs are not defined by statute. CIMTs have been defined by case law (i.e., by the courts). Courts struggle to apply this definition. It is hard to figure out what is and what is not a CIMT. Therefore, you should do as

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felonies as long as the penalty imposed was at least one year of prison time. Additionally, the 9th Circuit has held that a theft offense, for the purposes of finding an "aggravated felony," does not require the intent to permanently deprive someone of property; the deprivation of property can be temporary or incomplete and still qualify as a theft offense. Arteaga v. Mukasey, 511 F.3d 940, 947 (9th Cir. 2007).

[90] Prostitution business constitutes any crime related to owning, controlling, managing, or supervising a prostitution business. INA § 101(a)(43)(K)(i); 8 U.S.C. § 1101(a)(43)(K)(i) (2012).

[91] An offense may not be fraud or deceit unless fraud or deceit is a necessary or proven element of the crime. 8 U.S.C. § 1101(a)(43)(M) (2012).

[92] For the purposes of tax evasion, the "victim" is the government. 8 U.S.C. § 1101(a)(43)(M)(2012).

[93] 8 U.S.C. § 1101 (2012). However, a recent court decision held that a loss of over $10,000 is not required for the fraud or deceit to be an aggravated felony as long as the defendant intended to cause a loss of that size or greater. Eke v. Mukasey, 512 F.3d 372, 380–81 (7th Cir. 2008).

[94] This is an aggravated felony if the underlying offense is punishable by a term of five years or more. INA § 101(a)(43)(Q); 8 U.S.C. § 1101(a)(43)(Q) (2012).

[95] Some examples of this include counterfeiting, forgery, and trafficking in cars with altered vehicle identification numbers, where the penalty imposed is imprisonment for one year or more (felony or misdemeanor). 8 U.S.C. § 1101(a)(43)(R) (2012).

[96] If you have not been criminally convicted of smuggling, you might be eligible for a waiver if it is your first offense and you assisted your spouse, child, or parent. 8 U.S.C. § 1101(a)(43)(N) (2012).

[97] Other crimes besides the ones listed can make you deportable, such as failure to register and falsification of documents, INA § 237(a)(3)(B); 8 U.S.C. § 1227(a)(3)(B) (2012), security and related grounds, INA § 237(a)(4); 8 U.S.C. § 1227(a)(4) (2012), and being a ***public charge*** or an unlawful voter. INA § 237(a)(5), (6); 8 U.S.C. § 1227(a)(5), (6) (2012).

[98] INA § 237(a)(2)(B)(i); 8 U.S.C. § 1227(a)(2)(B)(i) (2012). If you are currently in criminal proceedings and are able to prove that you possessed 30 grams or less of marijuana for your own use and this is your only crime, you should tell your criminal defense attorney that this should be reflected in the criminal court record. Otherwise, even if you prove in your criminal proceedings that you possessed 30 grams or less for your personal use, it will not automatically be reflected in the record and you may still face immigration consequences for the conviction.

[99] INA § 237(a)(2)(B)(i); 8 U.S.C. § 1227(a)(2)(B)(i) (2012).

[100] INA § 237(a)(2)(A)(i); 8 U.S.C. § 1227(a)(2)(A)(i) (2012).

[101] Rodriguez v. Gonzales, 451 F.3d 60, 63 (2d Cir. 2006).

much research as possible if you think you might have committed a CIMT. There are various categories of CIMTs, which include, but are not limited to:

(1) Crimes that contain an element of intent to steal or defraud;
(2) Crimes in which bodily harm is caused or threatened by an intentional or willful act;
(3) Crimes in which serious bodily harm is caused or threatened by a reckless act; and
(4) Sex offenses.

To determine whether you have been convicted of a CIMT, the judge will look at the elements of the crime of which you were convicted. These elements are found in the statute that defines the crime. The judge will consider your crime a CIMT if certain elements (such as the intent to steal or defraud mentioned above) are included in the definition of your crime. Courts will not generally look to the facts of your case to determine whether you have been convicted of a CIMT, but instead to the criminal statute defining the crime and its elements.[102] Some examples of CIMTs are:

(1) Voluntary manslaughter;[103]
(2) Involuntary manslaughter;[104]
(3) Tax evasion;
(4) Aggravated assault;[105]
(5) Sexual abuse;[106]
(6) Spousal abuse;[107]
(7) Breaking and entering;[108]
(8) Arson;[109] and
(9) Theft or fraud[110] (including welfare fraud and student loan fraud).

While drunk driving is not considered a crime involving moral turpitude, drunk driving without a license may be.[111] It is important to get advice from your criminal defense attorney before taking a plea

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[102] Immigration judges were generally considered to be prohibited from looking at the particular facts of your conviction and could only look at the elements of the crime for which you are convicted to determine whether the crime qualified as a CIMT. *See* United States *ex rel.* Mylius v. Uhl, 210 F. 860, 863 (2d Cir. 1914) (finding that if a person can be convicted of a crime without having the level of depravity necessary to make the crime a CIMT, then anyone convicted of committing the crime cannot be said to have committed a CIMT, regardless of the facts of the particular case). *See also* Taylor v. United States, 495 U.S. 575, 599–603, 110 S. Ct. 2143, 2158–61, 109 L. Ed. 2d 607 (1990) (finding that the "categorical approach" like that laid out in *Uhl* is a workable and appropriate approach, but also holding that immigration judges are allowed to inquire into the record when faced with "divisible statutes" like burglary statutes in which one "branch" of the statute might include elements that would lead to a crime being classified as one involving moral turpitude, and another branch would not). *See* United States v. Spell, 44 F. 3d 936, 939 (11th Cir. Fla. 1995) (finding that despite the Supreme Court's holding in Taylor v. United States, courts should examine a charging document using the framework in Guidelines; U.S.S.G. § 4B1.2, cmt. 2 stresses that the focus of a court's inquiry should be the conduct for which a defendant was charged, as opposed to just the category of that conduct.) If you have been convicted of a crime that you think might involve moral turpitude, you should discuss the issue with your attorney.

[103] *See* In re Wojtkow, 18 I. & N. Dec. 111, 112 (BIA 1981) (holding that voluntary manslaughter can involve moral turpitude because "moral turpitude can lie in criminally reckless conduct").

[104] *See* In re Franklin, 20 I. & N. Dec. 867, 870 (BIA 1994) ("[B]ecause the statute under which the respondent was convicted requires that she acted with a 'conscious disregard of a substantial and unjustifiable risk,' the conclusion necessary follows that she has been convicted of a crime involving moral turpitude.").

[105] *See* In re Medina, 15 I. & N. Dec. 611, 612–14 (BIA 1976) (holding that a conviction for aggravated assault inherently involves moral turpitude where a statute requires either intent, knowledge, or recklessness).

[106] *See* Garcia-Lara v. Holder, 342 Fed. App'x. 212, 213 (7th Cir. 2009) ("Jose Garcia-Lara…was found to be removable after an immigration judge determined that his state conviction for criminal sexual abuse constituted both an aggravated felony and a crime involving moral turpitude.").

[107] *See* Mata-Guerrero v. Holder, 627 F.3d 256, 260 (7th Cir. 2010) ("Equating failing to register with the crimes of statutory rape, child abuse, and spousal abuse, the Board in Tobar-Lobo found that failure to register as a sex offender under the California statute, even as a result of forgetfulness, was a crime of moral turpitude.").

[108] Zivkovic v. Holder, 724 F.3d 894, 897 (7th Cir. 2013) states that the IJ did not need to reach the moral turpitude ground, as it affirmed deportation because of the aggravated felonies and ineligibility for Section 212(c) relief.

[109] *See* Rodriguez-Herrera v. INS, 52 F.3d 238, 239 n.2 (9th Cir. 1995) ("That arson necessarily involves moral turpitude is undisputed.").

[110] *See* Abdelqadar v. Gonzales, 413 F.3d 668, 670 (7th Cir. 2005) ("crimes of deceit are the classic exemplars of moral turpitude").

[111] *See* Marmolejo-Campos v. Gonzales, 503 F.3d 922, 926 (9th Cir. 2007) (holding that while drunk driving is not moral turpitude, drunk driving without a license is because "[d]riving while intoxicated is despicable, and when coupled with the knowledge that

bargain. You may face serious immigration consequences if you take a plea and admit to committing a CIMT. By speaking to your attorney, you may be able to resolve your case in a way that you can avoid deportation in the future.

You may be deportable if you were convicted of one CIMT within five years of the date of your admission to the U.S. and the judge could have sentenced you to a prison term of one year or more.[112] It does not matter what your actual sentence was as long as the judge could have sentenced you to one year or more. You cannot be deported if you are convicted of only one CIMT and more than five years (ten if you are an LPR) have passed since you were admitted to the U.S. However, you may be deportable if you have been convicted of two CIMTs that do not arise out of a single scheme any time after you were admitted into the U.S.[113]

(iii) *Certain Firearms Offenses*

If you have been convicted of certain firearms offenses, you may be deportable.[114]

(iv) *Domestic Violence Crimes*

If you have been convicted of domestic violence crimes, including a violation of an order of protection, stalking, or crimes against children (including child abuse, child neglect, or child abandonment), you may be deportable.[115]

(v) *High-Speed Flight*

If you are convicted of high-speed flight from an immigration checkpoint, you may be deportable.[116]

3. **Inadmissibility**[117]

You are inadmissible if you do not have permission to enter the U.S. You are also inadmissible if you entered the U.S. without the proper documentation at some point and are currently unlawfully present in the U.S.[118] You may also be found to be inadmissible any time you seek permission to enter the U.S. from a trip abroad.[119] Therefore, inadmissibility can apply without criminal convictions. However, the focus of this Section will be individuals who are inadmissible because of criminal convictions. The following Subsection describes the criminal grounds (or reasons) for inadmissibility.

(a) Criminal Grounds for Inadmissibility

There are many grounds for inadmissibility.[120] Criminal grounds for inadmissibility[121] are usually

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one has been specifically forbidden to drive, it becomes an act of baseness, violence or depravity in the private and social duties which a person shows to a fellow man or to society in general, contrary to the accepted and customary rule of right and duty."), *reh'g en banc granted*, 519 F.3d 907, 908 (9th Cir. 2008).

[112] INA § 237(a)(2)(A)(i)(I), (II); 8 U.S.C. § 1227(a)(2)(A)(i)(I), (II) (2012).

[113] INA § 237(a)(2)(A)(ii); 8 U.S.C. § 1227(a)(2)(A)(ii) (2012).

[114] INA § 237(a)(2)(C); 8 U.S.C. § 1227(a)(2)(C) (2012). These firearms offenses include "purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18) in violation of any law is deportable." INA § 237(a)(2)(C); 8 U.S.C. § 1227(a)(2)(C) (2012).

[115] INA § 237 (a)(2)(E); 8 U.S.C. § 1227(a)(2)(E) (2012).

[116] INA § 237(a)(2)(A)(iv); 8 U.S.C. § 1227(a)(2)(A)(iv) (2012).

[117] INA § 212; 8 U.S.C. § 1182 (2012).

[118] 8 U.S.C. § 1182 (2012).

[119] Legally permanent residents returning from trips abroad are not considered to be "seeking admission," so if you are a legal permanent resident returning from abroad you should not be found inadmissible. Matter of Alcibiades Antonio Pena, 26 I. & N. Dec. 613, 619 (BIA 2015).

[120] INA § 212(a); 8 U.S.C. § 1182(a) (2012). You may be inadmissible if you have been convicted of certain crimes or acts (either outside or inside the U.S.) as discussed further in this Part. Here are some of the other reasons why you may be inadmissible: you have certain communicable diseases; you have a controlled substance addiction; you have a mental illness (if that illness is likely to cause harm to others); you have immigration violations such as ***unlawful presence*** in the U.S.; you lied about a material fact in

raised when an LPR with criminal convictions travels abroad and is stopped at U.S. customs upon return. The LPR would have been deportable if already in the U.S., but attempting to reenter the U.S. subjects him to inadmissibility. Basically, if you are an LPR with criminal convictions who was stopped at an inspection point after a trip abroad, you are probably facing inadmissibility grounds in your removal proceedings.

The criminal grounds for inadmissibility are similar to those for deportability, although the forms of relief available to those who are subject to inadmissibility may be different. The following criminal convictions will make you subject to inadmissibility:

(i) *CIMTs*

For the purposes of inadmissibility, CIMTs are defined in the same way they are defined for deportability,[122] explained in Subsection C(2)(b)(ii) above. However, if you have only been convicted of one CIMT, you may qualify for one of the following ***petty offense exceptions*** and may not be inadmissible:

(1) Petty offense exception 1: (a) the crime was committed when you were under eighteen (18) years old, (b) you were only convicted of one CIMT, **and** (c) the crime was committed more than five years before your application for admission.[123] If all three of these conditions apply to you, then you may qualify for the first exception.
(2) Petty offense exception 2: (a) you must have only been convicted of one CIMT **and** (b) the maximum possible penalty for the crime (the maximum amount of time the judge could have sentenced you to) cannot exceed one year in prison. Also, you must not actually have been sentenced to more than six months in prison.[124]

(ii) *Two or More Criminal Convictions*

You are inadmissible if you have two or more criminal convictions (regardless of whether the crimes arose from a single scheme and regardless of whether the crimes were CIMTs) with a combined prison sentence of five years or more.[125]

(iii) *Any Controlled Substance Offense*

If you are convicted of violating any controlled substance law, you are inadmissible. There is no exception for a single offense for thirty grams or less of marijuana for personal use, as there was under deportability.[126]

(b) Other Grounds for Inadmissibility

(i) *Detained by Customs Officials During First Attempt to Enter the U.S.*

You are inadmissible if customs officials detained you during your first attempt to enter the U.S. because you did not have permission to enter the U.S.

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order to obtain an immigration benefit (for example, you lied on your application); you have a past deportation order or entered the U.S. without valid documents; you are a public charge, meaning that you are likely to become dependent on public benefits as your main source of income (in other words, if you are likely to request government (public) assistance). Human Immunodeficiency Virus (HIV) is no longer a ground for inadmissibility as of January 4, 2010. 8 U.S.C. § 1182(a) (2012); *see* HIV Ban End & HIV-Based Immigration, *available at* https://www.immigrationequality.org/get-legal-help/our-legal-resources/visa-questions/hiv-ban-hiv-based-immigration-applications/ (last visited Dec. 22, 2017).

[121] INA § 212(a)(2); 8 U.S.C. § 1182(a)(2) (2012) (outlining inadmissibility due to a criminal conviction).

[122] An alien "who admits having committed" a CIMT can also be found inadmissible. INA § 212(a)(2)(A)(i); 8 U.S.C. § 1182(a)(2)(A)(i) (2012).

[123] *See* INA § 212(a)(2)(A)(ii)(I); 8 U.S.C. § 1182(a)(2)(A)(ii)(I) (2012) (listing exceptions to inadmissibility).

[124] *See* INA § 212(a)(2)(A)(ii)(II); 8 U.S.C. § 1182(a)(2)(A)(ii)(II) (2012).

[125] INA § 212(a)(2)(B); 8 U.S.C. § 1182(a)(2)(B) (2012).

[126] INA § 212(a)(2)(C); 8 U.S.C. § 1182(a)(2)(C) (2012).

(ii) *You Have Entered the U.S. Without Inspection*

You are inadmissible if you ever ***entered the U.S. without inspection ("EWI")*** and did not have legal permission to enter the U.S.

If you are in removal proceedings under inadmissibility and applying to enter the U.S., the burden is on you to show that you are "clearly and beyond doubt entitled to be admitted"[127] and not inadmissible. If already present in the U.S., you must show "by clear and convincing evidence" that you were lawfully admitted.[128]

Now that you know your immigration status (Part B), and the different reasons why you might be subject to removal proceedings (Part C), Part D will tell you how the government places you in removal proceedings.

D. HOW THE GOVERNMENT PLACES YOU IN REMOVAL PROCEEDINGS

The government has the authority to place non-USCs in removal proceedings because of criminal convictions. This is true even if the non-USC is in the U.S. legally, has worked, paid taxes, and has USC family members (including children). You may wonder how the government finds out about the non-USCs who have criminal convictions and places them in removal proceedings.

There are four main ways that people are placed in removal proceedings: (1) stopped at the airport after traveling abroad; (2) interviewed while in jail/prison; (3) immigration applications; and (4) ***prior deportation orders***.

1. Stopped at the Airport After Traveling Abroad

If you are a non-USC and you travel abroad, you must go through a customs inspection conducted by DHS. At that time, you are attempting to reenter the U.S. In the past, many non-USCs traveled to their home countries and returned to the U.S. without facing any immigration problems. However, DHS is now enforcing the laws much more strictly. The government now regularly updates its computers at inspection points, especially airports. These computers have access to criminal records and prior deportation orders, among other things. Therefore, if a DHS officer at the airport or other inspection point finds that you have a criminal conviction or a prior deportation order, you may be detained or given a deferred inspection appointment.[129] DHS will then likely start removal proceedings against you.[130]

Because there is no statute of limitations (time limit) under immigration laws, you may face serious immigration consequences for your criminal convictions or prior deportation orders, even if they occurred many years ago. If you are a non-USC and have a criminal conviction, you should talk to an attorney before traveling abroad to make sure that you will be able to reenter the U.S. without facing any immigration consequences.

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[127] 8 C.F.R. § 1240.8(b); 8 U.S.C. § 1229a(c)(2)(A) (2012).
[128] 8 C.F.R. § 1240.8(c); 8 U.S.C. § 1229a(c)(2)(B) (2012).
[129] A deferred inspection appointment means that you will be allowed to enter the U.S. but are expected to appear at your immigration court date, which will be set at a later time. *See* Deferred Inspection, *available at* https://www.cbp.gov/contact/deferred-inspection/overview-deferred-inspection (last visited Dec. 22, 2017). You will eventually receive your Notice to Appear ("NTA"). The NTA is discussed in greater detail in Section G(1) of this Chapter. If you do not receive the NTA, you should call 1-800-898-7180 and enter your Alien Registration Number (an eight- or nine-digit number preceded by an "A" found on your resident alien card or other documents related to immigration) to see if your court date has been set.
[130] If you were in prison after October 1998 for your conviction, you may be subject to mandatory detention. *See* Is My Client Subject to Mandatory Detention, *available at* https://www.ilrc.org/sites/default/files/resources/mandatory_detention_ice_hold_policy_handout.pdf (last visited Dec. 22, 2017). This means you may be detained at the airport or point of inspection and be forced to defend your immigration case from inside the DHS detention center or a prison or jail that DHS uses. *See* Part E of this Chapter, which discusses detention in greater detail.

2. Interviewed While in Jail or Prison

There are DHS officers at most jails and state prisons. If you are a non-USC serving a criminal sentence in a jail or state prison, you will likely be interviewed at some point by a DHS officer. The officer will ask you about your immigration status. You may not even realize that it is a DHS officer who is interviewing you. Based on this interview and other information they collect, the DHS officers may find a reason to initiate removal proceedings against you.

Once a DHS officer interviews you, he or she may place a "detainer" on you. Basically, a detainer is an order issued by a government agency saying that they will place you in their ***detention***, although they cannot take possession of you right now. For example, if DHS cannot take possession of you immediately because you are in prison, they will use a detainer to make sure that they can detain you in a DHS facility soon.[131] If a detainer has been placed on you, you will not be released once your bail is paid or your prison sentence is complete. Instead, the government will detain you, sometimes beyond your sentence, for immigration purposes.[132] In other words, you will either: (1) complete your criminal sentence in a jail or prison, then be moved to a DHS detention center (a jail or prison that DHS uses[133]) to face deportation or (2) you will have to defend yourself at removal proceedings while you are completing your criminal sentence in a jail or prison. If you win your immigration case, you will be released at the end of your criminal prison sentence. But if you lose your immigration case, DHS will detain you and then deport you to your home country. Recently, some detainees have been moved to remote out-of-state facilities without prior notice to the detainees, their families, or their lawyers.[134] Although new policies were implemented in 2012 to try to minimize detainee transfers, you should keep the possibility of a transfer in mind.[135]

3. Immigration Applications

Most, if not all, applications[136] to the ***United States Citizenship and Immigration Services*** (**"*USCIS*"**) now require security clearances and/or fingerprints as part of the application process.[137] Once USCIS has received your immigration application, it determines whether you have any criminal convictions that occurred anywhere in the U.S., even if they occurred a long time ago. In other words, when you submit an application and your fingerprints to USCIS, it is able to obtain a list of all your criminal convictions, regardless of when or where they occurred. If you have a criminal conviction that makes you ***deportable*** or ***inadmissible***,[138] your application will likely be denied and you may be placed in removal proceedings.

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[131] *See* Immigration Detainer, *available at* https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses/immigration-detainers (last visited Dec. 22, 2017).

[132] State and local law enforcement authorities may only hold persons on immigration detainers for 48 hours after the completion of their jail time. 8 C.F.R. § 287.7(d) (2017). This means that once you have completed your criminal sentence, DHS must take you into custody for immigration purposes within two days. DHS frequently violates this provision. Therefore, if DHS does not take you into custody within 48 hours (does not count weekends and holidays) after the completion of your prison sentence, you should contact your criminal defense attorney and ask him or her to file a writ of habeas corpus with the state court demanding your release from immigration detention.

[133] At this point, you are no longer considered a prisoner. You are an immigration detainee. 8 C.F.R. § 287.7(d) (2017). Although some detainees are held in regular prisons, immigration detainees have fewer rights than prisoners. *See e.g.*, Access to Counsel in Immigration Court, *available at* https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court (last visited Dec. 22, 2017) (stating that "immigrants have a right to counsel in immigration court, but that expense has generally been borne by the noncitizen").

