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 Appendix C and contacting organizations listed in Appendix D at the end of this Chapter. Each immigration 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 organization listed in Appendix D. The organizations 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 organizations 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 currently 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 proceedings for many reasons. We mention some of these reasons in this Chapter. This Chapter's biggest focus is on incarcerated people who are facing or will face ***removal proceedings***[4] because of criminal convictions. Even if you are a ***legal permanent***

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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 Detention Facilities, *available at* https://www.aclu.org/files/pdfs/prison/unsr_briefing_materials.pdf (last visited Sept. 26, 2024). 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 2003, three agencies were created under the Department of Homeland Security ("DHS") to oversee the immigration and naturalization process. These replaced the former U.S. Immigration and Naturalization Services ("INS"), which no longer exists. The first agency, the United States Citizenship and Immigration Services ("USCIS"), is responsible for the administration of immigration services, including permanent residence, naturalization, asylum, and other duties. The second agency, U.S. Immigration and Customs Enforcement ("ICE"), serves as an investigative and enforcement body. Importantly, ICE is in charge of deportations. The third agency, U.S. Customs and Border Protection ("CBP"), oversees border patrol and customs inspection. *See How ICE, DHS, and USCIS Work Together*, Immigration Direct, *available at* https://www.us-immigration.com/us-immigration-news/us-immigration/how-ice-dhs-and-uscis-work-together/ (last visited Sept. 23, 2024).

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."

resident** ("**LPR**")* or have other legal status in the United States, you can still face removal proceedings and ***deportation.[5] 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.[6] The only people in the U.S. who cannot be deported are USCs or nationals.[7]

In this Chapter, "INA" means the Immigration and Nationality Act, as amended;[8] 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.

So, keep in mind that if you face deportation, you will be placed in "removal proceedings." *See The Removal System of the United States: An Overview*, American Immigration Council, *available at https://www.americanimmigrationcouncil.org/research/removal-system-united-states-overview* (last visited Dec. 14, 2024).

[5] *See The Ones They Leave Behind, Deportation of Lawful Permanent Residents Harm U.S. Citizen Children*, American Immigration Council, *available at https://www.americanimmigrationcouncil.org/research/ones-they-leave-behind-deportation-lawful-permanent-residents-harm-us-citizen-children* (last visited Dec. 14, 2024)

[6] Naturalized citizens that submitted fraudulent citizenship applications may have their citizenship revoked and may be deported. *Denaturalization and Revocation of Naturalization*, Immigrant Legal Resource Center, *available at* https://www.ilrc.org/sites/default/files/resources/denaturalization_pa.pdf (last visited Dec. 14, 2024).

[7] U.S. nationals are all USCs plus people born in American Samoa or Swains Island, or a person who is born to a parent or parents who are non-citizen nationals and have a residence in the United States or an outlying possessions prior to that person being born *See Certificates of Non-Citizen Nationality*, U.S. Department of State, *available at* https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Certificates-Non-Citizen-Nationality.html (last visited Nov. 15, 2024).

[8] Immigration and Nationality Act ("INA"), ch. 477, 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. §§ 1101–1537).

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.[9]

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 common reasons you could be found inadmissible or deportable.

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***.

Note that the term ***alien*** is used in immigration laws to refer to anyone who is not a U.S. citizen or national.[10] This Supplement uses the term ***noncitizen*** in this manual in place of the term alien, except where quoting legal language or providing the precise name of a form.[11]

(a) United States Citizenship[12]

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***.[13] The law surrounding citizenship is particularly complicated because the laws have changed over time, and the law in effect at the time that you were born is generally what determines citizenship. The following questions may help you determine whether you are a USC:[14]

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[9] 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 Sept. 28, 2024).

[10] *See* INA § 101(a)(3); 8 U.S.C. § 1101(a)(3).

[11] *See* Barton v. Barr, 590 U.S. 222, 226 n.2, 140 S. Ct. 1442, 1446 n.2, 206 L. Ed. 2d 682, 692 n.2 (2020) (using the term "noncitizen" as equivalent to the statutory term "alien").

[12] 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.

[13] The following link has updated information on different ways to acquire citizenship. Citizenship Resource Center, *available at* https://www.uscis.gov/us-citizenship (last visited on Sept. 28, 2024).

[14] 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.

(1) Were you born in the U.S. or one of its territories?[15]
(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) *Birthright Citizenship*

Under the U.S. Constitution and federal statute, if you were born in the United States, you are a U.S. citizen (USC).[16] There are only very limited exceptions to this rule, generally involving children of foreign government officials on assignment in the U.S.[17] As of early 2025, the Trump administration has attempted to change this rule for certain children of noncitizen parents in the future,[18] but this rule has so far been blocked by multiple courts as clearly unconstitutional and unlawful.[19]

You are also a USC if you are born in most of the U.S. territories.[20]

(ii) *Automatic Acquisition of Citizenship at Birth*

You are USC if you were born outside the U.S. to two USC parents who were married at the time of your birth and at least one of your parents lived in the U.S. before your birth.[21] If you were born outside the U.S. to one USC parent and one noncitizen and you were born in wedlock (your parents were married at the time of your birth), you are a USC if your USC parent was physically present in the U.S. for a certain amount of time before you were born.[22] If you were born out of wedlock (your parents were not married at the time you were born), the requirements are more complicated.[23]

(iii) *Derivative Citizenship*

Derivative citizenship means that you "derive" or gain citizenship through your parent(s), who have been naturalized.[24] The laws regarding derivative citizenship are complex and are different depending on when you were born and when your parent(s) became USCs.

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[15] 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 8 FAM 301.1 Acquisition by Birth in the United States,* Foreign Affairs Manual, *available at* https://fam.state.gov/fam/08fam/08fam030101.html (last visited Nov. 15, 2024).

[16] *See* INA § 301(a); 8 U.S.C. § 1401; U.S. CONST. amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.").

[17] *See* United States v. Wong Kim Ark, 169 U.S. 649, 693, 18 S. Ct. 456, 473–474, 42 L. Ed. 890, 906 (1898) (narrowly interpreting the 14th Amendment's phrase "subject to the jurisdiction thereof").

[18] *See* Exec. Order No. 14160, *Protecting the Meaning and Value of American Citizenship*, 90 Fed. Reg. 8449 (Jan. 20, 2025).

[19] *See, e.g.*, N.H. Indonesian Cmty. Support v. Trump, No. 1:25-cv-38-JL-TSM (D.N.H. Feb. 10, 2025); Washington v. Trump, No. C25-0127-JCC (W.D. Wash. Jan. 23, 2025).

[20] *See* INA §§ 101(a)(38), 302 (Puerto Rico), 306(b) (Virgin Islands), 307(b) (Guam); 8 U.S.C. §§ 1101(a)(38), 1402, 1404(b), 1406(b).

[21] *See* INA § 301(c); 8 U.S.C. § 1401(c).

[22] If you were born on or after November 14, 1986, your USC parent must have been in the U.S. for at least five years, at least two of which were after age 14. *See* INA § 301(g); 8 U.S.C. § 1401(g). If you were born between Dec. 24, 1952, and Nov. 14, 1986, they must have been physically present in the U.S. for at least 10 years, at least five of which were after age 14. *See* former INA § 301(a)(7).

[23] *See* INA § 309; 8 U.S.C. § 1409.

[24] *See* Citizenship Through Parents, *available at* https://www.uscis.gov/us-citizenship/citizenship-through-parents (last visited Sept. 28, 2024).

If you turned 18 on or after February 27, 2001, and you were born outside of the U.S., then you may be able to obtain derivative citizenship automatically through the Child Citizenship Act (CCA). To qualify for citizenship under the CCA, you must fulfill **all** of these requirements in order to obtain derivative citizenship:[25] (1) one of your parents became a naturalized USC (they became a U.S. citizen), (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.[26] If you were adopted by a naturalized USC, you may also qualify if you meet those four requirements and (1) you were adopted before turning 16 and (2) you resided with and remained in the legal custody of your adopting parent(s) for at least two years.[27] You must also be sure to have access to or a record of your adoption decree. If you were born out of wedlock (your parents were not married when you were born) or your parents divorced, the requirements may also be more complicated.

If you did not automatically derive citizenship, your parent, grandparent, or legal guardian may still be able to apply for a Certificate of Citizenship if (1) they are a USC, (2) your USC parent or grandparent meets certain physical presence requirements in the U.S., (3) you are under 18 years old, (4) you are residing outside the U.S. in the custody of your USC parent (or if they died, in the custody of someone who does not object to the citizenship application), and (5) you are lawfully present in the U.S.[28]

(iv) *Naturalized Citizenship*[29]

Naturalization is commonly referred to as the process through which a person who is not born in the United States (or U.S. territories) or not born to U.S. citizens voluntarily become a U.S. citizen. You may be a naturalized citizen if you, or someone on your behalf, has applied using the "Application for Naturalization" (Form N-400) **AND** you have taken the Oath of Allegiance to the United States in a formal naturalization ceremony. You will have received a "Certificate of Naturalization" if you are considered a naturalized citizen of the U.S. Note: In most instances, you will have filed this near the end/after finishing the requirements of your "green card."

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[25] If you turned eighteen (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 eighteen (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 eighteen (18) years old before February 27, 2001, and believe you might be a USC. For more information, see *USCIS Policy Manual*, vol. 12, pt. H, ch. 7, Deriving Citizenship Before the Child Citizenship Act of 2000 (Former INA 321 and 320), U.S. CITIZENSHIP & IMMIGR. SERVS., *available at* https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-7 (last visited Sept. 20, 2024).

[26] *See* INA § 320(a); 8 U.S.C. § 1431(a). For more information on derivative citizenship under INA § 320, see *USCIS Policy Manual*, vol. 12, pt. H, ch. 5, Child Residing Outside the United States (INA 322), U.S. CITIZENSHIP & IMMIGR. SERVS., *available at* https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-5 (last visited Sept. 20, 2024); Citizenship Through Parents, *available at* https://www.uscis.gov/us-citizenship/citizenship-through-parents (last visited Sept. 28, 2024).

[27] *See* INA §§ 101(b)(1)(E)(i), 320(b); 8 U.S.C. §§ 1101 (b)(1)(E)(i), 1431(b).

[28] *See* INA § 322(a); 8 U.S.C. § 1433(a). 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. For more information, see *USCIS Policy Manual*, vol. 12, pt. H, ch. 5, Child Residing Outside the United States (INA 322), U.S. CITIZENSHIP & IMMIGR. SERVS., *available at* https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-5 (last visited Sept. 20, 2024).

[29] As a naturalized citizen, you hold the rights and responsibilities of all U.S. citizens in that you can vote, have a U.S. passport, pass your citizenship to your children, work, travel, and sponsor others. In most cases, you will be aware if you are a naturalized citizen *or* are eligible for naturalized citizenship. If you are currently a "green card holder" and believe that you may be eligible, you should ask your attorney about naturalized citizenship. *See* A Guide to Naturalization, U.S. Citizenship and Immigration Services, M-476 (rev. 11/16), *available at* https://www.uscis.gov/sites/default/files/document/guides/M-476.pdf.

(v) *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. 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.[30] This is very important for immigration court proceedings because USCs cannot be deported by the U.S. government.[31] USCs also are protected by U.S. law and have constitutional rights in immigration court. 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.[32]

(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.[33] 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.[34] An LPR may apply to become a USC after five years.[35] 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."

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[30] If you are not yet in removal proceedings, you should contact your deportation officer and tell them you think you might be a USC. *See* Immigration Detainer – Notice of Action, available at https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf (last visited Sept 20, 2024).

[31] *See* Katherine Brady et al., Establishing Defense Goals; Immigration Status; Deportability, Inadmissibility, and an Aggravated Felony; The Problem of Illegal Re-entry; and the Ten-Step Checklist for Defending a Non-Citizen, §N.1 Overview, 41 (2013), https://www.ilrc.org/sites/default/files/resources/n.1-overview.pdf (last visited Sept. 20, 2024). 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.

[32] 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), or an "alien" as defined in INA § 101(a)(3); 8 U.S.C. § 1101(a)(3). Alien means "any person not a citizen or national of the United States." INA § 101(a)(3); 8 U.S.C. § 1101(a)(3).

[33] *See Your Rights and Responsibilities as a Lawful Permanent Resident*, IWL.COM, 8, *available at* http://ilw.com/articles/2004,1129-guide.pdf (last visited Sep. 26, 2024). Note that under Title IV of the Adam Walsh Child Protection and Safety Act of 2006, 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)(A)(viii)(I); 8 U.S.C. § 1154(a)(1)(A)(viii)(I).

[34] 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 Absences That Are Too Long and How to Cure Them*, CATH. LEGAL IMMIGR. NETWORK, INC., *available at* https://www.cliniclegal.org/resources/absences-are-too-long-and-how-cure-them (last visited Sep. 26, 2024).

[35] *See* INA § 316(a); 8 U.S.C. § 1427(a). 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. *USCIS Policy Manual,* vol. 12, pt. G, ch. 3, Spouses of U.S. Citizens Residing in the United States, U.S. CITIZENSHIP & IMMIGR. SERVS., *available at* https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartG-Chapter3.html (last visited Sept. 27, 2024).

You probably have LPR status if you have a ***green card***[36] 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, known as "adjusting your status." 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.[37] If you are an LPR and never commit a crime, then you always have the right to live, work, and travel in and out of the U.S.

The process for legal permanent residency is different if you apply 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 what is known as 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.[38]

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.[39] These crimes include, but are not limited to, fraud, intent to commit bodily harm, or theft.[40] 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 that could allow you to remain in the U.S.[41]

(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 you have been persecuted or have a well-founded fear of persecution in your ***home country*** "on account of . . . race, religion, nationality, membership in a particular social group, or political opinion."[42] You are 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.[43] You

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[36] 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*, CITIZENPATH (2023), *available at* https://citizenpath.com/history-green-card/ (last visited Sep. 27, 2024).

[37] 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*, IMMIGRATION DIRECT, *available at* https://www.us-immigration.com/blog/dont-let-that-green-card-expiration-date-sneak-up-on-you (last visited Sep. 27, 2024). However, if you have 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. For the consequences of filling out immigration applications if you have criminal convictions, see Section D(3) of this Chapter.

[38] *See Widow(er)*, U.S. CITIZENSHIP & IMMIGR. SERVS., *available at* https://www.uscis.gov/greencard/widower (last visited Sep. 27, 2024).

[39] Criminal convictions are not the only way to lose your LPR status. *See* INA § 237; 8 U.S.C § 1227. 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. INA § 237(a)(1)(E), (3)(C), (3)(D); 8 U.S.C. § 1227(a)(1)(E), (3)(C), (3)(D).

[40] *See* INA § 212(a)(2), 8 USC § 1182(a)(2). See Section C(3) for a discussion of the grounds of inadmissibility.

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

[42] INA § 101(a)(42); 8 U.S.C. § 1101(a)(42).

[43] *See Refugees*, U.S. CITIZENSHIP & IMMIGR. SERVS., *available at* https://www.uscis.gov/humanitarian/refugees-asylum/refugees (last visited Sep. 27, 2024).

are an "asylee" if you first entered the U.S. either legally or illegally and were later granted ***asylum***.[44] You can apply for asylum affirmatively, meaning you are not in removal proceedings currently and you submit an application for asylum to USCIS.[45] You can also apply for asylum defensively, meaning you are currently in removal proceedings and request asylum as a form of relief from removal. Both refugees and asylees can apply for ***adjustment of status*** to LPR status after they have lived in the U.S. for one year.

Asylum is one of the most common forms of relief from removal. The eligibility requirements are complicated and discussed in depth in Subsection F(5)(g). Two related forms of relief (withholding of removal under INA § 241(b)(3) and relief under the Convention Against Torture) are also discussed in that Subsection.

(d) Deferred Action for Childhood Arrival ("DACA") Recipients[46]

Deferred Action for Childhood Arrival, known as DACA, is a program that gives certain undocumented people who came to the United States as children a (1) two-year protection against deportation and (2) permission to work despite their undocumented status. DACA is not an automatic protection for children who came to the United States. You only receive DACA protection if you meet all seven requirements, file the appropriate forms to the United States Citizenship and Immigration Services (USCIS), and the USCIS approves your application.

The decision to grant DACA protections is a discretionary matter, meaning USCIS has the power to decide whether or not you are DACA approved. In other words, even if all requirements are met, the USCIS may still determine an individual should not receive DACA protections. However, DACA applications are decided on a case-by-case basis. If you believe you meet the threshold requirements and would like to receive deportation protection and a work permit, a DACA application is an option for you.

The future of DACA is uncertain. A related program called DAPA was challenged in court and was prevented from being implemented by a Fifth Circuit decision that was affirmed by the Supreme Court in a divided vote without an opinion.[47] The first Trump administration attempted to terminate the DACA program based on similar reasoning, but the Supreme Court ultimately struck down this attempt because DHS Secretary Elaine Duke failed to consider the possibility of keeping the forbearance component of DACA (exercising discretion not to deport individuals) from the eligibility for benefits component.[48] Meanwhile, DACA itself has been challenged in court.[49] At this point, it is unclear whether the original DACA program will be allowed to remain in place, at least for current recipients, and it is unclear if the Trump administration will be able to successfully eliminate the program.

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[44] Asylum is granted under INA § 208; 8 U.S.C. § 1158.

[45] For information on how to apply for asylum affirmatively, see *Questions and Answers: Affirmative Asylum Eligibility and Applications*, U.S. CITIZENSHIP AND IMMIGR. SERVS., *available at* https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-and-answers-asylum-eligibility-and-applications (last visited Sept. 27, 2024).

[46] *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP AND IMMIGR. SERVS., *available at* https://www.uscis.gov/DACA#:~:text=On%20June%2015%2C%202012%2C%20the,DACA%20for%20the%20first%20time. (last visited Oct. 30, 2024).

[47] *See* Texas v. United States, 809 F.3d 134 (5th Cir. 2015), *aff'd by an equally divided Supreme Court*, United States v. Texas, 579 U.S. 547 (2016).

[48] *See* DHS v. Regents of the Univ. of Cal., 591 U.S. 1, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020).

[49] *See, e.g.*, Texas v. United States, 50 F.4th 498 (5th Cir. 2022).

(i) *Seven Requirements to Qualify for DACA*[50]

As it currently exists, DACA's seven requirements are:

(1) **Age:** You were under the age of 31 as of June 15, 2012;
(2) **Entry:** You came to the U.S. before reaching your 16th birthday;
(3) **Residency:** You have lived continuously in the United States since June 15, 2007, and are living in the United States at the time of filing your DACA forms;
(4) **Physical Presence:** You were physically present in the United States on June 15, 2012, and are in the United States at the time of filing your request for DACA;
(5) **Immigration Status:** You did not have a legal right to reside in the United States (such as a student or work visa, green card, asylum, refugee, or temporary protected status) on or before June 15, 2012, and you also did not have any legal right to reside in the United States when you submitted the request for DACA;
(6) **School:** You are currently enrolled in school, have graduated or obtained a certificate of completion from high school, General Education Development (GED) certificate, or are an honorably discharged veteran;
(7) **Criminal History:** You have not been convicted of a felony, "significant misdemeanor" as defined by 8 C.F.R. § 236.22(b)(6), three or more misdemeanors not stemming from the same scheme or offense, and do not "otherwise pose a threat to national security or public safety." For more detailed information on what criminal history is allowed under DACA, please see subsection (ii) on Criminal History and Eligibility.[51]

(ii) *Criminal History and Eligibility*[52]

As explained above, requirement number seven for DACA is that your criminal history must meet certain guidelines. If you do not have any criminal history, then this section does not apply to you. If you do, this section explains the criminal history that does not disqualify you from DACA and the criminal history that does.

Criminal history that does not disqualify you from DACA protections includes expunged convictions, juvenile delinquency adjudications, and convictions under State (including U.S. territory) laws for immigration-related offenses.

Criminal history that does disqualify you from DACA protections includes felonies, "significant misdemeanors," or multiple unrelated misdemeanors. A "significant misdemeanor" that disqualifies someone from DACA includes an offense of domestic violence, sexual abuse, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence. In addition, regardless the nature of the offense, if you were sentenced to time in prison of more than 90 days then you are disqualified from DACA. To be clear, the 90-day sentence requirement does not include a suspended sentence. You must have been sentenced to serve 90 days in custody of the Department of Corrections.

(e) Parolee Status

Parolees are people the U.S. government has allowed to physically enter the country for different humanitarian reasons. Some of these reasons include illness or home country

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[50] 8 C.F.R. § 236.22 (2024).
[51] 8 C.F.R. § 236.22(b)(6) (2024).
[52] 8 C.F.R. § 236.22(b)(6) (2024).

conditions.[53] 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.[54] Some parolees can apply to adjust their status after one year.[55] The Trump administration is attempting to end certain parole programs.

(f) Temporary Protected Status ("TPS")[56]

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[57] that would be dangerous to return to. Examples of these dangerous situations are armed conflict, environmental disasters, or other extraordinary and temporary conditions.[58] 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.[59]

(g) Visas[60]

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.[61] Visas are given for a specific purpose and a specific period of time. Visas grant a legal right to be in the U.S.[62] 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.

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[53] *See Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States*, U.S. CITIZENSHIP AND IMMIGR. SERVS., *available at* https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states (last visited Sept. 29, 2024).

[54] 8 C.F.R. § 212.5(e)(2)(i) (2024); 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).

[55] 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 Part, it means that a parolee can apply for permanent status in the U.S. after one year. *See Adjustment of Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., *available at* https://www.uscis.gov/green-card/green-card-processes-and-procedures/adjustment-status (last visited Sept. 29, 2024). 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 Subsection B(1)(b) of this Chapter about LPR status.

[56] INA § 244; 8 U.S.C. § 1254a.

[57] As of 2024, countries that are designated for TPS include: Afghanistan, Burma (Myanmar), Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, Ukraine, Venezuela, and Yemen. For the most updated list, please visit Temporary Protected Status, *available at* https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Sept. 21, 2024).

[58] *See Temporary Protected Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., *available at* https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Sept. 29, 2024).

[59] *See Temporary Protected Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., *available at* https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Sept. 29, 2024).

[60] The different categories of nonimmigrant visas are described in INA § 101(a)(15); 8 U.S.C. § 1101(a)(15).

[61] INA § 221(a); 8 U.S.C. § 1201(a) (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. If an immigration officer at the border who disagrees with the consular office's determination that the visa-holder should be allowed into the U.S., the immigration officer can deny this person entrance into the U.S. This rarely happens but is nevertheless important to note. *See Frequently Asked Questions*, U.S. VISA INFO. SERV. FOR LEB., *available at* http://www.ustraveldocs.com/lb/lb-gen-faq.asp (last visited Sept. 29, 2024).

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

If the purpose or time of your visa expires, you have overstayed your visa and no longer have legal status in the U.S.[63] 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.[64]

If you are a victim of human trafficking, you may apply for a visa for "T nonimmigrant status" by filling out ***Form I-914***.[65] 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," also referred to as a "U-visa." To apply for a U-visa, you should fill out ***Form I-918***. Qualifying crimes include domestic violence, prostitution, sexual assault, and stalking. If approved, a U-visa allows you to stay in the U.S, and you can apply for LPR status after having three years of continuous U-visa status.[66]

2. Entry Without Inspection ("EWI")[67]

If you have not been legally admitted to the U.S., then you are in the U.S. without the proper documents. 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. If you entered the U.S. without inspection, you can be removed just for that reason. 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 removed simply because they have no legal status in the U.S.[68]

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.

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[63] Under INA § 222(g); 8 U.S.C. § 1202(g), a non-immigrant visa is void as soon as the non-immigrant "remain[s] in the United States beyond the period of stay authorized by the Attorney General." Noncitizens affected by this provision are precluded from seeking a new non-immigrant visa anywhere other than in their country of nationality, unless they are directed to another consular officer by the Secretary of State because there is no consular office in their country of nationality, or under "extraordinary circumstances." This Chapter refers to these people as "visa overstays."

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

[65] For information about T visa eligibility, please visit Victims of Human Trafficking: T Nonimmigrant Status, USCIS, https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status (last visited Sept. 29, 2024).

[66] For information about U visa eligibility and how to apply, please visit Victims of Criminal Activity: U Nonimmigrant Status, USCIS, https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status (last visited Sept. 29, 2024).

