# Self-Help Manual

# For Noncitizens Detained by Immigration (ICE)

Prepared by

**Political Asylum Immigration Representation Project**

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**ICE is not responsible for the contents of the material.**
**This information was not prepared by ICE.**

## Acknowledgments

This manual is primarily for people who are in Immigration detention in New England. The Political Asylum Immigration Representation Project prepared this manual with insights from the Boston College Immigration and Asylum Project; the Center for Immigrants Rights in New York; the Florence Immigrant and Refugee Rights Project; the National Immigration Project of the National Lawyers Guild; Proyecto Libertad; and the Refugee Immigration Ministry.

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### How soon will I see an Immigration Judge?

You will not see an Immigration Judge for at least 10 days after you receive a **Notice to Appear** from the government. 8 U.S.C. §1229(b).

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| The library in each prison should have volume 8 of the United States Code, known as 8 U.S.C. This is where you will find the law on immigration. |

### Who will decide my case?

An **Immigration Judge** will decide your case. The judge is supposed to be fair. If you have criminal charges, the Immigration Judge will probably know about them. It will not help your case to deny that you have charges or a conviction if you do.

### Do I have the right to a lawyer?

**Yes**. You have the right to a lawyer, but the government will not pay for that lawyer. 8 U.S.C. §1362. You can represent yourself if you cannot get a lawyer. If you want a lawyer, you will have to find and pay for a lawyer or you can try to get a free lawyer. It is very hard to find a free lawyer, because there are not very many lawyers who provide free services and there are many, many people who want one. Also, if you are not competent to represent yourself, and you do not have a lawyer, you can ask the Immigration Judge to appoint a lawyer for you. You will have to prove that you have a disability that prevents you from representing yourself.

### Can ICE deport me if I am still serving time in prison?

**No, but some people can request an international transfer**. See page 32. Otherwise, if you are still in prison, several things may happen to you:

**(1) Detainer.** ICE may put a detainer on you so that when you finish your sentence you will likely be moved to ICE custody, perhaps in another jail, for your immigration case.

**(2) Immigration Hearing in Prison.** Immigration may start a deportation case against you while you are still in prison. You have the same rights at that hearing as you have in Immigration Court. The hearing may happen in prison or through a video screen where the judge is in the court and you are still in prison. You and the judge will be able to see and hear each other through the screen. It is also possible that ICE will try to have the hearing over the telephone without the screen. You would only be able to hear, but not see, the judge. You can ask for a hearing in Immigration Court that is not over the telephone. You can also ask for a hearing in court that is not over the video screen, but you have to explain how that causes problems for you in presenting your case. It is very, very

unusual for anyone in ICE custody to be brough to see the Immigration Judge in person.

**(3) No Immigration Hearing at All.** The government may try to deport you from the U.S. without any hearing at all. This can happen to people who are not lawful permanent residents (who never had a green card) with an aggravated felony conviction. 8 U.S.C. §1228(b). An aggravated felony includes many crimes, such as drug trafficking, some crimes of violence, some theft crimes, and murder. See page 14.

To do this, the government must give you a special notice showing that your criminal conviction is an aggravated felony and that you are not a lawful permanent resident. Answer a notice in writing from ICE and let ICE know if:

- you have your green card (send proof, such as a copy); or
- your conviction is **not** an aggravated felony; or
- your conviction is on appeal; or
- you fear harm if forced to go back to your country. If you fear harm, check the box to apply for withholding of removal or protection under the Torture Convention.

**Can I be deported from the U.S. if I have a "green card"?**

**Yes**. For certain crimes and other reasons the government can deport anyone except a U.S. citizen. This manual explains defenses to deportation. See pages 14-23.

**Can I be deported if I am afraid to go back to my country?**

If you are afraid to go back, you may ask the Immigration Judge for asylum and withholding of removal. You must clearly state to the judge and to ICE that you are afraid of returning to your home country. The harm must be because of your political opinion, race, religion, nationality or membership in a particular group. If you fear torture by the government for any reason, you can ask for protection under the Torture Convention, and you do not need to show that the harm is because of one of these five reasons. If you win your case, ICE cannot deport you to the country where you fear harm.

**Can I be deported if I have lived in the U.S. a long time and have a child here?**

**Yes**. The government can deport you for certain reasons even if you are married to a U.S. citizen or have children born here. However, you may have some defenses to deportation, and your relationship to these citizens will help in your case. See pages 14-23 for possible defenses to deportation.

**Is it possible that I am a U.S. citizen but don't know it?**

**Yes**. You may be a citizen if your parent or grandparent was a U.S. citizen. You also may be a citizen if you were born in another country but one parent naturalized when you were under 18, and were living in the U.S. as a lawful permanent resident. A citizen is also a person whose parents are unknown and who was found in the U.S. while under age 5. If you think you might be a citizen, tell the Immigration Judge. See page 17.