[134] U.S.: Remote Detainee Lockups Hinder Justice, *available at* https://www.hrw.org/news/2009/12/02/us-remote-detainee-lockups-hinder-justice (last visited Jan. 7, 2017).

[135] Update: ICE Limits Immigrant Detainee Transfers, *available at* https://www.hrw.org/news/2012/05/22/update-ice-limits-immigrant-detainee-transfers (last visited Jan. 7, 2017).

[136] These include, but are not limited to, applications for U.S. citizenship, renewal of green cards, employment authorizations and petitions for family members. Preparing for your Biometric Services Appointment, *available at* https://www.uscis.gov/forms/forms-information/preparing-your-biometric-services-appointment (last visited Dec. 22, 2017).

[137] *See* USCIS International Biometric Processing Services, *available at* https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-ibps-may2016.pdf (last visited Dec. 22, 2017).

[138] *See* Part C of this Chapter for grounds for deportability and inadmissibility.

4. Prior Orders of Deportation

DHS also apprehends people who live in the U.S. and have prior deportation orders. Even if you do not know that the government has ordered you deported in the past or your deportation order was entered many years ago, it is still a problem for you. If you were ever in immigration court proceedings and you did not appear for your scheduled court date, you may have been ordered deported in your absence.[139] Persons with prior deportation orders have been entered into a national absconder list. Local law enforcement officers (such as police) help immigration officers catch the people on this list. This can happen anywhere, even if you are stopped for a traffic violation.

Now that you have determined your immigration status, if you are removable and how you were placed in removal proceedings, you should next find out about detention. Most people will have to face detention as their removal proceedings are happening. The next Part discusses detention and how to get out of detention.

E. DETENTION

Non-USCs who may be deported are now much more likely than before to be detained by ***Immigration and Customs Enforcement ("ICE").*** You may be held in immigration detention while you are waiting on your case or until your deportation is arranged. Immigration detention is not the same as criminal imprisonment. Even though you may have been put in immigration proceedings because of a criminal conviction, immigration law is not criminal law; it is civil law. Immigration detention might seem harsh, but it is technically not considered punishment. Both of these facts result in you having fewer rights as an immigration detainee than you do as a criminal prisoner. You do have the right, however, to contact the ***consulate*** of your home country.[140] The ICE arresting agent must inform you of this right when he arrests you. You do not have to contact your consulate if you do not want to. Chapter II discusses this right in more detail.

Immigration detention is seen as a way in which the government can temporarily "hold" you while your case and future are determined. The government's primary reason for detaining you is to ensure your deportation if the judge orders you deported.

1. Mandatory Detention

Depending on your immigration status and/or criminal record, you may be subject to "mandatory detention." This means you will not be eligible for the bond discussed below and you will not be released from the DHS detention center until you win your immigration case. If, however, you lose and are ordered deported, you will remain in the detention center until you leave the U.S.

Non-USCs who are deportable for certain crimes (including possession of a firearm) must be detained.[141] In 2000, the ***Board of Immigration Appeals*** (***BIA***) held if you were released from physical custody after criminal arrest (regardless of whether you were sentenced to jail time) after October of 1998, you are subject to mandatory detention.[142] In 2003, the Supreme Court decided the government is allowed to hold non-USCs who have been convicted of any of the crimes listed below in mandatory detention without a bond hearing.[143] So, if you were convicted of any of the crimes listed below and released from physical custody

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[139] Section G(2) of this Chapter describes the consequences of not appearing for your scheduled immigration court hearings. Part H of this Chapter explains how you may be able to file a motion to reopen your immigration case due to failure to appear.
[140] *See* What to Do if You Are Arrested or Detained by Immigration, *available at* https://www.nilc.org/get-involved/community-education-resources/know-your-rights/to_do_if_arrested_2007-08/ (last visited Dec. 22, 2017).
[141] INA § 236(c); 8 U.S.C. § 1226(c) (2012).
[142] In re West, 22 I. & N. Dec. 1405, 1407 (BIA 2000) (holding that only aliens released from criminal custody after October 8, 1998, are subject to mandatory detention); In re Roman Kotliar, 24 I. & N. Dec. 124, 135 (BIA 2007) (finding that an alien who is released from criminal custody after October 8, 1998, is subject to mandatory detention even if no jail term was served).
[143] Demore v. Kim, 538 U.S. 510, 531, 123 S. Ct. 1708, 1722, 155 L. Ed. 2d 724, 734 (2003) (finding that a criminal alien can be held in detention without bond procedures).

after October of 1998, you are subject to mandatory detention and are ineligible for a bond.[144] If you are in this situation, you will have to defend your removal proceedings from within the detention enter.

(a) Mandatory Detention of Inadmissible Non-USCs

If you are an inadmissible non-USC, you may be subject to mandatory detention if you have committed any offense listed in INA § 212(a)(2) or INA § 212(a)(3)(B).[145] Some of the grounds for inadmissibility that make you subject to mandatory detention include, but are not limited to: (1) one CIMT, although the petty offense exceptions apply; (2) a controlled substance offense; (3) a drug trafficking offense; (4) two or more offenses with aggregate sentences of five years; (5) prostitution; (6) or a domestic violence offense or violation of an order of protection.

(b) Mandatory Detention of Deportable Non-USCs

If you are a deportable non-USC, you may be subject to mandatory detention if you have committed any offense listed in INA § 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) or 237(a)(2)(A)(i) if your prison sentence was at least one year or in INA § 237(a)(4)(B).[146] Some of the grounds for deportability that make you subject to mandatory detention include, but are not limited to: (1) two CIMTs at any time; (2) an aggravated felony; (3) a controlled substance offense, with the exception of possession of thirty grams of marijuana for personal use; or (4) a firearms offense.

You may also be subject to mandatory detention if you are a suspected terrorist.[147]

2. **Bond**[148]

If you are not subject to mandatory detention and you are being detained in an immigration detention center (not the same as serving your criminal prison sentence), you may be able to request a bond hearing, sometimes referred to in immigration court as a "Joseph Hearing."[149] A bond is similar to paying bail for your release from prison. If you are released on an immigration bond, you may be able to fight your removal proceedings from outside of the detention center.[150]

(a) Eligibility

To be able to request bond, you must demonstrate that (1) you do not meet the requirements for mandatory detention and that (2) you are not an "arriving alien," meaning you have not just arrived in the

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[144] However, if DHS does not pick you up and detain you immediately upon release, you may be able to argue that you are no longer subject to mandatory detention. *See* Boonkue v. Ridge, No. 04-556, 2004 U.S. Dist. LEXIS 9648, at *4 (D. Or. May 7, 2004) (finding that an alien taken into custody over five years after release was not subject to mandatory detention). More recently, many courts have reached the opposite conclusion as *Boonkue*. *See, e.g.*, Lora v. Shanahan, 804 F.3d 601, 613 (2d Cir. 2015); Sylvain v. Attorney Gen. of the United States, 714 F.3d 150, 152 (3d Cir. 2013); Hosh v. Lucero, 680 F.3d 375, 380 (4th Cir. 2012).
[145] INA § 236(c)(1)(A); 8 U.S.C. § 1226(c)(1)(A) (2012) and INA § 236(c)(1)(D); 8 U.S.C. § 1226(c)(1)(D) (2012).
[146] INA § 236(c)(1)(B); 8 U.S.C. § 1226(c)(1)(B) (2012) and INA § 236(c)(1)(C); 8 U.S.C. § 1226(c)(1)(C) (2012).
[147] INA § 236(a); 8 U.S.C. § 1226(a) (2012).
[148] INA § 236(a)(2); 8 U.S.C. § 1226(a)(2) (2012) states that an immigration judge is not allowed to set a bond below $1,500 but can release you on "conditional parole," which means the judge can let you go without any bond. This may also be referred to as "released on your own recognizance." Judges set bond at very different amounts; the same judge may even grant very different amounts to people with similar cases.
[149] *See* In re Joseph, 22 I. & N. Dec. 799, 809 (BIA 1999) (finding that if the alien is not subject to mandatory detention, the alien "could be considered by the Immigration Judge for release" in a bond hearing).
[150] A "bond" is an agreement you make with the government whereby the government releases you on the condition that you agree to appear for all of your hearings and will obey the judge's order at the end of your case. To secure this agreement, you must give the government a sum of money that will be returned at the end of the proceedings. A friend or family member may pay the bond for you. If your family pays the bond directly to the government, the bond money will be returned to your family only when your court case is completed and only if you have complied with the court's order, even if that order is to leave the country. If you are ordered deported and you do not comply with the order, you or your family member will not receive your bond money back. *See* Immigration Bond, *available at* https://www.ice.gov/sites/default/files/documents/Document/2017/i352.pdf (last visited Dec. 22, 2017).

United States from abroad.[151]

If you think you may be eligible for one of the forms of relief listed in Part F of this Chapter, you should present evidence of why you think you may be granted that particular form of relief. A judge is less likely to release you from detention if there is little chance you will be able to get a form of relief.

(b) Standard

At a bond hearing, you must persuade the immigration judge that you are not a ***flight risk*** or a ***danger to society***.[152] A flight risk is someone who is likely to disappear and never return to immigration court. A danger to society is someone who the government believes is likely to commit crimes if released. Therefore, in order to prove that you are not a flight risk or a danger to society, you must show that you are responsible and that the government will be able to find you if it needs to find you.[153]

(c) Discretionary Factors

Examples of positive factors include:

(1) Proof that you are not a flight risk or a danger to society
   (a) You should first show the judge where you will be living if you are released on an immigration bond. Leases, mortgages, and property deeds will prove that you own a home or have long-term residence in the same place. A letter from someone who agrees to let you stay with him or her can also be submitted. In any case, you should give the court the address of where it can reach you. A complete address has a street number and name, apartment number (if you live in an apartment), city, state, and zip code.
   (b) If you have an employer willing to hire you once you are released from immigration detention, you should show the judge proof that this person will give you a job. If you were enrolled in or plan on enrolling in educational courses, you can also submit evidence of this.
   (c) If in the past you have always appeared for your scheduled court dates and obeyed court orders, you should present evidence of past court records. If, however, you have had a warrant issued for your arrest in the past, you should be prepared to explain why you failed to appear in court.
   (d) If you are married or have children, you should show proof of these relationships by presenting marriage or birth certificates.
(2) Proof of rehabilitation
   (a) ***Rehabilitated*** means that while you made mistakes in the past, you have improved your life and are no longer likely to make the same or similar mistakes. You can prove that you have been rehabilitated by giving the judge copies of certificates of attendance at drug or alcohol rehabilitation programs and letters from your counselors, therapists, or sponsors. Sometimes proof of involvement in a religious or civic organization or church group may also prove that you have been rehabilitated. You should obtain letters or ***affidavits*** from other group members who can attest to your good moral character.[154]
   (b) The immigration judge will also look to your criminal convictions, especially to determine whether you are a danger to society. If you have any convictions including, but not limited to, violent crimes or acts in which you put someone else's life or well-being in danger, you should be prepared to prove that you would no longer commit such acts.

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[151] You are an arriving alien if you are "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means . . . ." 8 C.F.R. § 1001.1(q) (2017).

[152] *See* In re Ellis, 20 I. & N. Dec. 641, 634 (BIA 1993) ("[T]he alien bears the burden of showing that he was lawfully admitted to the United States, that he is not a threat to the community, and that he is likely to appear before any scheduled hearings."). A bond hearing is a completely different hearing from both the master calendar hearing and the individual hearing discussed in Part G of this Chapter.

[153] Although you may submit the same or similar evidence for your bond hearing as you would for your individual hearing (if you are applying for one of the forms of relief discussed in Part F of this Chapter), you must resubmit all relevant evidence for each of your hearings.

[154] *See* footnote 292 of this Chapter, which lists what may bar a finding of good moral character.

3. Bond Appeal

If you disagree with the judge's determination in your bond request, you may file a bond appeal with the BIA.[155] The government may also appeal the judge's decision if the ***assistant chief counsel*** believes that the judge should not have set bond or set the bond too low.[156] In certain circumstances, when the assistant chief counsel appeals the bond, he will ***stay*** (which means stop) your release, which prevents you from being released from detention even though the judge granted your request for bond.[157] This stay could last until the BIA has made its decision on the bond appeal.

Even if you do not get out of detention, you may still be able to stay in the United States. Part F covers several ways in which you can apply to stay in this country.

F. FORMS OF RELIEF

A form of relief is something you can apply for to remain in the U.S. even though you are deportable. There are several different forms of relief, each of which is explained below. They include ***cancellation of removal*** for certain permanent residents, cancellation of removal and adjustment of status for certain nonpermanent residents, 212(c) waiver, 212(h) waiver, adjustment of status to permanent resident, asylum, withholding of removal, protection under the ***Convention Against Torture***, and ***voluntary departure***. A form of relief might also be called a ***waiver*** because it waives, or sets aside, the immigration consequences of your criminal activity.

To have a judge grant you the form of relief that you request, you must:

(1) Fill out the required application;
(2) Be eligible for that form of relief;
(3) Meet the standard for that form of relief; and
(4) Convince the judge that you deserve to stay in the U.S. because your positive ***discretionary factors*** outweigh any negative discretionary factors.

Each of these requirements is discussed below. If the judge grants you the form of relief that you request, you will not be deported and you can go back to living your life in the U.S.[158] Keep in mind, though, that getting immigration relief does not impact any criminal case that you may have.

1. Applications for Forms of Relief

You must fill out an application for each of the forms of relief you seek. In the descriptions of each form of relief below, you will also find the form itself.[159] For each application, read all of the questions carefully and answer each of them as honestly as you can. If you do not know the answer to a question, write, "I don't know." If a question does not apply to you (for example, if you are not married and there is a question about your spouse), write "N/A" or "not applicable." Most applications also ask you to pay a fee. If you cannot afford this fee, you may request a ***fee waiver*** from the court.[160] To do this, you must explain in writing how much money

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[155] 8 C.F.R. § 1003.19(f) (2017). When the judge decides your appeal, he or she will give you a form known as a "Notice of Appeal." You must complete and file the Notice of Appeal with the BIA within 30 days of the judge's decision. The BIA may take several months to decide your bond appeal, and the immigration judge may order you removed before you receive a decision from the BIA. You will be held in detention while your appeal is being decided. *See generally* Part H, which describes the appeals process in greater detail.

[156] The government also has a limited time to file the appeal. If it does not file an appeal, the judge's bond decision becomes final. Again, the immigration judge may decide to order you deported before you receive a decision from the BIA on the question of your bond. 8 C.F.R. §§ 1003.6, 1003.19 (2017).

[157] *See* 8 C.F.R. § 1003.19(i)(2) (2017).

[158] The exception to this is voluntary departure, discussed later in this Chapter. With voluntary departure, you still must leave the U.S.

[159] For each application, read all of the questions carefully and answer each of them as honestly as you can. If you do not know the answer to a question, write, "I don't know." If a question does not apply to you (for example, if you are not married and there is a question about your spouse), write "N/A" or "not applicable."

[160] *See* Waiver of Fees, *available at* https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-1067/0-0-0-1582.html (last

you receive from income, government assistance (such as public assistance or disability benefits), and any other sources as well as why you cannot afford the fee.

2. Eligibility for Forms of Relief

Each form of relief has certain eligibility requirements, which are defined by statute. This means that each form of relief can only be given under certain circumstances. For example, certain forms of relief are only available if you are deportable; others are only available if you are inadmissible, if you have family in the U.S., or if you have lived in the U.S. for five years. To find out if you qualify for a form of relief, read the eligibility requirements section under each form of relief discussed below.

You should ask the judge at the **master calendar hearing** if you are eligible for any forms of relief. If you qualify, the judge will give you the appropriate application materials. The judge will then set another court date to give you time to complete the application materials. You should bring the application and other ***supporting documents*** with you to this next court date, which will be either another master calendar hearing or an individual hearing. Part G discusses master calendar and individual hearings as well as supporting documents.

3. Standard

In addition to meeting the eligibility requirement for a form of relief, you must also meet the applicable standard. Unlike the eligibility requirements, however, the standard is not a simple fact (as in, the simple fact that you have family in the U.S.). The standard is what you must prove to the judge. For example, for a judge to cancel a removal for an LPR, you must convince the immigration judge that the positive discretionary factors in your life outweigh the negative factors.[161] The judge will use the discretionary factors, explained below, to decide whether you meet the standard. The standard is also defined and required by statute.

Since the standard requires the judge to make a difficult and subjective decision, he probably will look to other court cases and see how other judges have decided. Those cases will help the judge choose how to weigh the discretionary factors you present, and, ultimately, to decide whether you meet the standard and therefore are eligible to stay in the U.S.

4. Discretionary Factors

Discretionary factors are facts or circumstances that the judge has the option of weighing when making a decision. Even if you meet all eligibility requirements for a particular form of relief, you will not automatically be permitted to stay in the U.S. because the judge has the power to make the final decision. Therefore, the supporting documents you present to the immigration judge are extremely important because you will use them to convince the judge that you deserve to stay in the U.S.

Keep in mind that some forms of relief are harder to get than others because the discretionary factors are harder to prove.

5. Forms of Relief

This Section discusses the eligibility requirements, standards, and discretionary factors for eight forms of relief: (a) Cancellation of Removal for Certain Permanent Residents; (b) Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents; (c) Cancellation of Removal and Adjustment

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visited Dec. 22, 2017). For each application, read all of the questions carefully and answer each of them as honestly as you can. If you do not know the answer to a question, write, "I don't know." If a question does not apply to you (for example, if you are not married and there is a question about your spouse), write "N/A" or "not applicable."

[161] *See* Immigrant Detention and Removal: A Guide for Detainees and their Families at 15, 20, *available at* http://www.aclu-tn.org/wp-content/uploads/2016/05/Immigration-Detention-and-Removal-A-Guide-for-Detainees-and-Their-Families-_English_.pdf (last visited Dec. 22, 2017).

of Status for Certain Nonpermanent Residents: Special Rule for Battered Spouses and Children; (d) 212(c) Waiver; (e) 212(h) Waiver; (f) Adjustment of Status to Permanent Resident; (g) Asylum, Withholding of Removal, and Protection under the Convention Against Torture; and (h) Voluntary Departure.

(a) Cancellation of Removal for Certain Permanent Residents[162]

You must fill out a ***Form EOIR-42A*** to apply for cancellation of removal for certain permanent residents. The form can be found online at: https://www.justice.gov/sites/default/files/pages/attachments/2015/07/24/eoir42a.pdf (last visited Aug. 30, 2017).

(i) *Eligibility*

You qualify for this form of relief if you meet all of the following requirements:

(1) You are an LPR and have been for at least five years;[163]
(2) You came to the U.S. legally (under any immigration status) [164] and lived in the U.S. continuously[165] for seven years after you came;
(3) You have not been convicted of an aggravated felony;
(4) You have had NO prior 212(c) waivers granted (*see* form of relief in Part F(5)(d) below for an explanation of a 212(c) waiver);[166] and
(5) You are NOT a terrorist, crewman, or exchange visitor.[167]

(ii) *Standard*

To obtain this waiver, you must convince the immigration judge that the positive discretionary factors in your life outweigh the negative factors.

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[162] INA § 240A(a); 8 U.S.C. § 1229b(a) (2012).
[163] This means that at least five years have passed since your green card was issued.
[164] The seven years of continuous residence begin if you were admitted to the U.S. under any lawful immigration status, including admission through a visa or parole, even if your legal status later expired. However, it is clear that continuous residence would never begin if you entered the U.S. illegally or without lawful immigration status. Section B(2) of this Chapter discusses what it means to enter the U.S. without inspection.
[165] According to INA § 240A(d)(1); 8 U.S.C. § 1229b(d)(1) (2012), continuous residence or continuous presence in the U.S. ends either when you were served with the NTA or on the day you "committed an offense referred to in section 212(a)(2) of this Act [8 U.S.C § 1182(a)(2)] that renders the alien inadmissible to the United States under section 212(a)(2) of this Act [8 U.S.C § 1182(a)(2)] or removable from the United States under section 237(a)(2) [8 U.S.C § 1227(a)(2)] or section 237(a)(4) of this Act [8 U.S.C § 1227(a)(4)], whichever is earliest." An example of this "clock-stopping" provision is if you entered as an LPR in 1992 and committed a drug crime in 1995. The clock stops in 1995. So, your continuous presence in the U.S. would only be three years, and you would not be eligible for this form of relief.
[166] INA § 240A(c)(6); 8 U.S.C. § 1229b(c)(6) (2012).
[167] *See* INA § 240A(c); 8 U.S.C. § 1229b(c) (2012) for a complete list of aliens who are not eligible for this form of relief. "Terrorist," as defined in INA § 501, is any alien described in § 212(a)(3)(B); 8 U.S.C. § 1182(a)(3)(B) (2012). "Crewman" is defined in INA § 101(a)(10); 8 U.S.C. § 1101(a)(10) (2012), and "exchange visitor" is defined in INA § 101(a)(15)(J); 8 U.S.C. § 1101(a)(15)(J) (2012).

(iii) *Discretionary Factors*[168]

These are examples of positive factors:[169]

(1) You can prove you have lived long-term in the U.S.[170] by showing some or all of the following: apartment leases or mortgages, letters from neighbors, and utility bills (including telephone, cable and electric bills).
(2) You can prove a history of legal employment[171] by presenting letters from your employer, pay stubs, W-2 forms, and social security earnings.
(3) You can prove you own property in the U.S. by providing copies of your mortgages and bank statements or property deeds.
(4) You can prove you paid federal income taxes[172] by presenting copies of your yearly tax returns and/or a printout of your tax records from the Internal Revenue Service. If you have never paid taxes or did not pay for a particular year, you can remedy this by paying back taxes.[173]
(5) If you are a member of a church group, religious or civic organization, or if you perform some sort of community service, you should get letters from other members or participants that show how you have helped and that show your personal values.
(6) Close family ties are also positive factors. If you have family members in the U.S. who have legal status (LPR or USC), you should obtain and copy their documents, including birth certificates, family photos, green cards, U.S. passports, and naturalization certificates. You should also get notarized letters or written statements from these family members.