[67] Note that EWI is not actually an official immigration status. *See* Entry Without Inspection (EWI) and Family Unity Waiver in a Nutshell, National Immigration Forum, http://immigrationforum.org/blog/entry-without-inspection-ewi-and-family-unity-waiver-in-a-nutshell/ (last visited Sept. 29, 2024).

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

C. Two Grounds for Removal: Inadmissibility and Deportability

You may face removal proceedings based on inadmissibility or deportability grounds.[69] If you are found either ***inadmissible*** or ***deportable***, you may 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).[70]

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 in some situations.[71] You may be inadmissible if you have a ***deferred inspection appointment***[72] 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 convictions under immigration law even if they are not convictions under criminal law.[73] 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 decision of guilt in your case, or both:

(1) A judge or a jury found you guilty, you entered a plea of guilty or nolo contendere,[74] or you admitted sufficient facts that you could be found guilty, **and**

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[69] 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.

[70] *See Grounds of Inadmissibility and Deportability Related to Crimes*, Immigrant Legal Resource Center, *available at* https://www.ilrc.org/sites/default/files/sample-pdf/inadmiss_and_deport-5th-2019-ch_01.pdf (last visited Sept. 25, 2024).

[71] *See* INA § 101(a)(13)(C)(i)–(vi); 8 U.S.C. § 1101(a)(13)(C)(i)–(vi).

[72] 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 Sites*, U.S. Customs and Border Protection, *available at* https://www.cbp.gov/about/contact/ports/deferred-inspection-sites (last visited Sept. 25, 2024). See Part G of this Chapter, which discusses the NTA in greater detail.

[73] INA § 212(a)(2)(A)(i)(II); 8 U.S.C. § 1182(a)(2)(A)(i)(II) ("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.").

[74] Nolo contendere literally means "no contest." *See Nolo Contendere*, BLACK'S LAW DICTIONARY (12th ed. 2024). 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.

(2) The judge ordered some form of punishment, penalty, fine, community service, or restraint to be imposed on your liberty.[75]

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 finishing 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.[76]
(2) The BIA has ruled that expungements based on state rehabilitative laws do not erase a conviction for immigration proceedings.[77] An **expungement** seals a criminal record so that it is not publicly available.
(3) The Second Circuit has held that in cases where the noncitizen got a Certificate of Relief from Disabilities (CRD), the conviction may still stand for immigration purposes.[78] A **CRD** is a legal document issued in the New York State Court system that can help remove certain barriers tied to a criminal conviction.[79]
(4) Convictions that are vacated only because of ***rehabilitation*** or immigration hardships, instead of procedural or substantive mistakes in the underlying criminal proceedings, may still be considered convictions for immigration purposes.[80]

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

[76] *See* Matter of Salazar-Regino, 23 I. & N. Dec. 223, 233–234 (BIA 2002) (deciding that state rehabilitative expungements shall be considered convictions for immigration purposes).

[77] Matter of Roldan-Santoyo, 22 I. & N. Dec. 512 (BIA 1999).

[78] Mugalli v. Ashcroft, 258 F.3d 52, 62 (2d Cir. 2001).

[79] Having a conviction can impact the way you are treated in society. This can include a negative effect on job opportunity, housing, citizenship, government benefits and more. In the state of New York, a CRD can help remove barriers to applying to jobs, licenses, public housing and more. *See* Certificate of Relief from Disabilities, available at https://www.nycourts.gov/courthelp/criminal/CRD.shtml (last visited Oct. 27, 2024) for more details on CRD's and eligibility.

[80] *See* Matter of Pickering, 23 I. & N. Dec. 621, 624–625 (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); Sanusi 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 a noncitizen remains convicted of a removable offense for federal immigration purposes when the conviction is vacated simply to aid the noncitizen in avoiding negative immigration consequences). Since July 14, 2011, the Ninth Circuit has held that federal convictions for simple possession, even if later expunged under the Federal First Offender Act (FFOA), still count as convictions for immigration purposes. However first-time drug convictions expunged under FFOA before this date do not count as convictions for immigration purposes in the 9th Circuit. *See* Nunez-Reyes v. Holder, 646 F.3d 684, 687 (9th Cir. 2011).

(5) Disorderly conduct violations that meet the INA's definition of a "conviction." Even if a disorderly conduct violation is defined as not a crime under state law, it could still be a conviction for immigration purposes.[81]

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

(1) Youthful offender adjudications (as defined by federal law).[82]
(2) A conviction that a trial or appeals court vacates because it had a legal mistake or flaw.[83]
    - This includes convictions that are vacated because your attorney failed to provide you with advice about potential immigration consequences of a plea.[84]
(3) "Pre-plea diversion programs." These are programs developed by some state specialized courts that require completion of treatment, but instead of vacating the original plea upon completion of treatment, the court does not require you to initially plead guilty. As a result, the court's judgment is not enough to count as a "conviction" for immigration purposes, since you did not admit guilt.[85]

(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 reviewed to determine if it is a conviction for immigration purposes. You, your attorney, or a trusted friend should obtain ***certificates of disposition***[86]

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[81] A disorderly conduct violation can include a wide range of conduct depending on the state or city you were charged in. To determine if a disorderly conduct violation is a "conviction" for immigration purposes, it is important to know the details of the disorderly conduct statute you were charged with, such as the elements of the offense and the punishment. In recent cases, courts have decided that a state disorderly conduct violation is a "conviction" for immigration purposes when the state's judgment or formal decision of guilt fits the INA's definition of a "conviction." *See e.g.,* Kwok Sum Wong v. Garland, 95 F.4th 82, 86 (2d Cir. 2024) (holding that a state disorderly conduct violation was a "conviction" under the INA because it was produced by "criminal proceedings with minimum constitutional protections," which is necessary to meet the INA definition of "conviction"); Collado-Lantigua v. Att'y Gen. United States, No. 24-1721, 2024 U.S. App. LEXIS 20966, at *5 (3d Cir. Aug. 20, 2024) (*unpublished*) (holding that a "conviction" for immigration purposes occurred when the court entered a "formal judgment of guilt" for disorderly conduct, even though disorderly conduct is considered a petty offense and not a crime in New Jersey).

[82] *See* Matter of Devison-Charles, 22 I. & N. Dec. 1362, 1368–1373 (BIA 2000) (finding that declaration of juvenile delinquency or youthful offender adjudication by a state court does not count as a conviction for immigration purposes); Matter of Ramirez-Rivero, 18 I. & N. Dec. 135, 137 (BIA 1981) (holding that a foreign conviction which would have been considered a juvenile adjudication in the U.S. does not count as a conviction 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); Vieira Garcia v. INS, 239 F.3d 409, 412–413 (1st Cir. 2001) (holding that a seventeen-(17) year-old charged and convicted as an adult is a valid conviction for immigration purposes).

[83] Matter of 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); Matter of 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).

[84] Defense attorneys' obligation to advise you of immigration consequences of a conviction is discussed below in Subsection C(1)(b).

[85] 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.

[86] In New York, a certificate of disposition is an official court document that contains the Court Seal and indicates the disposition (or the decision the judge made) of a criminal case. Certificate of Disposition, *available at*

or a comprehensive ***rap sheet***.[87] 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 immigration relief or benefits may be available to you. Some criminal convictions bar (or stop) you from getting certain forms of immigration relief. The following may also play a role in determining the forms of immigration 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.[88]

If you have a pending criminal case, you should discuss the immigration consequences of a criminal conviction with your criminal defense lawyer. Your criminal defense lawyer has a constitutional obligation to advise you about immigration consequences of a conviction.[89] Make sure that they understand 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 lawyers do not know the severe consequences of criminal convictions on immigration court hearings.[90] You should also speak to a criminal lawyer if you find that a certain criminal conviction will permanently bar you from any immigration relief, just in case that the criminal lawyers can do anything about the conviction.

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https://www.nycourts.gov/courthelp/Criminal/CD.shtml (last visited Sept. 29, 2024). 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.

[87] The Legal Action Center, *available at* https://lac.org/ (last visited Nov. 16, 2024), can help you obtain your rap sheet if you are unable to do so on your own. You can use this online form to request your rap sheet for New York: *available at* https://legalactioncenter.cliogrow.com/intake/0c9e17c5a4b7edede0da3a66e10503c2 (last visited Nov. 16, 2024). The Legal Action Center also has a series of videos explaining more about rap sheets and how to obtain them: Virtual Rap Sheet Workshop, *available at* https://www.lac.org/resource/virtual-rap-sheet-workshop (last visited Nov. 16, 2024). Appendix D at the end of this Chapter includes more resources and websites, most of which will be helpful nationwide.

[88] *See* Immigrant Legal Resource Center, Section N.4: Sentence, *available* at https://www.ilrc.org/sites/default/files/resources/n.4-sentence_solutions.pdf (last visited Dec. 29, 2024).

[89] In *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), the Supreme Court held that an attorney's failure to inform a client about deportation risks associated with a guilty plea violates the Sixth Amendment right to effective counsel. *See* Lee v. United States, 582 U.S. 357, 371, 137 S. Ct. 1958, 1969, 198 L. Ed. 2d 476, 489 (2017) (holding that if an attorney does not inform a defendant about deportation risks, and the defendant would have chosen a trial to avoid those risks, this may satisfy the standard for ineffective assistance of counsel); Diaz v. State, 896 N.W.2d 723, 731–734 (Iowa 2017) (finding ineffective assistance when an attorney fails to advise a noncitizen defendant about serious immigration consequences of a guilty plea, allowing the defendant to withdraw the plea based on inadequate guidance on deportation risks). Your defense attorney has a duty to inform you about the immigration consequences of a guilty plea. If they do not, you may challenge your conviction based on ineffective assistance of counsel. To succeed, you must show that, with proper guidance, you would have chosen to go to trial instead of pleading guilty. Courts will also assess whether rejecting the plea offer and risking a trial would have been a reasonable choice in your case.

[90] Anything you say during your immigration court proceedings can be used against you in your pending criminal case. *See* 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 guilt. But, if 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.

2. Deportability[91]

The grounds of deportability (rather than the grounds of inadmissibility, discussed in Section C(3) below) generally apply to you if you are an LPR, a nonimmigrant visa holder or visa overstay, or a refugee. There are a variety of reasons you may be deportable, although this Section focuses on criminal grounds of deportability.

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 not only deportable, but you are also (1) ineligible for most forms of immigration relief and (2) you will be subjected to mandatory detention.[92] Additionally, if you are not an LPR and you are convicted of an aggravated felony, DHS could choose to place you in ***administrative removal*** proceedings instead of the usual immigration court proceedings, which would come with many fewer procedural protections.

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 considered an aggravated felony in immigration proceedings. For example, some state misdemeanor convictions are considered aggravated felonies under immigration law.[93] However, sometimes a felony conviction in a state court is not considered an aggravated felony.[94] 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.[95] Other crimes may be aggravated felonies no matter what the sentence was.

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[91] "Deportability" means whether you can be deported. 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. *See* Woodby v. INS, 385 U.S. 276, 277, 87 S. Ct. 483, 484, 17 L. Ed. 2d 362, 364 (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, 189–190 (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.

[92] *See* Aggravated Felonies: An Overview, American Immigration Counsel, *available at* https://www.americanimmigrationcouncil.org/research/aggravated-felonies-overview (last visited Sept. 21, 2024). Mandatory detention will be discussed in greater detail in Section E(1) of this Chapter.

[93] An example is United States v. Graham, 169 F.3d 787, 793 (3d Cir. 1999), which held that a state misdemeanor conviction in New York 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). 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 in New Hampshire constituted an aggravated felony); Guerrero-Perez v. INS, 242 F.3d 727, 737 (7th Cir. 2001) (holding that a misdemeanor sexual abuse conviction in Illinois constituted an aggravated felony); United States v. Saenz-Mendoza, 287 F.3d 1011, 1014 (10th Cir. 2002) (holding that a misdemeanor child abuse conviction in Utah constituted an aggravated felony).

[94] Section N.4: Sentence, Immigrant Legal Resource Center, *available* at https://www.ilrc.org/sites/default/files/resources/n.4-sentence_solutions.pdf (last visited Sept. 21, 2024).

[95] *See* INA §§ 101(a)(43), 48(B); 8 U.S.C. § 1101(a)(43), (48)(B) (definitions of "aggravated felony" and "sentence"). The relevant sentence is *not* the sentence which *could* have been imposed, but instead the *actual* sentence you were

(i) *What is an aggravated felony?*

Aggravated felonies are defined in the INA.[96] Examples of aggravated felonies are:

(1) ***Crimes of violence*** for which the penalty was at least one year;[97]
  (a) A crime of violence is "an offense that has as an element the use, attempted use, or threatened use of physical force" against someone else or their property.[98]
(2) Murder;[99]
(3) Rape;[100]
(4) Sexual abuse of a minor;[101]
  (a) The law on what counts as sexual abuse of a minor is complicated and evolving.[102]
  (b) 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.[103]
  (c) A statutory rape offense based solely on the ages of the participants does not qualify unless it requires the victim to be younger than 16 years old.[104]
(5) Drug trafficking;[105]
  (a) The law around what counts as drug trafficking is complex and has changed over time.

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given. *See* Ahmed v. Att'y Gen. of the United States, 212 F. App'x 133, 135 (3d Cir. 2007) (*unpublished*) (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. *See* Da Rosa Silva v. INS 263 F. Supp.2d 1005, 1010 (E.D. Pa. 2003).

96 INA § 101(a)(43); 8 U.S.C. § 1101(a)(43).

97 INA § 101(a)(43)(F); 8 U.S.C. § 1101(a)(43)(F).

98 18 U.S.C. § 16(a). For an example of a case applying this standard, see Gutierrez v. Garland, 106 F.4th 866, 877 (9th Cir. 2024) (holding that carjacking under California law was not a categorical crime of violence because carjacking does not necessarily involve the use, attempted use, or threatened use of physical force). Note that an additional definition of "crime of violence" found in 18 U.S.C. § 16(b) (felonies that by their nature involve a "substantial risk" physical force may be used) was held unconstitutional by the Supreme Court in *Sessions v. Dimaya*, 584 U.S. 148, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018).

99 INA § 101(a)(43)(A); 8 U.S.C. § 1101(a)(43)(A).

100 INA § 101(a)(43)(A); 8 U.S.C. § 1101(a)(43)(A).

101 INA § 101(a)(43)(A); 8 U.S.C. § 1101(a)(43)(A).

102 The BIA and some circuits have looked to the definition of "sexual abuse" found at 18 U.S.C. § 3509(a)(8), which includes "the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children." *See* Matter of Rodriguez-Rodriguez, 22 I. & N. Dec. 991 (BIA 1999). The Supreme Court has looked to a different statute, 18 U.S.C. § 2243, as relevant, but said it does not provide "the complete or exclusive definition," and state criminal codes across the country can also be relevant in defining sexual abuse of a minor. Esquivel-Quintana v. Sessions, 581 U.S. 385, 395, 137 S. Ct. 1562, 1571, 198 L. Ed. 2d 22, 32 (2017). Some circuits have followed the BIA's broad definition of sexual abuse of a minor, while other circuits have created their own tests. The Ninth Circuit has defined sexual abuse of a minor (except for statutory rape cases) as sexual conduct with a minor that constitutes abuse, which generally requires physical contact. *See* Mero v. Barr, 957 F.3d 1021, 1023 (9th Cir. 2020). Other circuits generally do not require physical contact with a minor (thus including crimes such as solicitation, even if there was no contact). *See, e.g.*, Contreras v. Holder, 754 F.3d 286 (5th Cir. 2014); Taylor v. U.S., 396 F.3d 1322, 1328–1339 (11th Cir. 2005). Some circuits have held that there is a *mens rea* (mental state) requirement that the crime be committing either knowingly or intentionally, rather than recklessly or negligently. *See* Cabeda v. AG of the United States, 971 F.3d 165, 173 (3d Cir. 2020); Acevedo v. Barr, 943 F.3d 619, 624 (2d Cir. 2019).

103 *See* Matter of Small, 23 I. & N. Dec. 448 (BIA 2002).

104 Esquivel-Quintana v. Sessions, 581 U.S. 385, 398, 137 S. Ct. 1562, 1572-73, 198 L. Ed. 2d 22, 33 (2017).

105 INA § 101(a)(43)(B); 8 U.S.C. § 1101(a)(43)(B) ("illicit trafficking in a controlled substance (as defined in [21 U.S.C. § 802]), including a drug trafficking crime (as defined in 18 U.S.C. § 924(c)])").

(b) There are two different ways that a state drug crime can be considered an aggravated felony:[106]
- It is a felony under state law, it involves a federally-controlled substance, and it involves a "commercial transaction, or passing of goods from one person to another for money or other consideration";[107] or
- It is analogous to a crime punishable under certain federal drug laws[108] and would be a felony under federal law (meaning it would be punishable by more than a year in prison).[109]

(c) The first category would generally include felony convictions for drug sale or possession with intent to sell.

(d) Under the second category, courts have to look carefully at the federal drug laws (usually the Controlled Substances Act) and compare the elements of the state statute with the relevant federal statutes.[110]

(e) The following are *not* considered drug trafficking under federal law and would not be considered aggravated felonies:
- A first-time conviction (felony or misdemeanor) in state court for drug possession without intent to sell;[111]
- A second-time conviction in state court for drug possession without intent to sell, if you were not charged as a recidivist (repeat offender);[112]
- A conviction for "distributing a small amount of marihuana for no remuneration" (in other words, not in exchange for money)[113]

(6) Firearms trafficking;[114]

(7) Theft or burglary for which the penalty is at least one year in prison;[115]

(8) Crimes related to child pornography;[116]

(9) Crimes related to prostitution/sex work business;[117]

(10) Crime of fraud or deceit or tax evasion if the loss to the victim or the government is more than $10,000;[118]

(11) Some types of money laundering in excess of $10,000;[119]

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[106] This is referred to as the *Davis/Barrett* test. *See* Matter of Davis, 20 I. & N. Dec. 536 (BIA 1992); Matter of Barrett, 20 I. & N. Dec. 171 (BIA 1990).

[107] Matter of L-G-H-, 26 I. & N. Dec. 365, 371 n.9 (BIA 2014).

[108] These are the Controlled Substances Act (21 U.S.C. § 801 et seq.), the Controlled Substance Import and Export Act (21 U.S.C. § 921 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. § 70501 et seq.). *See* 18 U.S.C. 924(c)(2).

[109] *See* 18 U.S.C. § 3559(a); Lopez v. Gonzales, 549 U.S. 47, 60, 127 S. Ct. 625, 633, 166 L. Ed. 2d 462, 475 (2006).

[110] See Section C(4) below for more on how this analysis works.

[111] *See* Lopez v. Gonzales, 549 U.S. 47, 58, 127 S. Ct. 625, 633, 166 L. Ed. 2d 462, 474 (2006).

[112] *See* Carachuri-Rosendo v. Holder, 560 U.S. 563, 582, 130 S. Ct. 2577, 2589–2590, 177 L. Ed. 2d 68, 87–88 (2010).

[113] 21 U.S.C. § 841(b)(4); Moncrieffe v. Holder, 569 U.S. 184, 206, 133 S. Ct. 1678, 1693-94, 185 L. Ed. 2d 727, 748 (2013).

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

[115] INA § 101(a)(43)(G); 8 U.S.C. § 1101(a)(43)(G). Regardless of whether the conviction was a misdemeanor or a felony, both types of theft or burglary are considered aggravated 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).

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

[117] 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).

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

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

(12) ***Failure to appear*** for service of sentence, if the underlying offense is punishable by at least five years in prison;[120]
(13) Crime related to commercial bribery;[121]
(14) Crime relating to obstruction of justice, perjury (lying after taking an oath to tell the truth), subornation of perjury (getting or encouraging someone else to lie under oath), or bribery of a witness, where the sentence for the offense is one year or more in prison (felony or misdemeanor);[122]
(15) Smuggling noncitizens into the United States;[123]
(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;[124] or
(17) An attempt or conspiracy (an agreement with another person) to commit any of the crimes listed above.[125]

(b) Other Offenses That Could Make You Deportable

The following are other crimes that could make you deportable, even though they are not aggravated felonies.[126]

(i) *Controlled Substance Offenses*

You may be deportable if you have been convicted of a ***controlled substance offense***. A controlled substance offense is a "violation of, or a conspiracy or attempt to violate, any law or regulation of a State, the United States, or a foreign country relating to" a controlled substance as defined under federal law.[127] If the specific offense of which you are convicted applies to drugs that are not controlled substances under federal law (at least if the government actually prosecutes people for those drugs that aren't covered under federal law), it does not qualify as a controlled substance offense.[128] Controlled substances under federal law are listed in 21 U.S.C. § 812. Marijuana is currently included as a controlled substance. Distilled spirits, wine, malt beverages, and tobacco are not controlled substances.[129]

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

[121] Some examples of this include counterfeiting, forgery, and trafficking in vehicles with altered vehicle identification numbers, where the penalty imposed is imprisonment for one year or more (felony or misdemeanor). INA § 101(a)(43)(R); 8 U.S.C. § 1101(a)(43)(R).

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

[123] INA § 101(a)(43)(N); 8 U.S.C. § 1101(a)(43)(N). This covers any conviction under INA § 274(a)(1)(A), (2); 8 U.S.C. § 1324(a)(1)(A), (2). *See* Matter of Alvarado-Alvino, 22 I. & N. Dec. 718 (BIA 1999); Matter of Ruiz-Romero, 22 I. & N. Dec. 486 (BIA 1999). There is an exception if it is your first offense and you were *only* helping your spouse, child, or parent. INA § 101(a)(43)(N); 8 U.S.C. § 1101(a)(43)(N).

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

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

[126] Other reasons 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), security and related grounds, INA § 237(a)(4); 8 U.S.C. § 1227(a)(4), and being a ***public charge*** or an unlawful voter. INA § 237(a)(5), (6); 8 U.S.C. § 1227(a)(5), (6).

[127] INA § 237(a)(2)(B)(i); 8 U.S.C. § 1227(a)(2)(B)(i); 21 U.S.C. § 802 (listing controlled substances under federal law).

[128] *See* Mellouli v. Lynch, 575 U.S. 798, 135 S. Ct. 1980, 192 L. Ed. 2d 60 (2015).

[129] 21 U.S.C. § 802(6).

There is one exception: A conviction for a single offense involving possession of thirty grams or less of marijuana for your own use does not count as a controlled substance offense for the purpose of deportability.[130]

(ii) *Crime Involving Moral Turpitude*[131]

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."[132] Basically, CIMTs are crimes that the court thinks are especially "cruel" or "bad for society." Judges have had a hard time figuring out which crimes should be considered CIMTs because there is no clear definition or list of CIMTs in a statute. CIMTs have been defined by case law (i.e., by past court decisions). 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 much research as possible if you think the crime you were convicted of might be considered 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.

Some specific examples of CIMTs are:

(1) Voluntary manslaughter;[133]
(2) Involuntary manslaughter;[134]
(3) Tax evasion;
(4) Aggravated assault;[135]

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[130] INA § 237(a)(2)(B)(i); 8 U.S.C. § 1227(a)(2)(B)(i). If you are currently in criminal proceedings and can 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.

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

[132] Rodriguez v. Gonzales, 451 F.3d 60, 63 (2d Cir. 2006) (citing how the BIA defines a CIMT).

[133] *See* Matter of 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") (quoting Matter of Medina, 15 I. & N. Dec. 611 (BIA 1976)).

[134] A CIMT generally requires a "culpable mental state," which is whether a person knew about or intended the consequences of their crime. Whether or not involuntary manslaughter is a CIMT depends on what mental state was demonstrated in the charging court. The state must prove a level of intent or knowledge when they charge you or someone else with involuntary manslaughter. If involuntary manslaughter is charged "recklessly," then a person consciously disregarded the risk and thus has committed a CIMT. *See, e.g.*, Matter of 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."). In the case of negligently committed involuntary manslaughter, the person is assumed to be unaware of the risk and has not committed a CIMT. *See, e.g.*, Sotnikau v. Lynch, 846 F.3d 731 (4th Cir. 2017) (involuntary manslaughter under Virginia law was not CIMT because it included acts of mere criminal negligence).

[135] *See* Matter of Medina, 15 I. & N. Dec. 611, 612–614 (BIA 1976) (holding that a conviction for aggravated assault inherently involves moral turpitude where a statute requires either intent, knowledge, or recklessness).