(b) Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents[174]

You must fill out ***Form EOIR-42B*** to apply for cancellation of removal and adjustment of status for certain nonpermanent residents. The form can be found online at

[168] The standards you must meet to obtain the forms of relief mentioned above are defined by statute. However, the discretionary factors (or how you prove these standards to the judge) are defined by case law. The following cases describe the discretionary factors that judges will consider when deciding whether to cancel removal for certain permanent residents: In re C-V-T, 22 I. & N. Dec. 7, 11–13; Interim Decision 3342 (BIA 1998) (listing factors against removal, including: family ties within the U.S., long-term residency, potential hardship caused by deportation, military service, employment history, property or business ties, value to the community, proof of rehabilitation; also listing unfavorable factors, including significant violations of domestic immigration laws, nature and seriousness of criminal record, and other evidence indicating bad character); In re Edwards, 20 I. & N. Dec. 191, 195–96; Interim Decision 3134 (BIA 1990) (stating that a clear showing of rehabilitation is not absolutely required for persons with criminal records); In re Arreguin, 21 I. & N. Dec. 38, 39–42; Interim Decision 3247 (BIA 1995) (granting relief to an applicant convicted of a serious drug offense, but who had made efforts to reform, had dependent minor children, and was a long-term resident; emphasizing that judges should consider the totality of the circumstances); In re Burbano, 20 I. & N. Dec. 872, 875–76; Interim Decision 3229 (BIA 1994) (explaining that an applicant with a lengthy criminal record must show unusual or outstanding favorable factors, and finding that such favorable factors were not shown); In re Roberts, 20 I. & N. Dec. 294, 302; Interim Decision 3148 (BIA 1991) (explaining that an applicant convicted for the sale of cocaine must have unusual or outstanding favorable factors, because immigration judges may not reassess an applicant's guilt or evidence, and finding that such favorable factors were not shown).

[169] This is not an exhaustive list. You, your witnesses, and your attorney should discuss any other positive factors you can think of that would be helpful to your case.

[170] There are several issues related to time in immigration proceedings. It is important that you have a clear understanding of the chronology (timeline) of your history in the U.S.—when you arrived, how many trips you have taken outside of the U.S., how many trips you have taken to your home country, and when you have taken them.

[171] The concept of a public charge is important in immigration proceedings. You may be deemed a public charge if you depend on the government for your income (in the form of public benefits). Immigration judges are more likely to grant relief to you if you have contributed to the U.S. economy and have been able to support yourself and your family. On the other hand, if you have received any public benefits or welfare, you should be honest about it because this is not the only factor that the judge will consider.

[172] Immigration judges look favorably on someone who has paid taxes because that person has not been a public charge and has contributed to society as a whole.

[173] If you have not filed taxes in the past, it is not too late to pay your back taxes. You will have to pay a fine, interest, and the taxes you owe, but the filing of taxes from previous years can seriously help your immigration case. For more information on how to file back taxes, visit The IRS Collection Process, *available at* https://www.irs.gov/pub/irs-pdf/p594.pdf (last visited Dec. 22, 2017). You can download tax forms for previous years at Prior Year Products, *available at* https://apps.irs.gov/app/picklist/list/priorFormPublication.html (last visited Dec. 22, 2017).

[174] INA § 240A(b)(1); 8 U.S.C. § 1229b(b)(1) (2012).

http://www.usdoj.gov/eoir/eoirforms/eoir42b.pdf (last visited Jan. 7, 2017). If the immigration judge approves your application, he may adjust your status to that of an LPR.

(i) *Eligibility*

If you have no legal status in the U.S., you may qualify for this form of relief if you meet all of the following requirements:

(1) You are not an LPR;
(2) You have been physically present in the U.S. continuously[175] for at least ten years before filing your application, and you have been a person of good moral character[176] during those ten years; and
(3) You have not been convicted of any crimes under INA §§ 212(a)(2), INA § 237(a)(2), or INA § 237(a)(3) (these do not include petty offenses; they do include CIMTs, controlled substance violations, multiple convictions for which all of the sentences imposed add up to five years or more, prostitution, and ***commercialized vice*** offenses).[177]

(ii) *Standard*

You must establish that your deportation will result in "exceptional and extremely unusual hardship" on your USC or LPR spouse, parent, child, or children.[178]

(iii) *Discretionary Factors*[179]

These are examples of positive factors:

(1) Proof of Spouse, Parent, Child, or Children in the U.S.[180]
   (a) Obtain and make copies of documents that proves your spouse's, parent's, child's, or children's legal status in the U.S. These documents include, but are not limited to, birth certificates, family photos, green cards, U.S. passports or naturalization certificates, and letters or written statements from family members.
(2) Proof of Hardship to Spouse, Parent, Child, or Children
   (a) Remember, it is your USC or LPR family members, not you, who must suffer this hardship as a

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[175] According to INA § 240A(d)(1); 8 U.S.C. § 1229b(d)(1) (2012), continuous residence or continuous presence in the U.S. ends either when you were served with the NTA or on the day you "committed an offense referred to in section 212(a)(2) of this Act [8 U.S.C § 1182(a)(2)] that renders the alien inadmissible to the United States under section 212(a)(2) of this Act [8 U.S.C § 1182(a)(2)] or removable from the United States under section 237(a)(2) [8 U.S.C § 1227(a)(2)] or section 237(a)(4) of this Act [8 U.S.C § 1227(a)(4)], whichever is earliest." An example of this "clock-stopping" provision is if you entered as an LPR in 1992 and committed a drug crime in 1995. The clock stops in 1995. So, your continuous presence in the U.S. would only be three years, and you would not be eligible for this form of relief.

[176] The immigration judge uses his discretion in deciding whether you are a person of good moral character. He can deny you LPR status even though you otherwise qualify. *See* footnote 292 below, which lists some activities and characteristics that may bar a finding of good moral character.

[177] *See* INA § 212(a)(2); 8 U.S.C. § 1182(a)(2) (2012), INA § 237(a)(2); 8 U.S.C. § 1227(a)(2) (2012), and INA § 237(a)(3); 8 U.S.C. § 1227(a)(3) (2012) for a complete list of offenses which make you ineligible for this form of relief.

[178] INA § 240A(b)(1)(D); 8 U.S.C. § 1229b(b)(1)(D) (2012).

[179] The standards you must meet to obtain the forms of relief mentioned above are defined by statute. The discretionary factors (or how you prove these standards to the judge), however, are defined by case law. The following cases describe the discretionary factors needed for cancellation of removal and adjustment of status for certain nonpermanent residents: In re Monreal-Aguinaga, 23 I. & N. Dec. 56, 60–63; Interim Decision 3447 (BIA 2001) (finding that the hardship to an alien's relatives must be "substantially" beyond the ordinary hardship that would be expected when a close family member leaves the country, but the hardship does not need to be "unconscionable"; and the court will consider the ages, health, and circumstances of the alien's USC and LPR relatives to determine the level of hardship); In re Recinas, 23 I. & N. Dec. 467, 471–72; Interim Decision 3479 (BIA 2002) (considering the alien's children's unfamiliarity with the language and life in the return country, the children's complete dependence on alien for financial support, and the lack of any family in the return country in assessing hardship to alien's children); In re Andazola, 23 I. & N. Dec. 319, 323; Interim Decision 3467 (BIA 2002) (considering the poor economic conditions of the return country and diminished educational opportunities in assessing hardship to the alien's children, though ultimately failing to find extreme hardship).

[180] One of the reasons family ties in the U.S. are important for your case is because the judge and the government are reluctant to separate families. In other words, the judge will be more sympathetic to you if you have a lot of family members (especially if they are LPRs and/or USCs) in the U.S. and have fewer family members in your home country.

result of your deportation. This type of hardship must be "exceptional and extremely unusual" and, therefore, greater than what would normally be suffered by the family members of those who face deportation.

(b) You should obtain records of any medical, psychiatric, or educational disabilities of family members who depend on you, especially elderly parents, children, or spouses.

(c) You can also show financial and emotional support through letters, affidavits, and financial records (including bank statements).[181]

(c) Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents: Special Rule for Battered Spouses and Children (Violence Against Women Act, also known as "VAWA")[182]

You must fill out ***Form EOIR-2B*** to apply for cancellation of removal and adjustment of status under the special rule for battered spouses and children. The form can be found online at https://www.justice.gov/sites/default/files/pages/attachments/2015/07/24/eoir42b.pdf (last visited Dec. 29, 2017). If the immigration judge approves your application, he will also adjust your status to that of an LPR.

(i) *Eligibility*

You qualify for this form of relief if you meet all of the following requirements:

(1) You are not an LPR;
(2) **Either** you have been "battered or subject to extreme cruelty" in the U.S. by a spouse or parent who is a USC or LPR**, or** you are the parent of a child who has been "battered or subject to extreme cruelty" in the U.S. by his USC or LPR parent. "Battered" means you have been physically hit or abused;
(3) You have been physically present in the U.S. continuously[183] for at least three years and you have been a person of good moral character[184] during those three years;[185]
(4) You have not been convicted of an offense under INA § 212(a)(2)–(3);[186]
(5) You have not been convicted of marriage fraud[187] or any offenses under INA § 237(a)(2)–(4);[188]
(6) You have not been convicted of an aggravated felony;[189] and
(7) Removal would result in extreme hardship to the person, the person's child or the person's parent.[190]

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[181] If you are divorced, you should obtain any proof of child support or alimony payments. This will show the judge you are not only reliable, but also that someone depends on your financial (and possibly emotional) support.

[182] INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) (2012).

[183] The clock-stopping provision, discussed in footnotes 165 and 175, does not apply to this form of relief under the Special Rule for Battered Spouses and Children. *See* INA § 240A(d)(1); 8 U.S.C. § 1229b(d)(1) (2012).

[184] *See* footnote 292, which lists what may bar a finding of good moral character. However, if the Attorney General finds that your act or conviction was connected to you having been assaulted or battered, a waiver may be warranted. INA § 240A(b)(2)(c).

[185] INA § 240A(b)(2)(A)(ii); INA § 240A(b)(2)(A)(iii); INA § 240A(b)(2)(C); 8 U.S.C. § 1229b(b)(2) (2012).

[186] INA § 240A(b)(2)(iv); 8 U.S.C. § 1229b(b)(2) (2012).

[187] INA § 240A(b)(2)(iv); 8 U.S.C. § 1229b(b)(2) (2012); INA § 237(a)(1)(G); 8 U.S.C. § 1227(a)(1)(G) (2012).

[188] These include, but are not limited to, CIMT, multiple CIMTs, an aggravated felony, high speed flight, a controlled substance offense, certain firearms offenses, crimes of domestic violence, stalking, crimes against children, violation of orders of protection, failure to register or falsification of documents, document fraud, falsely claiming citizenship, terrorist activities, and torture. INA § 237(a); 8 U.S.C. § 1227 (2012).

[189] INA § 240A(b)(2)(iv); 8 U.S.C. § 1229b(b)(2) (2012). *See* INA § 240A(c); 8 U.S.C. § 1229b(c) (2012) for a list of aliens who are ineligible for this form of relief.

[190] INA § 240A(b)(2)(v); 8 U.S.C. § 1229b(b)(2) (2012). Traditional factors of extreme hardship include: age of the applicant upon entry into the United States and at the time of application for removal; age and number of the applicant's children and their ability to speak applicant's native language and adjust to life in another country; medical condition of the applicant and her children; applicant's inability to obtain adequate employment in the foreign country; applicant and her children's length of residence in the United States; other family members legally residing in the United States; educational opportunities; negative psychological impact of deportation; impact of separation on the victim and her children; extent to which the applicant is an asset to her community in the United States. VAWA Cancellation of Removal at 5, 9–11, *available at* http://library.niwap.org/wp-content/uploads/IMM-Man-Ch9-VAWACancellationofRemoval.pdf (last visited Dec. 22, 2017).

(ii) *Standard*

You must show that you or your children have been battered and/or are subject to "extreme cruelty."[191]

(iii) *Discretionary Factors*

These are examples of positive factors:

(1) Proof of Child in the U.S.[192]
   (a) Obtain and make copies of documents that prove your child's legal status in the U.S. These documents include, but are not limited to, birth certificates, family photos, green cards, U.S. passports or naturalization certificates, and letters or affidavits from family members.
(2) Proof of Extreme Cruelty to You or Your Child[193]
   (a) You can prove battery or extreme cruelty by submitting evidence of abuse, acts of violence, or threats of physical or mental abuse. These submissions can include, but are not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, Child Protective Services staff, or a counseling or mental health professional. You can also show any police reports or orders of protection to prove that there have been incidents of abuse in the past. If you have ever sought shelter in a safe haven for battered individuals and you have proof that you have done so, you should also submit that proof. Lastly, you can submit letters or written statements from other people who have evidence of abuse, including particular incidents.

(d) 212(c) Waiver[194] (Possible Waiver for LPRs)

You must fill out ***Form I-191*** to apply for a 212(c) waiver. It can be found online at https://www.uscis.gov/sites/default/files/files/form/i-191.pdf (last visited Aug. 30, 2017).

(i) *Eligibility*

You qualify for this form of relief if you meet all of the following requirements:[195]

(1) You are an LPR;
(2) You pled guilty to a crime before April 24, 1996;[196]

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[191] "For the purpose of this chapter, the phrase 'was battered by or was the subject of extreme cruelty' includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser." 8 C.F.R. § 204.2(c)(1)(vi) (2017).

[192] One of the reasons family ties in the U.S. are important for your case is because the judge and the government are reluctant to separate families. In other words, the judge will be more sympathetic to you if you have a lot of family members (especially if they are LPRs and/or USCs) in the U.S. and have fewer family members in your home country.

[193] VAWA Cancellation of Removal at 8, *available at* http://library.niwap.org/wp-content/uploads/IMM-Man-Ch9-VAWACancellationofRemoval.pdf (last visited Dec. 22, 2017).

[194] INA § 212(c); 8 U.S.C. § 1182(c) (1994) (repealed 1996). This statute was repealed in 1996 but remains available to LPRs subject to removal for convictions resulting from guilty pleas made prior to April 24, 1996. INS v. St. Cyr, 533 U.S. 289, 326, 121 S. Ct. 2271, 2293, 150 L. Ed. 2d 347, 378 (2001). *See* Matter of Abdelghany, 26 I. & N. Dec. 254, 254, n.12 (BIA 2014) (The BIA in this case removed the distinction between pleading guilty and being found guilty for 212(c) eligibility purposes. The BIA also rejected the comparable grounds test and held that all qualified applicants for 212(c) can apply to waive any grounds of deportability unless they fall under the grounds of inadmissibility (security and child abduction) found in INA § 212(a)(3)(A), (B), (C), or (E), and INA § 212(a)(10)(C)).

[195] Possible future complications affecting these eligibility factors due to Judalang v. Holder, 565 U.S. 42, 132 S. Ct. 476, 181 L. Ed. 2d 449 (2011) and INS v. St. Cyr, 533 U.S. 289, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001) are discussed here: Eligibility for a § 212(c) waiver after *Judalang* and *St. Cyr*, *available at* https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/212c-post-judulang.pdf (last visited Dec. 26, 2017).

[196] INS v. St. Cyr, 533 U.S. 289, 291, 121 S. Ct. 2271, 2274, 150 L. Ed. 2d 347 (2001); Antiterrorism and Effective Death Penalty

(3) You have lived in the U.S. for seven years; and
(4) You have NOT served a prison sentence of five years or more for one or more aggravated felony convictions.[197]

(ii) *Standard*

To obtain this waiver, you must convince the immigration judge that the positive discretionary factors in your life outweigh the negative factors.[198]

(iii) *Discretionary Factors*

These are examples of positive factors:[199]

(1) You can prove that you have had long-term residence in the U.S.[200] by showing some or all of the following: apartment leases or mortgages, letters from neighbors, and utility bills (including telephone, cable, and electric bills).
(2) You can prove a history of legal employment[201] by presenting letters from your employer, pay stubs, W-2 forms, and social security earnings.
(3) You can prove you own property in the U.S. by providing copies of your mortgages and bank statements or property deeds.[202]
(4) You can prove you paid federal income taxes[203] by presenting copies of your yearly tax returns and/or a printout of your tax records from the Internal Revenue Service. If you have never paid taxes or did not pay for a particular year, you can fix this by paying back taxes.[204]
(5) If you are a member of a church group, religious or civic organization, or perform some sort of community service, you should obtain letters from other members of the group, attesting to your contributions and humanity.

Act, Pub. L. 104-132, 110 Stat. 1214 (1996). This crime cannot be an aggravated felony or a firearms offense. INS v. St. Cyr, 533 U.S. 289, 297, 121 S. Ct. 2271, 2277, 150 L. Ed. 2d 347 (2001); 8 U.S.C. § 1182 (2012).

197 The availability of a § 212(c) waiver following a conviction at trial varies among federal Circuits. As of 2012, for the majority of Circuit Courts (First, Second, Fifth, Sixth, Eleventh, and Seventh), you will not be eligible for § 212(c) relief following trial unless you demonstrate actual reliance on the availability of the relief. You don't have to show reliance if you are in the Third and Eighth Circuits. If you are in the Tenth, Seventh, and Ninth, you have to show "objective likelihood" of reliance. *See* Eligibility for a § 212(c) waiver after *Judalang* and *St. Cyr*, *available at* https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/212c-post-judulang.pdf (last visited Dec. 26, 2017).

198 The BIA decided in Matter of Buscemi, 19 I. & N. Dec. 628, 633 (BIA 1988) that a non-USC who is convicted of a serious criminal offense must demonstrate "unusual or outstanding equities" in order to obtain relief under § 212(c). This is a high standard to meet. This means that if you are eligible for a 212(c) waiver and have a very serious conviction or a number of serious convictions, simply showing that the positive factors in your life outweigh the negative factors may not be enough. Instead, you need to show that the positive factors in your life greatly outweigh the negative factors in your life. *See also* Matter of Edwards, 20 I. & N. Dec. 191, 196 (BIA 1990) (clarifying that the *Buscemi* inquiry is a case-by-case review of the facts and favorable factors, with rehabilitation a factor to be considered).

199 This is not an exhaustive list. You, your witnesses, and your attorney should discuss any other positive factors you can think of that would be helpful to your case.

200 *Matter of Marin*, 16 I. & N. Dec. 581, 584–585 (BIA 1978). There are several issues related to time in immigration proceedings. It is important that you have a clear understanding of the chronology (timeline) of your history in the U.S.—when you arrived, how many trips you have taken outside of the U.S., and how many trips you have taken to your home country, etc.

201 *Matter of Marin*, 16 I. & N. Dec. 581, 585 (BIA 1978). The concept of a public charge is important in immigration proceedings. You may be deemed a public charge if you depend on the government for your income (in the form of public benefits). Immigration judges are more likely to grant relief to you if you have contributed to the U.S. economy and have been able to support yourself and your family. On the other hand, if you have received any public benefits or welfare, you should be honest about it because this is not the only factor that the judge will consider.

202 *Matter of Marin*, 16 I. & N. Dec. 581, 585 (BIA 1978).

203 In Re Victor Manuel Morales, 2008 WL 4420053, at *2 (BIA 2008). Immigration judges look favorably on people who have paid taxes, again probably because they have not been public charges and instead have contributed to society as a whole.

204 If you did not file taxes in the past, it is not too late to pay your back taxes. You will have to pay a fine, interest, and the taxes you owe, but the filing of taxes from previous years can seriously help your immigration case. Visit this website for more information on how to file back taxes: The IRS Collection Process, *available at* https://www.irs.gov/pub/irs-pdf/p594.pdf (last visited Dec. 22, 2017). You can download tax forms for previous years at Prior Year Products, *available at* https://apps.irs.gov/app/picklist/list/priorFormPublication.html (last visited Dec. 22, 2017).

(6) Close family ties are also positive factors. If you have family members in the U.S. who have legal status (LPR or USC), you should obtain and copy their documentation, including birth certificates, family photos, green cards, U.S. passports or naturalization certificates, and notarized letters or affidavits from family members.

(e) 212(h) Waiver ("Waiver of Inadmissibility")[205]

Under INA § 212(h), the Attorney General may waive inadmissibility if it is because you committed certain types of crimes. These crimes include (1) CIMTs; (2) a single possession of thirty grams or less of marijuana for personal use; (3) two or more offenses for which the aggregate sentences were five years or more; and (4) prostitution or commercialized vice.[206] There are three different ways to qualify for this kind of waiver, which are defined in three subsections of the INA: § 212(h)(1)(A)–(C). You must fill out an ***I-601 Form*** to apply for any of these waivers. The form can be found online at https://www.uscis.gov/sites/default/files/files/form/i-601.pdf (last visited Aug. 30, 2017).

In order to qualify for any of these waivers, you must meet the following requirements:

(1) The crime for which you are facing inadmissibility is not murder, a criminal act involving torture, or an attempt or conspiracy to commit either murder or a criminal act involving torture;[207] and
(2) If you are an LPR:
  (a) You must have resided continuously in the U.S. for a period of at least seven years before you were put in removal proceedings;[208] and
  (b) You have not been convicted of an aggravated felony.[209]

In addition to these threshold requirements, you will also have to meet the specific eligibility requirements for each subsection listed below. The requirements vary depending on under which subsection of the statute you fall: INA §§ 212(h)(1)(A), 212(h)(1)(B), or 212(h)(1)(C).

(i) *212(h)(1)(A) Waiver (Rehabilitation)*

1. Eligibility

You qualify for this form of relief under subsection 212(h)(1)(A) if you meet the following requirements:

(1) you are inadmissible only under INA § 212(a)(2)(D)(i) or (ii);[210] or
(2) the activities for which you are inadmissible[211] occurred more than fifteen years before the date of your application for a visa, admission, or adjustment of status.

2. Standard

You must convince the immigration judge that you have been rehabilitated.[212] In addition, you must

[205] INA § 212(h)(1); 8 U.S.C. § 1182(h)(1) (2012).
[206] This list is not exhaustive. The Attorney General can waive any offense listed in INA § 212(a)(2)(A)(i)(I); 8 U.S.C. § 1182(a)(2)(A)(i)(I) (2012) and INA § 212(a)(2)(A)(i)(II); 8 U.S.C. § 1182(a)(2)(A)(i)(II) (2012) insofar as it relates to a single possession of 30 grams or less of marijuana, or in INA § 212(a)(2)(B), (D), and (E); 8 U.S.C. § 1182(a)(2)(B), (D), and (E) (2012).
[207] INA § 212(h)(2); 8 U.S.C. § 1182(h)(2) (2012).
[208] INA § 212(h)(2); 8 U.S.C. § 1182(h)(2) (2012). However, Four Circuits have held that the limitations do not apply to LPRs who adjusted status in the United States. *See* Waivers of Admissibility at 141–42, *available at* https://cliniclegal.org/sites/default/files/Waivers%20of%20Inadmissibility.doc (last visited Dec. 22, 2017).
[209] INA § 212(h)(2); 8 U.S.C. § 1182(h)(2) (2012).
[210] Basically, these include crimes relating to, or engaging in or soliciting prostitution.
[211] For the purposes of this form of relief, you may be inadmissible for any activity listed in INA § 212(a)(2)(A)(i)(I); 8 U.S.C. § 1182(a)(2)(A)(i)(I) (2012); INA § 212(a)(2)(A)(i)(II); 8 U.S.C. § 1182(a)(2)(A)(i)(II) (2012) insofar as it relates to a single possession of 30 grams or less of marijuana; or INA § 212(a)(2)(B), (D), and (E); 8 U.S.C. § 1182(a)(2)(B), (D), and (E) (2012). These include, but are not limited to, CIMTs; a single possession of 30 grams or less of marijuana for personal use; two or more offenses for which the aggregate sentences were five years or more; and prostitution or commercialized vice.
[212] INA § 212(h)(1)(A)(iii); 8 U.S.C. § 1182(h)(1)(A)(iii) (2012). *See also* Returning to the United States After Deportation, *available*

convince that judge that allowing you to enter the U.S. would not be against the national welfare, safety, or security of the U.S.[213]

3. Discretionary Factors

A positive factor considered for this type of relief is proof of rehabilitation. You can prove that you have been rehabilitated by providing the judge with copies of certificates of attendance at drug or alcohol rehabilitation programs or letters from your counselors, therapists, or sponsors. Sometimes, proof of involvement in a religious or civic organization or church group may also prove that you have been rehabilitated. You should obtain letters or written statements from other members of the group who can speak to your good moral character.[214]

(ii) *212(h)(1)(B) Waiver (Extreme Hardship)*

1. Eligibility

You qualify for this form of relief under subsection 212(h)(1)(B) if you are the spouse, parent, son or daughter of an LPR or USC.

2. Standard

You must convince the judge that your deportation from the U.S. would result in "extreme hardship" to a USC or LPR spouse, parent, child, or children.

3. Discretionary Factors

Examples of positive factors include:

(1) Proof of USC or LPR spouse, parent, child, or children in the U.S.[215]
   (a) Obtain and make copies of documentation that proves your spouse's, parent's, child's, or children's legal status in the U.S. These documents include, but are not limited to, birth certificates, family photos, green cards, U.S. passports or naturalization certificates, and letters or written statements from family members.
(2) Examples of extreme hardship to a USC or LPR spouse, parent, child, or children
   (a) You must show that your relatives will suffer more than the average family would because of your deportation.[216] You can show that you provide financial and emotional support with the following items: letters, written statements, and medical or financial records (including bank statements).[217] Proof that you are the parent of a child with disabilities might count as an extreme hardship.[218] If your children have disabilities, obtain their medical, psychiatric, or educational records that show proof of disabilities.

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at https://www.bc.edu/content/dam/files/centers/humanrights/pdf/Returning%20to%20the%20US%20AfterDeportation%20-%20A%20Self-Assessment%20FINAL.pdf (last visited Dec. 26, 2017).

[213] INA § 212(h)(1)(A)(ii); 8 U.S.C. § 1182(h)(1)(A)(ii) (2012).

[214] *See* footnote 292, which lists what may bar a finding of good moral character.

[215] One of the reasons family ties in the U.S. are important for your case is because the government is reluctant to separate families. In other words, the judge will be more sympathetic to you if you have a lot of family members (especially if they are LPRs and/or USCs) in the U.S. and have fewer family members in your home country.

[216] U.S. Citizenship and Immigration Services Policy Manual Chapter 5–Extreme Hardship Consideration and Factors, *available at* https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume9-PartB-Chapter5.html (last visited Aug. 22, 2017).

[217] If you are divorced, you should obtain any proof of child support/alimony payments. This will show the judge that you are not only reliable but also that someone is dependent upon your financial or emotional support.

[218] U.S. Citizenship and Immigration Services Policy Manual Chapter 5–Extreme Hardship Consideration and Factors, *available at* https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume9-PartB-Chapter5.html (last visited Aug. 22, 2017).

(iii) *212(h)(1)(C) Waiver (Domestic Violence/Battery)*

1. Eligibility

You qualify for this form of relief under subsection 212(h)(1)(C) if you meet the following requirement:

(1) You qualify for classification under INA § 204(a)(1)(A)(iii) or (iv) or INA § 204(a)(1)(B)(ii) or (iii). That means you **either** married or wanted to marry a USC and your spouse or intended spouse battered or was "extremely cruel" to you or your child,[219] **or** you are the child of an LPR and you have been battered or suffered "extreme cruelty" because of your LPR parent.[220]

2. Standard

You must show you or your child were battered or suffered "extreme cruelty."

3. Discretionary Factors

These are examples of positive factors:

(1) Proof of "Good Faith"[221]
   (a) If you were married or wanted to marry a USC, you must show that you married that person or wanted to marry that person "in good faith." Obtain and make copies of documentation that proves your child's legal status in the U.S. These documents include, but are not limited to, birth certificates, family photos, green cards, U.S. passports or naturalization certificates, and letters or affidavits from family members.
(2) Proof that Your Spouse was a USC[222] or that Your Parent was an LPR[223]
   (a) Obtain and make copies of documents that prove your spouse's or parent's legal status in the U.S. These documents include, but are not limited to, birth certificates, family photos, green cards, U.S. passports or naturalization certificates, and letters or written statements from family members.
(3) Proof of Extreme Cruelty to You or Your Child[224]
   (a) You can prove battery or extreme cruelty by submitting evidence of abuse, acts of violence, or threats of physical or mental abuse. These submissions can include, but are not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, Child Protective Services staff, or a counseling or mental health professional. You can also show any police reports or orders of protection to prove that there have been incidents of abuse in the past. If you have ever sought shelter in a safe haven for battered individuals, and you have proof that you have done so, you should also submit that proof. Lastly, you can submit letters or written statements from other people who have evidence of abuse, including particular incidents.

(f) Adjustment of Status to Permanent Resident[225]

Another way to avoid deportation is by adjusting your immigration status to that of an LPR.[226] Adjustment of status may be used without another form of relief. Frequently, however, when adjustment of

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[219] INA § 204(a)(1)(A)(iii) and INA § 204(a)(1)(B)(iii); 8 U.S.C. § 1154 (2012).
[220] INA § 204(a)(1)(A)(iv) and INA § 204(a)(1)(B)(iv); 8 U.S.C. § 1154 (2012).
[221] INA § 204(a)(1)(A)(iii) and INA § 204(a)(1)(B)(iii); 8 U.S.C. § 1154 (2012).
[222] INA § 204(a)(1)(A)(iii) and INA § 204(a)(1)(B)(iii); 8 U.S.C. § 1154 (2012).
[223] INA § 204(a)(1)(A)(iv) and INA § 204(a)(1)(B)(iv); 8 U.S.C. § 1154 (2012).
[224] VAWA Cancellation of Removal at 8, *available at* http://library.niwap.org/wp-content/uploads/IMM-Man-Ch9-VAWACancellationofRemoval.pdf (last visited Dec. 22, 2017).
[225] INA § 245(a); 8 U.S.C. § 1255(a) (2012). There are other ways in which non-USCs can adjust their status. Some examples are the Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966), Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, 111 Stat. 2193 (1997), and registry procedures in INA § 249; 8 U.S.C. § 1259 (2012). *See* the notes to INA § 245; 8 U.S.C. § 1255 (2012) for more information about these alternative methods of adjusting your immigration status.
[226] You can even use this form of relief if you already are an LPR.

status is used as a form of relief, it is used in conjunction with another form of relief (or waiver). This may apply to you if you have more than one criminal conviction. For example, if you have a gun possession conviction and one CIMT, the above forms of relief alone may not prevent your deportation. In such a case, to avoid deportation, you would have to apply for the "212(c) waiver" as a form of relief as part of an application for an adjustment of status. This is because the "212(c) waiver" waives the CIMT[227] and adjustment of status waives the gun possession.[228] Courts have allowed the simultaneous use of two forms of relief or waivers.[229]

To begin the process of adjustment of status, you will generally need a sponsor (family member or employer) to petition for a visa on your behalf.[230] Depending on whether your sponsor is a family member or employer, your sponsor will be required to complete a ***Form I-130*** ("Petition for Alien Relative") or a ***Form I-140*** ("Immigrant Petition for Alien Worker"), and you must show proof of your relationship. These applications can be found online at http://www.uscis.gov/files/form/I-130.pdf and http://www.uscis.gov/files/form/i-140.pdf (last visited Jan. 7, 2017). You must also submit a written statement of support with your application. This statement of support is called a ***Form I-864*** and can be found online at http://www.uscis.gov/files/form/I-864.pdf (last visited Jan. 7, 2017).[231] In this written statement of support, your family member must prove that he is able to financially support himself, his other dependents, and you. He also must promise to do so if it becomes financially necessary.[232] If you are eligible for this form of relief, you will be required to complete a ***Form I-485*** ("Application to Register Permanent Residence or Adjust Status"), which you can find online at http://www.uscis.gov/files/form/i-485.pdf (last visited Jan. 7, 2017).

(i) *Eligibility*[233]

In order to obtain this form of relief in immigration court, you must be an LPR or a visa overstay[234] who either (1) is an ***immediate relative***[235] of a USC or (2) qualifies for one of the family- or employment-based preferences (have an approved I-130) with a current priority date[236] (this means your visa is immediately

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[227] *See* Section F(5)(d) and footnote 195 to determine whether you are eligible for a 212(c) waiver.

[228] In re Gabryelsky, 20 I. & N. Dec. 750, 750 (BIA 1993); Matter of Rainford, 20 I. & N. Dec. 598, 601 (BIA 1992).

[229] In re Gabryelsky, 20 I. & N. Dec. 750, 754 (BIA 1993) (holding that a waiver under INA § 212(c) may be used in conjunction with an application for adjustment of status by an alien who is deportable for both drug and weapons offenses and that 8 C.F.R. § 245.1(e) (1993) permitted an alien to concurrently apply for adjustment of status and INA § 212(c) relief); *see also* In re Azurin, 23 I. & N. Dec. 695, 697 (BIA 2005) (reaffirming In re Gabryelsky). *But see* Powell v. Jennifer, 937 F. Supp. 1245, 1254 (E.D. Mich. 1996) (rejecting the *In re Gabryelsky* approach).

[230] "Adjustment of Status:" Putting the Puzzle Together at 4, *available at* http://firrp.org/media/AOS-Guide-2013.pdf (last visited Aug. 22, 2017).

[231] Your sponsor may instead be eligible to apply for the Form I-864EZ or the Form I-864W, which can be found online at http://www.uscis.gov/files/form/I-864EZ.pdf and http://www.uscis.gov/files/form/I-864W.pdf, respectively (last visited Jan. 7, 2017). Also, the Form I-864P ("Poverty Guidelines") does not need to be filed but is used to assist people in completing their Form I-864. The Form I-864P can be found online at http://www.uscis.gov/files/form/i-864p.pdf (last visited Jan. 7, 2017). For more information about who qualifies for these alternatives to Form I-864, you can refer to the USCIS website at www.uscis.gov, contact the USCIS Forms Line at 1-800-870-3676, or the National Customer Service Center ("NCSC") telephone line at 1-800-375-5283; TTY: 1-800-767-1833. A family member or attorney can also contact your local USCIS office by using Infopass, a web-based system allowing you to schedule appointments at USCIS offices. *See* InfoPass, *available at* https://infopass.uscis.gov/ (last visited Jan. 7, 2017).

[232] The purpose of an affidavit of support is to prove that you will not become a public charge if lawfully admitted with permanent immigration status in the U.S. Your sponsor must maintain you at an annual income that is not less than 125% of the federal poverty line during the period in which the affidavit is enforceable. For more information about the eligibility, terms, and enforceability period for the affidavit of support, you should refer to INA § 213A; 8 U.S.C. § 1183a (2012) for the full text of the statute.

[233] *See* INA § 245(c); 8 U.S.C. § 1255(c) (2012) for a complete list of aliens ineligible for adjustment of status.

[234] If you are a non-LPR who entered the U.S. without inspection (EWI, for example), the only way you can adjust your status is if you have filed an approvable I-130 petition under INA § 245(i); 8 U.S.C. § 1255(i) (2012) on or before April 30, 2001.

[235] Immediate relatives of USCs, which include spouses, unmarried children under 21 years old, and parents (if the USC is over 21 years old) have no quota or waiting time for approval of their visa. The government, however, does have quotas for all other family- and employment-based petitions. Therefore, if you are an immediate relative of a USC and that relative completed an I-130 on your behalf, your visa would be immediately available to you and you would be eligible for this form of relief. *See* Green Cards for Immediate Relative of U.S. Citizen, *available at* https://www.uscis.gov/green-card/green-card-through-family/green-card-immediate-relative-us-citizen (last visited Jan. 7, 2017).

[236] The priority date is the date on which the visa petition (for family-based petitions) is filed with USCIS or on which the labor certification (for employment-based petitions) is filed with the Department of Labor. In other words, it is the date on which your sponsor initiated the adjustment of status process on your behalf. The priority date is important because it is the date on which

available). Because immigration court proceedings move quickly, if your family member or employer has not yet petitioned for you (completed, filed, and received approval of the I-130) and your visa is not immediately available, the process may take too long and the immigration judge will probably not be willing to wait.

(ii) *Standard*

The statute does not define standards or discretionary factors required for adjustment of status, but the immigration judge may use some of the same or similar discretionary factors used for other forms of relief to determine whether you deserve to adjust your status and remain in the U.S. You should be prepared to prove that the following positive discretionary factors outweigh the negative factors.[237]

(iii) *Discretionary Factors*

Examples of positive factors include:[238]

(1) You can prove you have lived long-term in the U.S.[239] by showing some or all of the following things: apartment leases or mortgages, letters from neighbors, and utility bills (including telephone, cable and electric bills).
(2) You can prove a history of legal employment[240] by presenting letters from your employer, pay stubs, W-2 forms, and social security earnings statements.
(3) You can prove you own property in the U.S. by providing copies of your mortgages and bank statements or property deeds.
(4) You can prove you paid federal income taxes[241] by presenting copies of your yearly tax returns and/or a print-out of your tax records from the Internal Revenue Service. If you have never paid taxes or did not pay for a particular year, you can fix this by paying back taxes.[242]
(5) If you are a member of a church group, religious or civic organization, or perform some sort of community service, you should obtain letters from other members of the group, attesting to your contributions and humanity.
(6) Close family ties are also positive factors. For all of your family members in the U.S. who have legal status (LPR or USC), you should make copies of their documentation, including birth certificates, family photos, green cards, U.S. passports, naturalization certificates, and notarized

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you are placed in the waiting line for your visa. Because the government has quotas for family- and employment-based petitions, there are many more applicants for these visas than there are available visas. This creates a backlog for these categories. If there is a backlog, your visa is not immediately available and you will not be eligible to obtain this form of relief in immigration court. *See* Visa Availability and Priority Dates, *available at* https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates (last visited Dec. 31, 2017). In order to check the estimate of how long it will take for your family petition to be processed, please visit https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html (last visited Dec. 22, 2017).

[237] Matter of Arai, 13 I. & N. Dec. 494, 496 (BIA 1970) ("Where adverse factors are present in a given application, it may be necessary for the applicant to offset these by a showing of unusual or even outstanding equities. Generally, favorable factors such as family ties, hardship, length of residence in the United States, *etc.*, will be considered as countervailing factors meriting favorable exercise of administrative discretion. In the absence of adverse factors, adjustment will ordinarily be granted, still as a matter of discretion.").

[238] This is not an exhaustive list. You, your witnesses, and your attorney should discuss any other positive factors you can think of that would be helpful to your case.

[239] There are several issues related to time in immigration proceedings. It is important that you have a clear understanding of the chronology (timeline) of your history in the U.S.—when you arrived, how many trips you have taken outside of the U.S., and how many trips you have taken to your home country, etc.

[240] The concept of a public charge is important in immigration proceedings. You may be deemed a public charge if you depend on the government for your income (in the form of public benefits). Immigration judges are more likely to grant relief to you if you have contributed to the U.S. economy and have been able to support yourself and your family. On the other hand, if you have received any public benefits or welfare, you should be honest about it because this is not the only factor that the judge will consider.

[241] Immigration judges look favorably on people who have paid taxes, again probably because they have not been public charges, but have instead contributed to U.S. society as a whole.

[242] If you did not file taxes in the past, it is not too late to pay your back taxes. You will have to pay a fine, interest, and the taxes you owe, but the filing of taxes from previous years can seriously help your immigration case. Visit this website for more information on how to file back-taxes: The IRS Collection Process, *available at* https://www.irs.gov/pub/irs-pdf/p594.pdf (last visited Dec. 22, 2017). You can download tax forms for previous years at Prior Year Products, *available at* https://apps.irs.gov/app/picklist/list/priorFormPublication.html (last visited Dec. 22, 2017).

letters or affidavits from family members.

(g) Asylum, Withholding of Removal, and Protection under the Convention Against Torture ("CAT")

If you are eligible to apply for asylum, withholding of removal, or protection under the Convention Against Torture ("CAT"), you should apply for all three of these forms of relief. This way, even if the judge does not grant you your first choice, you may still be eligible for one of the others. While the standards differ slightly for each one of these forms of relief, the discretionary factors are the same and you will likely be submitting the same kinds of evidence for all three forms of relief. The discretionary factors and evidence will be described at the end of this Section.

The standards and the consequences differ for each of these forms of relief. If the judge grants you asylum, he will not order your deportation and you will be able to apply to ***adjust your status*** within a year to that of an LPR. If the judge grants you withholding of removal, however, you will be ordered deported, but that deportation order will be withheld or stopped. As a result, you will not be eligible to adjust your status, but you will be able to get employment authorization. There are two possible outcomes in your immigration case if the judge grants you protection under CAT: (1) withholding and (2) deferral. Particularly serious crimes[243] are bars to withholding under the CAT, but they are not bars to deferral. You will not be eligible to adjust your status under either withholding or deferral, but you will be able to stay in the U.S. You will not be able to get employment authorization under deferral.

(i) *Asylum*[244]

You must fill out ***Form I-589*** to apply for asylum. The form can be found online at http://www.uscis.gov/files/form/I-589.pdf (last visited Jan. 7, 2017). Asylum is a form of relief available to people who are unable to return to their home countries for certain reasons.

1. Eligibility

You qualify for this form of relief if you meet ALL of the following requirements:

(1) You apply for asylum within one year of your arrival in the U.S.;[245]
(2) You have **not** been convicted of a particularly serious crime; and
(3) You have **not** been convicted of an aggravated felony.

2. Standard

You must prove to the immigration judge you are unable or unwilling to return to your home country because you have been "persecuted" there or because you have a well-founded fear that you will be badly mistreated there because of your race, religion, nationality, membership in a particular social group, or political opinion.[246] Additionally, this persecution must either be done by part of your home country's government, by a group that is sanctioned (allowed or encouraged) by your home country's government, or by a group or individual that your home country is unwilling or unable to stop. For an immigration judge to grant you asylum, he must be convinced there is a possibility[247] you will be persecuted.

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[243] If you are convicted of an aggravated felony, then you have been convicted of a particularly serious crime. INA § 208(b)(2)(B); 8 U.S.C. § 1158(b)(2)(B) (2012). Some crimes can be considered particularly serious crimes even if they are not aggravated felonies. *See* 8 U.S.C. § 1231(b)(3)(B). Additionally, the Attorney General may designate by regulation offenses that will be considered particularly serious crimes. INA § 208(b)(2)(B)(ii); 8 U.S.C. § 1158(b)(2)(B)(ii) (2012).

[244] INA § 208; 8 U.S.C. § 1158 (2012).

[245] *See* INA § 208(a)(2)(D); 8 U.S.C. § 1158(a)(2)(D) (2012) for a few limited exceptions to this rule.