(5) Sexual battery;[136]
(6) Spousal abuse;[137]
(7) Breaking and entering;[138]
(8) Arson;[139] and
(9) Theft[140] or fraud[141] (including welfare fraud and student loan fraud).

Drunk driving offenses without aggravating factors like intent to harm, fraud, or violence generally do not count as CIMTs. However, courts may find that drunk driving offenses that included reckless behavior or serious aggravating factors—like driving with a suspended license or causing significant injury—may be a CIMT depending on the jurisdiction.[142]

To determine whether you have been convicted of a CIMT, the judge will generally apply the "categorical approach," discussed in more detail in Section C(4) below. Basically, this means the judge will look at the elements of the crime of which you were convicted. These elements are found in the text of 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. Therefore, courts will generally not look to the facts of your case to determine whether you have been convicted of a CIMT, but instead will use the words of the criminal statute defining the crime and its elements.

It is important to get advice from your criminal defense attorney before taking a plea bargain. When you take a plea bargain, you are admitting to committing a crime. 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.

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[136] *See* Gonzales-Cervantes v. Holder, 709 F.3d 1265, 1270 (9th Cir. 2013) (upholding the BIA's determination that sexual battery is a CIMT); Gomez-Ruotolo v. Garland, 96 F.4th 670, 682 (4th Cir. 2024) (holding that conviction for attempted sexual battery was a CIMT).

[137] *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.") (citing Matter of Tobar-Lobo 24 I. & N. Dec. 143, 144 (BIA 2007)

[138] Breaking and entering is sometimes considered to be a CIMT. This in part depends on what actions are covered by the statute under which a person is charged. Courts have considered the crime a person was seeking to commit when they entered a dwelling. *See*, *e.g.*, Wala v. Mukasey, 511 F.3d. 102 (2d Cir. 2007) (holding that although Wala intended to commit larceny when he entered into the home, there were two definitions of larceny under the statute and only one was a CIMT). Other courts are stricter and hold that any intrusion into a person's home is a CIMT because it violates a person's right to privacy. *See* Uribe v. Sessions, 855 F.3d 622, 627 (4th Cir. 2017) (finding that the crime of breaking and entering is a crime involving moral turpitude); Matter of J-G-D-F-, 27 I. & N. Dec. 82, 88 (BIA 2017). When courts have not held breaking and entering to be a CIMT, they have reasoned that the statute covers too many "dwelling types" that are not likely to be occupied. *See* Matter of M-, 2 I. & N. Dec. 721, 723 (AG 1946) (offense designated as third-degree burglary; "breaking and entering … in and of itself, should not be stigmatized as base, vile or depraved" and thus not a CIMT). If a home or building has never been occupied, the act of breaking and entering may not be a CIMT. *See* Lauture v. Att'y Gen., 28 F.4th 1169 (11th Cir. 2022).

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

[140] However, theft offenses that only require intent to *temporarily* deprive someone of their property may not qualify as CIMTs. *See* Castillo-Cruz v. Holder, 581 F.3d 1154, 1159 (9th Cir. 2009) ("The BIA has held in a number of cases that a theft offense is not categorically a crime of moral turpitude if the statute of conviction is broad enough to criminalize a taking with intent to deprive the owner of his property only temporarily.").

[141] *See* Abdelqadar v. Gonzales, 413 F.3d 668, 670 (7th Cir. 2005) ("[C]rimes of deceit are the classic exemplars of moral turpitude." (citing Jordan v. De George, 341 U.S. 223, 228, 71 S. Ct. 703, 706, 95 L. Ed. 886, 890 (1951)).

[142] *See* Marmolejo-Campos v. Holder, 558 F.3d 903, 914 (9th Cir. 2009) (en banc) (holding that DUI offenses committed with the knowledge that one's driver's license has been suspended or otherwise restricted are crimes involving moral turpitude).

If you are convicted of committing a CIMT within five years of admission into the U.S. (or within ten years if you became an LPR under INA § 245(j) after receiving an S visa) and you could have been sentenced you to a prison term of one year or more (typically this means that the offense is a felony), you are deportable.[143] The actual length of your sentence does not matter as long as the court *could have* sentenced you to one year or more. If you were convicted of only one CIMT and more than five years (or ten if you are an LPR) have passed since you were admitted to the U.S., you cannot be deported on that basis. However, if you were convicted of two or more CIMTs that did not arise out of a single operation any time after the U.S. admitted you, you are deportable.[144]

(iii) *Certain Firearms Offenses*

If you have been convicted of certain firearms offenses, you are deportable.[145]

(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 are deportable.[146]

(v) *High-Speed Flight*

If you are convicted of high-speed flight from an immigration checkpoint, you are deportable.[147]

3. Inadmissibility[148]

The grounds of inadmissibility (rather than the grounds of deportability discussed above in Section C(2)) apply if you entered without inspection (EWI), if you are applying for admission at the border (for example, as an immigrant visa holder arriving for the first time), if you are applying to adjust status, or if you are a parolee. If you are an LPR, you are also subject to the grounds of inadmissibility in some circumstances when you attempt to return to the U.S. after traveling abroad, such as if you committed a crime listed in the grounds of inadmissibility (unless you have been granted a 212(h) waiver or cancellation of removal for LPRs).[149]

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143 INA § 237(a)(2)(A)(i)(I), (II); 8 U.S.C. § 1227(a)(2)(A)(i)(I), (II).

144 INA § 237(a)(2)(A)(ii); 8 U.S.C. § 1227(a)(2)(A)(ii).

145 INA § 237(a)(2)(C); 8 U.S.C. § 1227(a)(2)(C). 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).

146 INA § 237 (a)(2)(E); 8 U.S.C. § 1227(a)(2)(E).

147 INA § 237(a)(2)(A)(iv); 8 U.S.C. § 1227(a)(2)(A)(iv).

148 INA § 212; 8 U.S.C. § 1182.

149 LPRs returning from trips abroad are not considered to be "seeking admission" (and therefore will not be held inadmissible), unless they fall into one of the exceptions outlined in INA § 101(a)(13)(C); 8 U.S.C. § 1101(a)(13)(C). *See* Matter of Alcibiades Antonio Pena, 26 I. & N. Dec. 613, 619 (BIA 2015). The exceptions outlined in INA § 101(a)(13)(C); 8 U.S.C. § 1101(a)(13)(C) are: abandoning or relinquishing status, being absent from the U.S. for more than 180 days, engaging in illegal activity after departing the U.S., departing from the U.S. while undergoing a process of being removed from the country, committing an offense under INA 212(a)(2); 8 U.S.C. §1182(a)(2), attempting to enter the U.S. at a time or place different than the one specified by an immigration officer or not being admitted to the U.S. after inspection or authorization by an immigration officer. If you are an

You are inadmissible to the U.S. if you do not have the necessary permission to enter. This can be true even if a court has not convicted you of a crime. For instance, you may be inadmissible if you entered the U.S. without being admitted or paroled, you used fraud or misrepresentation to try to get a visa or other documentation, or you entered the U.S. without a valid entry document such as a visa.[150] However, this section focuses on individuals who are inadmissible because a court has convicted them of a crime.

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," so you are not inadmissible.[151] If already present in the U.S., you must show "by clear and convincing evidence" that you were lawfully admitted.[152]

(a) Criminal Grounds for Inadmissibility

There are many grounds for inadmissibility.[153] Criminal reasons for inadmissibility[154] are often raised when an LPR with a criminal conviction travels abroad and is stopped at an inspection point upon return. If you are an LPR with a criminal conviction, you may already be at risk of deportation. However, attempting to reenter the U.S. makes you inadmissible.

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

(i) *CIMTs*

For the purposes of inadmissibility, CIMTs are defined in the same way they are defined for deportability, explained in Subsection C(2)(b)(ii) above. However, you can be found inadmissible if you admit to committing the crime or all the elements of the crime, even if you were never convicted.[155] On

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LPR and have committed an offense that constitutes a criminal ground of inadmissibility, and you have not been granted a 212(h) waiver or cancellation of removal [insert cross-references], you may be found inadmissible after returning from any trip abroad. INA § 101(a)(13)(C); 8 U.S.C. § 1101(a)(13)(C). If, however, the offense occurred before April 1, 1997, you may return from a brief trip abroad without having to apply for admission to the U.S. and being subject to the grounds of inadmissibility for that offense. *See* Vartelas v. Holder, 566 U.S. 263, 132 S. Ct. 1485,182 L. Ed. 2d 483 (2012).

[150] *See* INA § 212(a)(6)(A)(i), (C)(i), (7)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i), (C)(i), (7)(A)(i).

[151] 8 C.F.R. § 1240.8(b) (2024); INA § 239a(c)(2)(A); 8 U.S.C. § 1229a(c)(2)(A).

[152] 8 C.F.R. § 1240.8(c) (2024); INA § 239a(c)(2)(B); 8 U.S.C. § 1229a(c)(2)(B).

[153] *See* INA § 212(a); 8 U.S.C. § 1182(a). 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 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. *See* INA § 212(a); 8 U.S.C. § 1182(a); HIV Ban End & HIV-Based Immigration, available at https://immigrationequality.org/legal/legal-help/people-living-with-hiv/ (last visited Dec. 15, 2024).

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

[155] INA § 212(a)(2)(A)(i); 8 U.S.C. § 1182(a)(2)(A)(i). To be considered a valid "admission" for inadmissibility purposes, you must be "given an adequate definition of the crime, including all essential elements" and the crime must be explained to you "in understandable terms." Matter of K-, 7 I. & N. Dec. 594, 597 (BIA 1957).

the other hand, 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 (also referred to as the "youthful offender exception"): (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.[156] 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, (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, **and** (c) you must not actually have been sentenced to more than six months in prison.[157]

(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.[158]

(iii) *Any Controlled Substance Offense*

If you are convicted of violating (or a conspiracy or attempt to violate) any law relating to a federally-controlled substance, you are inadmissible. See the discussion of controlled substances offenses in Section C(2)(b)(i) above for details on controlled substances. However, as with CIMTs, you can be found inadmissible based on an admission of the crime, even without a conviction.[159] Additionally, there is no exception for a single offense for thirty grams or less of marijuana for personal use, like there was under deportability.[160]

(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.[161]

(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.[162]

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[156] *See* INA § 212(a)(2)(A)(ii)(I); 8 U.S.C. § 1182(a)(2)(A)(ii)(I).
[157] *See* INA § 212(a)(2)(A)(ii)(II); 8 U.S.C. § 1182(a)(2)(A)(ii)(II).
[158] INA § 212(a)(2)(B); 8 U.S.C. § 1182(a)(2)(B).
[159] INA § 212(a)(2)(A)(i); 8 U.S.C. § 1182(a)(2)(A)(i).
[160] *See* INA § 212(a)(2)(C); 8 U.S.C. § 1182(a)(2)(C). It is still relevant whether the conviction is a single conviction for 30 grams or less of marijuana for personal use, as you could then be eligible for 212(h) waiver, discussed below.
[161] *See* INA § 212(a)(7)(A)(i); 8 U.S.C. § 1182(a)(7)(A)(i).
[162] *See* INA § 212(a)(6)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i).

4. How Do I Know if My Conviction Makes Me Removable?

The "Categorical Approach"

To figure out if your conviction falls into a category of crimes that have negative immigration consequences (aggravated felony, CIMT, controlled substance offense, etc.), courts generally use what is called the "***categorical approach***."[163] This means that they do not look at the specific facts behind your conviction, but rather see if there is a categorical match between your statute of conviction and the federal removal offense.

There are three basic steps to the categorical approach:

First, identify the elements of the federal removal offense. Sometimes the removal statute will point to a federal criminal statute, often a statute within Title 18 of the United States Code. For example, some categories of aggravated felonies identify specific federal criminal statutes involving money laundering, firearms offenses, child pornography, tax evasion, etc. In those cases, you would look up that statute to see what are the elements of that offense.

Other removal offenses reference a more "generic" category of crime. For example, other categories of aggravated felonies use general terms such as "murder, "rape," "theft offense," or "burglary offense." In those cases, you need to determine the generic federal definition of that crime by looking at case law from the BIA and federal courts. "Crimes involving moral turpitude" (CIMTs) are also defined by case law, rather than by referring to any particular federal criminal statute.[164]

Second, identify the elements of your statute of conviction. To do this, do not look at the specific facts of your case, but rather look at the statute that you were convicted under.

Third, compare the elements of your statute of conviction and the federal removal offense.

If all of the elements of your statute of conviction are included within the federal removal offense, then there is a categorical match. In other words, if every conviction under your statute of conviction would also violate the federal removal offense, there is a categorical match. This means your conviction meets the definition of the federal removal offense.

If, instead, your statute of conviction covers some conduct outside of the federal removal offense, there is likely not a categorical match. In other words, if there is some *minimum conduct* that would violate the statute you were convicted under without violating the federal removal offense, then there is likely not a categorical match.

If you think you have found some minimum conduct that would violate the statute of conviction but would be outside the federal removal offense, you must show that there is "a realistic probability, not a theoretical possibility," that the government would actually apply your statute of conviction to that conduct that falls outside the definition of the federal removal offense.[165]

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[163] *See, e.g.*, Matter of Silva-Trevino, 26 I. & N. Dec. 826 (BIA 2016) ("Silva-Trevino III") (CIMTs); Moncrieffe v. Holder, 569 U.S. 184, 133 S. Ct. 1678, 185 L. Ed. 2d 727 (2013) (aggravated felonies); Mellouli v. Lynch, 575 U.S. 798, 135 S. Ct. 1980, 192 L. Ed. 2d 60 (2015) (controlled substance offenses).

[164] See Subsection C(2)(b)(ii) above for a discussion of what counts as a CIMT.

[165] Moncrieffe v. Holder, 569 U.S. 184, 191, 133 S. Ct. 1678, 1685, 185 L. Ed. 2d 727, 739 (2013) (quoting Gonzales v. Duenas-Alvarez, 549 U.S. 183, 193, 127 S. Ct. 815, 822, 166 L. Ed. 2d 683, 693 (2007)).

Most circuit courts have held that you do not have to show that the government would actually prosecute that conduct if the statute explicitly includes that minimum conduct.[166] However, the BIA has held that this rule applies every time; in other words, you must always point to an example of the government prosecuting the conduct that falls outside of the federal removal offense.[167] Regardless of which circuit you are in, the safest approach is to try to point to specific instances of the government prosecuting that minimum conduct. You can do this by pointing to the facts of your own conviction if you were convicted of that conduct outside of the federal removal offense, or you can point to published or unpublished cases describing someone else's conviction.[168] If you cannot find either of these, you could try to get a sworn statement from an attorney saying that they have seen instances of that minimum conduct being prosecuted.

The "Modified Categorical Approach"

If you think there is not a categorical match, you next need to check if you were convicted under a statute that is "divisible," meaning it lists multiple different offenses. If the statute is divisible and at least one of the offenses within it is a categorical match to the federal removal offense, courts use what is called the "***modified categorical approach***." This means they would apply the categorical approach discussed above to the specific *offense* you were convicted of, rather than the whole *statute* you were convicted under.

It can be difficult to tell if a statute is divisible or not. The basic standard is that it is divisible if it lists different *elements*, which require jury unanimity and must be proven beyond a reasonable doubt to convict.[169] In contrast, a statute is not divisible if it lists different *means*, which are different ways to satisfy an element.

Several sources may be helpful to tell if the statute is divisible:

- State case law and model jury instructions
    - State case law may explain whether certain statutory provisions require unanimous jury verdicts (and therefore are elements).[170] Model jury instructions might also suggest an answer to this and provide citations to cases.
- Statutory language
    - The statute might explicitly say what must be charged (elements – divisible) and what doesn't need to be (means – not divisible).[171]
    - If the statute uses language like "including" or "such as," which suggest a list of "illustrative examples," this suggests they are means (statute not divisible).[172]
- Sentencing exposure
    - If the different provisions of the statute would lead to different potential punishments, then they are elements (divisible statute).[173]

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166 *See* Swaby v. Yates, 847 F.3d 62, 66 & n.2 (1st Cir. 2017); Hylton v. Sessions, 897 F.3d 57, 63-64; (2d Cir. 2018); Jean-Louis v. Att'y Gen., 582 F.3d 462, 481 (3d Cir. 2009); Chavez-Solis v. Lynch, 803 F.3d 1004, 1009–1010 (9th Cir. 2015); United States v. Titties, 852 F.3d 1257, 1275 (10th Cir. 2017).

167 Matter of Ferreira, 26 I. & N. Dec. 415, 419 (BIA 2014).

168 *See* Gonzales v. Duenas-Alvarez, 549 U.S. 183, 193, 127 S. Ct. 815, 822, 166 L. Ed. 2d 683, 693 (2007).

169 *See* Mathis v. United States, 579 U.S. 500, 517, 136 S. Ct. 2243, 2256, 195 L. Ed. 2d 604, 619 (2016).

170 *See* Mathis v. United States, 579 U.S. 500, 517–518, 136 S. Ct. 2243, 2256, 195 L. Ed. 2d 604, 619 (2016).

171 *See* Mathis v. United States, 579 U.S. 500, 518, 136 S. Ct. 2243, 2256, 195 L. Ed. 2d 604, 619 (2016).

172 Mathis v. United States, 579 U.S. 500, 518, 136 S. Ct. 2243, 2256, 195 L. Ed. 2d 604, 619 (2016).

173 *See* Mathis v. United States, 579 U.S. 500, 518, 136 S. Ct. 2243, 2256, 195 L. Ed. 2d 604, 619 (2016).

- Your record of conviction
    - If the other sources don't show whether the statue is divisible, the court can "peek" at certain documents from your ***record of conviction*** (discussed below) to determine if the statute is divisible. For example, if the charging document (e.g., the indictment or information) lists several statutory alternatives, those are means (statute not divisible). If the statute is not divisible, the court can't use the facts of your specific case.

If your statute of conviction is not divisible, that is the end of the analysis.[174] If there is no categorical match and the statute is not divisible, your conviction isn't covered by the federal removal ground.

If your statute of conviction is divisible, courts can look at your ***record of conviction*** to see which offense you were convicted under. Your ***record of conviction*** includes a narrow set of documents called "***Shepard documents***."[175] These include the jury instructions, charging documents, plea agreement, and transcript of the plea colloquy, but generally does *not* include police reports unless explicitly stipulated as the basis for the plea.[176]

Once it is clear which offense you were convicted under, the court will apply the usual categorical approach to that offense to see if it is a categorical match to the federal removal offense.

Who has to show which offense you were convicted under? If the government has the burden of proof with respect to whether you have a particular kind of conviction, then it is their burden to show which offense you were convicted of within the divisible statute. This applies if the question is whether you are deportable under INA § 237.[177]

In contrast, if you have the burden of proof with respect to whether you have a particular kind of conviction, then you have to show which offense you were convicted of within the divisible statute in order to meet your burden.[178] In other words, you must show that your conviction was for an offense that is not a categorical match to the federal removal offense. This applies if the question is whether you are eligible for various forms of relief.[179]

The "Circumstance-Specific Approach"

There are a few situations where the categorical approach does not apply. These generally involve situations where the relevant federal statute has a specific number amount or another specific requirement that is unlikely to be found in a criminal statute or charging document. Courts have used a circumstance-specific approach, meaning they *will* look at the specific facts of your case, in these circumstances:

- To determine if a fraud offense met the $10,000 loss threshold to count as an aggravated felony under INA 101(a)(43)(M)(i);[180]
- To determine if drug conviction involved personal use of 30 grams or less of marijuana;[181]

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[174] *See* Descamps v. United States, 570 U.S. 254, 277–278, 133 S. Ct. 2276, 2293, 186 L. Ed. 2d 438, 462 (2013).

[175] *See* Shepard v. United States, 544 U.S. 13, 16, 125 S. Ct. 1254, 1257, 161 L. Ed. 2d 205, 211 (2005).

[176] *See* Shepard v. United States, 544 U.S. 13, 16, 125 S. Ct. 1254, 1257, 161 L. Ed. 2d 205, 211 (2005).

[177] *See* INA § 240(c)(3)(A); 8 U.S.C. § 1229a(c)(3)(A).

[178] Pereida v. Wilkinson, 592 U.S. 224, 236, 141 S. Ct. 754, 763, 209 L. Ed. 2d 47, 62 (2021).

[179] *See, e.g.*, INA §§ 208(b)(1)(B)(i), 240(c)(2), (4)(A); 8 U.S.C. §§ 1158(b)(1)(B)(i), 1229a(c)(2), (4)(A); 8 C.F.R. §§ 208.16(b), (c)(2), 1208.16(b), (c)(2).

[180] Nijhawan v. Holder, 557 U.S. 29, 36, 129 S. Ct. 2294, 2300, 174 L. Ed. 2d 22, 28 (2009).

[181] Matter of Davey, 26 I. & N. Dec. 37, 39 (BIA 2012).

- To assess the domestic nature of a relationship to determine if a violent crime was a crime of domestic violence;[182]
- To determine if the family exception to the smuggling aggravated felony applied;[183]
- To determine if a conviction of transportation for the purpose of prostitution was committed for "commercial advantage";[184]
- To determine the nature of a violation of a protection order for the purposes of the deportability ground in INA 237(a)(2)(E)(ii).[185]

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 can 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 the government finds and places people 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.[186] DHS will then likely start removal proceedings against you.[187]

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[182] Matter of H. Estrada, 26 I. & N. Dec. 749, 753 (BIA 2016).

[183] United States v. Guzman-Mata, 579 F.3d 1065 (9th Cir. 2009).

[184] Matter of Gertsenshteyn, 24 I. & N. Dec. 111, 114 (BIA 2007).

[185] Matter of Obshatko, 27 I. & N. Dec. 173, 176–177 (BIA 2017).

[186] 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. *Deferred Inspection Sites*, U.S. Customs and Border Protection, *available at* https://www.cbp.gov/about/contact/ports/deferred-inspection-sites (last visited Sept. 30, 2024). 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 permanent resident card (Green Card) or other documents related to immigration) to see if your court date has been set.

[187] 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*?, Immigration Legal Resource Center, *available at* https://www.ilrc.org/sites/default/files/resources/mandatory_detention_ice_hold_policy_handout.pdf (last visited Sept. 30, 2024). 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.

Because there is no statute of limitations (time limit) on removal 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 to another country to make sure that you will be able to reenter the U.S. without facing any immigration consequences.

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, they may place a "detainer" on you. Basically, a detainer is a government order saying that you will be in their ***detention***, although they cannot hold you in prison or jail right now. For example, if DHS hold you in their own prison or jail cell right away because you are in prison, they will use a detainer to make sure that they can detain you in a DHS facility soon.[188] 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.[189] 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[190]) 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 faraway out-of-state facilities without prior notice to the detainees, their families, or their lawyers.[191] Although new rules were set in 2012 to try to decrease detainee transfers, you should keep the possibility of a transfer in mind.[192]

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[188] *See* Immigration Detainer, ACLU, *available at* https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses/immigration-detainers (last visited Sept. 30, 2024).

[189] 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) (2024). 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 them to file a writ of habeas corpus with the state court demanding your release from immigration detention.

[190] At this point, you are no longer considered a prisoner. You are an immigration detainee. 8 C.F.R. § 287.7(d) (2024). Although some detainees are held in regular prisons, immigration detainees have fewer rights than prisoners. *See e.g.*, Access to Counsel in Immigration Court, American Immigration Council, *available at* https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court (last visited Sept. 30, 2024) (stating that "immigrants have a right to counsel in immigration court, but that expense has generally been borne by the noncitizen").

[191] *See* U.S.: Remote Detainee Lockups Hinder Justice, Human Rights Watch, *available at* https://www.hrw.org/news/2009/12/02/us-remote-detainee-lockups-hinder-justice (last visited Sept. 24, 2024).

[192] *See* Update: ICE Limits Immigrant Detainee Transfers, Human Rights Watch, *available at* https://www.hrw.org/news/2012/05/22/update-ice-limits-immigrant-detainee-transfers (last visited Sept. 30, 2024).

3. Immigration Applications

Most, if not all, applications[193] to the ***United States Citizenship and Immigration Services*** **(*"USCIS"*)** now require security clearances and fingerprints as part of the application process.[194] Once USCIS has received your immigration application, it determines whether you have any criminal convictions that happened anywhere in the U.S., even if they were 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 happened. If you have a criminal conviction that makes you ***deportable*** or ***inadmissible***,[195] your application will likely be denied and you may be placed in removal proceedings.