[246] INA § 241(b)(3)(A); 8 U.S.C. § 1231(b)(3)(A) (2012).

[247] Recent court decisions have held that an applicant seeking asylum does not have to show that persecution is highly probable; instead, the applicant only needs to show as little as a 10% probability of persecution if he is sent back. I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987) ("There is simply no room in the United Nations' definition for concluding that because an applicant only has a 10% chance of being shot, tortured, or otherwise persecuted, that he or she has no 'well-founded fear' of the event happening.").

It is not enough that your home country is in general political or social unrest. You must show how this will directly affect you or how you will be specifically targeted by this unrest.

(ii) *Withholding of Removal*[248]

You must fill out ***Form I-589*** to apply for this form of relief. The form can be found online at http://www.uscis.gov/files/form/I-589.pdf (last visited Aug. 30, 2017).

1. Eligibility

You may qualify for this form of relief if you meet ALL the following requirements:

(1) You have **not** been convicted of a particularly serious crime;
(2) You have **not** committed persecution against another person; and
(3) You have **not** been convicted of an aggravated felony for which you received a sentence of five or more years in prison.[249]

2. Standard

Withholding of removal is similar to asylum, but it is more difficult to get. You must prove that you are unable or unwilling to return to your home country because your life or freedom would be threatened because of your race, religion, nationality, membership in a particular social group, or political opinion. For a judge to grant you withholding of removal, he or she must be convinced that there is a clear probability[250] that you will be persecuted. If you are granted withholding of removal, the judge will still order you deported, but you will not have to return to your home country until the government decides it is safe for you to do so.

(iii) *Convention Against Torture ("CAT")*[251]

CAT is an ***international treaty*** that prohibits the U.S. government from returning anyone to a home country where he may be subjected to torture.

1. Eligibility

You may seek protection through withholding of removal or deferral of a deportation under the CAT. You may not be eligible for withholding under the CAT if you are convicted of a particularly serious crime.

2. Standard

You must prove to the immigration judge that if you return to your home country, you will probably suffer severe pain and suffering that is intentionally done to you for an illicit (illegal) purpose. This pain and suffering must be caused or approved by a public official[252] and it must not arise out of a lawful sanction. For an immigration judge to grant you protection under the CAT, he or she must be convinced that it is more

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[248] INA § 241(b)(3)(A); 8 U.S.C. § 1231(b)(3)(A) (2012).

[249] If you were convicted of an aggravated felony and were sentenced to less than five years in prison, the government still has the discretion to classify it as a particularly serious crime. *See* Immigration Detention and Removal: A Guide for Detainees and Their Families at 18, *available at* http://www.aclu-tn.org/wp-content/uploads/2016/05/Immigration-Detention-and-Removal-A-Guide-for-Detainees-and-Their-Families-_English_.pdf (last visited Dec. 26, 2017).

[250] This "clear probability" standard is higher than the "possibility" standard required for asylum. Once you prove the possibility in asylum, the judge still has the discretion to deny you asylum. If, however, you prove the probability standard for withholding, the judge no longer has discretion and must grant you that form of relief. Therefore, withholding is more difficult to prove than asylum, but once you prove it, the judge is required to grant you that form of relief. It is also important to note that you cannot adjust your status (in other words, get a green card) with withholding, but you can with asylum.

[251] As was the case with withholding, you cannot apply to adjust your status after obtaining relief under CAT as you would be able to do after obtaining asylum as a form of relief.

[252] The Ninth Circuit has found that this can include the government officials' "willful blindness," and that it is not necessary to prove they had "actual knowledge" of your torture. *See* Reyes-Reyes v. Ashcroft, 384 F.3d 782, 787 (9th Cir. 2004).

likely than not that you would suffer severe pain and suffering.[253]

(iv) *Discretionary Factors for Asylum, Withholding, and CAT*

If you are applying for asylum, withholding of removal, or protection under CAT, you will need to present evidence about the current conditions in your home country and why you are afraid to return. This evidence may include country reports written by the U.S. Department of State and/or human rights organizations such as Amnesty International and Human Rights Watch. You can also use newspaper or magazine articles about the conditions in your home country related to human rights violations, the economy, or healthcare, if any of these apply to your situation.[254] You can also use witness testimony to support your claims.[255]

(h) Voluntary Departure[256]

Voluntary departure gives you the option of volunteering to leave the U.S. and return to your home country instead of being deported by the U.S. government. If you do not leave the U.S. by the date set by the immigration judge, you are subject to a penalty of $1,000 to $5,000 and are not eligible for relief under the sections providing for cancellation of removal, voluntary departure, adjustment of status, change of non-immigrant classification, or record of admission for permanent residence for certain aliens.[257] The benefit of voluntary departure is that you may be able to return to the U.S. much sooner than if you were deported.[258] However, a voluntary departure order is much harder to reopen than a deportation order.[259] Because voluntary departure is irreversible, you should consider all the consequences before requesting it.

(i) *Eligibility*

You cannot get voluntary departure if you are an arriving alien, if you have been convicted of an aggravated felony, or you if have a prior deportation order.[260]

(ii) *Standard*

The standard you must meet to obtain voluntary departure varies depending on when you request it. In other words, if you request voluntary departure at the master calendar hearing, you will need to show the judge that you have (1) a valid travel document and (2) the means to buy a one-way open ticket (a ticket without a departure date) to your home country. If you wait until the individual hearing to request voluntary

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[253] This is a higher standard than is required for asylum. Matter of J-E-, 23 I. & N. Dec. 291, 302 (BIA 2002) (citing Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, art. 3, Dec. 10, 1984, art. 3 S. Treaty Doc. No 100–20, 1465 U.N.T.S. 85 (1987) and referring to 8 C.F.R. § 208.16(c)(2) (2003), which states what evidence satisfies this standard).

[254] Some countries treat people who have been deported like criminals, making their lives extremely difficult when they return to their home countries. You should do research to prove any situations in your home country that may be relevant to your case. Some information you obtain may also be helpful in proving extreme hardship to you if you were to be deported.

[255] Although immigration judges are aware of country conditions worldwide, do not assume your particular judge knows anything about your home country. Part of convincing the judge you should remain in the U.S. is educating him or her on the effects of your deportation. You should not, of course, exaggerate conditions, but be honest about what your life would be like and how you would be affected if you were to return to your home country.

[256] There is no formal application for voluntary departure as there is for each other form of relief. INA § 240B(d); 8 U.S.C. § 1229c(d) (2012).

[257] INA § 240B(d); 8 U.S.C. § 1229c(d) (2012). If you have a ticket to leave by the date the judge sets, and the only reason you do not leave is because you are detained and DHS does not release you by that date, you should contact your immigration judge to inform him or the district director to extend your voluntary departure date.

[258] *See* Immigration Detention and Removal: A Guide for Detainees and Their Families, *available at* http://www.aclu-tn.org/wp-content/uploads/2016/05/Immigration-Detention-and-Removal-A-Guide-for-Detainees-and-Their-Families-_English_.pdf (last visited Dec. 26, 2017); *see also* Part I of this Chapter, which discusses both legal and illegal reentry into the U.S.

[259] Sometimes, at the time of your removal proceedings, you do not qualify for any forms of relief. You may anticipate, however, that you will qualify for a form of relief (such as adjustment of status) at a later date. At that later date, you may wish to reopen your immigration court proceedings. *See* Part H of this Chapter, which describes the process of reopening immigration cases.

[260] *See* http://www.aclu-tn.org/wp-content/uploads/2016/05/Immigration-Detention-and-Removal-A-Guide-for-Detainees-and-Their-Families-_English_.pdf.

departure,[261] in addition to showing (1) and (2) above, you will also have to show that you were physically present in the U.S. for one year before the ***Notice to Appear*** (the document that you received from the government telling you that you were being put into removal proceedings) was filed and that you have good moral character.[262]

If the judge grants you voluntary departure, he or she will give you a certain period of time to get your documents and ticket. If you request voluntary departure before the end of the immigration court proceedings, the judge can give you a maximum of 120 days to leave. If you make your request at the end of proceedings, the judge can grant you a maximum of sixty days to depart. Thus, the earlier you request voluntary departure, the greater the chance the judge will grant it.[263]

G. REMOVAL PROCEEDINGS

Now you know the kind of relief you can apply for. This Part will cover the step-by-step process of the actual removal proceeding. Your case will be heard in an administrative court. This court can only hear immigration cases and is called an immigration court.[264] An immigration judge must do removal proceedings,[265] except in the case of ***expedited removal***.[266] A lawyer called the assistant chief counsel will represent the government in your removal proceedings. The assistant chief counsel works for ***U.S. Immigration and Customs Enforcement ("ICE")***. ICE is part of the Department of Homeland Security. The assistant chief counsels take immigration cases that involve criminal convictions very seriously.

1. Notice to Appear

Removal proceedings begin with a Notice to Appear ("NTA"), which is a document that the government gives both you and the court. The NTA explains why the government thinks you should be deported from the U.S. It usually provides you with your first court date.[267] The NTA is sent to your last known address, even if you no longer live there. Because of this, make sure you provide the right mailing address to immigration officials.[268] If you are placed in a DHS detention center, DHS is supposed to give you the NTA within seventy-two hours.[269]

The NTA is divided into two parts. The first part is called "Allegations" and includes your name, your home country, the date you entered the U.S., and how you entered the U.S. Here, the government gives the factual reasons for wanting to deport you. The second part of the NTA is called "Charges" and gives the legal

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[261] Sometimes people requesting other forms of relief listed in this Part will request voluntary departure as an alternative to those other forms of relief. This way, if they lose their case, they can still obtain voluntary departure.

[262] *See* footnote 292, which lists what may bar a finding of good moral character.

[263] 8 C.F.R. § 1240.26(e) (2017).

[264] You can find a list of the various immigration courts (including their addresses and phone numbers) throughout the U.S. on the EOIR website, EOIR Immigration Court Listing, *available at* https://www.justice.gov/eoir/eoir-immigration-court-listing (last visited Dec. 31, 2017). If you are still serving your prison sentence, the Institutional Hearing Program ("IHP") may apply to you. The IHP was designed in order to expedite the deportation of non-U.S. Citizens with criminal convictions. Therefore, the IHP enables the government to ensure that you will be deported as soon as you are released from prison. It does this by conducting its investigations and hearings and even ordering you deported while you are still incarcerated.

[265] INA § 240A(1); 8 U.S.C. § 1229a(a)(1) (2012). *See* also INA § 101(b)(4); 8 U.S.C. § 1101(b)(4) (2012) (defining "immigration judge").

[266] If you attempt to enter the U.S. by fraud or without valid documentation, you may be deported without a hearing ("expedited removal"), unless you claim asylum, have a fear of persecution, or can show that you have been in the U.S. continuously for at least the previous two years. INA § 235(b)(1); 8 U.S.C. § 1225(b)(1) (2012).

[267] Sometimes, you will be served with an NTA that says "to be calendared." This means that you will get a Notice of Hearing in the near future giving you a court date. You can also call 1-800-898-7180 and enter your Alien Registration Number, also known as your A number, to see if your court date has been set.

[268] If you fail to provide an address, then the government does not have to give you notice. INA § 240(b)(5)(B); 8 U.S.C. § 1229a(b)(5)(B) (2012). Without notice, you will likely fail to show up to court and could be ordered deported in your absence. *See* Section 2 below.

[269] Immigration Detention and Removal: A Guide for Detainees and Their Families, *available at* http://www.aclu-tn.org/wp-content/uploads/2016/05/Immigration-Detention-and-Removal-A-Guide-for-Detainees-and-Their-Families-_English_.pdf (last visited Dec. 26, 2017).

reasons for your removal. In the NTA, the government must tell you all of the following:[270]

(1) The nature of the removal proceedings against you;
(3) The laws that you allegedly violated;
(4) What you did to violate the law(s);
(5) The consequences of not appearing at your hearing; and
(6) The time and place of your court proceeding.

Make sure to check the NTA carefully for accuracy. For example, you should make sure that all of the names, dates, and addresses are correct. You should also make sure that your criminal convictions have been listed correctly. These may seem like unimportant details, but they can make a big difference in your removal proceedings. For example, these details may determine what relief you may be eligible for and whether or not you must be detained.[271] If any of the facts in the NTA are not true, you should deny the allegations or charges and demand that the government provide proof.

2. Immigration Court

It is extremely important that you show up to all of your immigration court dates. You cannot send someone (even your attorney) to appear in your place. If you do not appear at your scheduled hearing, the hearing will take place without you (known as "in absentia"), and the judge will likely order you deported. In this situation, all the government must prove is that (1) the NTA was properly served on you[272] and that (2) you are removable.[273]

If you miss your court hearing, you may move to reopen the case. You can only do this if you (1) show "exceptional circumstances" for being absent, (2) prove that you did not receive ***notice***, or (3) prove that you were in state or federal custody.[274]

3. Master Calendar Hearing

Removal proceedings begin with a master calendar hearing, which is similar to an arraignment in criminal court. The master calendar hearing can take place in person, through video conference, or (with your permission) on the telephone.[275] The hearing is the first time you appear in front of the judge in immigration court (although you may appear at several master calendar hearings). In the master calendar hearing, the basic facts of your case will be reviewed briefly. The judge will take the pleadings (discussed below), confirm that you can be deported as the government has claimed,[276] and identify the forms of relief for which you are eligible to apply, if any.

The judge may hear a lot of cases during the day of the master calendar hearing. Therefore, the judge will usually not spend very long on your case. There are several reasons why a judge might postpone (adjourn) the hearing for another master calendar hearing. If you are eligible for a form of relief, you will have an individual hearing after all your master calendar hearings. The individual hearing will be discussed in more detail below.

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[270] INA § 239(a)(1)–(6); 8 U.S.C. § 1229a(a)(1)–(6) (2012).
[271] *See* Part E for a discussion about mandatory detention. Forms of relief are discussed in Part F of this Chapter.
[272] The government properly serves you with an NTA when it either gives you the NTA in person, or, if personal notice is not possible, mails it to you or your lawyer. INA § 239(b)(2); 8 U.S.C. § 1229a(b)(2) (2012).
[273] INA § 240(b)(5)(A); 8 U.S.C. § 1229a(b)(5)(A) (2012).
[274] INA § 240(b)(5)(C); 8 U.S.C. § 1229a(b)(5)(C) (2012). *See* Part H of this Chapter for more information about motions to reopen. Motions to reopen are not necessarily easy to obtain, especially since "exceptional circumstances" usually means a serious illness that caused emergency hospitalization or death of a family member. INA § 240(e)(1); 8 U.S.C. § 1229a(e)(1) (2012).
[275] INA § 240(b)(2); 8 U.S.C. § 1229a(b)(2) (2012).
[276] This does not mean that the judge will decide whether or not you will be deported. He will just confirm that you are eligible for deportation. If, however, the judge finds that you are not eligible for any form of relief, he may order you deported at the master calendar hearing.

(a) Reasons for Adjournment

(i) *You Need Time to Find an Attorney*

You have a right to have a lawyer represent you in your immigration court proceedings. However, you do not have the right to a free lawyer provided by the government.[277] Instead, you must obtain an attorney on your own. You should ask the court for a list of organizations that provide low-cost or free legal services.[278] The judge will postpone (adjourn) your first master calendar hearing to a later date to give you time to find an attorney. If you have not found a lawyer by the second master calendar hearing, the judge might allow you more time to find a lawyer. However, the judge might just proceed with your case and you may have to represent yourself. If you are not eligible for any form of relief, the judge may order you deported at this second master calendar hearing.

(ii) *You Need Time to Fill Out Your Application for Relief*

At the master calendar hearing, the judge may tell you the forms of relief for which you may be eligible. But you should be ready to state which forms of relief[279] you are seeking and bring the corresponding applications with you, if possible. Otherwise, you should ask for an adjournment. This will give you more time to fill out the necessary applications. The judge should adjourn your case for another master calendar hearing.

(iii) *You Need Time to Appeal a Criminal Conviction*

If you are currently appealing your criminal conviction, you should tell the immigration judge. In general, a conviction that is pending on ***direct appeal*** is not a final conviction.[280] This is important because the government can only rely on final convictions when it uses criminal convictions as the basis for deporting non-USCs. The U.S. government can't deport you until you have no more right to appeal your conviction.[281]

(iv) *You Want a Change of Venue*

If you are facing removal proceedings outside of your home state, you may apply for a ***change of venue*** to move your removal proceedings to a more convenient location. You can apply for a change of venue at any time during your case, but the judge is more likely to grant you your request if you apply early. If you plan to ask for a change of venue, you should do so at the master calendar hearing.[282]

You may want to ask for a change of venue if moving to a court closer to your home makes it easier to travel to court. It would also be good to be close to home if you are seeking a form of relief and would like to bring ***witnesses*** to testify in the court hearing for you. In addition, official records are harder to get from far away. The judge will consider these and other factors in deciding whether to move your case. If you are held by the government and subject to mandatory detention, which means you are ineligible for bond,[283] you probably will not be transferred to another state unless the government agrees. The government will want to detain you wherever there is space available, which may not be in or near your home state. So, if you are

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[277] Unlike criminal court proceedings, the government will not assign a free attorney to you. If you cannot find one on your own, you will have to proceed without one. *See* I am an Immigrant in Detention . . . What are my Rights?, *available at* https://www.nationalimmigrationproject.org/PDFs/community/know-your-rights-eng.pdf (last visited Dec. 26, 2017). However, if you face removal proceedings in New York City or are a detained New Yorker facing deportation in nearby New Jersey immigration courts, the New York City Council funds free, high-quality legal representation to every low-income immigrant. *See* New York Immigrant Family Unity Project, *available at* https://www.bronxdefenders.org/programs/new-york-immigrant-family-unity-project/ (last visited Dec. 31, 2017).

[278] Appendix D at the end of this Chapter includes a list of providers of legal services.

[279] *See* Part F of this Chapter for more information regarding forms of relief and their applications.

[280] The direct appeal is a way for you to challenge your conviction or sentence. If your case is on direct appeal, you should tell the immigration judge immediately and request that the immigration case against you be terminated.

[281] *See* Immigrant Defense Project, Finality of Convictions, *available at* https://www.immigrantdefenseproject.org/finality-of-convictions/ (last visited Dec. 26, 2017).

[282] 8 C.F.R. § 1003.20 (2017).

[283] *See* Section E(1) of this Chapter for more information on mandatory detention.

detained, it is highly unlikely that your request for a change of venue will be granted.[284]

Whether or not you have an attorney, the judge can still "take the pleadings," which is the next step in the master calendar hearing.

4. Pleadings

At the beginning of your master calendar hearing, the judge will "take the pleadings," or review the NTA with you. The judge will ask you (1) if the facts in the NTA are true, (2) if you admit you are removable, and (3) whether you will be applying for any forms of relief. If, in reviewing the NTA, you found any mistakes, you should mention them. You should also deny any false or incorrect allegations.

The government, however, must first prove two facts: (1) that you are an alien, meaning that you are a non-USC,[285] and (2) that if you are a Lawful Permanent Resident (green card holder) or were otherwise lawfully admitted into the U.S., that you are removable.[286] This means that the government must show that you have done something to violate immigration law that would let the government deport you.[287]

If the judge finds that you are not eligible for any form of relief discussed in Part F of this Chapter, the immigration judge will likely make a decision at your master calendar hearing and order you deported. Both the ***chief counsel*** and you can reserve the right to appeal this decision.[288] If you have applied for a form of relief and the immigration judge has found that you are eligible for that form of relief, he or she will schedule an individual hearing at the end of your final master calendar hearing. The individual hearing is discussed in greater detail below.

5. Individual Hearing

At the individual hearing, you have to prove why you deserve the form of relief for which you have applied. This means you must convince the judge that you deserve to stay in the U.S. At this hearing, you and your witnesses[289] will testify. The immigration judge and assistant chief counsel will also probably question both you and your witnesses. An interpreter who speaks your language will be provided, if necessary.

(a) Supporting Documents at the Individual Hearing

Supporting documents are any documents that you bring to your removal proceedings for the purpose of helping you prove that you should not be deported. Part F of this Chapter discusses what kinds of documents you may want to present to the court. The documents vary depending on which form of relief you

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[284] In fact, many immigration detainees are moved around the country more than once if DHS determines that this is necessary because of space concerns.

[285] If you are an LPR, the government can prove you are a non-USC by showing the judge a copy of your "visa face sheet"—the document that you received when you first entered into the U.S. If you entered without inspection ("EWI"), they may rely on any statements you made or any other evidence showing that you were not lawfully admitted into the United States. If the government cannot prove that you are an alien, then the case must be terminated. *See* Immigration Detention and Removal: A Guide for Detainees and their Families at 9, *available at* http://www.aclu-tn.org/wp-content/uploads/2016/05/Immigration-Detention-and-Removal-A-Guide-for-Detainees-and-Their-Families-_English_.pdf (last visited Dec. 26, 2017).

[286] Immigration Detention and Removal: A Guide for Detainees and Their Families at 9, *available at* http://www.aclu-tn.org/wp-content/uploads/2016/05/Immigration-Detention-and-Removal-A-Guide-for-Detainees-and-Their-Families-_English_.pdf (last visited Dec. 26, 2017).

[287] For example, if the NTA states that you are removable for a criminal conviction, the government will need to produce a certificate of disposition or some other court record to verify that you were convicted of a crime. The government will also have to show that the crime you were convicted of is one that allows the government to deport you. It is generally fairly easy for the government to meet this burden by producing criminal records from the criminal court. *See* Immigration Detention and Removal: A Guide for Detainees and Their Families at 9, *available at* http://www.aclu-tn.org/wp-content/uploads/2016/05/Immigration-Detention-and-Removal-A-Guide-for-Detainees-and-Their-Families-_English_.pdf (last visited Dec. 26, 2017).

[288] *See* Part H of this Chapter, which discusses decisions and appeals.

[289] Part F of this Chapter discusses what evidence you will need to present in order to convince the judge that you deserve to remain in the U.S.

are seeking. Before you read that Part, however, you should know that there are some expectations of how you present evidence in immigration court:

(1) You should make three copies of all documents. One copy is for the judge, one is for the assistant chief counsel, and the extra set is for you.
(2) You should request to keep the originals for your own records.
(3) You should punch two holes (using a "two-hole puncher") at the top-center of all of the documents you submit so that they can easily be inserted in the judge's and assistant chief counsel's files.
(4) Affidavits or letters of support should be notarized to prove that they were done under oath and contain only truthful information.
(5) You and your witnesses should dress in a clean and professional manner.
(6) Refer to the immigration judge as "Your Honor" and always maintain a respectful tone.

(b) Witnesses at the Individual Hearing

You are allowed to—and should, if you can—have witnesses to support your case at your individual hearing. These witnesses may include your spouse, children, siblings, friends, clergy, doctors, boss, co-workers, and neighbors. Your witnesses should have legal immigration status in the U.S.[290] If they do not, they risk being placed in removal proceedings also. Your witnesses should try to attend your removal proceedings in person. If they cannot, they should write notarized letters or affidavits for you.

Depending on which form of relief you are seeking, you will want to make sure your witnesses are prepared to discuss the discretionary factors that correspond to that form of relief.[291] This means that your witnesses should be prepared to discuss your life in the U.S., your "good moral character,"[292] the nature of your relationship with them, and why they do not want you to be deported. This is especially important if they will be directly harmed by your deportation. They should be prepared to discuss any financial or emotional support you provide for them. If your witnesses know anything about your criminal history, they should be prepared to discuss that as well.

You, your attorney, the assistant chief counsel, and the immigration judge may all ask your witnesses questions during the individual hearing. You or your attorney should prepare your witnesses by asking them some of the questions you think the judge or assistant chief counsel will ask before the hearing. While it may seem easy for a friend or family member to discuss your life, your witnesses should still be thoroughly prepared because the judge and/or assistant chief counsel may ask questions that are more difficult than you expect. If your witnesses are not well prepared, they are more likely to say something that ends up hurting your case.

Now that you know how removal proceedings work, and what you can apply for during these proceedings, you can read on to Part H to learn how cases are decided and appealed.

H. DECISION AND APPEALS

1. Decision

The immigration judge will decide your case based on the evidence both you and the government give. If the judge orders you deported, the judge must tell you about the consequences if you fail to leave.[293] At the end of the hearing, the judge will ask you whether you expect to appeal the decision. The judge will ask the assistant chief counsel the same question. If there is an appeal, the immigration judge will issue a long decision. This decision will explain the case (known as "preserving the record") for the next stage. If you win

[290] Part B of this Chapter discusses U.S. immigration status. Use it to see if your witnesses have legal U.S. immigration status.
[291] Part F of this Chapter discusses these discretionary factors in more detail.
[292] Some of the reasons an immigration judge would think you do not have good moral character: you get drunk regularly; you committed a crime involving moral turpitude ("CIMT"); you engaged in prostitution. In addition, there are other characteristics that will cause a judge to find that you are not of good moral character. Some exceptions may also apply. *See* 8 U.S.C. § 1101(f) (2017) (stating what bars a finding of good moral character).
[293] INA § 240(c)(5); 8 U.S.C. § 1229a(c)(5) (2012).

your case and the assistant chief counsel does not want to appeal, your case is final. You are now allowed to remain in the U.S. and keep your lawful immigration status. If your green card, passport, or other documents were taken, they may be returned when the hearing is done. However, it is more likely that these documents will be returned at a later time.

If you win your case and the government appeals the decision, your case is not over. Your case is also not over if you lose your case and you decide to appeal. The outcome of the appeal will determine whether you get to remain in the U.S. If you lose and you appeal, you cannot leave the country while your case is pending. If you do, the government will deem your case abandoned.

2. **Appeals**

(a) Appeals to the Board of Immigration Appeals ("BIA")

You have the right to appeal a judge's decision to the Board of Immigration Appeals (BIA)[294] The government has this right too. The BIA is another type of administrative court. The BIA is in Virginia, so immigration appeals are not done in person. You do not have to be present at the time of your appeal. The BIA has very strict rules about how you file and prepare an appeal. Failure to follow these rules may result in your appeal being ***dismissed***.

(b) Filing Deadlines and BIA Addresses

To appeal, you must file a ***Notice of Appeal*** with the BIA.[295] The BIA must have notice within thirty days of the judge's decision.[296] It is not good enough to mail the Notice of Appeal by the thirtieth day. The notice must actually be in the clerk's office of the BIA by that day.[297] If it arrives even one day late, the appeal will be dismissed. If that happens, you will not have another chance to appeal the decision.[298]

The notice can be sent by the U.S. Postal Service, hand delivery, courier, same-day delivery, overnight or express delivery (including U.S. Postal Service express mail) to:[299]

Board of Immigration Appeals
Office of the Chief Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

(c) Notice of Appeal

At the end of your hearing, the immigration judge should provide you with a Notice of Appeal. On the notice, you must state the reason for your appeal, giving all the legal claims you want to make. You must also indicate whether you plan to file a ***legal brief***.[300] There is also a required fee of $110 for an appeal, whether you file a legal brief or not.[301] Once the BIA receives your Notice of Appeal, the BIA will let you

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[294] 8 C.F.R. § 1003.1(b) (2017). The BIA is the highest administrative body for interpreting and applying immigration law. It is composed of 15 members and is located at EOIR headquarters in Falls Church, Virginia. Generally, the BIA does not conduct courtroom proceedings, but in rare instances, it has heard oral arguments of appealed cases.

[295] Questions and Answers: Appeals and Motions, *available at* https://www.uscis.gov/forms/questions-and-answers-appeals-and-motions (last visited Dec. 26, 2017).

[296] Questions and Answers: Appeals and Motions, *available at* https://www.uscis.gov/forms/questions-and-answers-appeals-and-motions (last visited Dec. 26, 2017).

[297] At the end of your individual hearing, the judge will give you his or her decision on a piece of paper that contains the date by which you must file your appeal.

[298] *See* EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer, *available at* https://www.uscis.gov/eoir-29 (last visited Dec. 26, 2017).

[299] Before sending anything to this address, or any addresses within the context of this Chapter or the Appendices that follow it, be sure to confirm that the address has not changed since this supplement was published.

[300] The legal brief is your written account of your immigration court proceedings, including why you believe the case should have been decided in your favor. The purpose of the legal brief is to persuade the BIA that you should have won your immigration case.

[301] You should always check what the current fee is. If you cannot afford to pay the fee, you can request a fee waiver. In order to do so, you must complete a Fee Waiver Request Form EOIR-26A, *available at*

know by sending you a receipt. If you said that you wanted to file a legal brief, you will get a transcript of the immigration hearing. You will also get a ***briefing schedule***. You will receive both the transcript and the briefing schedule at a later time. The briefing schedule is a schedule that tells you and the government when your legal briefs are due. You can ask for an extension for more time if you need it. But you should know that the BIA usually only grants the first request for extra time. If they do, they will give you an extra twenty-one days to file your legal brief. The BIA usually denies requests for extra time after the first one. You may also request oral argument on the Notice of Appeal. Oral argument is a chance for you to explain in person why the first judge was wrong about your case.[302] If you say you are going to file a legal brief and you do not file one, your appeal may be dismissed.

(d) Legal Brief

Writing a legal brief is not easy. That is why you should try to get the help of an attorney.[303] When writing a brief, you should start with a statement of facts. The statement of facts should outline the following: (1) the essential facts of the case, including when and how you came to the U.S., (2) when the government began removal proceedings against you, and (3) the specific charges the government made against you. You should then briefly state the evidence that you showed to the immigration court during your hearings. If you have any new evidence that you did not already present to the court, you cannot mention it in your brief. You can only talk about evidence that the immigration judge saw during one of your hearings.

After your statement of facts, you should then state your specific legal claim or claims. The BIA knows that you are not an attorney. It does not expect you to use legal terms in the writing of your legal brief. However, you should, refer to cases that support your argument. The BIA may dismiss your appeal if you say that you will file a legal brief in your original Notice of Appeal, but do not.

(e) BIA Decision

The BIA can take many months or even years to make a final decision on your case.[304] Appeals involving detainees tend to move quicker than the appeals of non-USCs who are not detained. Once the BIA makes a decision on your appeal, it might issue a summary of the case along with its decision. The BIA recently started issuing ***summary affirmances***. These are very short decisions. They simply state that the immigration judge was correct. They do not have any discussion of the facts and circumstances of the case.[305] Summary affirmances do not actually indicate why the BIA is making its decision.[306]

3. **Motion to Reopen or Reconsider**

There are certain times where you might get to ask the immigration judge or the BIA to review your case again. There are two types of ***motions*** that can do this. Both motions must be filed with the court that last decided your case. The motion to reopen is based on factual claims. The motion to reconsider is based on legal claims or changes in the law that could help your case.

(a) Motion to Reopen

You can file one[307] motion to reopen.[308] This would ask the court to reopen your immigration court

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https://www.justice.gov/sites/default/files/pages/attachments/2015/07/24/eoir26a.pdf (last visited Aug. 14, 2017).

[302] Requests for oral argument are rarely granted.

[303] *See* Appendices C and D for more resources and legal service providers.

[304] You can check on the status of your case by calling the Automated Status Query line, toll-free, at (800) 898-7180. You will need your Alien Registration Number when you call.

[305] *See* Executive Office for Immigration Review, Board of Immigration Appeals: Streamlining, *available at* https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-60707/0-0-0-61450.html (last visited Dec. 26, 2017).

[306] Within another 30 days, you may have the right to appeal the BIA decision to one final court—the Circuit Court of Appeals in your district. This court is part of the federal court system. Not everyone has the right to appeal a BIA decision. Most cases involving criminal convictions cannot be appealed to the Court of Appeals. This will be discussed in greater detail below.

[307] There is one exception to the limitation of one motion to reopen, which falls under the special rule for battered spouses,

proceedings. This motion must be filed within ninety days of the date of entry of the final administrative deportation order. If your motion to reopen is because you failed to appear in court due to exceptional circumstances and/or ineffective assistance of counsel,[309] you must file this motion within 180 days from the date of the final deportation order.[310] If you do not file within 180 days, the judge gets to decide whether or not to reopen your case.[311] If the deportation order was issued in removal proceedings that occurred before June 13, 1992, there is no deadline. There also is no deadline if you are applying for asylum, as long as your motion is based on changed home country conditions.[312]

Motions to reopen based on lack of notice or failure to attend your hearing due to exceptional circumstances will automatically stay (which means stop) your deportation. Motions based on new evidence or changed circumstances in your home country do not automatically stay your deportation.[313] If you do not request a stay or if your request is denied, you may be deported before there is a decision on your motion. However, if the BIA grants your motion to reopen after you are deported, you may return immediately.[314]

(i) *New Evidence*

If your motion to reopen is based on new evidence, it must state the new facts that you will prove at the hearing if the motion is granted. You must also state that these facts will be supported by evidence or affidavits. You must show why this evidence was not available at the time of your prior hearing.[315] If the basis of the motion is failure to appear due to exceptional circumstances or new facts or evidence, you must pay a $110 filing fee.[316]

(ii) *Lack of Notice/Failure to Attend Hearing*

If you were ordered deported in your absence, you may file a motion to reopen if there were exceptional circumstances that stopped you from appearing at your immigration court date. You can also file a motion if you can prove that you did not receive your NTA.[317] If the motion to reopen or motion to

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children, and parents. INA § 240(c)(7)(C)(iv); 8 U.S.C. § 1229a(c)(7)(C)(iv) (2012).

[308] INA § 240(c)(7); 8 U.S.C. § 1229a(c)(7) (2012).

[309] For an overview of how to file an ineffective assistance of counsel claim in immigration cases, *see* Seeking Remedies for Ineffective Assistance of Counsel in Immigration Cases, *available at* https://www.americanimmigrationcouncil.org/sites/default/files/research/seeking_remedies_for_ineffective_assistance_of_counsel_in_immigration_cases_practice_advisory.pdf (last visited Dec. 26, 2017).

[310] INA § 240(c)(7)(iii); 8 U.S.C. § 1229a(c)(7)(C)(iii) (2012). Some jurisdictions consider ineffective assistance of counsel an exceptional circumstance. *See* Lopez v. INS, 184 F.3d 1097, 1100–01 (9th Cir. 1999). *But see* Gunawan v. Gonzales, No. 04-3091, 2005 U.S. App. LEXIS 10502, at *9 n.4 (3d Cir. June 7, 2005) (noting that the Third Circuit has not joined the First, Sixth, and Ninth Circuits in holding that ineffective assistance of counsel is an exceptional circumstance).

[311] In *Lopez v. INS*, the court found that for cases in which deportation was ordered in your absence, the 180-day deadline for motions to reopen was tolled due to ineffective assistance of counsel. Lopez v. INS 184 F.3d 1097, 1100–01 (9th Cir. 1999). When a statute is tolled, the time for the statute of limitations is suspended and the time you have to move to reopen is extended. In other words, although you may have 180 days to file the motion to reopen based on ineffective assistance of counsel, the clock may not start running until you know or should have known that you were a victim of ineffective assistance of counsel.

[312] INA § 240(c)(7)(C)(ii); 8 U.S.C. § 1229a(c)(7)(C)(ii) (2012) ("[T]here is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under [INA §§ 208 or 241(b)(3); 8 U.S.C. §§ 1158 or 1231(b)(3)] of this title and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.").

[313] You must request a stay from the BIA in order to obtain a stay in this situation. 8 C.F.R. § 1003.23(b)(v) (2017).

[314] ICE Policy Directive, Number 11061.1 (Feb. 24, 2012). DHS may refuse to return you while the BIA appeal is pending. Such refusal may warrant an appeal to federal court, which is covered in the Section 4 below. For more information about negotiating this return process, *see* Return to the United States After Prevailing on a Petition for Review or Motion to Reopen or Reconsider, *available at* https://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/fed/2015_27Apr_return-advisory.pdf (last visited Dec. 26, 2017).

[315] There is a very important difference between (a) evidence that you were unable to get despite your best efforts because it did not exist or was unavailable and (b) evidence that you could have gotten, but you neither obtained nor presented to the court for some reason. For the purposes of your motion to reopen, (a) would probably constitute a valid reason for reopening your immigration case whereas (b) would probably not be enough. *See* Patel v. Ashcroft, 378 F. 3d 610, 612 (7th Cir. 2004).

[316] 8 C.F.R. § 1103.7(b)(2) (2017). You should always check what the current fee is. If you cannot afford to pay the fee, you can request a fee waiver. In order to do so, you must complete a Fee Waiver Request Form EOIR-26A, *available at* https://www.justice.gov/sites/default/files/pages/attachments/2015/07/24/eoir26a.pdf (last visited Aug. 14, 2017).

[317] INA § 240(c)(7); 8 U.S.C. § 1229a(c)(7) (2012). For the purposes of motions to reopen, the term "exceptional circumstances" is

reconsider is based on a lack of notice, there is no fee.

(iii) *Ineffective Assistance of Counsel*[318]

The requirements for a claim of ineffective assistance of counsel are: [319]

(1) The motion must be supported by an affidavit (a sworn statement in which you state the relevant facts). The affidavit should include a statement of agreement between you and your attorney with respect to representation. In other words, you must explain how you developed a relationship with your former attorney. This includes proof that you had an ***attorney-client relationship***. This may include evidence of any payments you made to your attorney, receipts, or a ***retainer agreement***.
(2) Before you file the motion to reopen, you must tell your former attorney of the claims you are going to make. This allows him or her the opportunity to respond to you first. If you do receive a response from your former attorney, you should include that in the motion as well.
(3) The court may not consider a claim of ineffective assistance of counsel unless you also file a formal complaint against your former attorney with the bar association in the state where your attorney practices, or with another disciplinary authority. Each state has different requirements on how to file a complaint. Your motion should include any attempt you made to report this attorney. If you have not done so, your motion should include the reasons for not reporting them.
(4) You must also show that you were prejudiced (that you were hurt) because of your former attorney's actions. If your attorney's incompetence actually resulted in a deportation order, you do not need to show that you were prejudiced.

(b) Motion to Reconsider

You can file one motion to reconsider, which asks the court to reconsider the decision that you are deportable in light of new case law or changes in the law. This motion must be filed within thirty days of the date of entry of the final administrative deportation order. It must specify the errors of law or fact in the previous order.[320]

4. **Appeal to the Court of Appeals** [321]

The REAL ID Act of 2005 ("REAL ID Act")[322] purports to eliminate all reviews of final deportation orders and direct appeals by habeas corpus. This means that the REAL ID Act would prevent you from filing an appeal with the federal district court.[323] You may still file a ***petition for review*** if your claim is a question of law or a constitutional claim. This would include a claim that your criminal conviction is not a deportable offense[324] or that the government did not prove that you are an alien. If your case concerned asylum, withholding of removal, or protection under the CAT, you must file a petition for review with the Federal Circuit Court in the judicial district where your immigration court decision was made.[325] Your petition for

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defined in INA § 240(e)(1); 8 U.S.C. § 1229a(e)(1) (2012) as "battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child or parent of the alien, but not including less compelling circumstances beyond the control of the alien."

[318] There is generally a fee of $110 associated with filing a motion to reopen based on ineffective assistance of counsel. 8 C.F.R. § 1103.7(b)(2) (2017). You should always check whether there is an applicable fee. If there is and you cannot afford to pay the fee, you can request a fee waiver. In order to do so, you must complete a Fee Waiver Request Form EOIR-26A, *available at* https://www.justice.gov/sites/default/files/pages/attachments/2015/07/24/eoir26a.pdf (last visited Aug. 14, 2017).

[319] In re Lozada, 19 I. & N. Dec. 637, 639 (BIA 1988), *aff'd* 857 F.2d 10 (1st Cir. 1988); In re Rivera-Claros, 21 I. & N. Dec. 599, 604–05 (BIA 1996); In re Grijalva, 21 I. & N. Dec. 472, 474 (BIA 1996).

[320] INA § 240(c)(6); 8 U.S.C. § 1229a(c)(6) (2012).

[321] The rules regarding review in federal courts are very complicated and are still evolving. You should consult an attorney when filing anything with a federal court.

[322] REAL ID Act of 2005, Pub. L. No. 109–13, 119 Stat. 231 (2005) (codified as amended in scattered sections of 8 U.S.C.).

[323] This is a very controversial and complicated law, and efforts have been made—and are continuing to be made—to amend or repeal it. You should consult an attorney to find out how the Real ID Act could affect your case.

[324] *See* Part C of this Chapter, which discusses grounds of deportability; *see also* INA § 237(a)(2); 8 U.S.C. § 1227(a)(2) (2012) (listing deportable offenses).

[325] Practice Advisory: How to File a Petition for Review at 2, *available at* https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/how_to_file_a_petition_for_review_2015_update.

review must be filed within thirty days of the BIA decision you are appealing.[326] It is not enough to mail your petition for review by the thirtieth day—it must be received by the thirtieth day.[327] The REAL ID Act does contain bars to judicial review, including bars of review of certain discretionary decisions.[328]

I. FAILURE TO DEPART FROM THE U. S. AND RETURNING TO THE U. S. AFTER DEPORTATION

1. Departure

If you are ordered deported, you will most likely have to leave the U.S. within ninety days.[329] These ninety days are referred to as your ***removal period***.[330] The removal period begins either the moment your deportation order becomes administratively final or when you are released from detention, whichever occurs later. The government has the right to extend this ninety-day period and to detain you during your removal period. If you have not departed within ninety days and your deportation has not happened, the government can also release you under an order of supervision.[331]

You may be fined and imprisoned for up to four years if you have been ordered deported and do any of the following: (1) fail to depart within your removal period, (2) fail to make timely applications for travel or other documents necessary to depart the U.S., (3) attempt to prevent your departure from the U.S., or (4) fail to present yourself at the designated time and place pursuant to your deportation order.[332] Classes of aliens who fall under INA §§ 237(a)(1)(E), 237(a)(2), 237(a)(3), or 237(a)(4); 8 U.S.C. §§ 1227(a)(1)(E), 1227(a)(2), 1227(a)(3), or 1227(a)(4) (2012) may face imprisonment of up to ten years for failure to depart after a final order of removal.[333]

2. Bars to Reentry[334]

If you are deported from the U.S., you will not be allowed to return to the U.S. Depending on why you were deported, you may be able to apply for reentry into the U.S. after a certain period of time. The time periods listed below refer to how long you must wait before you apply for reentry to the U.S. Even if you wait the required amount of time, this does not mean that your application to reenter the U.S. will be approved.[335] Therefore, everyone who is deported from the U.S. faces the possibility of never being able to return.

(1) Failure to Appear. If you were deported because of failure to appear at your removal proceedings, you can apply for reentry to the U.S. after five years.
(2) Inadmissibility. If you were deported based on inadmissibility grounds (except controlled substance offenses), you can apply for reentry to the U.S. after five years.
(3) Deportability. If you were deported based on deportability grounds (except aggravated felonies), you can apply for reentry to the U.S. after ten years.
(4) Laws Prior to 1996. If you were deported based on the immigration laws prior to 1996, you can apply for reentry to the U.S. after ten years.