4. Prior Orders of Deportation

DHS also tries to detain 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 go to court for your scheduled court date, you may have been ordered deported in your absence.[196] 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 learn more 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 considered "criminal" law; it is considered "civil" law. Immigration detention might seem harsh, but it is technically not considered punishment because immigration law is civil law. This means you have 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.[197] The ICE arresting agent must inform you of this right when he

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[193] These include, but are not limited to, applications for U.S. citizenship, renewal of green cards, employment authorizations and petitions for family members. *See* Preparing for Your Biometric Services Appointment, USCIS, *available at* https://www.uscis.gov/forms/forms-information/preparing-your-biometric-services-appointment (last visited Sept. 30, 2024).

[194] *See USCIS International Biometric Processing Services*, Homeland Security, *available at* https://www.dhs.gov/publication/dhsuscispia-048-uscis-international-visa-project (last visited Dec. 14, 2024).

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

[196] 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.

[197] *See* Know Your Rights: What to Do if You Are Arrested or Detained by Immigration, *available at* https://www.nilc.org/resources/know-your-rights-what-to-do-if-arrested-detained-immigration/ (last visited Sept. 20, 2024).

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 in prison or jail 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 or criminal record, you may be forced to stay in detention ("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. This means you will not be released on bond. You will stay in the detention center until your immigration case is decided. If you lose the case and are ordered to leave the U.S., you will stay in the detention center until you are deported.

If you are a non-USC and you have been convicted of certain crimes (such as having a gun), you will be detained.[198] In 2000, the ***Board of Immigration Appeals*** (***BIA***) decided that if you were released from jail after criminal arrest (even if you were not sentenced to jail time) after October of 1998, you are subject to mandatory detention.[199] In 2003, the Supreme Court decided the government is allowed to keep non-USCs who have been convicted of any of the crimes listed below in mandatory detention without the opportunity to be released on bond.[200] So, if you were convicted of any of the crimes listed below and released from physical custody after October 1998, you are subject to mandatory detention and cannot get bond.[201] If you are in this situation, you will have to fight your removal case while inside the detention enter.

If the government claims that you are subject to mandatory detention as described below, but you believe that you are not actually subject to mandatory detention (e.g., you have not actually been convicted of a crime that the government claims you have been convicted of), you can request a hearing to challenge your detention, referred to as a "*Joseph* hearing."[202]

(a) Mandatory Detention of Inadmissible Non-USCs

If you are an inadmissible non-USC (you are not legally allowed to enter the U.S.), you are subject to mandatory detention if you have committed any offense listed in INA § 212(a)(2).[203] Some of the crimes 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.

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198 INA § 236(c); 8 U.S.C. § 1226(c).

199 Matter of West, 22 I. & N. Dec. 1405, 1407 (BIA 2000) (holding that only noncitizens released from criminal custody after October 8, 1998, are subject to mandatory detention); Matter of Roman Kotliar, 24 I. & N. Dec. 124, 135 (BIA 2007) (finding that a noncitizen who is released from criminal custody after October 8, 1998, is subject to mandatory detention even if no jail term was served).

200 Demore v. Kim, 538 U.S. 510, 531, 123 S. Ct. 1708, 1722, 155 L. Ed. 2d 724, 734 (2003) (finding that a noncitizen convicted of a crime can be held in detention without bond procedures).

201 *See* Nielsen v. Preap, 586 U.S. 392, 413–414, 139 S. Ct. 954, 968, 203 L. Ed. 2d 333, 352 (2019).

202 *See* 8 C.F.R. § 1003.19(h)(2)(ii); Matter of Joseph, 22 I. & N. Dec. 799 (BIA 1999).

203 INA § 236(c)(1)(A); 8 U.S.C. § 1226(c)(1)(A).

Additionally, under a recent law, you are subject to mandatory detention if you are both inadmissible under INA § 212(a)(6)(A) (EWI), (C) (fraud or misrepresentation), or (7) (lack of valid entry documents) and: you are "charged with, … arrested for, … convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person."[204]

(b) Mandatory Detention of Deportable Non-USCs

If you are a deportable non-USC, you are subject to mandatory detention if you have committed any offense listed in INA § 237(a)(2)(A)(ii) (two or more CIMTs not arising out of a single scheme of criminal misconduct), (A)(iii) (aggravated felony), (B) (controlled substance offense, with an exception for a single offense involving possession of 30 grams or less of marijuana for personal use), (C) (firearms offense), or (D) (misc. federal crimes, mostly related to national security).[205] Additionally, you are subject to mandatory detention if you are deportable under INA § 237(a)(2)(A)(i) (single CIMT) if your prison sentence was at least one year.[206]

You are also subject to mandatory detention if you are inadmissible or deportable for terrorism-related reasons.[207]

2. Bond[208]

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.[209] 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.[210]

(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 United States from abroad.[211]

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[204] INA § 237(c)(1)(E); 8 U.S.C. § 1226(c)(1)(E).

[205] INA § 236(c)(1)(B); 8 U.S.C. § 1226(c)(1)(B).

[206] INA § 236(c)(1)(C); 8 U.S.C. § 1226(c)(1)(C).

[207] INA § 236(c)(1)(D); 8 U.S.C. § 1226(c)(1)(D).

[208] INA § 236(a)(2); 8 U.S.C. § 1226(a)(2) 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.

[209] *See* INA § 236(a)(2); 8 U.S.C. § 1226(a)(2).

[210] 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 Sep. 27, 2024).

[211] 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

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***.[212] A flight risk is someone who is likely to run away and never return to immigration court. A danger to society is someone who the government believes is likely to commit crimes if released. 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.[213]

(c) Relevant Evidence to Submit

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. Basically, 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 attendance certificates of attendance at drug or alcohol rehabilitation programs and letters from your counselors, therapists, or sponsors. Sometimes proof of involvement in a religious

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alien interdicted in international or United States waters and brought into the United States by any means . . . ." 8 C.F.R. § 1001.1(q) (2024).

[212] *See* Matter of Ellis, 20 I. & N. Dec. 641, 643 (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.

[213] 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. This is because records of bond proceedings are kept separate and apart from records filed in other removal proceedings. *See* 9.3 Bond Proceedings, Executive Office for Immigration Review U.S. Department of Justice, available at https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3 (last visited Nov. 19, 2024).

or civic organization or church group may also prove that you have been rehabilitated. You should obtain letters or ***affidavits*** (sworn statements) from other group members who can attest to your good moral character.

(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.

3. Bond Appeal

If you disagree with the judge's determination in your bond request, you may file a bond appeal with the BIA.[214] 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.[215] 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.[216] 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, and all the most common ones are 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 (where applicable).

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

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[214] 8 C.F.R. § 1003.19(f) (2024). When the judge decides your appeal, they 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.

[215] 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(c)(1), 1003.19(d) (2024).

[216] *See* 8 C.F.R. § 1003.19(i)(2) (2024).

the U.S.[217] 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.[218] For each application, read all 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.[219] To do this, you must explain in writing how much money 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 generally 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. Certain types of criminal convictions, such as aggravated felonies, will make you ineligible for certain forms of relief. 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 basic eligibility requirements, most forms of relief have at least one more in-depth, fact-specific, and potentially subjective standard that you have to meet. Unlike the eligibility requirements, the standard is not a simple fact (for example, 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

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[217] The exception to this is voluntary departure, discussed later in Subsection F(5)(h) of this Chapter. If you are granted voluntary departure, you still must leave the U.S. within a specific amount of time and at your own expense. *See* Voluntary Departure, available at https://www.justice.gov/eoir/page/file/1480811/dl (last visited Nov. 19, 2024).

[218] For each application, read all 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."

[219] *See* Fee Waivers and Fee Exemptions, *available at https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-4* (last visited Nov. 18, 2024). 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."

a removal for an LPR, you must convince the immigration judge that the positive discretionary factors in your life outweigh the negative factors.[220] For cancellation of removal for non-LPRs, you must prove that removing you from the U.S. "would result in exceptional and extremely unusual hardship" to your USC or LPR spouse, parent, or child.[221] For asylum, you must prove that you are "unable or unwilling to return to" your country of nationality "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[222]

Since the standard requires the immigration judge to make a difficult and subjective decision, they 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 evidence you present, and, ultimately, to decide whether you meet the standard and therefore are eligible to stay in the U.S.

4. Discretionary Factors and Evidence

Some forms of relief allow the judge to exercise discretion in choosing whether to grant you relief, even if you meet all the other requirements. For those forms of relief, this Section will discuss relevant discretionary factors, which are facts or circumstances that the judge has the option of weighing when making a decision.

For all types of relief, it is critical that you provide evidence to support your application. This might include witness testimony, medical reports, police reports, photographs, and a range of supporting documents. You need evidence to prove that you meet all of the requirements for the particular form of relief, including the basic eligibility requirements and the standard(s).

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 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[223]

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/eoir/page/file/904286/dl (last visited Dec. 29, 2024).

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[220] *See Immigrant Detention and Removal: A Guide for Detainees and their Families*, National Immigration Law Center at 15, 20, *available at* https://www.nilc.org/wp-content/uploads/2015/12/detentionremovalguide_2006-02.pdf (last visited Sept. 28, 2024).

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

[222] INA § 101(a)(42); 8 U.S.C. § 1101(a)(42).

[223] INA § 240A(a); 8 U.S.C. § 1229b(a).

(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;[224]
(2) You came to the U.S. legally (under any immigration status)[225] and lived in the U.S. continuously for seven years after you came. Your continuous residence can end in two different ways (this is known as the "stop-time" rule):[226]
    - The date you received a notice to appear (NTA). Your notice to appear must come in the form of a single document for it to legally "end" your residency. It must include the type of proceedings, the charges against you, the fact that you have the right to an attorney, and the time and place where the proceedings will take place all within that single document.[227]
    - The date you committed an offense that is listed in the criminal grounds of inadmissibility. This is true even if your removal proceedings are brought years later and are related to another completely separate crime.[228] For example, 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.
(3) You have not been convicted of an aggravated felony;
(4) You have not previously received cancellation of removal, a 212(c) waiver, or suspension of deportation under former INA § 244(a).;[229] and
(5) You are not a terrorist, crewman, or exchange visitor.[230]

(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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[224] This means that at least five years have passed since your green card was issued.

[225] 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.

[226] *See* INA § 240A(d)(1); 8 U.S.C. § 1229b(d)(1).

[227] *See* Niz-Chavez v. Garland, 593 U.S. 155, 159, 172, 141 S. Ct. 1474, 209 L. Ed. 2d 433 (2021).

[228] *See* Barton v. Barr, 590 U.S. 222, 226, 140 S. Ct. 1442, 206 L. Ed. 2d 682 (2020).

[229] INA § 240A(c)(6); 8 U.S.C. § 1229b(c)(6).

[230] *See* INA § 240A(c); 8 U.S.C. § 1229b(c) for a complete list of noncitizens who are not eligible for this form of relief. "Terrorist," as defined in INA § 501; 8 U.S.C. § 1531 is any noncitizen described in INA § 212(a)(3)(B); 8 U.S.C. § 1182(a)(3)(B). "Crewman" is defined in INA § 101(a)(10); 8 U.S.C. § 1101(a)(10), and "exchange visitor" is defined in INA § 101(a)(15)(J); 8 U.S.C. § 1101(a)(15)(J).

(iii) *Discretionary Factors and Relevant Evidence to Submit*[231]

Examples of positive discretionary factors that you should emphasize are: family ties within the U.S., long-term residency in the U.S., potential hardship that would be caused to you or your family by deportation, military service, employment history, property or business ties, value and service to the community, proof of rehabilitation (signs of personal improvement) if you have a criminal record, and any other evidence of good character.[232] Examples of negative discretionary factors that you may have to address are: significant violations of domestic immigration laws, your criminal record (including how recent and how serious), and any other evidence indicating bad character.[233]

These are examples of evidence you can use to establish some of the positive discretionary factors:[234]

(1) You can prove you have lived long-term in the U.S.[235] 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[236] 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[237] by presenting copies of your yearly tax returns and/or a printout of your tax records from the Internal Revenue Service (IRS). If you have never paid taxes or did not pay for a particular year, you can fix this by paying back taxes.[238]

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231 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: Matter of C-V-T-, 22 I. & N. Dec. 7, 11–13 (BIA 1998) (listing positive and negative factors); Matter of Edwards, 20 I. & N. Dec. 191, 195–196 (BIA 1990) (stating that a clear showing of rehabilitation is not absolutely required for persons with criminal records to obtain relief); Matter of Arreguin, 21 I. & N. Dec. 38, 39–42 (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); Matter of Burbano, 20 I. & N. Dec. 872, 875–876 (BIA 1994) (explaining that an applicant with a lengthy criminal record must show unusual or outstanding equities (positive factors), which the Board did not find in this case); Matter of Roberts, 20 I. & N. Dec. 294, 301–302 (BIA 1991) (explaining that the immigration judge cannot grant relief because they are unsure if the applicant was actually guilty of selling cocaine; instead, the applicant must show unusual or outstanding equities (positive factors) to make up for their crime and have a chance at relief).

232 Matter of C-V-T-, 22 I. & N. Dec. 7, 11 (BIA 1998).

233 Matter of C-V-T-, 22 I. & N. Dec. 7, 11 (BIA 1998).

234 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.

235 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.

236 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.

237 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.

238 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.

(5) You can show that you are a good person who helps others. You can do this by having people from your church group, civic organization (any group that improves the community), or community service group write letters about your good qualities and how you have helped people.
(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[239]

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 https://www.justice.gov/eoir/page/file/904291/dl (last visited Dec. 29, 2024). If the immigration judge approves your application, they may change 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 already an LPR;
(2) You have been "physically present" in the U.S. for at least the past ten years[240] and did not leave the country for more than 90 days straight or more than 180 days total[241];
    - The "stop-time rule" for LPR cancellation discussed in Subsection F(5)(a)(i) also applies to this "physical presence" requirement.[242] In other words, continuous physical presence ends as soon as you either receive a single complete Notice to Appear (NTA)[243] or you commit a crime that is listed in the criminal grounds of inadmissibility.[244]
(3) You have been a person of "***good moral character***" while you have been here;
    - The statute lists several reasons that automatically make you considered not a person of "good moral character," including: you get drunk regularly; you were incarcerated for at least 180 days total during the time period; you committed certain crimes during the time period (a CIMT, multiple crimes resulting in at least five years of incarceration, or a controlled substance offense except for a single conviction for 30 grams or less of marijuana for personal use); you engaged in prostitution; you gave false testimony to obtain immigration benefits; or you were *ever* convicted of an aggravated felony.[245] In addition,

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irs.gov/pub/irs-pdf/p594.pdf (last visited Sept. 28, 2024). You can download tax forms for previous years at Prior Year Forms and Instructions, *available at* https://apps.irs.gov/app/picklist/list/priorFormPublication.html (last visited Sept. 28, 2024).

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

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

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

[242] *See* INA § 240A(d)(1); 8 U.S.C. § 1229b(d)(1).

[243] *See* Niz-Chavez v. Garland, 593 U.S. 155, 159, 172, 141 S. Ct. 1474, 209 L. Ed. 2d 433 (2021).

[244] *See* Barton v. Barr, 590 U.S. 222, 226, 140 S. Ct. 1442, 206 L. Ed. 2d 682 (2020).

[245] *See* INA § 101(f); 8 U.S.C. § 1101(f).

an immigration judge balances other positive and negative factors relating to your life.[246] Drunk driving convictions are particularly likely to lead to the judge finding that you do not have good moral character.

(4) You have not been convicted of any crimes under INA §§ 212(a)(2) or 237(a)(2)–(3) (petty offenses are fine, but CIMTs, controlled substance violations, multiple convictions with sentences that total up to five years or more, prostitution, and ***commercialized vice*** offenses are all crimes that will make you fail this requirement).[247]

(ii) *Standard*

You must establish that your deportation will result in "exceptional and extremely unusual hardship" to your USC or LPR spouse, parent, child, or children.[248] This is a difficult standard to meet. You must show that the hardship to your qualifying relative(s) would be "substantially" beyond the ordinary hardship that would be expected when a close family member leaves the country, although the hardship does not need to be "unconscionable."[249] Immigration judges can consider the age, health, and circumstances of your qualifying relative(s) in evaluating the level of hardship.[250] Relevant factors may include your relative(s)'s unfamiliarity with the language and life in the return country, their complete dependence on you for financial support, their lack of any family in the return country, and their inability to immigrate to the U.S. otherwise due to long visa backlogs.[251]

(iii) *Relevant Evidence to Submit*

These are examples of evidence that may be useful to meet the standard:

(1) Proof of Spouse, Parent, Child, or Children in the U.S.[252]
   (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) We do not want to ignore the hardship you will suffer from getting deported. But legally, this factor only considers the hardship your USC or LPR family members would experience from your 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.

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246 *See* Matter of Sanchez-Linn, 20 I. & N. Dec. 362 (BIA 1991).

247 See Part C above for a discussion of the most common criminal grounds of inadmissibility and deportability. See INA §§ 212(a)(2), 237(a)(2)–(3); 8 U.S.C. § 1182(a)(2); 8 U.S.C. § 1227(a)(2)–(3) for a complete list of offenses which make you ineligible for this form of relief.

248 INA § 240A(b)(1)(D); 8 U.S.C. § 1229b(b)(1)(D).

249 *See* Matter of Monreal-Aguinaga, 23 I. & N. Dec. 56, 61–62 (BIA 2001).

250 Matter of Monreal-Aguinaga, 23 I. & N. Dec. 56, 63 (BIA 2001).

251 *See* Matter of Recinas, 23 I. & N. Dec. 467, 469–472 (BIA 2002) (finding the standard met based on combination of all these factors).

252 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.

(c) You should also obtain letters, affidavits, and financial records (including bank statements) to show that your family members need your financial or emotional support.[253]

The immigration judge also has discretion in making their final decision whether to grant you cancellation of removal. This analysis may overlap with deciding whether you have been a person of good moral character and whether you met the "exceptional and extremely unusual hardship" standard. However, you should also present other evidence of good character and address negative factors such as any criminal record.

(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")[254]

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/eoir/page/file/904291/dl (last visited Dec. 29, 2024). If the immigration judge approves your application, they 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 lived in the U.S., and did not leave the country for more than 90 days straight or more than 180 days total[255] and you have been a person of good moral character while you were here;[256]
(4) You have not been convicted of an offense under INA § 212(a)(2)–(3);[257]
(5) You have not been convicted of marriage fraud[258] or any offenses under INA § 237(a)(2)–(4);[259]

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[253] 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.

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

[255] INA § 240A(d)(2); 8 U.S.C. § 1229b(d)(2). The "stop-time rule" discussed in Subsections F(5)(a)(i) and (b)(i) above does not apply here.

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

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

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

[259] This statute makes a person deportable if they are convicted of a CIMT that occurs within five (5) years of their entry to the United States, or ten (10) years of your entry if you are granted lawful permanent resident status. If multiple you have been convicted of CIMTs that are not from the same criminal event, then there is no time limit on deportability. Additional crimes deportable under this statute include, but are not limited to, 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(a).

(6) You have not been convicted of an aggravated felony;[260] and
(7) Removal would result in extreme hardship to you, your child, or your parent.[261]

(ii) *Standard*

You must show that you or your children have been battered and/or subject to "extreme cruelty."[262]

(iii) *Relevant Evidence to Submit*

These are examples of evidence that may be useful to meet the standard:

(1) Proof of Child in the U.S.[263]
   (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[264]
   (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 sworn statements 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 proof that you 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 specific incidents.

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260 INA § 240A(b)(2)(A)(iv); 8 U.S.C. § 1229b(b)(A)(iv). See INA § 240A(c); 8 U.S.C. § 1229b(c) for a list of non-citizens who are ineligible for this form of relief.

261 INA § 240A(b)(2)(A)(v); 8 U.S.C. § 1229b(b)(2)(A)(v). 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 5–6, 8–11, *available at* http://library.niwap.org/wp-content/uploads/IMM-Man-Ch9-VAWACancellationofRemoval.pdf (last visited Sept. 20, 2024).

262 "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) (2024).

263 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.

264 VAWA Cancellation of Removal, National Immigrant Women's Advocacy Project (NIWAP), at 8, *available at* http://library.niwap.org/wp-content/uploads/IMM-Man-Ch9-VAWACancellationofRemoval.pdf (last visited Sept. 20, 2024).

(d) 212(c) Waiver[265] (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 Oct. 4, 2024).

(i) *Eligibility*

You qualify for this form of relief if you meet all of the following requirements:[266]

(1) You are an LPR;
(2) You were convicted of a crime before April 24, 1996;[267]
(3) You have lived in the U.S. for at least seven years;
(4) You are not inadmissible on terrorism-related or national security grounds; and
(5) You have NOT served a prison sentence of five years or more for one or more aggravated felony convictions entered between November 29, 1990, and April 24, 1996.

(ii) *Standard*

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

(iii) *Discretionary Factors and Relevant Evidence to Submit*

For relevant discretionary factors and types of evidence you could use to show positive factors, see the discussion of discretionary factors for LPR cancellation of removal above in Subsection F(5)(a).[268]

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[265] INA § 212(c); 8 U.S.C. § 1182(c) (repealed effective 1997). This statute was significantly limited by the Antiterrorism and Effective Death Penalty Act (AEDPA), effective April 24, 1996, and was fully repealed by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), effective April 1, 1997. However, this form of relief remains available to LPRs subject to removal for convictions resulting from guilty pleas or convictions at trial before April 24, 1996 (the effective date of AEDPA). *See* INS v. St. Cyr, 533 U.S. 289, 326, 121 S. Ct. 2271, 2293, 150 L. Ed. 2d 347, 378 (2001) ("§ 212(c) relief remains available for aliens, like respondent, whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect."); Matter of Abdelghany, 26 I. & N. Dec. 254, 268 (BIA 2014) (holding that the same standard applied to convictions at trial).

[266] You can use 212(c) relief if you are facing inadmissibility as well as in some situations if you are facing deportability. While the law is not fully settled on when you can use 212(c) to avoid deportation, the Supreme Court rejected the BIA's restrictive approach of requiring you to identify a "comparable ground" of inadmissibility. *See* Judulang v. Holder, 565 U.S. 42, 132 S. Ct. 476, 181 L. Ed. 2d 449 (2011). For further information on eligibility for 212(c) relief, see *212(c) Relief and Retroactivity*, Immigrant Defense Project, *available at* https://www.immigrantdefenseproject.org/212c-relief-and-retroactivity/ (last visited Sept. 30, 2024).

[267] If you were convicted between April 24, 1996, and April 1, 1997, you could still qualify but you would be ineligible if you were convicted of any aggravated felony, controlled substance offense, firearm offense, or two or more CIMTs (not arising out of a single scheme of criminal misconduct) committed within five years of entry that each resulted in at least one year of incarceration. *See* Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, § 440(d), 110 Stat. 1214, 1277 (effective Apr. 24, 1996).

[268] *See* Matter of C-V-T-, 22 I. & N. Dec. 7, 10 (BIA 1998) (holding that the discretionary factors for 212(c) also apply to LPR cancellation of removal).

(e) 212(h) Waiver ("Waiver of Inadmissibility")[269]

Under INA § 212(h), an immigration judge 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.[270] 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/document/forms/i-601.pdf (last visited Oct. 4, 2024).

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;[271] and
(2) If you have been admitted as an LPR:[272]
  (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; and
  (b) You have not been convicted of an aggravated felony.[273]

In addition to these minimum requirements, you will also have to meet the specific eligibility requirements for each subsection listed below. The extra requirements vary depending on the subsection of the statute you fall under: INA § 212(h)(1)(A), (B), or (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);[274] or
(2) the activities for which you are inadmissible occurred more than fifteen years before the date of your application for a visa, admission, or adjustment of status.

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269 INA § 212(h); 8 U.S.C. § 1182(h).

270 INA § 212(h); 8 U.S.C. § 1182(h).

271 INA § 212(h); 8 U.S.C. § 1182(h).

272 These requirements only apply to those who *entered* the U.S. as an LPR at some point in the past. Therefore, the limitation does not apply if you had your status adjusted to that of an LPR and have not entered as an LPR. *See* Matter of N-V-G-, 28 I. & N. Dec. 380 (BIA 2021); Matter of J-H-J-, 26 I. & N. Dec. 563 (BIA 2015); *see also* Discretionary Waivers of Criminal Grounds of Inadmissibility Under INA § 212(h), *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10603 (last visited Oct. 28, 2024).