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pdf (last visited Dec. 26, 2017).
[326] INA § 242(b)(1); 8 U.S.C. § 1252 (2012).
[327] Practice Advisory: How to File a Petition for Review at 5, *available at* https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/how_to_file_a_petition_for_review_2015_update.pdf (last visited Dec. 26, 2017).
[328] *See* Judicial Review Provisions of the REAL ID Act, *available at* https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/realid6705.pdf (last visited Dec. 26, 2017).
[329] INA § 241(a)(1)(A); 8 U.S.C. § 1231(a)(1)(A) (2012).
[330] INA § 241(a)(1)(A); 8 U.S.C. § 1231(a)(1)(A) (2012).
[331] The terms of supervision after the 90-day period are outlined in INA § 241(a)(3); 8 U.S.C. § 1231(a)(3) (2012).
[332] INA § 243(a); 8 U.S.C. § 1253(a) (2012).
[333] For the full statute, *see* INA § 243; 8 U.S.C. § 1253 (2012).
[334] *See* 8 U.S.C. § 1182 (2012) (detailing the different categories that make a person legally inadmissible to the United States).
[335] If you have unlawful presence in the U.S., you may face additional bars to reentry. If you have been unlawfully present in the U.S. between 180 days and one year, you must wait three years before applying for reentry. If you were unlawfully present for one or more years, you must wait 10 years before applying for reentry into the U.S. *See* The Three- and Ten-Year Bars: How New Rules Expand Eligibility for Waivers, *available at* https://www.americanimmigrationcouncil.org/sites/default/files/research/three_and_ten_year_bars.pdf (last visited Dec. 26, 2017).

(5) Two Deportation Orders. If you were ordered deported because of two deportation orders, you can apply for reentry to the U.S. after twenty years.
(6) Controlled Substance Offense/Aggravated Felony. If you were deported because of a controlled substance offense or aggravated felony, then you will never be allowed to reenter the U.S.

You should discuss your possibilities for reentry with your attorney before attempting to reenter the U.S. The consequences for illegal reentry are very serious.

3. Illegal Reentry

If you reenter or attempt to reenter the U.S. illegally after being deported from the U.S., you may be fined or imprisoned in a federal prison for up to twenty years.[336]

J. CONCLUSION

This Chapter has given you an overview of immigration law. As immigration law is very complicated and changes frequently, you should now do research on any forms of relief that you think might apply to you. You should think about the arguments that you will make to convince the judge that you should not be deported. You should also collect documents that support your arguments.

[336] For the full statute, *see* INA § 276; 8 U.S.C. § 1326 (2012). The fines are determined according to Title 18 of the U.S.C. The length and terms of imprisonment are determined according to the basis for your original deportation order from the U.S.

APPENDIX A

GLOSSARY

Acquired Citizenship
The U.S. citizen status of children born abroad (in another country) to parents who are already U.S. citizens (either by birth or naturalization).

Adjustment of Status
The process by which a non-USC already in the U.S. may apply to change his status to a lawful immigration status. Non-USCs admitted as non-immigrants, refugees, or parolees may adjust to become lawful permanent residents if they meet the requirements outlined in INA § 245; 8 U.S.C. § 1255 (2012). *See* Part F of this Chapter, which discusses adjustment of status as a form of relief from deportation in greater detail.

Affidavit
A written or printed statement of facts that is made voluntarily (freely) by a person who swears to the truth of the statement before a public officer, such as a notary public.

Aggravated Felony
A general term which includes the crimes listed at INA § 101(a)(43); 8 U.S.C. § 1101(a)(43) (2012) and includes murder, rape, sexual abuse of a minor, illegal drug trafficking, illegal trafficking in firearms or explosive material, theft or burglary if the punishment was a prison sentence of more than one year, child pornography, owning or managing prostitutes, some types of money laundering in excess of $10,000, fraud or tax evasion where the loss to the victim(s) is over $10,000, smuggling aliens, crimes of violence that receive a sentence of imprisonment for one or more years, and attempt or conspiracy to commit any of the above. A conviction for an aggravated felony will bar a non-USC from most forms of relief.

Alien Registration Number (also known as ***"A number"***)
An eight- or nine-digit number preceded by the letter A (for example, "A00000000"), which can be found on a resident alien card (for LPRs) or other governmental documents relating to immigration. An "A number" will also appear on the top of an NTA and is used to identify a non-USC in immigration court proceedings.

Assistant Chief Counsel
See Chief Counsel.

Asylum (Asylee)
Protection from persecution in one's home country offered by a foreign government. A person who entered the U.S. either legally or illegally may seek asylum if he fears returning to his country of origin due to past persecution or a well-founded fear of being persecuted based upon race, religion, nationality, political opinion, or membership in a particular social group. A person who has been granted asylum is called an "asylee." *See* INA § 208; 8 U.S.C. § 1158 (2012).

Attorney-Client Relationship
The formal and official representation of a person by a lawyer. This relationship is given certain protections by the court, such as the evidentiary privilege of attorney-client confidentiality, which means that a lawyer cannot be forced to testify about things told to him by his client.

Board of Immigration Appeals ("BIA")
The highest administrative body for interpreting and applying immigration laws. The BIA hears appeals from immigration courts and its decisions are reviewed by the federal appellate courts. Generally, the BIA does not conduct courtroom proceedings (and instead decides cases based on a written record and briefs submitted by both sides), but it has heard oral arguments of appealed cases in rare instances. It is made up of eleven administrative judges and is located at the ***Executive Office for Immigration Review (EOIR)*** headquarters in Falls Church, Virginia.

Bond

A payment made to the government to guarantee an agreement between a non-USC and the government. The government agrees to release the non-USC from immigration detention and the non-USC agrees to appear at all court proceedings and to follow the immigration judge's final order. Paying an immigration bond is like paying bail in criminal law.

Bond Hearing
An immigration court proceeding in which the non-USC requests bond and attempts to convince the judge that he is not a flight risk or danger to society (for example, because he has strong family connections in the community). A non-USC might present some of the same or similar evidence in his bond hearing as he would in other immigration court proceedings.

Briefing Schedule
A schedule issued by the BIA that tells a non-USC appealing a decision in his removal proceedings and the government when briefs are due.

Cancellation of Removal
A form of relief from deportation available to LPRs under INA § 240A(a); 8 U.S.C. § 1229b(a) (2012) and to non-LPRs under INA § 240A(b); 8 U.S.C. § 1229b(b) (2012). *See* Part F of this Chapter, which discusses forms of relief in greater detail.

Certificate of Disposition
An official court document stating the final outcome of a criminal court proceeding, for instance acquittal or conviction. This document is useful in immigration court proceedings for proving if and how a prior criminal case against a non-USC was resolved.

Chief Counsel
The lawyers from ICE that represent the government in immigration court proceedings. An attorney from ICE, referred to as assistant chief counsel, will represent the government in all removal proceedings. These attorneys take cases involving criminal convictions very seriously and will generally strongly fight these cases on the government's behalf.

Commercialized Vice
The unlawful promotion of or participation in sexual activities for profit (*e.g.*, prostitution). Commercialized vice is a grounds for inadmissibility under INA § 212(a)(2)(D); 8 U.S.C. § 1182(a)(2)(D) (2012).

Consulate
The U.S. office of a foreign government. For example, Mexico has several consulates in the United States, located in various cities such as Chicago and New York.

Controlled Substance Offense
A crime involving possession or use of anything the government has prohibited from sale and use in society, for example illegal drugs and some kinds of weapons.

Convention Against Torture ("CAT")
An international treaty that prohibits member countries, including the U.S., from returning anyone to a country where he may be tortured. A non-USC can seek protection under the CAT as a form of relief from deportation.

Conviction
With respect to non-USCs and for the purposes of removal proceedings, a formal judgment of guilt entered by a court; or, if adjudication of guilt has been withheld, where (1) a judge or jury has found the non-USC guilty or the non-USC has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (2) the judge has ordered some kind of punishment or penalty. *See* INA § 101(a)(48); 8 U.S.C. § 1101(a)(48) (2012).

Crime Involving Moral Turpitude ("CIMT")

A crime that is "inherently immoral" and reflects "conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." Rodriguez v. Gonzales, 451 F.3d 60, 63 (2d Cir. 2006). CIMTs are defined by case law. An example of a CIMT is prostitution.

Crime of Violence
A crime that includes the use, attempted use, or threatened use of physical force against another person or the property of another as an element of the offense. A crime of violence can also be any other offense that is a felony and by its nature involves a risk that physical force may be used against the person or the property of another in the process of committing the offense, for instance, robbery.

Customs and Border Protection ("CBP")
An agency within the Department of Homeland Security that is responsible for controlling which people and things enter the U.S. For instance, the CBP keeps out not only illegal aliens and illegal drugs, but also harmful diseases that may be unknowingly transported in foreign food and pets. The customs officers who interview arriving travelers to the U.S. are part of the CBP.

Danger to Society
Someone who is likely to threaten the safety and well-being of others or society as a whole, for instance because he is likely to commit a violent crime again. In order for the judge to grant a non-USC an immigration bond, which will release him from immigration detention, the non-USC must prove that he will not be a danger to society (or a flight risk) if he is released.

Deferred Inspection Appointment
A continuation of the interview begun by U.S. customs officers at a U.S. inspection point. The deferred inspection appointment is used when customs officers need to get more detailed information than is possible at an inspection point. For instance, if an arriving alien is interviewed by customs officers at a U.S. airport, he may be given a deferred inspection appointment to continue the interview later at his local DHS office.

Department of Homeland Security ("DHS")
A U.S. executive department, created in March 2003, which oversees the protection of the territory of the U.S. DHS includes the United States Citizenship and Immigration Services (USCIS), the United States Immigration and Customs Enforcement (ICE), and the United States Customs and Border Protection (CBP).

Deportation (also known as "Removal Proceedings")
The legal process by which the government removes non-citizens from the U.S. Deportation is now officially referred to as removal proceedings in immigration court. *See also* "removal proceedings."

Deportation Order (also known as "Removal Order")
An order from an immigration judge to remove an alien from the U.S. A deportation order is now technically referred to as a removal order. A final removal order is one where the BIA has either affirmed the immigration judge's removal order or reversed the immigration judge's grant of relief and issued a removal order instead. A prior deportation order is a removal order that was issued in the past.

Derivative Citizenship
The U.S. citizen status of children who become citizens as a result of their parent(s) being naturalized.

Detention
The holding of an alien at a DHS detention center (or a prison contracting with DHS) while his immigration case is pending. Because immigration is a civil matter, immigration detention is different from criminal imprisonment. An alien in a DHS detention center does not have the same rights as someone who is in prison serving a criminal sentence. *See also* "mandatory detention."

Detention Center (DHS Detention Center)
A place where non-citizens are held until their immigration court proceedings are complete. Technically, it is different from a prison because immigration is considered a civil matter, not a criminal matter. However, some immigration detainees are held in prisons that contract with DHS.

Direct Appeal
An appeal of your case to a higher court based on any errors that occurred in the adjudicative process of your case.

Discretion
The power of a legal body, such as a court or agency, to act or decide something in the way it thinks best because the law provides no clear answers. For example, the judge may have discretion to grant forms of relief if the law does not say exactly how to do so.

Discretionary Factors
Individual facts about an alien's life, which a judge looks at to see if he should receive the forms of relief he has requested. The judge will decide based on these facts whether the form of relief would be positive for both the alien and the U.S.

Dismiss
To terminate (end) a case or an action without any further hearings or decisions. Sometimes, a dismissal can be appealed to the next highest court.

Entry Without Inspection ("EWI")
A term applied to people who come into the U.S. without proper authorization by the U.S. government. Examples of EWI include crossing a border without inspection or presenting false documents to border officials.

Evidence
Anything presented to a court that proves, or helps to prove, the claim of a party or the existence of a fact. Evidence can be presented orally by witnesses, or through documents, physical objects, or anything that will help prove a point.

Executive Office for Immigration Review (EOIR)
The part of the U.S. Department of Justice that handles immigration cases (for example, removal proceedings). The EOIR includes the immigration courts and the BIA.

Expedited Removal
Deportation without a hearing.

Expungement
The sealing of a criminal record so that it is not publicly available.

Failure to Appear
When a person is officially scheduled to go before a judge or a government agency at a certain time and does not do so. A failure to appear in immigration court will likely result in a removal order.

Fee Waiver
Permission granted by a court or administrative body so that a person does not have to pay a fee that he would otherwise be required to pay. For instance, filing fees might be waived in a court case for a poor person.

Flight Risk
Someone who is likely to run from the law or fail to appear for future scheduled court dates. In order for the judge to grant an alien an immigration bond, he must prove that he is not a flight risk. *See also* "danger to society."

Forms of Relief (from deportation)
A legal excuse or waiver that cancels or suspends deportation for an alien facing removal proceedings. If a form of relief is granted by an immigration judge, the non-USC will not be deported and will be allowed to remain in the U.S.

Green Card ("Resident Alien Card")
A US CIS I-551 Permanent Resident Card which is issued to non-USCs who have permission to permanently live and work in the U.S. *See also* "Lawful Permanent Resident ("LPR")."

Home Country
The country in which an alien was born or the country to which he would be deported.

Home Country Conditions
The current state of political, social, economic, or healthcare conditions in an alien's home country. Some forms of relief, like asylum, require an alien to show his current home country conditions.

Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 ("IIRIRA")
A set of changes to U.S. immigration laws that tightened immigration laws by expanding grounds for deportation, instituting mandatory deportation, detention, and lifetime bars to reentry, and removing judicial discretion in a lot of cases. These laws have been in effect since April 1, 1997.

Illegal Reentry
An attempt to reenter the U.S. after deportation.

Immediate Relative
For the purposes of adjustment of status, the spouses, unmarried children (under twenty-one-years old) and parents (if the USC is over twenty-one-years old) of USCs.

Immigration and Customs Enforcement ("ICE")
An agency within the Department of Homeland Security that investigates and enforces immigration laws. The attorneys that represent the government in immigration court proceedings are part of ICE and are referred to as assistant chief counsels. U.S. Customs investigators, the Federal Protective Service, and the Federal Air Marshal Service are also part of ICE.

Immigration Court
A special court that deals only with immigration issues such as deportation.

Immigration Detention
See detention.

Immigration Status
The legal or illegal status that an alien has in the U.S., for example legal permanent resident (LPR), visa-holder, or undocumented. Part B of Chapter I of the Immigration Supplement discusses how to determine immigration status in the U.S.

Inadmissibility (Inadmissible)
For immigration purposes, lack of permission to enter the U.S. or unlawful presence in the U.S. An alien may be found to be inadmissible any time he seeks permission to enter the U.S., even if he is an LPR returning from a trip abroad. He may also be inadmissible if he is found to be present in the U.S. without permission. *See* INA § 212; 8 U.S.C. § 1182 (2012) for more information about inadmissibility.

International Treaty
A formal agreement between two or more states (nations) in reference to some aspect of international relations including, but not limited to, peace, human rights, and commerce.

Legal Brief
A written summary (explanation), submitted by either an alien or the government, of the particular facts and arguments in an alien's immigration court proceedings. A brief can be submitted by either an alien or the government to the BIA if a case is appealed. A brief includes why the particular side believes the case should have been decided in its favor. The purpose of the legal brief is to persuade the BIA to decide the case a certain way.

Legal (or Lawful) Permanent Resident Status ("LPR")
The immigration status possessed by most green card or resident alien card holders. The exception is that some green cards are issued for conditional permanent residency and are valid for only two years. If an alien has one of these kinds of green cards and never obtained permanent residency, then he does not have LPR status. All other green cards are valid indefinitely, even if they have an expiration date printed on them. This means that even if you lose your card, you still have LPR status.

Mandatory Detention
A situation where the law requires that an alien be held until immigration proceedings are finished. The terms and conditions of mandatory detention are outlined in INA § 236(c); 8 U.S.C. § 1226(c) (2012) and INA § 236a; 8 U.S.C. § 1226a (2012) (mandatory detention of suspected terrorists). *See also* "detention."

Master Calendar Hearing
The first date for a removal hearing scheduled before an immigration judge in immigration court. An alien may have more than one master calendar hearing. If a judge finds that an alien is not eligible for any form of relief, she can order him deported at the master calendar hearing.

Motion
A request by one of the parties that the judge take a specific action or make a specific ruling.

Nicaraguan Adjustment and Central American Relief Act ("NACARA")
A law passed in 1997 that provides various forms of immigration benefits and relief from deportation to certain Nicaraguans, Cubans, Salvadorans, Guatemalans, nationals of former Soviet bloc countries, and their dependents. Individuals granted relief under NACARA will become LPRs and will be issued a green card. Those wishing to apply for relief under NACARA must complete and file Form I-881, which can be found online at http://www.uscis.gov/files/form/I-881.pdf (last visited Mar. 10, 2016).

Notice (Notification)
Knowledge or information received. "Notice" has several meanings in the law. First, the law often requires that "notice" be given to an individual about a certain fact. For example, the government is required to provide "notice" to a defendant of the charges against him in criminal proceedings or in civil proceedings in which an individual's interests are involved. This means the government must give you a piece of paper explaining the charges. It also means that a civil plaintiff must tell the person he is suing about the lawsuit through "notice" by service of process. Second, "notice" is used in cases to refer to whether an individual was aware of something. For example, a statute may require that before an individual can be held liable for damages, he had to have "notice" about a certain fact.

Notice of Appeal
An alert (notification) that an appeal is being filed with a higher court. Aliens are often required to provide the government with notice of appeal if they choose to challenge immigration court decisions. *See also* "notice."

Notice to Appear ("NTA")
The government document that begins a removal proceeding. The NTA contains basic information about the alien being removed, including his name, country of origin, and how he entered the U.S., as well as the grounds for his deportability and/or inadmissibility. *See* INA § 239(a); 8 U.S.C. § 1229(a) (2012).

Parolee Status
The immigration status of those the U.S. government has allowed to physically enter the country for different reasons, such as humanitarian reasons including, but not limited to, illness or home country conditions. Sometimes the government sets a specific time for parolees to remain in the U.S. Other times, the government allows parolees to stay in the U.S. indefinitely. Some parolees can adjust their status after one year. The most common example of parolees are Cubans who came through the Mariel boatlift.

Petition for Review

A document submitted to an appellate court that asserts a legal claim on appeal. For immigration appeals of BIA decisions, the petition for review to the federal Court of Appeals should include the alien's name, the reason he is requesting that the court review his case, why the court has jurisdiction, and that the petition was timely filed.

Petty Offense Exception
An exception to the usual rule that a single CIMT is grounds for inadmissibility. The CIMT cannot be used against an alien if he falls within one of the exceptions described in INA § 212(a)(2)(A)(ii); 8 U.S.C. § 1182(a)(2)(A)(ii) (2012): either because he committed only one CIMT when he was under eighteen years old and the crime was committed more than five years before the date of application for admission into the U.S.; or he committed one crime and the maximum sentence of that crime does not exceed one year of imprisonment and he was not sentenced to more than 6 months of imprisonment.

Prior Deportation Order
A deportation order that was issued in the past.

Public Charge
Someone who depends upon public benefits as his main source of income. In the case of a non-USC facing removal proceedings, officials may consider age, health, family status, assets, education, and whether he receives (or has ever received) public benefits in the past to determine whether he is or will become a public charge.

Rap Sheet
The unofficial term for the record of a person's criminal history.

Refugee
A person who seeks entry and resettlement in the U.S. due to past persecution or a well-founded fear of being persecuted based upon race, religion, nationality, political opinion, or membership in a particular social group. *See* INA § 101(a)(42); 8 U.S.C. § 1101(a)(42) (2012).

Rehabilitation
The process of changing one's life for the better. For example, a drug addict who is rehabilitated has worked to overcome his addiction and stop using drugs. Rehabilitation is a positive discretionary factor that a judge may consider when evaluating certain applications for relief from removal.

Removal Period
The ninety days following a final deportation order or release from detention during which a deportable alien is supposed to leave the country. The government has the right to extend this 90-day period and to detain an alien during his removal period. If the alien has not departed within 90 days and his deportation is still pending, the government can also place him under an order of supervision, as defined in INA § 241(a)(3); 8 U.S.C. § 1231(a)(3) (2012).

Removal Proceedings
The legal process by which the government removes non-USCs from the U.S. (formerly known as exclusion or deportation proceedings).

Retainer Agreement
A written contract for legal services between an attorney and client, which may or may not include an hourly rate or predetermined fee.

Stay
An order given by a judge to stop or postpone a proceeding or the carrying out of a legal order for a specific length of time or until a specific event occurs.

Summary Affirmance
Short (sometimes only one sentence) written decisions by an appellate court that agree with the lower court's

decision.

Supporting Documents
Any documents presented by an alien to the court, immigration judge, and assistant chief counsel for the purposes of his immigration court proceedings (removal proceedings, master calendar hearing, individual hearing, and bond hearing). Supporting documents may also be referred to as documentary evidence.

Temporary Protected Status ("TPS")
An immigration status granted by the President to non-USCs from certain countries if he finds that armed conflict, environmental dangers, or other extraordinary and temporary conditions in that country prevent people from returning there. The President reviews the conditions of the country on an annual basis to determine whether the TPS status is still necessary. If it is not, the TPS status will expire for the non-USCs from that particular country.

United States Citizen ("USC")
A person who has the right to live, work, and travel in the U.S. without restrictions, to participate in the U.S. political system, and to be represented and protected abroad through U.S. embassies and consulates. *See also* "acquired citizenship" and "derivative citizenship."