273 INA § 212(h); 8 U.S.C. § 1182(h).

274 Basically, these include crimes relating to, or engaging in or soliciting prostitution.

2. Standard

You must convince the immigration judge that you have been rehabilitated.[275] In addition, you must 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.[276]

3. Examples of Relevant Evidence to Submit

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.

(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 cause an "extreme hardship" to a USC or LPR spouse, parent, child, or children.

3. Relevant Evidence to Submit

Examples of relevant evidence to establish "extreme hardship" may include:

(1) Proof of USC or LPR spouse, parent, child, or children in the U.S.[277]
   (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) Proof 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.[278] You can show that you provide financial and emotional

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[275] INA § 212(h)(1)(A)(iii); 8 U.S.C. § 1182(h)(1)(A)(iii); *see also* Returning to the United States After Deportation, *available at* https://www.bc.edu/content/dam/files/centers/humanrights/pdf/Returning%20to%20the%20US%20AfterDeportation%20-%20A%20Self-Assessment%20FINAL.pdf (last visited Sept. 20, 2024).

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

[277] 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.

[278] 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 Sept. 28, 2024).

support with the following items: letters, written statements, and medical or financial records (including bank statements).[279]

(b) Proof that you are the parent of a child with disabilities might count as an extreme hardship.[280] If your children have disabilities, obtain their medical, psychiatric, or educational records that show proof of disabilities.

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

1. Eligibility

You are eligible for this form of relief under subsection 212(h)(1)(C) if 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,[281] **or** you are the child of an LPR and you have been battered or suffered "extreme cruelty" because of your LPR parent.[282]

2. Standard

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

3. Relevant Evidence to Submit

Examples of evidence that you need to submit may include:

(1) Proof of "Good Faith"[283]
   (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" (you honestly wanted to marry them).
   (b) 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[284] or that Your Parent was an LPR[285]
   (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.

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[279] 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.

[280] 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 Sept. 28, 2024).

[281] INA § 204(a)(1)(A)(iii), (B)(iii); 8 U.S.C. § 1154(a)(1)(A)(iii), (B)(iii).

[282] INA § 204(a)(1)(A)(iv), (B)(iv); 8 U.S.C. § 1154(a)(1)(A)(iv), (B)(iv).

[283] INA § 204(a)(1)(A)(iii), (B)(iii); 8 U.S.C. § 1154(a)(1)(A)(iii), (B)(iii).

[284] INA § 204(a)(1)(A)(iii), (B)(iii); 8 U.S.C. § 1154(a)(1)(A)(iii), (B)(iii).

[285] INA § 204(a)(1)(A)(iv), (B)(iv); 8 U.S.C. § 1154(a)(1)(A)(iv), (B)(iv).

(3) Proof of Extreme Cruelty to You or Your Child[286]

(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 sworn statements from police, judges and other court officials, medical personnel, school officials, clergy, Child Protective Services staff, or a counseling or mental health professional.

(b) 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.

(c) Lastly, you can submit letters or written statements from other people who have evidence of the abuse you suffered, including particular incidents.

(f) Adjustment of Status to Permanent Resident[287]

Another way to avoid removal is by adjusting your immigration status to that of an LPR.[288] Adjustment of status may be used without another form of relief. However, since the grounds of inadmissibility are applicable when you apply for adjustment of status, you may need to apply for a waiver of inadmissibility, such as a 212(h) waiver (discussed in Subsection F(5)(e) above), at the same time in order to be eligible. Courts have allowed the simultaneous use of two forms of relief or waivers together at the same time.[289]

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.[290] 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 https://www.uscis.gov/sites/default/files/document/forms/i-130.pdf and https://www.uscis.gov/sites/default/files/document/forms/i-140.pdf (last visited Oct. 6, 2024). 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 https://www.uscis.gov/sites/default/files/document/forms/i-864.pdf (last visited Oct. 6, 2024).[291] In this written statement of support,

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[286] Rebecca Story, Cecilia Olavarria and Moira Fisher Preda, VAWA Cancellation of Removal at 8, *available at* http://library.niwap.org/wp-content/uploads/IMM-Man-Ch9-VAWACancellationofRemoval.pdf (last visited Sept. 20, 2024).

[287] INA § 245(a); 8 U.S.C. § 1255(a). 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.

[288] You can even use this form of relief if you already are an LPR. *See* Matter of Mendez-Moralez, 21 I. & N. Dec. 296, 298 (BIA 1996).

[289] *See* Matter of 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 a noncitizen who is deportable for both drug and weapons offenses and that 8 C.F.R. § 245.1(e) (1993) permitted a noncitizen to concurrently apply for adjustment of status and INA § 212(c) relief); *see also* Matter of Azurin, 23 I. & N. Dec. 695, 697 (BIA 2005) (reaffirming *Matter of Gabryelsky*).

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

[291] Your sponsor may instead be eligible to apply for the Form I-864EZ or the Form I-864W, which can be found online at https://www.uscis.gov/i-864ez and https://www.uscis.gov/i-864w, respectively (last visited Sep. 20, 2024). 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 https://www.uscis.gov/i-864p (last visited Sep. 20, 2024). For more information about who qualifies for these alternatives to Form I-864, you can refer to the USCIS

your family member must prove that they are able to financially support themselves, their other dependents, and you. They also must promise to do so if it becomes financially necessary.[292] 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 https://www.uscis.gov/sites/default/files/document/forms/i-485.pdf (last visited Oct. 6, 2024).

(i) *Eligibility*[293]

In order to obtain this form of relief in immigration court, you must be an LPR or a visa overstay[294] who either (1) is an ***immediate relative***[295] 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[296] (this means your visa is immediately 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

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website at www.uscis.gov, contact the USCIS Forms Line at 1-800-870-3676, the National Customer Service Center ("NCSC") telephone line at 1-800-375-5283, or the USCIS automated information line at 1-800-767-1833. A family member or attorney can also contact your local USCIS office by using USCIS's online scheduling tool, available at https://my.uscis.gov/en/appointment/v2 (last visited Sep. 20, 2024), or by calling the USCIS Contact Center at 1-800-375-5283.

[292] 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 for the full text of the statute.

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

[294] 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) on or before April 30, 2001.

[295] 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 Relatives of U.S. Citizen, *available at* https://www.uscis.gov/green-card/green-card-through-family/green-card-immediate-relative-us-citizen (last visited Sept. 28, 2024).

[296] 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 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 Sept. 28, 2024). In order to check the estimate of how long it will take for your family petition to be processed, you may check the State Department's online Visa Bulletin, available at https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html (last visited Sept. 28, 2024).

U.S. You should be prepared to prove that positive discretionary factors outweigh any negative factors.[297]

(iii) *Discretionary Factors and Relevant Evidence*

For relevant positive factors and types of evidence to consider submitting, see the discussion in Subsection F(5)(a)(iii) above regarding LPR Cancellation of Removal.

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

You must fill out ***Form I-589*** to apply for asylum, withholding, and relief under the Convention Against Torture. The form can be found online at https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf (last visited Dec. 23, 2024). using Form I-589.

If you are eligible to apply for asylum, withholding of removal under INA § 241(b)(3), or protection under the Convention Against Torture ("CAT"), you should apply for all three of these forms of relief at the same time. This way, even if the judge does not grant you asylum, you may still be eligible for one of the other forms of relief. While the standards differ slightly for each one of these forms of relief, you will likely be submitting similar kinds of evidence for all three forms of relief.

The consequences differ for each of these forms of relief. If the immigration judge grants you asylum, you cannot be deported, you can potentially receive work authorization and travel abroad if you obtain the government's consent, you may be eligible for certain public benefits, your spouse and children can receive asylee status if accompanying or following to join you, and will be able to apply to ***adjust your status*** after a year to that of an LPR. If the judge grants you withholding of removal under INA § 241(b)(3), 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 of removal and (2) deferral of removal. Deferral of removal occurs when you are eligible for relief under CAT but you have committed certain crimes that prevent you from being eligible for withholding of removal. You will not be eligible to adjust your status under either withholding or deferral, but you cannot be sent back to the country where you are at risk of torture.

(i) *Asylum*[298]

Asylum is a form of relief available to people who are unable to return to their home countries because of a fear of persecution.

1. Eligibility

You must show that you meet ALL of the following requirements:

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[297] 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.").

[298] INA § 208; 8 U.S.C. § 1158.

(1) You apply for asylum within one year of your arrival in the U.S., unless you can show that you did not apply within one year due to either:[299]
    - Changed circumstances meaningfully affecting your eligibility for asylum, such as: (1) changes in your home country; (2) changes in your own circumstances; or (3) you were previously included as a dependent in your spouse or parent's asylum application and no longer are able to be included due to age, marriage, divorce, or death;[300] or
    - Extraordinary circumstances relating to your failure to file within one year, such as: serious illness or disability during the one-year period, legal disability, ineffective assistance of counsel, death or serious illness or incapacity of your legal representative or immediate family member, or maintaining another lawful immigration status until a reasonable period before applying for asylum;[301]

(2) You have **not** firmly resettled in another country before coming to the U.S.;[302]
    - For the government to prove that you were firmly resettled, they must show you received an offer of permanent residence or its equivalent.[303] Some circuits focus on whether there was a formal offer of official status, while others look more broadly at the "totality of circumstances."[304] Even if you received an offer of permanent resettlement, you may qualify for one of two exceptions.[305] If you received any documentation from or spent any significant amount of time in another country before you got to the U.S., you should explain and present any evidence showing why you were unlikely to receive any permanent status there and any other reasons you were not able to stay there in the long term.

(3) You have **not** persecuted others on account of race, religion, nationality, membership in a particular social group, or political opinion;[306]

(4) You have **not** been convicted of a ***particularly serious crime***[307]
    - For asylum purposes, any aggravated felony is automatically considered a "particularly serious crime";[308]
    - A crime that is not an aggravated felony can also be considered a "particularly serious crime"[309]

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[299] INA § 208(a)(2)(B), (D); 8 U.S.C. § 1158(a)(2)(B), (D).

[300] 8 C.F.R. § 208.4(a)(4) (2024). You must still submit your application within a reasonable time after the change in circumstances. 8 C.F.R. § 208.4(a)(4)(ii) (2024).

[301] 8 C.F.R. § 208.4(a)(5) (2024). You must still submit your application within a reasonable time given the extraordinary circumstances. 8 C.F.R. § 208.4(a)(5) (2024).

[302] INA 208(b)(2)(A)(vi); 8 U.S.C. § 1158(b)(2)(A)(vi).

[303] 8 C.F.R. §§ 208.15, 1208.15 (2020). Subsequent amendments to the regulations that made it easier for the government to establish firm resettlement are not in effect because they were enjoined nationwide in *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966 (N.D. Cal. 2021). *See* Zepeda-Lopez v. Garland, 38 F.4th 315, 323 n.5 (2d Cir. 2022).

[304] *Compare, e.g.*, Maharaj v. Gonzales, 450 F.3d 961, 971–76 (9th Cir. 2006) (*en banc*) (direct offer approach) *with* Sall v. Gonzales, 437 F.3d 229, 232–234 (2d Cir. 2006) (totality of the circumstances approach). Additionally, the BIA has adopted a four-step analysis for assessing firm resettlement. *See* Matter of A-G-G-, 25 I. & N. Dec. 486, 501 (BIA 2011).

[305] The two exceptions are: (a) "entry into the country was a necessary consequence of flight from persecution," you "remained in that country only as long as necessary to make further travel arrangements," and you "did not establish significant ties to that country; or (b) conditions of residence were so "substantially and consciously restricted" by the authority of the country that you were not resettled. 8 C.F.R. §§ 208.15(a)–(b), 1208.15(a)–(b) (2020.

[306] INA §§ 101(a)(42), 208(b)(2)(A)(i); 8 U.S.C. §§ 1101(a)(42), 1158(b)(2)(A)(i)

[307] INA § 208(b)(2)(A)(ii); 8 U.S.C. § 1158(b)(2)(A)(ii).

[308] INA § 208(b)(2)(B)(i); 8 U.S.C. § 1158(b)(2)(B)(i). See Subsection C(2)(a) above for what counts as an aggravated felony.

[309] Relevant factors in determining whether a crime is a "particularly serious crime" include: (1) "the nature of the conviction," (2) "the circumstances and underlying facts of the conviction," (3) "the type of sentence imposed,"

(5) You have **not** committed a "serious non-political crime" outside the U.S.;[310]
(6) You are **not** a danger to the security of the U.S.;[311]
(7) You have **not** engaged in terrorist activities, including any "material support" of a terrorist organization, which is defined very broadly;[312]
(8) You have **not** previously been denied asylum by an immigration judge or the BIA, unless you can show changed circumstances that materially affect your subsequent application for asylum.[313]
(9) You have **not** made a frivolous application for asylum previously.[314]

Also, if you can be safely removed to a different country pursuant to an agreement between the U.S. and another country, you are ineligible for asylum in the U.S.[315] As of early 2025, the U.S. only has such an agreement with Canada. If you enter the U.S. from the Canadian border, you could be sent back to Canada and could apply for asylum in Canada.[316]

Additionally, recent administrations have imposed other significant limitations on asylum eligibility.

One is the ***Circumvention of Lawful Pathways*** (CLP) rule. This rule applies to asylum applicants who entered the United States via the U.S.-Mexico land border between May 11, 2023 and May 11, 2025 without documents and who are not Mexican citizens.[317] The rule does not apply if: (1) you were considered an unaccompanied child at the time you entered the U.S.; (2) you received authorization to come to the U.S. to seek parole; (3) you entered the U.S. pursuant to an appointment you made using the CBP One app; (4) you were unable to make an appointment using the CBP One app for certain reasons; (5) or you applied for asylum in another country before reaching the U.S. and were denied.[318] If the CLP rule does apply to you, you are presumed ineligible for asylum, unless you can demonstrate "exceptionally compelling circumstances," such as showing that you (or a member of your immediate family who you were travelling with), at the time you arrived in the U.S.: (1) faced an acute medical emergency; (2) faced an imminent and extreme threat to life or safety; or (3) were a "victim of a severe form of trafficking in persons."[319]

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and (4) "whether the type and circumstances of the crime indicate that the [noncitizen] will be a danger to the community." Matter of Frentescu, 18 I. & N. Dec. 244, 247 (BIA 1982). Crimes against persons are more likely to be categorized as "particularly serious crimes." *Id.*

310 This only requires there to be "serious reasons" for the government to believe that you committed such a crime. INA § 208(b)(2)(A)(iii); 8 U.S.C. § 1158(b)(2)(A)(iii); Matter of Ballester-Garcia, 17 I. & N. Dec. 592, 595 (BIA 1980).

311 INA § 208(b)(2)(A)(iv); 8 U.S.C. § 1158(b)(2)(A)(iv); Matter of A-H-, 23 I. & N. Dec. 774 (AG 2005).

312 INA § 208(b)(2)(A)(v); 8 U.S.C. § 1158(b)(2)(A)(v). Terrorism-related inadmissibility grounds are defined in INA 212(a)(3)(B); 8 U.S.C. 1182(a)(3)(B). "Material support" to a terrorist organization is defined extremely broadly, including very minimal assistance and even if you were forced to help the organization. *See* Matter of A-C-M-, 27 I. & N. Dec. 303 (BIA 2018).

313 INA § 208(a)(2)(C)–(D); 8 U.S.C. § 1158(a)(2)(C)–(D). A previous application is only considered to have been "denied" if it was denied by an immigration judge or the BIA. *See* 8 C.F.R. §§ 208.4(a)(3), 1208.4(a)(3) (2024). For example, this means that an asylum officer determining that you lacked a credible fear of asylum would not qualify as a prior denial.

314 INA § 208(d)(6); 8 U.S.C. § 1158(d)(6).

315 INA § 208(a)(2)(A); 8 U.S.C. § 1158(a)(2)(A); *see also* Matter of Y-L-, 24 I. & N. Dec. 151, 155 (BIA 2007) (explaining four requirements for a finding of frivolousness).

316 *See* 8 C.F.R. §§ 208.30(e)(6), 1208.30(e)(6) (2024).

317 *See* 8 C.F.R. §§ 208.33(a)(1), 1208.33(a)(1) (2024).

318 *See* 8 C.F.R. §§ 208.33(a)(2), 1208.33(a)(2) (2024).

319 8 C.F.R. §§ 208.33(a)(3), 1208.33(a)(3) (2024).

Another significant limitation on asylum is the ***Securing the Border*** (STB) rule. This rule applies to asylum applicants who entered the United States via the U.S.-Mexico border after June 5, 2024.[320] There are exceptions for unaccompanied children, LPRs, noncitizens with a valid visa, and those who arrived in the U.S. for an appointment scheduled using the CBP One app.[321] You can also avoid the rule applying if you can show "exceptionally compelling circumstances," defined the same as for the CLP rule.[322] However, there is no exception for Mexican citizens or those who are unable to access or use the CBP One app.

Be aware that the Trump administration and subsequent administrations may also implement additional or alternative restrictions on asylum eligibility.

2. Standard

You must prove to the immigration judge you are unable or unwilling to return to your home country because you have a well-founded fear that you will be persecuted there because of your race, religion, nationality, membership in a particular social group, or political opinion.[323] 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.

Persecution:

"Persecution" is generally defined as "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive."[324] Persecution can include harm such as physical beatings,[325] sexual violence,[326] detention and threat of imprisonment,[327] and psychological harm.[328] Courts vary in whether they automatically consider credible death threats to qualify as persecution on their own.[329] If your claim is based on threats, you should try to show how the threats are credible, immediate, specific, and harmful to you.[330] Persecution can also be economic in nature, but must be more than simply economic disadvantage.[331] To show economic persecution, you must generally show "deliberate imposition of substantial economic

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[320] *See* Presidential Proclamation 10773, "Securing the Border" (June 3, 2024), *amended by* Proclamation 10817, "Amending Proclamation 10773" (Sept. 27, 2024).

[321] *See* 8 C.F.R. §§ 208.35(a)(1), 1208.35(a)(1) (2024); Presidential Proclamation 10773, "Securing the Border" (June 3, 2024) § 3(b).

[322] *See* 8 C.F.R. §§ 208.35(a)(2)(i), 1208.35(a)(2)(i) (2024)

[323] INA § 101(a)(42); 8 U.S.C. § 1101(a)(42).

[324] Matter of Acosta, 19 I. & N. Dec. 211, 222 (BIA 1985).

[325] *See, e.g.*, Voci v. Gonzales, 409 F.3d 607, 609 (3d Cir. 2005); Borja v. INS, 175 F.3d 732, 738 (9th Cir. 1999).

[326] *See, e.g.*, Zubeda v. Ashcroft, 333 F.3d 463, 472 (3d Cir. 2003); Matter of D–V–, 21 I&N Dec. 77, 79–80 (BIA 1993).

[327] *See* Matter of Toboso-Alfonso, 20 I. & N. Dec. 819 (BIA 1990).

[328] *See, e.g.*, Matter of A-K-, 24 I&N Dec 275 (BIA 2007); Sumolang v. Holder, 723 F.3d 1080, 1084 (9th Cir. 2013).

[329] *Compare* Tairou v. Whitaker, 909 F.3d 702, 708 (4th Cir. 2018) (death threats constitute persecution without a showing of resulting harm in the 4th Circuit) *with* Lim v. INS, 224 F.3d 929, 936 (9th Cir. 2000) (requiring a showing of actual "suffering or harm" as a result).

[330] *See, e.g.*, Herrera-Reyes v. U.S. Att'y Gen., 952 F.3d 101, 108 (3d Cir. 2020) (collecting cases holding that threats can constitute persecution when considered "concrete and menacing" within the cumulative circumstances faced by the petitioner); Matter of M-D-C-V-, 28 I. & N. Dec. 18, 32 (BIA 2020).

[331] *See, e.g.*, Hussain v. Rosen, 985 F.3d 634, 646–647 (9th Cir. 2021); Youssefinia v. INS, 784 F.2d 1254, 1261 (5th Cir. 1986).

disadvantage" or "economic deprivation or restrictions so severe that they constitute a threat to [your] life or freedom."[332]

Your asylum claim can be based on past persecution or an independent well-founded fear of future persecution.[333]

Past Persecution:

If you can show that you have already suffered persecution, there is a presumption that you have a well-founded fear of future persecution on that basis.[334] The government can overcome that presumption by showing that either: (1) there has been a fundamental change in circumstances such that you no longer have a well-founded fear of persecution on account of a protected ground or (2) you could avoid persecution by relocating to another part of your home country and it would be reasonable to expect you to do so.[335] If the government shows one of those things, the immigrant judge could still grant you ***humanitarian asylum*** if you show that either: (1) there are "compelling reasons" you are unable or unwilling to return to your home country because of how severe the past persecution was[336] or (2) there is a reasonable possibility you would suffer "other serious harm" upon returning to your home country.[337]

Well-Founded Fear of Persecution:

Your asylum claim can also be based on a well-founded fear of persecution without showing you have been persecuted in the past.[338] Your fear must be both: (1) "subjectively genuine" and (2) "objectively reasonable."[339] You can show that you have a genuine subjective fear of persecution through your own credible testimony.[340] For your fear to be objectively reasonable, there must be at least a "reasonable possibility" that you will be persecuted, which could be as low as a 10% chance of persecution.[341]

The BIA has a four-part test for determining if you have a well-founded fear of future persecution. To establish a well-founded fear of persecution, you must demonstrate: (1) you possess a belief or characteristic a persecutor seeks to overcome; (2) the persecutor is already aware, or could become aware, that you possess this belief or characteristic; (3) the persecutor has the capability of punishing you; and (4) the persecutor has the inclination to punish you.[342] If you do not actually possess a

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[332] Matter of T-Z-, 24 I. & N. Dec. 163, 170 (BIA 2007).

[333] *See* 8 C.F.R. §§ 208.13(b), 1208.13(b) (2018).

[334] 8 C.F.R. §§ 208.13(b)(1), 1208.13(b)(1) (2018).

[335] 8 C.F.R. §§ 208.13(b)(1)(i), 1208.13(b)(1)(i) (2018). Internal relocation is discussed in more detail later as it is also applicable to claims based only on a future fear of persecution.

[336] 8 C.F.R. §§ 208.13(b)(1)(B)(iii)(A), 1208.13(b)(1)(B)(iii)(A) (2018). "Atrocious" past persecution causing lasting effects would qualify. *See* Matter of S-A-K- & H-A-H-, 24 I. & N. Dec. 464, 465–466 (BIA 2008).

[337] 8 C.F.R. §§ 208.13(b)(1)(B)(iii)(B), 1208.13(b)(1)(B)(iii)(B) (2018). The "other serious harm" must be as severe as persecution but does not have to be related to your past persecution or any of the five protected grounds. Matter of L-S-, 25 I. & N. Dec. 705, 714 (BIA 2012).

[338] *See* 8 C.F.R. §§ 208.13(b)(2), 1208.13(b)(2) (2018).

[339] Matter of Mogharrabi, 19 I. & N. Dec. 439, 445 (BIA 1987).

[340] *See* Ramsameachire v. Ashcroft, 357 F.3d 169, 178 (2d Cir. 2004); Berroteran-Melendez v. INS, 955 F.2d 1251, 1256 (9th Cir. 1992).

[341] *See* INS v. Cardoza-Fonseca, 480 U.S. 421, 440, 107 S. Ct. 1207, 1217, 94 L. Ed. 2d 434, 453 (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."); *see also* Al-Harbi v. INS, 242 F.3d 882, 888 (9th Cir. 2001) ("[E]ven a ten percent chance of persecution may establish a well-founded fear."); Diallo v. INS, 232 F.3d 279, 284 (2d Cir. 2000) (stating that a fear may be well-founded "even if there is only a slight, though discernible, chance of persecution").

[342] Matter of Mogharrabi, 19 I. & N. Dec. 439, 446 (BIA 1987).

particular belief or characteristic, but the persecutor believes that you do, you can base your claim on an "imputed" belief or characteristic.[343]

If at all possible, you should try to submit evidence to show how you individually would be likely to face persecution. However, if there is a widespread practice of persecuting people with a certain characteristic or belief in your home country and you do not have individualized evidence, you may be able to qualify for asylum by demonstrating a "pattern or practice" of persecution towards people with the characteristic or belief that you share.[344] In that case, you would need to show that there is "systemic or pervasive" persecution of that category of people.[345]

As with claims based on past persecution, you are not considered to have a well-founded fear of persecution if you could safely relocate to another part of your home country and it would be reasonable to require you to do so.[346] Internal relocation is discussed in more detail later.