United States Citizenship and Immigration Services ("USCIS")
An agency within the Department of Homeland Security that handles the administrative processing of non- USC petitions and documents, including citizenship applications, visa petitions, and asylum applications. The USCIS conducts inspection interviews, and its decisions are reviewed by the Executive Office for Immigration Review (which includes the immigration courts and Board of Immigration Appeals).

Unlawful Presence
Describing any alien who is in the U.S. even though he has not been granted an official immigration status that gives him the right to be there.

Venue
The proper location at which a lawsuit can proceed. If venue is found improper at one location, the case will usually simply be brought again in the correct place. In addition, more than one venue may be proper, giving the person bringing a lawsuit or the government a choice. A change of venue is the transfer of a case from one court to another court in the same judicial system to fix a defect in venue, to lessen prejudice, or to secure a more convenient location for trial.

Visa
A document, issued by a U.S. Consul, authorizing non-USCs to come to a U.S. port or inspection point to apply to be admitted to the U.S. Visas are given for a specific purpose. For example, non-USCs who comes into the U.S. with a non-immigrant visa may have a student or visitor visa. Visas are not only given for a specific purpose, but also for a specific period of time. Once either the purpose or time of the visa expires, the non-USC has overstayed his visa and no longer has legal status in the U.S. For example, if you come to the U.S. with a student visa and you are no longer a student, then your status has expired and you are now illegally present in the U.S. You have no legal right to remain in the U.S., which is enough of a reason to put you in removal proceedings. Therefore, if a non-USC overstays his visa, it does not matter whether he has been convicted of any crimes; the government can still deport him.

Visa Overstay
See "visa."

Voluntary Departure
An option available to some non-USCs facing deportation in which the alien agrees to leave the U.S. within a specified period of time (usually thirty days) instead of being ordered deported by the U.S. government. Persons convicted of aggravated felonies and individuals who may pose security risks to the U.S. are not eligible for voluntary departure.

Waiver
A form of relief that a judge can grant at a removal proceeding that ignores the immigration consequences of criminal activity.

Withholding of Removal
A form of relief from deportation that is very similar to asylum, but more difficult to obtain. To qualify, a non-USC must prove to the immigration judge that he is unable or unwilling to return to his country because his life or freedom would be threatened there due to race, religion, nationality, membership in a particular social group, or political opinion. For a judge to grant withholding of removal, he must be convinced that there is a probability that the non-USC will be persecuted. If withholding of removal is granted, the judge will still order the non-USC deported, but he will not have to return to his home country until it is safe to do so.

Witness
A person who is called upon by a party in a legal proceeding to verify the truth of an event or story. In immigration court, it is helpful to have witnesses appear to confirm the evidence submitted. Witnesses can include, but are not limited to, family members, co-workers, neighbors, and community members. At a hearing, the judge and/or assistant chief counsel may question witnesses.

APPENDIX B

FORMS

Name and Purpose of Forms:

AR-11:	Change of Address Form
G-28:	Notice of Entry of Attorney (filed when dealing with DHS, not with the court)
G-325A:	Biographic Information Form (this form is submitted with most applications and contains specific personal information about you)
I-90:	Application to Replace Permanent Resident Card ("Green Card")
I-94:	Arrival-Departure Record
I-130:	Petition for Alien Relative (completed by the sponsoring relative in an adjustment of status application)
I-140:	Immigrant Petition for Alien Worker (completed by the sponsoring employer in an adjustment of status application)
I-864:	Affidavit of Support (Form I-864EZ and Form I-864W are alternatives to the affidavit of support)
I-864P:	Poverty Guidelines (not filed, but used only for assistance in completing I-864 forms)
I-191:	Application for Advanced Permission to Return to Unrelinquished Domicile (used in 212(c) applications)
I-485:	Application to Register Permanent Residence or Adjust Status (submitted by the individual wishing to obtain permanent residence; usually filed with supporting evidence and may be filed with other petitions or applications)
I-601:	Application for Waiver of Grounds of Inadmissibility
I-765:	Application for Employment Authorization
I-881:	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to § 203 of Pub. L. No. 105-100, 111 Stat. 2160, 2193 (1997) ("NACARA"))
I-589:	Application for Asylum and Withholding of Removal (can also be used to seek relief under CAT)
I-914:	Application for T Nonimmigrant Status
I-918:	Application for U Nonimmigrant Status
N-400:	Application for Naturalization
N-600:	Certificate of Citizenship (used for those who acquire or derive U.S. citizenship)

These forms are found on the EOIR website:

https://www.justice.gov/eoir/list-downloadable-eoir-forms

EOIR-33/IC:	Alien's Change of Address
EOIR-26:	Notice of Appeal from a Decision of an Immigration Judge
EOIR-26A:	Fee Waiver Request
EOIR-27:	Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals
EOIR-28:	Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court
EOIR-42A:	Application for Cancellation of Removal for Certain Permanent Residents
EOIR-42B:	Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (including VAWA)

APPENDIX C

IMMIGRATION AND LEGAL RESOURCES

American Immigration Lawyers Association ("AILA")
www.aila.org

Amnesty International
www.amnesty.org

Cornell Legal Information Institute
http://www.law.cornell.edu/wex/index.php/Immigration

Department of Homeland Security
www.dhs.gov

Department of Justice
www.usdoj.gov

Department of State
www.state.gov

Department of State—Human Rights
http://www.state.gov/g/drl/hr/

Detention facilities of ICE
https://www.ice.gov/detention-facilities

Executive Office for Immigration Review
www.justice.gov/eoir

Find Law
www.findlaw.com

Foreign Consular Offices in the U. S.
www.state.gov/s/cpr/rls/fco

Human Rights Watch
http://www.hrw.org/

OutRight Action International
https://www.outrightinternational.org/

New York State Defenders Association: Immigrant Defense Project
www.nysda.org/?page=ImmDef

National Immigration Forum
www.immigrationforum.org

National Legal Aid and Defenders Association
www.nlada.org

Summary of Resources for Home Country Conditions
http://library.law.yale.edu/tags/country-conditions-research

U. S. Attorneys Contact Information
https://www.justice.gov/usao/eousa/contact

U. S. Citizenship and Immigration Services
http://uscis.gov/

To order USCIS forms, you can contact the USCIS forms line at 1-800-870-3676. For information on immigration laws, regulations and procedures or for information about any forms or applications, you can call the National Customer Service Center ("NCSC") telephone line at 1-800-375-5283; TTY: 1-800-767-1833. A family member or attorney can also contact your local USCIS office by using Infopass, a web-based system that allows you to schedule appointments at USCIS offices. The website for Infopass is http://infopass.uscis.gov/.

U. S. Courts
www.uscourts.gov

U. S. Customs and Border Protection
www.cbp.gov

U. S. Embassies and Missions Abroad
http://usembassy.gov

U. S. Immigration and Customs Enforcement ("ICE")
www.ice.gov

United States Court of Appeals Second Circuit
www.ca2.uscourts.gov

United States Visas
http://travel.state.gov/content/visas/en.html

APPENDIX D

LIST OF LEGAL SERVICES PROVIDERS: NEW YORK

Buffalo Area

Legal Aid Society of Rochester, Inc.
One West Main Street, Room 800
Rochester, NY 14614
Tel: (585) 232-4090

- Represents aliens seeking asylum
- Representation limited to persons residing in Allegheny, Cattaraugus, Chautauqua, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Steuben, Wayne, Wyoming, and Yates Counties
- Will NOT represent detained aliens

International Institute of Buffalo
864 Delaware Ave.
Buffalo, NY 14209
Tel: (716) 883-1900

- May charge a nominal fee
- Languages: English, Spanish, and Arabic

Michael Berger, Esq.
Berger, Berger & Slepian
5530 Sheridan Drive, Suite 1
Buffalo, NY 14221
Tel: (716) 634-6500

Anne E. Doebler, Esq.
14 Lafayette Square, Suite 1800
Buffalo, NY 14203
Tel: (716) 898-8568
Fax: (716) 898-8929

Erie County Bar Association
Volunteer Lawyers Project
237 Main Street, Suite 1000
Buffalo, NY 14203
Tel: (716) 847-0752 for detained men at Buffalo Federal Detention Facility in Batavia, NY
Tel: (716) 847-0662 ext. 301 for non-detained individuals and detained women

- Will ***only*** represent individuals who qualify as low-income

Alejandro Gutiérrez, Esq.
Law Offices of Alejandro Gutierrez PLLC
745 Englewood Avenue
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Toll Free Fax: (855) 260-1323
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Canada L4Z2E5
Tel: (905) 712-1680
Fax: (905) 712-1447

Robert Kolken, Esq.
Matthew Kolken, Esq.
Kolken & Kolken, Attorneys at Law
135 Delaware Ave., Suite 101
Buffalo, NY 14202
Tel: (716) 854-1541

Stephen K. Tills, Esq.
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Orchard Park, NY 14127
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Eric W. Schultz, Esq.
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Annick T. Koloko , Esq.
Law Office of Annick T. Koloko
69 Delaware Ave. Suite 608
Buffalo, NY 14222
Tel: (716) 200-1720

Jose, E. Perez, Esq.
Law Offices of Jose Perez, P.C.
Oficinas de abogado Jose Perez
651 Delaware Avenue, Suite 118
Buffalo, New York 14202
Tel: (716) 362-1204
Fax: (315) 466-5673
Email: http://www.josepereztuabogado.com/

- Will provide free legal services to indigent aliens
- Will represent indigent aliens in asylum proceedings
- Will represent indigent aliens in immigration proceedings pro bono

Sarah E. Murphy, Esq.
Law Office of Sarah E. Murphy
2316 Delaware Avenue, #294
Buffalo, NY 14216
Tel: (716) 464-2296
Email: sarahmurphyesq@gmail.com

Nevin F. Murchie, Esq.
Law Office of Nevin F. Murchie, PLLC.
8555 Main Street
Williamsville, NY 14221
Tel: (716) 565-6270
Email: nmurchie@murchielaw.com
Website: www.murchielaw.com

- Will represent indigent aliens in immigration proceedings pro bono
- Will represent indigent aliens in asylum proceedings

Matthew Borowski, Esq.
Law Office of Mathew Borowski, Esq.
474 Elmwood Ave, Suite 204
Buffalo, NY 14222
Tel: (716) 418-7431
Website: www.borowskilaw.com

New York City Area

Catholic Charities of New York
Catholic Charities Community Services
80 Maiden Lane, 13th Floor
New York, NY 10038
Tel: (212) 419-3700

- Languages: Spanish, Haitian-Creole, Mandarin, Cantonese, French, Russian, Polish, Albanian, Greek, Macedonian, Serbo-Croatian, Arabic, Turkish, Bosnian, Amharic, Italian, Hindi, Urdu, Punjabi, Vietnamese, Portuguese, Thai
- Asylum cases accepted
- May charge nominal fee
- Will appear at 26 Federal Plaza Court and Varick St. Court

Central American Legal Assistance
240 Hooper St.
Brooklyn, NY 11211
Tel: (718) 486-6800

- Language: Spanish
- Asylum cases accepted
- Will appear at 26 Federal Plaza Court and Varick St. Court

City Bar Justice Center
42 West 44th St.
New York, NY 10036
Tel: (212) 382-6727 – must call to make appointment; no walk-in service provided
Email: cbjc@nycbar.org

- Languages: Spanish, French
- Limited to individuals seeking asylum, domestic violence survivors seeking legal status, victims of crimes (including hate crimes), and human trafficking victims

- Will appear at 26 Federal Plaza Court and Varick St. Court

Gay Men's Health Crisis, Inc.
446 West 33rd St.
New York, NY 10001
Tel: (212) 367-1326
Email: legal@gmhc.org

- Languages: Spanish, French, Creole
- Asylum cases accepted
- Limited to HIV-positive individuals only
- Will appear at 26 Federal Plaza Court and Varick St. Court

Human Rights First
75 Broad Street, Floor 31
New York, NY 10004
Tel: (212) 845-5200
Detention Hotline: (212) 629-6170 (open 2-5 pm Monday–Friday)
Fax: (212) 845-5299

- Languages: Spanish, French, and others as needed
- Limited to asylum cases
- Represents detained and non-detained individuals before the New York and New Jersey Immigration Courts
- Contacts: Frederique Drouin, Adham Elkady, and Djibrine Hamon Madi

Bhanu B. Ilindra, Esq.
Pasricha & Patel, LLC
1794 Oak Tree Rd.
Edison, NJ 08820
Tel: (732) 593-6200
Fax: (732) 593-6201

- Will appear at 26 Federal Plaza Court and Varick St. Court
-

The Legal Aid Society Immigration Law Unit
199 Water St., 3rd Floor
New York, NY 10038-3500
Tel: (212) 577-3300

- Languages: Spanish, French, Russian, Italian, Mandarin
- Represents detained and non-detained cases before New York City immigration courts (except Wackenhut), including persons with criminal convictions
- Also coordinates the Juvenile Immigration Representation Project for persons aged eighteen and under in removal proceedings
- Asylum cases accepted
- Immigration Detention Hotline will accept collect calls from detention facilities; open Wednesdays and Fridays from 1:00pm to 5:00pm. Will accept collect calls from detention facilities at (212) 577-3456.
- Will appear at 26 Federal Plaza Court and Varick St. Court

Northern Manhattan Coalition for Immigrant Rights
5030 Broadway, Suite 650
New York, NY 10034
Tel: (212) 781-0355

- Language: Spanish
- No asylum cases accepted
- May charge nominal fee
- Limited to non-detained cases
- Will appear at 26 Federal Plaza Court and Varick St. Court

Safe Horizon Immigration Law Project
50 Court Street, 8th floor
Brooklyn, New York 11201
Tel: (718) 943-8632

- Languages: Spanish, Russian
- Asylum cases accepted
- Priority given to survivors of domestic abuse, persecution, and/or torture
- Can represent people with non-violent criminal offenses
- May charge nominal fee
- Will Appear at 26 Federal Plaza Court and Varick St. Court

CAMBA Legal Services, Inc.
2211 Church Avenue, Room 301
Brooklyn, NY 11226
Tel: (718) 940-6311
Website: www.CAMBA.org

- Will appear at 26 Federal Plaza Court

HIV Law Project
57 Willoughby Street, Lower Level
Brooklyn, NY 11201
Tel: (212) 577-3001
Website: www.hivlawproject.org

- Language: Spanish & French
- Asylum: Yes
- Limited: Represent HIV positive individuals only
- Will appear at 26 Federal Plaza Court

Migration Office of Catholic Charities
Diocese of Rockville Centre
143 Shleigel Blvd
Amityville, NY 11701
Tel: (631) 789-5210

- Languages: Russian, French, Spanish, Italian, Mandarin
- Serves Nassau and Suffolk counties, Long Island
- Representation available for VAWA, Cancellation of removal, Asylum, NACARA, TPS, U & T visas
- May charge a nominal fee
- Will appear at 26 Federal Plaza Court and Varick St. Court

Hebrew Immigrant Aid Society (HIAS)
411 Fifth Avenue, Suite 1006
New York, NY. 10001-5004
Tel: (212) 967-4100
Contacts: Simon Wettenhall /Aleksander Milch
Provides free legal representation for asylum applicants who are:

- scientists, scholars, students, artists or other professionals or,
- detained or paroled survivors of torture.

Deborah M. Ferdinand, Esq.
Law Office of Deborah M. Ferdinand, Esq.
233 Seventh Street, Suite 300A
Garden City, NY 11530
Tel: (516) 742-0067
Fax: (516) 742-0696

- Language(s): Spanish
- Asylum: Yes

- May charge a nominal fee
- Will appear at 26 Federal Plaza Court and Varick St. Court

Kids In Need of Defense (KIND)
New York City Office
1410 Broadway Ave.
Office 1401
New York, NY 10018
Tel: (646) 677-9900
Fax: (646) 677-9914
Email: Infonewyork@supportkind.org

- KIND serves children under age 18 only
- Will appear at 26 Federal Plaza Court

Comite Nuestra Senora De Loreto Sobre
Asuntos De Inmigracion Hispana
41 Adelphi Street
Brooklyn, NY 11205
Tel: (718) 625-5115; (718) 625-2141; (718) 625-2142
Fax: (718) 625-2918

- Language(s): Spanish, French, Italian
- Asylum: Yes
- Will appear at 26 Federal Plaza Court, Varick St. Court and Downstate Correctional Facility

Make the Road NY
92-10 Roosevelt Avenue
Jackson Heights, NY 11372
Tel: (718) 565-8500
Fax: (718) 565-0646
And
301 Grove Street
Brooklyn NY 11237
(718) 418 7690

- Languages: Spanish, English
- Asylum: Yes
- Will appear at 26 Federal Plaza Court
- Only represents residents of New York City (the five boroughs)

Catholic Migration Services
191 Joralemon Street, 4th Floor
Brooklyn, NY 11201
Tel: (718) 236-3000
And
47-01 Queens Boulevard, Suite 203B
Sunnyside, NY 11104
Tel: (347) 472-3500

- Languages: Spanish, Haitian-Creole, Albanian, Arabic, French, Catalan, and Greek.
- ONLY serves Brooklyn and Queens County residents
- Represents individuals seeking asylum and all other forms of relief, including VAWA, 212(c), U & T visas, and cancellation of removal
- Will appear at 26 Federal Plaza Court
- We do not charge a fee for our representation

African Hispanic Immigration Organization
5 Central Ave.
Newark, NJ 07102
Tel: 973-370-0907
Fax: 973-850-0707
Website: www.ahiolaw.org
Email: ahiolaw@gmail.com

Rhonda deJean, Esq.
60 Broadway #10H
Brooklyn, NY 11249
Tel: (718) 785-5545
Email: rdejeanesq@gmail.com

- Will appear at 26 Federal Plaza Court and Varick St. Court

ILS Immigration Legal Services, Inc.
Eleanor Lam, Esq.
481 Main Street, Suite 504
New Rochelle, NY 10801
Tel: (888) 631-6686
Fax: (800) 517-6785
Email: info@ilsny.org
Website: http://www.ilsny.org

- Language(s): Spanish, English
- Appointment required
- By appointment in: Manhattan, Queens, Bronx, Brooklyn, Long Island, and others
- Asylum: Yes
- May Charge Nominal Fee
- Limited: pro bono gender-based asylum
- Will appear at 26 Federal Plaza Court and Varick St. Court

Annette Esliker-Kabia, Esq.
744 Broad Street, 16th Floor
Newark, New Jersey 07102
Email: annetteeslikerkabiaesq@yahoo.com
Tel: (862) 944-6613

- May charge a minimal fee
- Will appear at 26 Federal Plaza Court

Justin C. Egeolu, Esq.
2386 Morris Avenue, Suite 100
Union, NJ 07083
Tel: (866) 794-1716
Tel: (973) 200-2808
Email: ejc@egeolulaw.com

- Will represent indigent aliens pro bono in asylum proceedings.

Jason St. Fleur, Esq.
140 Broadway
New York City, NY 10005
Tel: (917) 563-2440 or 1 (800) 223-4977

- We speak Chinese, Spanish, French, and Creole and translations for all languages can be arranged
- May charge a nominal fee; but fee waivers considered in certain circumstances
- Representation available in all types of cases, including asylum
- Will represent foreign nationals, including permanent residents, with criminal convictions, and in detention facilities
- Telephonic consultation available

Toria L. Dixon, Esq.
236 Fulton Avenue, Suite 221
Hempstead, NY 11550
Tel: (516) 481-2100
And
1363 5th Avenue
Bay Shore, NY 11706
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Tel: (855) 444-2484

For a list of pro bono legal services providers outside of the New York area, you or someone you know with internet access should visit the EOIR website at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers-map:

Arizona: https://www.justice.gov/eoir/file/ProBonoAZ/download
California: https://www.justice.gov/eoir/file/ProBonoCA/download
Colorado: https://www.justice.gov/eoir/file/ProBonoCO/download
Connecticut: https://www.justice.gov/eoir/file/ProBonoCT/download
Florida: https://www.justice.gov/eoir/file/ProBonoFL/download
Georgia: https://www.justice.gov/eoir/file/ProBonoGA/download
Hawaii: https://www.justice.gov/eoir/file/ProBonoHI/download
Illinois: https://www.justice.gov/eoir/file/ProBonoIL/download
Louisiana: https://www.justice.gov/eoir/file/ProBonoLA/download
Maryland: https://www.justice.gov/eoir/file/ProBonoMD/download
Massachusetts: https://www.justice.gov/eoir/file/ProBonoMA/download
Michigan: https://www.justice.gov/eoir/file/ProBonoMI/download
Minnesota: https://www.justice.gov/eoir/file/ProBonoMN/download
Missouri: https://www.justice.gov/eoir/file/ProBonoMO/download
Montana: https://www.justice.gov/eoir/file/ProBonoMT/download
Nebraska: https://www.justice.gov/eoir/file/ProBonoNE/download
Nevada: https://www.justice.gov/eoir/file/ProBonoNV/download
New Jersey: https://www.justice.gov/eoir/file/ProBonoNJ/download
North Carolina: https://www.justice.gov/eoir/file/ProBonoNC/download
Ohio: https://www.justice.gov/eoir/file/ProBonoOH/download
Oregon: https://www.justice.gov/eoir/file/ProBonoOR/download
Pennsylvania: https://www.justice.gov/eoir/file/ProBonoPA/download
Puerto Rico: https://www.justice.gov/eoir/file/ProBonoPR/download
Tennessee: https://www.justice.gov/eoir/file/ProBonoTN/download
Texas: https://www.justice.gov/eoir/file/ProBonoTX/download
Utah: https://www.justice.gov/eoir/file/ProBonoUT/download
Virginia: https://www.justice.gov/eoir/file/ProBonoVA/download
Washington: https://www.justice.gov/eoir/file/ProBonoWA/download