Nexus:

The persecution must be "on account of" one or more protected grounds.[347] Specifically, a protected ground must be "at least one central reason" for the persecution.[348] You can meet this standard even if the persecutor had mixed motives.[349] However, you should make sure to show that the protected ground(s) were an important reason and that the persecution would not have occurred if not for the persecution.[350] The connection between the persecution and the protected ground(s) is referred to as the ***nexus*** requirement. You can show this using direct evidence, such as specific words and actions of the persecutor. You can also show this using circumstantial evidence, such as evidence that the persecutor negatively views people with the particular characteristic or that they target others with that characteristic.

Protected Grounds:

You must base your asylum claim on at least one of the five protected grounds: "race, religion, nationality, membership in a particular social group, or political opinion."[351] You should generally identify all possible protected grounds.

Race and nationality are defined broadly and can overlap in some circumstances, including membership in an ethnic or linguistic group.[352]

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[343] *See, e.g.*, Chavez v. Garland, 51 F.4th 424 (1st Cir. 2022); Vasquez-Rodriguez v. Garland, 7 F.4th 888 (9th Cir. 2021).

[344] *See* 8 C.F.R. §§ 208.13(b)(2)(iii), 1208.13(b)(2)(iii) (2018).

[345] Matter of A-M-, 23 I&N Dec. 737, 741 (BIA 2005). The Ninth Circuit also has its own "disfavored group" analysis. Under this approach, you would need to show you are a member of a "disfavored group" in your home country plus some evidence that you would be likely to be targeted, but there is a sliding scale analysis: the "'more serious and widespread the threat' to the group in general, 'the less individualized the threat of persecution needs to be.'" Sael v. Ashcroft, 386 F.3d 922, 925 (9th Cir. 2004) (citation omitted).

[346] 8 C.F.R. §§ 208.13(b)(2)(ii), 1208.13(b)(2)(ii) (2018).

[347] INA § 101(a)(42); 8 U.S.C. § 1101(a)(42).

[348] INA § 208(b)(1)(B)(i); 8 U.S.C. § 1158(b)(1)(B)(i).

[349] *See* Matter of J-B-N- & S-M-, 24 I. & N. Dec. 208, 213 (BIA 2007).

[350] *See* Matter of L-E-A- I, 27 I. & N. Dec. 40, 43–44 (BIA 2017).

[351] INA § 101(a)(42); 8 U.S.C. § 1101(a)(42).

[352] *See* Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva 1992), paras. 68, 75; Knezevic v. Ashcroft, 367 F.3d 1206 (9th Cir. 2004).

Religion can include "theistic, non-theistic, and atheistic beliefs."[353] Asylum officers and immigration judges may doubt the sincerity of your religious beliefs, so be prepared to answer questions about religious doctrine and to explain your personal religious beliefs and practices and why they are important to you.

Political opinion includes a broader range of views than just electoral politics, including views on the government and its policies.[354] Assessing what constitutes a political opinion requires looking to the context of the particular society.[355] A political opinion might be expressed through words, actions, or both.[356] The Supreme Court has emphasized that the relevant person's political opinion is "the *victim's* political opinion, not the persecutor's."[357] Additionally, forced abortion or involuntary sterilization (or persecution for refusing such a procedure) is automatically considered persecution on account of political opinion.[358]

If your fear of persecution is based on a ground not included in the above categories, you may be able to show it is based on your "membership in a particular social group." When you are defining a particular social group, the definition must meet three basic criteria:[359]

- Composed of members who share a common immutable characteristic
    - This can be either a characteristic that cannot be changed or that is so fundamental to your individual identity that you should not be required to change it.
- Defined with particularity
    - It must be specific enough and have well-defined boundaries so that one could objectively determine who falls within the group. Vague or overbroad categories such as poverty, homelessness, youth, or wealth are not particular enough.
- Socially distinct within the society in question
    - The group must be perceived as a group by society, not just by the persecutors. Group members do not have to be recognizable by sight.

The particular social group cannot be defined in a circular way based on the persecution itself.[360]

Some examples of particular social groups are:

- Former occupations, associations, or shared experiences[361]
- Sexual orientation[362]
- Gender plus another characteristic[363]

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353 UNHCR, *UNHCR Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/GIP/04/06 (Apr. 28, 2004), para. 6.

354 *See, e.g.*, Zometa-Orellana v. Garland, 19 F.4th 970, 977–978 (6th Cir. 2021).

355 *See, e.g.*, Ruqiang Yu v. Holder, 693 F.3d 294, 298–300 (2d Cir. 2012).

356 *See, e.g.*, Chang v. INS, 119 F.3d 1055, 1063 (3d Cir. 1997).

357 INS v. Elias-Zacarias, 502 U.S. 478, 482, 112 S. Ct. 812, 816, 117 L. Ed. 2d 38, 45 (1992).

358 INA § 101(a)(42); 8 U.S.C. § 1101(a)(42).

359 Matter of M-E-V-G-, 26 I. & N. Dec. 227 (BIA 2014).

360 *See* Matter of W-G-R-, 26 I. & N. Dec. 208, 215 (BIA 2014) (noting that circuit courts "have long recognized that a social group must have 'defined boundaries' or a 'limiting characteristic,' other than the risk of being persecuted").

361 *See, e.g.*, Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988) (holding that former national police members could be a particular social group in certain circumstances).

362 *See* Matter of Toboso-Alfonso, 20 I. & N. Dec. 819 (BIA 1990); Bringas-Rodriguez v. Sessions, 850 F.3d 1051 (9th Cir. 2017).

363 *See, e.g.*, Matter of Kasinga, 21 I. & N. Dec. 357 (BIA 1996) (young women of certain tribe who had not been subjected to female genital mutilation and opposed the practice).

Source of Persecution:

You may be eligible for asylum even if the harm or threats to your safety come from non-government actors.[364] 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 group that is threatening your safety.[365] More specifically, you would need to submit proof showing that you are unable to rely on your country's government to step in to protect you from the actions of the group threatening your safety.[366] 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.

Internal Relocation:

You are not considered to have a well-founded fear of persecution if you could relocate to another part of your country where both: (1) you would not be at risk of persecution and (2) it would be reasonable to require you to do so.[367] There is a presumption that relocation would be unreasonable if you establish past persecution or if your fear of persecution is based on the government or someone sponsored by the government.[368] The regulations list several factors as potentially relevant to assessing whether it would be reasonable to require you to relocate: "whether [you] would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties."[369]

3. Discretion

The decision to grant asylum is a ***discretionary matter***, meaning the immigration judge has the power to decide whether or not to grant it. You, the person applying for asylum, have to establish that you deserve to be granted asylum. The judge will consider the totality of circumstances and your actions. This means they will look at all different factors in your life and your case.[370] The judge will also look to humanitarian concerns, such as your age or poor health.[371] You can emphasize factors such as the severity of harm you have faced or would face if forced to return to your home country, your honesty and candor in your interactions with the U.S. immigration system, hardship that would be caused to your family if you had to leave the U.S., evidence of rehabilitation if you have been convicted of a crime, and any other evidence of your positive characteristics and how you would contribute positively to your community. The BIA has held that "the danger of persecution should generally outweigh all but the most egregious of adverse factors."[372]

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364 *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.").

365 *See, e.g.*, Matter of A-B-, 28 I.&N Dec. 307, 307 (AG 2021).

366 *See, e.g.*, Juan Antonio v. Barr, 959 F.3d 778, 793 (6th Cir 2020).

367 8 C.F.R. §§ 208.13(b)(1)(i)(B), (b)(2)(ii), 1208.13(b)(1)(i)(B), (b)(2)(ii) (2018).

368 *See* 8 C.F.R. §§ 208.13(b)(3)(i)–(ii), 1208.13(b)(3)(i)–(ii) (2018).

369 8 C.F.R. §§ 208.13(b)(3), 1208.13(b)(3) (2018).

370 *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).

371 Matter of Pula, 19 I. & N. Dec. 467, 473–474 (BIA 1987).

372 Matter of Pula, 19 I. & N. Dec. 467, 474 (BIA 1987).

(ii) *Withholding of Removal Under INA § 241(b)(3)*

1. Eligibility

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

(1) You have **not** been convicted of a ***particularly serious crime***, including any ***aggravated felonies*** for which you received a total sentence of five or more years in prison;[373]
(2) You have **not** committed persecution against another person;[374]
(3) You have **not** committed a serious non-political crime outside the U.S.;[375] and
(4) You are **not** a danger to the security of the U.S., such as by engaging in terrorist activities.[376]

Unlike asylum, there is no firm resettlement bar, no prior denial bar, and no one-year deadline to apply.

2. Standard

The requirements for withholding of removal are similar to those for asylum, with a few differences. 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.[377] These are the same five protected characteristics discussed above for asylum. As with asylum, a similar burden-shifting approach applies where your life or freedom was threatened in the past.[378] The internal relocation analysis is also the same as for asylum. Finally, the immigration judge's analysis regarding sufficiency of the evidence and credibility determinations is the same as with asylum.[379]

Unlike with asylum, the immigration judge must be convinced there is a "clear probability"[380] that your life or freedom will be threatened, which means it is "more likely than not" that your life or freedom will be threatened.[381] This is harder to prove than the "possibility" of persecution required for asylum. In the Ninth Circuit, you do not need to show that the protected characteristic (race, religion, etc.) is "one central reason" that your life or freedom will be threatened; instead, you only need to show that it is "a reason," which is a lower standard.[382] In other circuits, you will generally have to meet the nexus requirement discussed above for asylum.[383]

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[373] INA 241(b)(3)(B)(ii). An aggravated felony involving drug trafficking, regardless of the length of sentence, is presumptively a particularly serious crime. Matter of Y-L-, 23 I. & N. Dec. 270, 274 (AG 2002). To rebut that presumption, you would need to show at least: (1) a very small quantity of drugs; (2) a very modest amount of money; (3) merely peripheral involvement by the applicant; (4) the absence of any violence or threat of violence; (5) the absence of any organized crime or terrorist organization; and (6) the absence of any adverse effect on youth. *Id.* at 276 n.12.

[374] INA 241(b)(3)(B)(i); 8 U.S.C. § 1231(b)(3)(B)(i).

[375] INA 241(b)(3)(B)(iii); 8 U.S.C. § 1231(b)(3)(B)(iii).

[376] INA 241(b)(3)(B)(iv); 8 U.S.C. § 1231(b)(3)(B)(iv).

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

[378] *See* 8 C.F.R. §§ 208.16(b)(1), 1208.16(b)(1) (2024).

[379] *See* INA 241(b)(3)(C); 8 U.S.C. § 1231(b)(3)(C).

[380] 8 C.F.R. §§ 208.16(b)(2), 1208.16(b)(2) (2024).

[381] 8 C.F.R. §§ 208.16(b)(2), 1208.16(b)(2) (2024).

[382] *See* Barajas-Romero v. Lynch, 846 F.3d 351, 360 (9th Cir. 2017).

[383] *See* Matter of C-T-L-, 25 I. & N. Dec. 341 (BIA 2010).

3. Discretion

Unlike asylum, if you meet all the requirements for withholding of removal, the immigration judge *must* grant you withholding of removal; they cannot deny your withholding as a matter of discretion.[384]

(iii) *Convention Against Torture ("CAT")*

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. The details regarding CAT relief are found in DHS and DOJ regulations, 8 C.F.R. §§ 208.16–208.18, 1208.16–1208.18.

1. 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[385] and it must not arise out of a lawful sanction. For an immigration judge to grant you protection under the CAT, they must be convinced that it is more likely than not that you would suffer severe pain and suffering.[386]

In determining whether you are more likely than not to be tortured, the immigration judge must consider "all evidence relevant to the possibility of future torture," such as:[387]

- Evidence of past torture inflicted upon [you];
- Evidence that [you] could relocate to a part of the country of removal where [you are] not likely to be tortured;
    - Note that, unlike asylum and withholding under INA 241(b)(3), the possibility of internal relocation is only one factor for CAT relief, so you do not have a burden to specifically prove that internal relocation would be unreasonable.[388]
- Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
- Other relevant information regarding conditions in the country of removal.

Unlike asylum and withholding under INA 241(b)(3), you do not need to show a connection to any specific protected ground (race, religion, etc.). You only need to show that it is more likely than not that you would be tortured, regardless of the reason for the torture.

2. Discretion

As with withholding of removal under INA 241(b)(3), relief under the CAT is mandatory; immigration judges *cannot* deny your application as a matter of discretion.[389]

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[384] *See* INA 241(b)(3); 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.16(d)(1), 1208.16(d)(1) (2024).

[385] Some circuits have held 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, e.g.*, Reyes-Reyes v. Ashcroft, 384 F.3d 782, 787 (9th Cir. 2004).

[386] *See* Matter of J-E-, 23 I. & N. Dec. 291, 302 (BIA 2002). Note that this is a much higher standard than is required for asylum or withholding of removal under INA § 241(b)(3).

[387] 8 C.F.R. §§ 208.16(c)(3), 1208.16(c)(3) (2024).

[388] *See* Maldonado v. Lynch, 786 F.3d 1155 (9th Cir. 2015) (*en banc*).

[389] *See* 8 C.F.R. §§ 208.16(d)(1) (withholding), 208.17(a) (deferral).

3. Types of Relief

If you are eligible for relief under the CAT, then you will be granted ***withholding of removal***, unless one of the bars to relief for withholding of removal under INA 241(b)(3) discussed above applies.[390] If one of those bars applies, you will be granted ***deferral of removal*** instead.[391] The difference between these forms of relief is that it is easier for the government to end your benefits under deferral of removal.[392]

(iv) *Relevant Evidence to Submit in Application 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.[393]

You will also need to present evidence of your identity, evidence showing you possess particular beliefs or characteristics that your asylum claim is based on, and evidence documenting any persecution you faced in the past (e.g., medical or psychological records, police reports, photos or news articles about specific events you experienced). You should also use witness testimony (your own written declaration and oral testimony, as well as statements and/or testimony from other witnesses) to support your claims.[394]

(h) Voluntary Departure[395]

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 might be required to pay a fine of $1,000 to $5,000[396] and would not be eligible for several forms of relief (cancellation of removal, voluntary departure, adjustment of status, change of non-immigrant classification, and registry) for ten years.[397] The benefit of voluntary depar-

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[390] 8 C.F.R. §§ 208.16(d)(2), 1208.16(d)(2) (2024). These bars to withholding of removal are: conviction for a "particularly serious crime" (automatically including aggravated felonies with a total sentence of five years of more); persecution of others; commission of a serious non-political crime outside the U.S.; and danger to U.S. security, including any terrorist activities. *See* INA § 241(b)(3)(B); 8 U.S.C. § 1231(b)(3)(B).

[391] 8 C.F.R. §§ 208.17(a), 1208.17(a) (2024).

[392] *See* 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1) (2024).

[393] 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.

[394] 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.

[395] There is no formal application for voluntary departure as there is for each other form of relief. INA § 240B(a)(1); 8 U.S.C. § 1229c(a)(1).

[396] Regulations set a fine of $3,000 as the default. 8 C.F.R. § 1240.26(*l*) (2024).

[397] INA § 240B(d); 8 U.S.C. § 1229c(d). 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.

ture is that you may be able to return to the U.S. much sooner than if you were deported.[398] However, some of the bars to reentering the U.S. discussed in Section I(2) could still apply. Additionally, a voluntary departure order is much harder to reopen than a deportation order.[399] Because voluntary departure is irreversible, you should consider all the consequences before requesting it.

(i) *Eligibility*

You cannot get voluntary departure if you have been convicted of an aggravated felony,[400] if you have been involved in terrorist activities,[401] or if you previously received voluntary departure after you were found inadmissible for entering without inspection and you failed to depart.[402]

(ii) *Standard*

The standard you must meet to obtain voluntary departure varies depending on when you request it. If you request voluntary departure at the start of removal proceedings (e.g., at the master calendar hearing), you will need to show the judge that you have a valid travel document such as a passport (or that you do not need a travel document to return to your native country or that DHS has your travel document).[403] To request voluntary departure at this point, the regulations also require you to concede removability (admit you are inadmissible or deportable), make no other requests for relief, and waive appeal of all issues.[404]

If you wait until the end of removal proceedings to request voluntary departure,[405] in addition to showing you have a valid travel document, 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; you are a person of "good moral character" and have been for the past five years;[406] and you can show by "clear and convincing evidence" that you can afford to leave the U.S. and that you plan

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398 *See* Bryan Lonegan & the Immigr. Law Unit of the Legal Aid Soc'y, *Immigration Detention and Removal: A Guide for Detainees and Their Families*, National Immigr. Law Ctr., 21 (2006), *available at* https://www.nilc.org/wp-content/uploads/2015/12/detentionremovalguide_2006-02.pdf (last visited Sep. 19, 2024); *see also* Part I of this Chapter, which discusses both legal and illegal reentry into the U.S.

399 Sometimes you do not qualify for any forms of relief at the time of your removal proceedings. However, you may anticipate qualifying 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.

400 INA § 240B(a)(1), (b)(1)(C); 8 U.S.C. 1229c(a)(1), (b)(1)(C).

401 INA § 240B(a)(1), (b)(1)(C); 8 U.S.C. 1229c(a)(1), (b)(1)(C).

402 *See* INA § 240B(c); 8 U.S.C. 1229c(c); *see also* Bryan Lonegan & the Immigr. Law Unit of the Legal Aid Soc'y, *Immigration Detention and Removal: A Guide for Detainees and Their Families*, National Immigr. Law Ctr., 22 (2006), *available at* https://www.nilc.org/wp-content/uploads/2015/12/detentionremovalguide_2006-02.pdf (last visited Sep. 19, 2024).

403 8 C.F.R. § 1240.26(b)(3)(i) (2024).

404 8 C.F.R. § 1240.26(b)(1)(i) (2024).

405 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.

406 Several categories of convictions and other factors can make you considered not a person of good moral character. *See* INA § 101(f); 8 U.S.C. § 1101(f). The judge also has discretion to balance other positive and negative factors to decide if you have been a person of good moral character. See Subsection F(5)(b)(i) above for a more in-depth discussion of good moral character.

to do so.[407] The judge also has discretion to deny you voluntary departure even if you meet the statutory requirements.

If the judge grants you voluntary departure, they 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.[408] If you make your request at the end of proceedings, the judge can grant you a maximum of sixty days to depart.[409] This means that if you request voluntary departure earlier, the judge could give you more time get yourself ready to depart the US. They do not *have* to give you more time, however. The maximum time the judge can give is 120 days, but the minimum time is not defined by the law.[410]

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.[411] An immigration judge must do removal proceedings.[412] 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.

Before going over removal proceedings in more detail, it is important to know that there are a few situations where regular removal proceedings do not apply. One is called ***expedited removal***. Under Trump administration policies, you could potentially be placed in expedited removal proceedings if you are inadmissible under INA § 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid entry documents), you have not been admitted or paroled into the U.S., and you cannot show that you have been physically present in the U.S. for at least two years.[413] Under expedited removal, if a DHS officer finds that you are subject to expedited removal, that officer will order you removed unless you indicate an intent to apply for asylum or a fear of persecution or torture.[414] If you indicate an intent to apply for asylum or a fear of persecution or torture, you are referred to an asylum officer for a "credible fear interview," where the officer would decide if there is a "significant possibility" that you would be able to establish eligibility for asylum, withholding of removal, or relief

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[407] INA § 240B(b)(1); 8 U.S.C. 1229c(b)(1); 8 C.F.R. § 1240.26(c)(1) (2024).

[408] INA § 240B(a)(2)(A); 8 U.S.C. 1229c(a)(2)(A).

[409] INA § 240B(b)(2); 8 U.S.C. 1229c(a)(2).

[410] *See* 8 C.F.R. § 1240.26(e) (2024).

[411] You can find a list of the various immigration courts (including their addresses and phone numbers) throughout the U.S. on the EOIR website, *Find an Immigration Court and Access Internet-Based Hearings*, Executive Office for Immigration Review (2024), *available at* https://www.justice.gov/eoir/eoir-immigration-court-listing (last visited Sept. 28, 2024). 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.

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

[413] *See* INA § 235(b)(1)(A)(iii)(II); 8 U.S.C. § 1225(b)(1)(A)(iii)(II); Dept. of Homeland Sec., *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025) (authorizing DHS officers to use expedited removal to the full extent permitted by the statute).

[414] *See* INA § 235(b)(1)(A)(i); 8 U.S.C. § 1225(b)(1)(A)(i).

under the Convention Against Torture.[415] If you establish a credible fear of persecution or torture, then you are referred to regular removal proceedings where you can assert your claim for asylum, withholding, and relief under the Convention Against Torture. Noncitizens are subject to detention in expedited removal proceedings[416] and you generally cannot appeal or seek judicial review of an expedited removal order.[417]

Another situation where regular removal proceedings do not apply is ***administrative removal***. DHS can choose to use this form of removal if you are convicted of an aggravated felony and you are not an LPR or you have conditional LPR status (for example, based on a marriage within the past two years). DHS initiates the process by issuing Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order. You have ten days (thirteen if you received the form by mail) to respond.[418] If you challenge the government's findings (for example, you are arguing that you are actually a USC or LPR, or arguing that you were not actually convicted of an aggravated felony), make sure to specifically identify which points you are challenging and provide supporting evidence.[419] You can request to review the government's evidence first, and you then would have ten days (thirteen if received by mail) to respond.[420] You can also submit a statement saying that you plan to request withholding of removal (under INA § 241(b)(3) or the Convention Against Torture).[421] However, under administrative removal, you are ineligible for discretionary forms of relief, such as asylum, cancellation of removal, or adjustment of status.[422] If you request withholding of removal, you will be referred to an asylum officer for a "reasonable fear interview" once a Final Administrative Removal Order is issued.[423] The standard in a reasonable fear interview is whether you establish a "reasonable possibility" of persecution or torture upon removal.[424] This is a higher standard that you have to meet compared to the standard in credible fear hearings.

One final situation where regular removal proceedings do not apply is ***reinstatement of removal***. This occurs if you have previously been ordered removed, and is discussed more in Section I(3).

The remainder of this Part discusses removal proceedings in immigration court.

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.[425] 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

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415 INA § 235(b)(1)(B)(v); 8 U.S.C. § 1225(b)(1)(B)(v); 8 C.F.R. § 208.30(e)(2) (2024).

416 *See* INA § 235(b)(1)(B)(iii)(IV); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

417 *See* INA §§ 235(b)(1)(C)–(D), 242(a)(2)(iii), (e); 8 U.S.C. §§ 1225(b)(1)(C)–(D), 1252(a)(2)(iii), (e). Limited review in federal habeas corpus proceedings is available to assert that you are actually a U.S. citizen, LPR, or asylee/refugee who is not subject to expedited removal.

418 8 C.F.R. § 238.1(c)(1) (2024).

419 *See* 8 C.F.R. § 238.1(c)(2)(i) (2024).

420 *See* 8 C.F.R. § 238.1(c)(2)(ii) (2024).

421 *See* 8 C.F.R. § 238.1(c)(1) (2024).

422 *See* INA § 235(b)(5); 8 U.S.C. § 1225(b)(5).

423 *See* 8 C.F.R. § 238.1(f)(3) (2024).

424 8 C.F.R. § 208.31(c) (2024).

425 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.

mailing address to immigration officials.[426] If you are placed in a DHS detention center, DHS is supposed to give you the NTA within seventy-two hours.[427]

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 reasons for your removal. In the NTA, the government must tell you all of the following:[428]

(1) The nature of the removal proceedings against you;
(2) The special rules that the proceeding must follow;
(3) The laws that you allegedly violated;
(4) What you did to violate the law(s);
(5) Your right to access legal representation (a lawyer);
(6) The requirement that you share a written record of your address and telephone number;
(7) The consequences of not appearing at your hearing; and
(8) 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 on the NTA may determine what relief, or remedies, you may be eligible for and whether or not you must be detained.[429] 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[430] and that (2) you are removable.[431]

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.[432]

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[426] 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). Without notice, you will likely fail to show up to court and could be ordered deported in your absence. See Section G(2) below.

[427] *See* Bryan Lonegan & the Immigr. Law Unit of the Legal Aid Soc'y, *Immigration Detention and Removal: A Guide for Detainees and Their Families*, National Immigr. Law Ctr., 7 (2006), *available at* https://www.nilc.org/wp-content/uploads/2015/12/detentionremovalguide_2006-02.pdf (last visited Sep. 19, 2024).

[428] INA § 239(a)(1); 8 U.S.C. § 1229a(a)(1).

[429] See Part E of this Chapter for a discussion about mandatory detention. Forms of relief are discussed in Part F of this Chapter.

[430] 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(a)(1); 8 U.S.C. § 1229a(a)(1).

[431] INA § 240(b)(5)(A); 8 U.S.C. § 1229a(b)(5)(A).

[432] INA § 240(b)(5)(C); 8 U.S.C. § 1229a(b)(5)(C). 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).

3. Master Calendar Hearing

Removal proceedings begin with a master calendar hearing, which is similar to an arraignment in criminal court (an arraignment in criminal court is when you first appear in front of a judge and you hear your charges and an explanation of your rights). The master calendar hearing can take place in person, through video conference, or (with your permission) on the telephone.[433] The master calendar 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,[434] 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 (or "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.

(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.[435] 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.[436] 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[437] you are seeking and bring the corresponding applications with you, if possible. Otherwise, you should ask for an adjournment. This

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433 INA § 240(b)(2); 8 U.S.C. § 1229a(b)(2).

434 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.

435 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* Know Your Rights: What to Do if You are Questioned, Arrested, or Detained by Immigration and Other Law Enforcement, *available at* https://www.nilc.org/wp-content/uploads/2023/06/to_do_if_arrested_2007-08.pdf (last visited Sept. 28, 2024). 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 Sept. 21, 2024).

436 Appendix D at the end of this Chapter includes a list of providers of legal services.

437 See Part F of this Chapter for more information regarding forms of relief and their applications.

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.[438] 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.[439]

(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.

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,[440] 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 detained, it is highly unlikely that your request for a change of venue will be granted.[441]

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,[442] and (2) that if you are a Lawful Permanent Resident (green card holder) or were

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[438] 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.

[439] *See Finality of Convictions,* Immigrant Defense Project, *available at* https://www.immigrantdefenseproject.org/finality-of-convictions/ (last visited Sept. 27, 2024).

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

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

[442] 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

otherwise lawfully admitted into the U.S., that you are removable.[443] This means that the government must show that you have done something to violate immigration law that would let the government deport you.[444]

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 you and the. assistant ***chief counsel*** can reserve the right to appeal this decision.[445] If you have applied for a form of relief and the immigration judge has found that you are eligible for that form of relief, they 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[446] 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 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.

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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* Bryan Lonegan, *Immigration Detention and Removal: A Guide for Detainees and their Families*, The Legal Aid Society (Feb. 2006) at 9, *available at* https://www.nilc.org/wp-content/uploads/2015/12/detentionremovalguide_2006-02.pdf (last visited Sept. 22, 2024).

443 Bryan Lonegan, *Immigration Detention and Removal: A Guide for Detainees and their Families*, The Legal Aid Society (Feb. 2006) at 9, *available at* https://www.nilc.org/wp-content/uploads/2015/12/detentionremovalguide_2006-02.pdf (last visited Sept. 22, 2024).

444 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* Bryan Lonegan, *Immigration Detention and Removal: A Guide for Detainees and their Families*, The Legal Aid Society (Feb. 2006) at 9, *available at* https://www.nilc.org/wp-content/uploads/2015/12/detentionremovalguide_2006-02.pdf (last visited Sept. 22, 2024).

445 See Part H of this Chapter, which discusses decisions and appeals.

446 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.

(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.[447] 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 sworn statements (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 the judge must consider when deciding whether to grant you that relief.[448] This means that your witnesses should be prepared to discuss your life in the U.S., your good moral character, 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.[449] 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 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

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[447] Part B of this Chapter discusses U.S. immigration status. Use it to see if your witnesses have legal U.S. immigration status.

[448] Part F of this Chapter discusses these discretionary factors in more detail.

[449] INA § 240(c)(5); 8 U.S.C. § 1229a(c)(5).

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)[450] 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.[451] The BIA must have notice within thirty days of the judge's decision.[452] 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.[453] 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.[454]

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:[455]

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

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[450] 8 C.F.R. § 1003.1(b) (2024). 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.

[451] 8 C.F.R. § 1003.3(a) (2024).

[452] 8 C.F.R. § 1003.38(b) (2024).

[453] *See* 8 C.F.R. § 1003.38(c) (2024); BIA Practice Manual § 3.1(a)(1). 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. *See* 8 C.F.R. § 1003.37(a) (2024).

[454] *See* 8 C.F.R. § 1003.39 (2024); BIA Practice Manual § 3.1(c)(3).

[455] 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. For the current address, see BIA Practice Manual § 3.1(a)(3).

(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***.[456] There is also a required fee of $110 for an appeal, whether you file a legal brief or not.[457] Once the BIA receives your Notice of Appeal, the BIA will let you 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.[458] 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.[459] When writing a brief, you should start with a statement of facts. The statement of facts should outline the following: (1) the important 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. The BIA 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.[460] Appeals involving detainees are likely to move quicker than the appeals of non-USCs who are not detained. Once the BIA makes a decision on your appeal, it might provide a summary of the case along with

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[456] 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. For more detailed requirements for legal briefs, see BIA Practice Manual § 4.6.

[457] 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 Sep. 27, 2024).

[458] Requests for oral argument are rarely granted. *See* BIA Practice Manual § 8.2(a).

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

[460] 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 Noncitizen Registration Number when you call.

the decision. The BIA often issues ***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.[461] Summary affirmances do not give reasons why the BIA is making its decision.[462]

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.

There is generally a filing fee of $145 for a motion to reopen or reconsider before the immigration court, and a filing fee of $895 for a motion to reopen or reconsider before the BIA.[463] 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/eoir/page/file/1237856/dl (last visited Sept. 26, 2024).

(a) Motion to Reopen

You can file one[464] motion to reopen.[465] This would ask the court to reopen your immigration court 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 did not appear in court because of exceptional circumstances (things outside of your control) and/or ineffective assistance of counsel,[466] you must file this motion within 180 days from the date of the final deportation order.[467] If you do not file within 180 days, the judge gets to decide whether or not to reopen your case.[468] If the deportation order was put in place removal proceedings that occurred before June 13, 1992, there is no deadline.

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461 *See* BIA Practice Manual § 4.15.

462 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.

463 *See* 8 C.F.R. § 1103.7(b)(2) (2024). You should always check what the current fee is.

464 There is one exception to the limitation of one motion to reopen, which falls under the special rule for battered spouses, children, and parents. INA § 240(c)(7)(C)(iv); 8 U.S.C. § 1229a(c)(7)(C)(iv).

465 INA § 240(c)(7); 8 U.S.C. § 1229a(c)(7).

466 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 Sep. 27, 2024).

467 INA § 240(c)(7)(iii), (b)(5)(C); 8 U.S.C. § 1229a(c)(7)(C)(iii), (b)(5)(C). Some jurisdictions consider ineffective assistance of counsel an exceptional circumstance. *See* Lopez v. INS, 184 F.3d 1097, 1100–1101 (9th Cir. 1999). *But see* Borges v. Gonzales, 402 F.3d 398, 408 (3d Cir. 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).

468 In *Lopez v. INS*, the court decided that for cases where deportation is ordered in your absence, the 180-day deadline for a motion to reopen is tolled when there is ineffective assistance of counsel. Lopez v. INS 184 F.3d 1097, 1100–1101 (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 the case is extended. In other words, even though you may have 180 days to file the motion to reopen based on ineffective assistance of counsel, the clock does not start running until you know or should have known that you were a victim of ineffective assistance of counsel.

There also is no deadline if you are applying for asylum, as long as your motion is based on the argument that conditions have changed in your home country.[469]

Motions to reopen based on lack of notice or failure to attend your hearing because of circumstances outside of your control 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.[470] 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.[471]

(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 sworn statements ("affidavits"). You must show why this evidence was not available at the time of your prior hearing.[472]

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

If you were ordered deported during a hearing you did not attend, you can file a motion to reopen if there were exceptional circumstances (things outside of your control) 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 Notice to Appear (NTA).[473] If the motion to reopen or motion to reconsider is based on a lack of notice, there is no fee.[474]

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469 INA § 240(c)(7)(C)(ii); 8 U.S.C. § 1229a(c)(7)(C)(ii) ("There 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.").

470 You must request a stay from the BIA to obtain a stay in this situation. 8 C.F.R. § 1003.23(b)(1)(v) (2024).

471 ICE Policy Directive Number 11061.1: Facilitating the Return to the United States of Certain Lawfully Removed Aliens (Feb. 24, 2012), *available at* https://www.ice.gov/doclib/foia/dro_policy_memos/11061.1_current_policy_facilitating_return.pdf (last visited Sept. 26, 2024). However, DHS may refuse to return you while the BIA appeal is pending. This kind of refusal may require an appeal to federal court, which is covered in Section 4 below. For more information about negotiating this return process, *see* National Immigration Project of the National Lawyers Guild, Practice Advisory: Return to the United States After Prevailing on a Petition for Review or Motion to Reopen or Reconsider (Apr. 27, 2015), *available at* https://nipnlg.org/sites/default/files/2023-08/2015_27Apr_return-advisory_0.pdf (last visited Sept. 26, 2024).

472 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 did not get or present to the court for some reason. For your motion to reopen, (a) would probably be a valid reason for reopening your immigration case but (b) would probably not be enough. *See* Patel v. Ashcroft, 378 F.3d 610, 612 (7th Cir. 2004).

473 INA § 240(c)(7); 8 U.S.C. § 1229a(c)(7). For the purposes of motions to reopen, the term "exceptional circumstances" is defined in INA § 240(e)(1); 8 U.S.C. § 1229a(e)(1) 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."

474 *See* 8 C.F.R. § 1003.24(b)(2)(v) (2024); INA § 240(b)(5)(C)(ii); 8 U.S.C. 1229a(b)(5)(C)(ii).

(iii) *Ineffective Assistance of Counsel*[475]

The requirements for a claim of ineffective assistance of counsel are:[476]

(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 about your 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*** (a written contract for legal services between an attorney and client).
(2) Before you file the motion to reopen, you must tell your previous attorney about the claims you are going to make. This allows them the opportunity to respond to you first. If you do receive a response from your previous attorney, you should include their response in the motion as well.
(3) The court might 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 works, 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 filed a formal complaint, your motion must include the reasons for not reporting them.
(4) You must also show that you were "prejudiced" because of your former attorney's actions. While the exact standard varies by circuit, you basically must show that there is at least a reasonable chance that the result of the proceedings would have been different if not for the attorney's poor performance (e.g., that you would have been entitled to relief from deportation). If your attorney's poor performance resulted in you not showing up to your court date, causing you to be ordered removed *in absentia* (in your absence), you do not need to separately demonstrate prejudice.[477]

(b) Motion to Reconsider

You can file one motion to reconsider, which asks the court to reconsider the decision that you are deportable because 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. The motion must point out the errors of law or fact in the previous order.[478]

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[475] There is generally a fee of $145 associated with filing a motion to reopen based on ineffective assistance of counsel. 8 C.F.R. § 1103.7(b)(2) (2024). 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 Sept. 27, 2024).

[476] Matter of Lozada, 19 I. & N. Dec. 637, 639–640 (BIA 1988) (explaining the requirements to successfully claim ineffective assistance of counsel as a reason to reopen your case); Matter of Rivera-Claros, 21 I. & N. Dec. 599, 604–605 (BIA 1996) (confirming *Lozada* requirements); Matter of Grijalva, 21 I. & N. Dec. 472, 473–474 (BIA 1996) (confirming *Lozada* requirements).

[477] *See* Matter of Grijalva, 21 I. & N. Dec. 472, 474 n.2 (BIA 1996).

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

4. Appeal to the Court of Appeals[479]

The REAL ID Act of 2005 ("REAL ID Act") eliminated reviews of final deportation orders in habeas proceedings in federal district court.[480] However, you can still file a ***petition for review*** in the federal court of appeals for the judicial circuit where your immigration court decision was made. The REAL ID Act prohibits review of certain discretionary decisions,[481] but specifically states that you can still raise constitutional claims (such as a claim that your right to due process or equal protection was violated) and questions of law (claims that the BIA wrongly interpreted or applied the relevant law, such as the INA or the applicable regulations).[482] The appeals court also has the authority to review the BIA's decision in an asylum case, even though asylum involves a discretionary decision.[483] Your petition for review must be filed within thirty days of the BIA decision you are appealing.[484] It is not enough to mail your petition for review by the thirtieth day—it must be received by the thirtieth day.[485]

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.[486] These ninety days are referred to as your ***removal period***.[487] 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.[488]

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

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[479] The rules regarding review in federal courts are very complicated and are still changing. You should talk to an attorney when filing anything with a federal court.

[480] 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.).

[481] *See* INA § 242(a)(B); 8 U.S.C. § 1252(a)(B).

[482] *See* INA § 242(a)(2)(D); 8 U.S.C. § 1252(a)(2)(D).

[483] *See* INA § 242(a)(B)(ii); 8 U.S.C. § 1252(a)(B)(ii). However, certain decisions are not subject to review, such as whether you met an exception to the one-year filing deadline for an asylum application. *See* INA § 208(a)(3); 8 U.S.C. § 1158(a)(3).

[484] INA § 242(b)(1); 8 U.S.C. § 1252(b)(1).

[485] *See* 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, 2024).

[486] INA § 241(a)(1)(A); 8 U.S.C. § 1231(a)(1)(A).

[487] INA § 241(a)(1)(A); 8 U.S.C. § 1231(a)(1)(A).

[488] INA § 241(a)(6); 8 U.S.C. § 1231(a)(6). The terms of supervision after the 90-day period are outlined in INA § 241(a)(3); 8 U.S.C. § 1231(a)(3). The government cannot hold you indefinitely or for an unreasonable period, and they generally must justify detaining you for longer than six months. *See* Zadvydas v. Davis, 533 U.S. 678, 701, 121 S. Ct. 2491, 2505, 150 L. Ed. 2d 653, 674 (2001).

order.[489] If you are deportable under certain provisions,[490] you may face imprisonment of up to ten years for failure to depart after a final order of removal.[491]

2. Bars to Reentry

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. Therefore, everyone who is deported from the U.S. faces the possibility of never being able to return.

- 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.[492]
- Inadmissibility. If you were deported based on inadmissibility grounds, you can apply for reentry to the U.S. after five years.[493]
- Deportability. If you were deported based on deportability grounds (except aggravated felonies), you can apply for reentry to the U.S. after ten years.[494]
- Two or More Deportation Orders. If you have been removed from the U.S. at least twice, you can apply for reentry to the U.S. after twenty years.[495]
- Aggravated Felony. If you were deported because of an aggravated felony, then you will never be allowed to reenter the U.S.[496]

If one of those bars to reentry applies to you, you may be able to apply for a waiver.[497]

Additionally, there are potential bars to reentry based on length of unlawful presence in the U.S.:[498]

- Between 180 Days and One Year of Unlawful Presence. If you have been unlawfully present in the U.S. (either by entering without inspection or overstaying a visa) more than 180 days but less than one year, and you voluntarily leave the U.S. before the start of any removal proceedings, you must wait three years before applying for reentry.[499]

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[489] INA § 243(a); 8 U.S.C. § 1253(a).

[490] This applies to INA § 237(a)(1)(E) (smuggling), (a)(2) (criminal grounds of deportability), (a)(3) (failure to register or falsification of documents), or (a)(4) (national security and terrorism grounds); 8 U.S.C. § 1227(a)(1)(E), (a)(2)–(4).

[491] For the full statute, see INA § 243; 8 U.S.C. § 1253.

[492] INA § 212(a)(6)(B); 8 U.S.C. § 1182(a)(6)(B).

[493] INA 212(a)(9)(A)(i); 8 U.S.C. § 1182(a)(9)(A)(i).

[494] INA 212(a)(9)(A)(ii); 8 U.S.C. § 1182(a)(9)(A)(ii).

[495] INA 212(a)(9)(A)(i), (ii); 8 U.S.C. § 1182(a)(9)(A)(i), (ii).

[496] INA 212(a)(9)(A)(i), (ii); 8 U.S.C. § 1182(a)(9)(A)(i), (ii).

[497] You would generally do this using Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

[498] A waiver of these bars may be possible if you have a spouse or parent who is a U.S. citizen or LPR and your removal would result in extreme hardship to them. *See* INA § 212(a)(9)(A)(v); 8 U.S.C. § 1182(a)(9)(A)(v); *see also* 8 C.F.R. § 212.7(e) (outlining additional requirements and procedures). To apply, you would use Form I-601A, Application for Provisional Unlawful Presence Waiver. For more on these two unlawful presence bars in general, 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 Sept. 27, 2024).

[499] INA 212(a)(9)(B)(i)(I); 8 U.S.C. § 1182(a)(9)(B)(i)(I).

- One Year or More of Unlawful Presence: If you have been unlawfully present in the U.S. for at least one year, you must wait ten years before applying for reentry.[500]

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.[501]

Additionally, if you illegally reenter the U.S. after having been order removed, you may be subject to ***reinstatement of removal***.[502] DHS initiates this process by giving you a document called "Form I-871 Notice of Intent to Reinstate Prior Order." As with expedited removal and administrative removal, discussed earlier, this is a streamlined process with very few procedural rights and you cannot apply for almost any forms of relief.[503] You are not entitled to proceedings before an immigration judge.[504] However, you can make a statement to the DHS officer disputing their determination (for example, saying that you were not actually subject to a prior removal order or you are not actually the person they are claiming was previously removed), which the officer can consider.[505] Also, as with administrative removal, if you express a fear of persecution or torture, you will be referred to an asylum officer for a reasonable fear interview to see if you may qualify for withholding of removal (under INA § 241(b)(3) or the Convention Against Torture).[506] If reinstatement of removal applies to you and you do not establish a reasonable fear of persecution, the previous order of removal will be reinstated from its original date and cannot generally be reopened or reviewed.[507]

Additionally, if you illegally reenter after being ordered deported or after being unlawfully present in the U.S. for at least one year total, you are permanently inadmissible, although you can request permission to reapply after ten years outside the U.S.[508]

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[500] INA 212(a)(9)(B)(i)(II); 8 U.S.C. § 1182(a)(9)(B)(i)(II).

[501] For the full statute, see INA § 276; 8 U.S.C. § 1326. The fines are determined according to Title 18 of the U.S.C. The length and terms of imprisonment are determined based on your criminal history and the basis for your original deportation order from the U.S. If you were previously convicted of an aggravated felony, you could be sentenced to up to 20 years in prison. *See* INA § 276(b)(2); 8 U.S.C. § 1326(b)(2). If you were previously convicted of a felony (other than an aggravated felony) or three or more misdemeanors involving drugs and/or crimes against the person, or you were removed on terrorism grounds, you could be sentenced to up to 10 years. *See* INA § 276(b)(1), (3), (4); 8 U.S.C. § 1326(b)(1), (3), (4). Otherwise, you could be sentenced to up to two years. *See* INA § 276(a); 8 U.S.C. § 1326(a).

[502] If you requested relief under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) or section 202 or 203 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), reinstatement of removal does not apply. *See* LIFE Act Amendments of 2000, Pub. L. No. 106-554, § 1505(a)(1), (b)(1), (c), 114 Stat. 2763A-324 (2000); 8 C.F.R. § 241.8(d) (2024).

[503] *See* INA §241(a)(5); 8 U.S.C. §1231(a)(5).

[504] *See* 8 C.F.R. § 241.8(a) (2024).

[505] *See* 8 C.F.R. § 241.8(b) (2024).

[506] *See* 8 C.F.R. § 241.8(e) (2024).

[507] INA §241(a)(5); 8 U.S.C. §1231(a)(5).

[508] INA § 212(a)(9)(C)(i), (ii); 8 U.S.C. § 1182(a)(9)(C)(i), (ii).

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.

APPENDIX A

GLOSSARY

Acquired Citizenship
The U.S. citizen status of children born abroad (outside the U.S.) 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 their 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. See Part F of this Chapter, which discusses adjustment of status as a form of relief from deportation in greater detail.

Administrative Removal
A legal procedure that DHS can use to remove noncitizens who have been convicted of an aggravated felony. *See* Aggravated Felony. This procedure is "summary" — which means without a hearing in front of a judge. However, a noncitizen facing administrative removal is still entitled to counsel that they pay for, reasonable notice of the charges, a determination that they are the person named in that notice, and a record of those proceedings. Lawful permanent residents (except for those with conditional lawful permanent residence) cannot be removed under this procedure. *See* INA § 238(b); 8 U.S.C. § 1228(b).

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) 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
This term is used in immigration law to refer to anyone who is not a U.S. citizen or national. *See* INA § 101(a)(3); 8 U.S.C. § 1101(a)(3). This Supplement uses the term "noncitizen" in place of the word "alien." *See* Barton v. Barr, 590 U.S. 222, 226 n.2, 140 S. Ct. 1442, 1446 n.2, 206 L. Ed. 2d 682, 692 n.2 (2020).

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 they fear returning to their 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.

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 up to 23 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 they are 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) and to non-LPRs under INA § 240A(b); 8 U.S.C. § 1229b(b). See Part F of this Chapter, which discusses forms of relief in greater detail.

Categorical Approach
An approach that courts use to assess whether a criminal conviction falls within a category of offenses under immigration law (such as crimes involving moral turpitude) by looking to the elements of the offense of conviction, rather than looking at the specific facts of the noncitizen's actual conduct. See Section C(4) of this Chapter, which explains the categorical approach in 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 assistant chief counsel, who is an attorney from ICE, 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 grounds for inadmissibility under INA § 212(a)(2)(D); 8 U.S.C. § 1182(a)(2)(D).

Consulate
The office of a foreign government in the U.S. 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 a drug that is considered a controlled substance under federal law. Controlled substances under federal law are listed in 21 U.S.C. § 812 and include marijuana. Controlled substance offenses are a ground of deportability and inadmissibility. The ground of deportability contains an exception for a single conviction involving 30 grams or less of marijuana for personal use. The ground of inadmissibility does not contain such an exception, although you may apply for a Section 212(h) waiver in that situation. A Section 212(h) waiver is not available for any other controlled substance offenses.

Convention Against Torture ("CAT")
An international treaty that prohibits member countries, including the U.S., from returning anyone to a country where they 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).

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. *See* 18 U.S.C. § 16(a). The other category of crimes listed in 18 U.S.C. § 16(b) was struck down by the Supreme Court as unconstitutional in *Sessions v. Dimaya*, 584 U.S. 148, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018).

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 they are 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 they are released.

Deferred Action
A decision made by the prosecutor not to take action in a case. This can be because that case is unique, or it can be because the case belongs to a group of cases where the prosecutor has chosen not to take action. This is entirely the prosecutor's decision, and it is not possible to obtain through a hearing or other means. The most well-known group of cases where deferred action is common is for noncitizens who arrived in the U.S. as children. This is the "Deferred Action for Childhood Arrivals" (DACA) program. This program instructs prosecutors to defer action in cases where the noncitizen came to the U.S. before the age of sixteen, was physically in the U.S. on June 15, 2012, and is in or completed high school or is a veteran, among other requirements. *See* 8 C.F.R. §§ 236.21–236.25. It is important to bear in mind that there are other forms of deferred action.

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 (an inspection at a later time) 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. citizenship 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 a noncitizen's life, which a judge looks at to see if they should receive the forms of relief they have requested. The judge will decide based on these facts whether the form of relief would be positive for both the noncitizen 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.

Embassy
An embassy is the main place where a foreign country represents itself within the U.S. Often, an embassy will offer consular services to citizens of the country in the U.S. This includes passport renewal, for example.

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 Board of Immigration Appeals.

Expedited Removal
A removal procedure used for noncitizens without valid arriving at the border or for noncitizens who are inadmissible under INA § 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid entry documents), and who are either: (1) arriving at the border or (2) have not been admitted or

paroled into the U.S. and cannot show that they have been physically present in the U.S. for at least two years.[509] *See* INA § 235(b)(1)(A)(i), (iii)(II); 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II). Under expedited removal, noncitizens are subject to detention and are not entitled to a hearing before an immigration judge unless they establish a credible fear of persecution or torture.

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 they would otherwise be required to pay. For instance, filing fees might be waived in a court case for someone who could not pay.

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 a noncitizen an immigration bond, they must prove that they are 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 a noncitizen facing removal proceedings. If a form of relief is granted by an immigration judge, the noncitizen will not be deported and will be allowed to remain in the U.S.

Good Moral Character
A requirement for certain forms of relief, including cancellation of removal for non-LPRs and voluntary departure at the conclusion of removal proceedings. There are several statutory bars to a finding of good moral character. *See* INA § 101(f); 8 U.S.C. § 1101(f). Additionally, immigration judges exercise discretion in balancing positive and negative factors to decide if you have demonstrated good moral character.

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

Home Country
The country in which a noncitizen was born or the country to which they would be deported.

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

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[509] *See* INA § 235(b)(1)(A)(iii)(II); 8 U.S.C. § 1225(b)(1)(A)(iii)(II); Dept. of Homeland Sec., *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025) (authorizing DHS officers to use expedited removal to the full extent permitted by the statute).

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 a noncitizen 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. A noncitizen may be found to be inadmissible any time they seek permission to enter the U.S., even if they are a LPR returning from a trip abroad. A noncitizen may also be inadmissible if they are found to be present in the U.S. without permission. *See* INA § 212; 8 U.S.C. § 1182 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 a noncitizen or the government, of the particular facts and arguments in a noncitizen's immigration court proceedings. A brief can be submitted by either a noncitizen or the government to the Board of Immigration Appeals (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 a noncitizen has one of these kinds of green cards and never obtained permanent residency, then they do 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 a noncitizen 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) and INA § 236a; 8 U.S.C. § 1226a (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. A noncitizen may have more than one master calendar hearing. If a judge finds that a noncitizen is not eligible for any form of relief, the judge can order the noncitizen 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.

Naturalization
The process by which a Lawful Permanent Resident (someone who has a Green Card) becomes a citizen. To be naturalized a noncitizen must be at least 18, have resided continuously in the U.S. for five years (or three if the noncitizen is married to a U.S. citizen), be of good moral character, demonstrate the ability to understand English, pass an examination on the U.S., and take the Oath of Allegiance.

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 Oct. 18, 2024).

Noncitizen
Someone who is not a citizen or national of the U.S. Where possible, this Supplement uses the term "noncitizen" in place of the statutory term "alien," which is used in immigration law to refer to anyone who is not a U.S. citizen or national. *See* INA § 101(a)(3); 8 U.S.C. § 1101(a)(3) (defining "alien"); Barton v. Barr, 590 U.S. 222, 226 n.2, 140 S. Ct. 1442, 1446 n.2, 206 L. Ed. 2d 682, 692 n.2 (2020) (treating "noncitizen" as equivalent to the statutory term "alien").

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 them 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 they are 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, they had to have "notice" about a certain fact.

Notice of Appeal
An alert (notification) that an appeal is being filed with a higher court. Noncitizens 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 noncitizen being removed, including their name, country of origin, and how they entered the U.S., as well as the grounds for their 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.

Particularly Serious Crime
A category of crimes that renders someone ineligible for asylum or withholding of removal. The court will consider what the conviction was for, what the facts of the conviction were, what sentence was given, and whether the conviction indicates that the applicant will be a danger to the community in the U.S. In other words, the usual "categorical approach" that does not look at specific facts does not apply in this context. Additionally, for the purposes of asylum, all aggravated felonies are automatically considered particularly serious crimes. INA § 208(b)(2)(A)(ii); 8 U.S.C. § 1158(b)(2)(A)(ii). For the purposes of withholding of removal, aggregated felonies with an aggregate sentence of at least five years are automatically considered particularly serious crimes. INA § 241(b)(3)(B); 8 U.S.C. § 1231(b)(3)(B).

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 crime involving moral turpitude ("CIMT") is a ground of inadmissibility. These exceptions apply to noncitizens who either: (1) committed only one CIMT when they were 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 (2) committed one crime and the maximum sentence of that crime does not exceed one year of imprisonment and they were not sentenced to more than 6 months of imprisonment.

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

Public Charge
Someone who depends on public benefits as their main source of income. In the case of a non-U.S. Citizen facing removal proceedings, officials can consider age, health, family status, assets, education, and whether they receive (or have ever received) public benefits in the past to determine whether they are 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 relocation 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).

Registry
A way for noncitizens who are considered "unauthorized aliens" to become lawful permanent residents. USCIS has the discretion to grant lawful status to an individual noncitizen who has been continuously resident in the U.S. since January 1st, 1972, is of "good moral character," and is eligible for naturalization. INA § 249; 8 U.S.C. § 1259.

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

Reinstatement of Removal
If a noncitizen has unlawfully entered the U.S., and has previously been removed following a removal order, then the DHS can remove the noncitizen without a new hearing before an immigration judge. This is done by a "reinstatement order" which reactivates the previous removal order. The only ways to prevent removal when facing a reinstatement order are to obtain withholding of removal or relief under the Convention Against Torture.

Removal Period
The ninety days following a final deportation order or release from detention when a deportable non-citizen is supposed to leave the country. The government has the right to extend this 90-day period and to detain a non-citizen during their removal period. If the non-citizen has not departed within 90 days and their deportation is still being decided, the government can also place them 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-U.S. citizens 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 established 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.

Stipulated Order of Removal
An order of removal where the noncitizen agrees with the government that they should be removed from the U.S. By agreeing with the government, the noncitizen agrees not to have a hearing or argue that they should not be removed. This is a final order of removal, and so means that if a noncitizen unlawfully enters the U.S. again, that order of removal may be reinstated. *See* Reinstatement of Removal.

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 a non-citizen to the court, immigration judge, and assistant chief counsel for the purposes of their 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-U.S citizen's from certain countries if they find that armed conflict, environmental dangers, or other unique and temporary conditions in that country prevent people from returning there. The President reviews the conditions of the country every year to determine whether the TPS status is still necessary. If it is not, the TPS status will expire for the non-U.S. citizen 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- U.S. Citizens 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 non-citizen who is in the U.S. even though they have not been granted an official immigration status that gives them the right to be there.

Venue
The correct 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 correct, 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-U.S. citizens 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-U.S. citizens 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 their visa, it does not matter whether they have been convicted of any crimes; the government can still deport them.

Visa Overstay
See "visa."

Voluntary Departure
An option available to some non-U.S. citizen facing deportation in which the non-citizen 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 be a security risk 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-U.S. citizen must prove to the immigration judge that they are unable or unwilling to return to their country because their 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, they must be convinced that there is a probability that the non-U.S. citizen will be persecuted. If withholding of removal is granted, the judge will still order the non-U.S. citizen deported, but they will not have to return to their home country until it is safe to do so.

Witness
A person who is called 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

USCIS FORMS

Immigration Documents (these are documents that you may receive and can use to show your immigration status)

I-94: Arrival/Departure Record (this is a record of your arrival in the United States, including the date and status you were admitted under; you or someone else with your permission can find your most recent I-94 online at https://i94.cbp.dhs.gov/search/recent-search)

I-551: Permanent Resident Card ("Green Card")

I-766: Employment Authorization Document (EAD) Card

N-550: Certificate of Naturalization

N-570: Certificate of Naturalization

N-560: Certificate of Citizenship

N-561: Replacement Certificate of Citizenship

Charging Documents (documents that DHS uses to initiate the removal process)

I-851: Notice of Intent to Issue a Final Administrative Removal Order

I-860: Notice and Order of Expedited Removal

I-862: Notice to Appear (NTA) (this is the charging document that tells a noncitizen to appear before an Immigration Judge; if you receive an NTA, make sure to read it carefully to see when and where you need to appear in court, what reasons the government lists for why they believe you are inadmissible or deportable, and if the information is complete and correct)

I-871: Notice of Intent/Decision to Reinstate Prior Order

The following forms can all be found on the USCIS website at https://www.uscis.gov/forms/all-forms. *Make sure you are using the most recent version of any form.*

Requests for Information or Documents

G-639: Freedom of Information/Privacy Act (FOIA/PA) Request (use this form to request immigration documents that the government has related to you; to request all such documents, ask for your "complete A-file")

G-884: Request for the Return of Original Documents (use this form if you submitted original documents in applying for an immigration benefit and need to get those documents back)

I-102: Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (use this form to access your I-94 Arrival/Departure Record if you were not issued an I-94 or your I-94 was lost, stolen, or damaged; if you were admitted after April 30, 2013, you should first try accessing your I-94 online at https://i94.cbp.dhs.gov/search/recent-search)

Personal Information Forms

AR-11: Change of Address Form (you must update your address with USCIS within 10 days)

G-325A: Biographic Information for Deferred Action (use this form to provide biographic information when requesting certain forms of deferred action)

Forms Related to Fees

G-1055: Fee Schedule (do not submit this form; this lists the current fees for all USCIS forms)

I-912: Request for Fee Waiver

Applications for Immigration Statuses or Relief and Related Forms

I-90: Application to Replace Permanent Resident Card ("Green Card") (use this form to renew, correct, or replace your green card)

I-130: Petition for Alien Relative (completed by the sponsoring relative in an adjustment of status application)

I-130A: Supplemental Information for Spouse Beneficiary

I-131: Application for Travel Documents, Parole Documents, and Arrival/Departure Records

I-864: Affidavit of Support (Form I-864EZ and Form I-864W are alternatives to the affidavit of support)

I-864P: Poverty Guidelines (do not submit this; used only for assistance in completing I-864 forms)

I-191: Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)

I-192: Application for Advance Permission to Enter as a Nonimmigrant (use this form to either request advance permission o temporarily enter the United States as a nonimmigrant despite a ground of inadmissibility, or to request a waiver of inadmissibility if you are an applicant for a T or U visa)

I-212: Application for Permission to Reapply for Admission into the United States After Deportation or Removal

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-589: Application for Asylum and Withholding of Removal (can also be used to seek relief under CAT)

I-601: Application for Waiver of Grounds of Inadmissibility

I-601A: Application for Provisional Unlawful Presence Waiver

I-602: Application by Refugee for Waiver of Inadmissibility Grounds

I-690: Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act

I-730: Refugee/Asylee Relative Petition (use this form if you have already received refugee/asylee status as the principal applicant and are requesting your spouse or child receive derivative refugee/asylee status)

I-821: Application for Temporary Protected Status (TPS)

I-821D: Consideration of Deferred Action for Childhood Arrivals (use this form to apply for renewal of DACA status)

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-914: Application for T Nonimmigrant Status

I-918: Application for U Nonimmigrant Status

Employment Forms

I-140: Immigrant Petition for Alien Worker (completed by the sponsoring employer in an adjustment of status application)

I-765: Application for Employment Authorization

Citizenship and Naturalization Forms

N-336: Request for a Hearing on a Decision in Naturalization Proceedings

N-400: Application for Naturalization

N-600: Application for Certificate of Citizenship (used for those who acquire or derive U.S. citizenship)

Forms Related to Legal Representation

G-28: Notice of Entry of Attorney (filed when dealing with DHS, not with the court)

EOIR FORMS

These forms can be found on the EOIR website at https://www.justice.gov/eoir/list-downloadable-eoir-forms. *Make sure you are using the most recent version of any form.*

EOIR-33/IC: Change of Address/Contact Information Form – Immigration Court

EOIR-33/BIA: Change of Address/Contact Information Form – Board of Immigration Appeals

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-29: Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer

EOIR-40: Application for Suspension of Deportation

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—Under Secretary for Civilian Security, Democracy, and Human Rights
https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/

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.
https://www.state.gov/subjects/foreign-consular-offices-in-the-u-s/

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
https://www.nlada.org/

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 AND RESOURCES: NEW YORK

For the current official list of pro bono legal service providers in New York, see https://www.justice.gov/eoir/file/ProBonoNY/dl.

Nationwide

American Bar Association Detention and LOP Information Line
Tel: (202) 442-3363
Email: immcenter@americanbar.org
Website: www.americanbar.org/groups/public_interest/immigration

- Operates Monday through Friday, from 9:00 a.m. through 5:00 p.m. Eastern Time
- Dial 2150# from the detention center
- Offers pro se case assistance, NOT legal representation
- Refers callers to legal representation in their local area
- Provides information in native language
- Does not provide free legal services for noncitizens scheduled for Credible Fear Interviews and/or Asylum Merits Interviews

Buffalo Area

The Legal Aid Society of Rochester
One West Main Street, Suite 800
Rochester, NY 14614
Tel: (585) 232-4090
Fax: (585) 232-2352
Website: https://www.lasroc.org/

- Represents noncitizens 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 noncitizens

International Institute of Buffalo
864 Delaware Ave.
Buffalo, NY 14209
Tel: (716) 883-1900
Website: https://iibuffalo.org/

- Does NOT provide legal representation
- Offers refugee resettlement, job training programs, interpreting and translation services, and educational opportunities
- May charge a nominal fee
- They offer interpretation and translation services in various languages, including: English, Spanish, Arabic, Mandarin, Haitian Creole, Hindi, Portuguese, Somali, and Vietnamese

Michael Berger, Esq.
***Berger, Berger & Sobieski*: Immigration Attorneys**
5530 Sheridan Drive, Suite 1
Buffalo, NY 14221
Tel: (716) 634-6500
Website: https://www.usavisa.net/

Anne E. Doebler, Esq.
***Anne E. Doebler,* P.C.**
14 Lafayette Square, Suite 1800
Buffalo, NY 14203
Tel: (716) 898-8568
Fax: (716) 898-8929
Website: https://annedoebler.com/

- Small firm that focuses on family reunion, citizenship, asylum, and immigration removal litigation.

***Erie County Bar Association* Volunteer Lawyers Project, Inc.**
438 Main Street, Suite 7
Buffalo, NY 14202
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
Website: https://ecbavlp.com/
Online Intake form: https://ecbavlpoi.legalserver.org/modules/matter/extern_intake.php?pid=129&h=daa817#

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

Alejandro Gutiérrez, Esq.
Law Offices of Alejandro Gutierrez PLLC
745 Englewood Avenue
Buffalo, NY 14223-2406
Tel: (716) 877-4276
Toll Free Fax: (855) 260-1323
Email: aglaw01@mac.com & Aglaw01@gmail.com
Website: www.alejandrogutierrezpllc.com

- Office is 45 minutes from the Federal Detention facility in Batavia, NY
- Alejandro Gutiérrez, Esq. is a Spanish speaker

Matthew Kolken, Esq.
Kolken Law
135 Delaware Ave., Suite 101
Buffalo, NY 14202
Tel: (716) 854-1541
Website: https://www.kolkenandkolken.com/

Stephen K. Tills, Esq.
Tills Visa Immigration Lawyer USA
P.O. Box 635
6413 West Quaker Rd. Orchard Park, NY 14127-2354
Tel: (716) 662-5080
Fax: (716) 662-8475
Website: https://tillsvisalaw.com/home.html

Andrew Slepian, Esq.
Slepian Law
14 Lafayette Square, Suite 1800
Buffalo, New York 14203
Tel: (716) 870-4788

Annick T. Koloko, Esq.
Law Office of Annick T. Koloko
69 Delaware Ave. Suite 608
Buffalo, NY 14222
Tel: (716) 200-1720
Fax: (716) 837-2749
Website: https://kolokoimmigration.com/

Jose, E. Perez, Esq.
Law Offices of Jose Perez, P.C.
Oficinas de abogado Jose Perez
Syracuse Office:

- 659 West Onondaga Street
  Upper Floor
  Syracuse, NY 1320
- Tel: (315) 422-5673
- Fax: (315) 466-JOSE

Buffalo Office:

- 651 Delaware Avenue, Suite 118
- Buffalo, New York 14202
- Tel: (716) 362-1204
- Fax: (315) 466-JOSE

Rochester Office:

- 250 Mill Street Suit 305
- Rochester, NY, 14614
- Tel: (585) 433-1770
- Fax: (315) 466-JOSE

Email: http://www.josepereztuabogado.com/

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

Nevin F. Murchie, Esq.
Law Office of Nevin F. Murchie, PLLC.
8555 Main Street
Williamsville, NY 14221
Tel: (716) 565-6270
Fax: (716) 565-6272
Email: nmurchie@murchielaw.com
Website: www.murchielaw.com

Matthew Borowski, Esq.
Borowski Witmer Immigration Lawyers
4343 Union Rd
Buffalo, NY 14222
Tel: (716) 418-7431
Website: www.borowskilaw.com

- The Buffalo office is near the Buffalo Niagara International Airport (BUF) and the Walden Galleria.
- It is also fifteen minutes from the Buffalo Immigration Court in downtown Buffalo and thirty minutes from the Buffalo Federal Detention Facility in Batavia, New York
- Languages: English, Spanish, Farsi, and French

Prisoners' Legal Services of New York, Immigration Unit
Albany Immigration Office:

- 41 State Street, Suite M112
  Albany, NY 12207
- Tel: (518) 694-8699
- Fax: (518) 694-4281
- Email: frbarrios@plsny.org

Buffalo Immigration Office:

- 14 Lafayette Square, Suite 510
  Buffalo, NY 14203
- Tel: (716) 844-8266
- Fax: (716) 854-1008
- Email: jnowak@plsny.org

Website: www.plsny.org

- Represents non-citizens incarcerated in New York State prison in immigration removal proceedings, non-citizens facing detention, and provides holistic immigration services to unaccompanied minors
- Multilingual staff

New York City Area

Catholic Charities Community Services, Archdiocese of New York
80 Maiden Lane, 13th Floor
New York, NY 10038
Tel: (212) 419-3700
Fax: (212) 751-3197

- Languages: Interpretation available in all languages.
- Limited to non-detained cases only
- No walk-ins
- All types of removal cases; for removal cases only, call/text the Immigration Court Helpdesk for information about legal services: (315) 690-4831
- 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
Email: cala@igc.org
Website: www.centralamericanlegal.info

- Call for appointment
- No walk-ins
- Removal defense for Central and South American asylum cases.
- 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
Website: https://www.citybarjusticecenter.org/

- Languages: Filipino, French, Portuguese, Spanish, and Tagalog
- Services including legal protections for victims of violence (including domestic violence and sexual assault), visas for victims of human trafficking, asylum cases, DACA and TPS applications, and other forms of immigration relief
- Will appear at 26 Federal Plaza Court and Varick St. Court

Connecticut Immigrant Center Inc.
36 Mill Plain Road, Suite 403
Danbury, CT 06811
Tel: (203) 312-7689
Email: info@cimmc.org
Website: www.cimmc.org/

- Represents clients in a variety of immigration matters, including removal cases, defensive asylum, VAWA, unaccompanied minors, and cancellation of removal matters
- Represents non-detained and detained clients (NYC: non-detained cases only)
- Low-cost legal representation
- Languages: Spanish

The Door
121 Avenue of the Americas
New York, NY 10013
Tel: (212) 941-9090 ext. 3280
Email: legalhelp@door.org
Website: www.door.org/

- Membership required to access legal services, sign-up available online
- Provides services to minors (under 18 years old) detained by the Office of Refugee Resettlement (ORR)
- Represents clients in immigration court, applications for immigration relief, and federal court
- Languages: Spanish, French, and access to interpreter services for other languages

Frank H. Hiscock Legal Aid Society
351 South Warren Street, Floor 3
Syracuse, NY 13202
Tel: (315) 422-8191 – must call to make an appointment
Fax: (315) 472-2819
Email: mail@hlalaw,org
Website: www.hlalaw.org

- Represents clients in a variety of legal immigration matters, including but not limited to naturalization, family reunification, humanitarian based relief, asylum, adjustment of status, special immigrant juvenile status, and Violence Against Women Act cases
- Represents detained clients ONLY if detained at Clinton County Jail in Plattsburgh, NY

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

- Languages: Spanish, French, Creole
- Asylum cases accepted
- Will appear at 26 Federal Plaza Court and Varick St. Court

Human Rights First
75 Broad Street, 31st Floor
New York, NY 10004 Tel: (917) 320-9601
Detention Hotline: (212) 629-6170 (open 2-5 pm Monday–Friday)
Fax: (212) 845-5299

- Languages: Spanish, French, Arabic, and others as needed
- Represents indigent individuals and families seeking asylum
- No walk-ins accepted

La Victoria Foundation
3753 90th Street, Suite 13B
Jackson Heights, NY 11372
Tel: (347) 985-4079
Email: recepcion@lavictoriafoundation.org
Website: www.lavictoriafoundation.org

- Legal representation for a variety of immigration, deportation and asylum cases
- Represents immigrants before USCIS and immigration court
- Services available to minors and adults
- Languages: Spanish

The Legal Aid Society Immigration Law Unit
49 Thomas Street, 5th Floor
New York, NY 10038-3500
Tel: (212) 577-3300
Website: https://legalaidnyc.org/programs-projects-units/immigration-law-unit/

- 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 (between 213 and 214 street), Suite 639
New York, NY 10034
Tel: (212) 781-0355

- Languages: English, French, Spanish
- Will appear at 26 Federal Plaza Court and Varick St. Court

Safe Horizon Immigration Law Project
41 Flatbush Avenue, 6th Floor
Brooklyn, New York11217
Tel: (718) 943-8632
Website: https://www.safehorizon.org/our-services/legal-and-court-help/immigration-law-project/

- Languages: Spanish, access to interpreter services for all other languages
- Representation limited to residents of New York City (the five boroughs)
- Non-detained cases only; no walk-ins, please call to make an appointment.
- 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.
1720 Church Avenue
Brooklyn, NY 11226
Tel: (718) 287-2600
Email: info@CAMBA.org
Website: https://camba.org/programs/refugee-assistance-program/

- Must be resident of New York State
- Offers a "Refugee Assistance Program" providing a variety of services, which is open to Refugee, Asylee, Afghan and Ukrainian Humanitarian Parolees, Cuban and Haitian Entrants, Iraqi and Afghan SIVs, Amerasians, and VOTs within five years of status
- Will appear at 26 Federal Plaza Court

Catholic Charities of Long Island
Diocese of Rockville Centre
143 Shleigel Blvd
Amityville, NY 11701
Tel: (631) 789-5210
Email: migration@catholiccharities.cc
Website: https://www.catholiccharities.cc/how-we-can-help/immigration-and-refugee-services

- Any immigrant is eligible to receive their services, regardless of status, documentation, or national origin
- Languages: Russian, French, Spanish, Italian, Mandarin, Creole, Polish, Ukrainian
- 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 (depending on ability to pay)
- 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: 212-613-1341; The legal intake phone line is connected solely on the first Friday of every month from 9:00 am to 3:00 pm EST.
Website: https://hias.org/legal-services/

- HIAS provides services to all immigrants in need of assistance, regardless of their national, ethnic, or religious background.

Kids In Need of Defense (KIND)
New York City Office
252 West 37th Street, Suite 1500
New York, NY 10018
Tel: (646) 677-9900
Fax: (646) 677-9914
Email: NYreferrals@supportkind.org
Website: https://supportkind.org/what-we-do/legal-services/

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

Make the Road NY
92-10 Roosevelt Avenue
Jackson Heights, NY 11372
Tel: (718) 565-8500 (Jackson Heights, Queens); (718) 727-1222 (Staten Island); (631) 231-2220 (Long Island); (914) 948-8466 (White Plains, Westchester)
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
Website: https://catholicmigration.org/immigration/

- Languages: Spanish, Haitian-Creole, Albanian, Arabic, French, Catalan, and Greek.
- By appointment only, call to schedule
- Non-detained cases only
- 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
- Does not charge a fee for representation
- To request assistance with naturalization applications, send a text message to 347-305-5520

Rhonda deJean, Esq.
309 Chartres St., Ste C
New Orleans LA 70130
Tel: (718) 785-5545
Email: rdejeanesq@gmail.com

- Will do online legal services for anyone in any locational nationwide

LEGAL SERVICES PROVIDERS IN OTHER STATES

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. A PDF with the full list of pro bono legal service providers across the country is available at https://www.justice.gov/eoir/file/probonofulllist/dl. For a PDF of pro bono legal services providers in other individual states, see below:

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

Idaho: https://www.justice.gov/eoir/file/ProBonoID/download

Illinois: https://www.justice.gov/eoir/file/ProBonoIL/download

Kentucky: https://www.justice.gov/eoir/page/file/1265416/dl?inline

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

New Mexico: https://www.justice.gov/eoir/file/ProBonoNM/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