## ATTENDING YOUR FIRST IMMIGRATION COURT HEARING

### What will happen the first time I see the Immigration Judge?

Your first hearing is the **Master Calendar Hearing**. You will attend the hearing by video from the detention facility. An Immigration Judge will be on screen and so will a government lawyer from ICE who is trying to deport you. If you do not speak English well, the Immigration Court must have an interpreter for you. If there is no interpreter, ask for another hearing with an interpreter. If you do not understand what the judge is saying or you do not understand the interpreter, clearly tell the judge that you do not understand. If you have a lawyer, your lawyer should also attend the hearing by video. To find out when your next hearing is, call the Immigration Court (EOIR) hotline at 1-800-898-7180 and enter your A number. The government is required to have a special phone in your unit with a code to call this hotline free.

### Can I ask for more time to find a lawyer?

**Yes**. You can ask the Immigration Judge for more time to find a lawyer. Usually, the Judge will give you at least one or two opportunities to look for a lawyer. If you do not have a lawyer after the second or third Master Calendar Hearing, the Judge will begin moving forward with your case.

### For what reasons can I be deported from the U.S.?

A person can be deported for several reasons. For example, the government may try to deport you if you entered the U.S. illegally, or you stayed after your visa expired, or you have a criminal conviction. 8 U.S.C. §1227(a). Even if these things are true, you may still have a defense and be able to stay here. See pages 14-23.

### How will the government prove that I can be deported?

The government starts a case by giving you a **Notice to Appear**, which lists the charges against you. If the government is trying to deport you for a crime, that crime will be listed on the Notice to Appear along with the section of the immigration law that the government believes you have violated. The government can add other charges later.

If you do not have a Notice to Appear, tell the Immigration Judge. If you do not have one, it may be that you were ordered deported in the past, but never left. If you have previously been ordered removed from the United States, you will not receive a Notice to Appear.

If you have a Notice to Appear, the Immigration Judge will ask you if it contains correct information. If you tell the Judge the information is correct, the Judge will order you deported unless you have a defense to deportation. See pages 14-23. Check your Notice

to Appear carefully. If any information on the Notice to Appear is incorrect, tell the Judge.

**Do I have to agree that the government can deport me from the U.S.?**

**No**. You have the right to remain silent and not answer any questions about your immigration situation. The government will have to prove that you are not a U.S. citizen. If the government proves that, you have to show that you are lawfully present in the U.S. See 8 U.S.C. §1229a(c)(2). If you show that, then the government has to prove that you are deportable. 8 U.S.C. §1229a(c)(3). For example, the government lawyer will have to have a certified copy of your criminal conviction or other official record of it. If the government has this evidence at the first hearing, the Judge may order you deported. Other times, the government may ask for more time to get the evidence.

**Can I ask the Immigration Judge for permission to stay in the U.S.?**

**Yes**. If the Judge finds you can be deported from the U.S., you may have a defense to deportation and may be able to remain. See pages 14-23. If you do not have a defense, the Judge may order you deported at that first hearing.

At your Master Calendar Hearing, the Immigration Judge should tell you about the defenses to deportation and give you a date to send your application forms and other papers to the court. The Judge will also give you a date for a hearing where you have witnesses appear by video and prove the reasons you should be allowed to stay in the U.S. This is called your Individual Hearing. See pages 28-30. You must file your application by the date that the Judge gives you. If you do not, the Judge will say you have abandoned your case and will order you deported.

**Where do I send my applications and evidence?**

Currently, cases for individuals detained by ICE in Massachusetts, Rhode Island, New Hampshire, and Maine are being heard out of the Chelmsford Immigration Court in Chelmsford, Massachusetts. The Court's address is: Chelmsford Immigration Court, Clerk's Office, 150 Apollo Drive, Chelmsford, MA 01824. Be sure that your A number is on everything you mail to the Court to file in your case.

**Can I name the country that I want to be deported to if I want to be deported?**

**Yes**. The Judge will ask what country you want to be deported to. If you are afraid to be deported to your own country, do not name that country. Tell the Judge you are afraid and want to apply for asylum. You can name another country, but that country must agree to accept you. If you have the right to live in more than one country, name the country where you want to live.

**Can I be deported to a country where I am not a citizen?**

**Yes**. You need to have permission from that other country to enter. Usually, you need to apply to the Embassy or Consulate of that country for permission to enter. It is difficult to be accepted by another country especially if you don't have any legal status to live there.

**Can I appeal the Immigration Judge's decision to deport me?**

**Yes**. If the Immigration Judge orders you deported, he or she will ask if you want to appeal. If you appeal, the Board of Immigration Appeals must receive your Notice of Appeal sooner than 30 days after the date of the Judge's decision. See page 30. Do this right away. If you miss the deadline, you lose your appeal.

**Do I have to fill out forms before my first Immigration Court hearing?**

**No**. If the Immigration Judge finds that you might have a defense to deportation, he or she will give you forms at one of the first hearings and give you time to complete the forms and mail them back to the court. You have to fill out forms in English.

**Can I just ask to be deported immediately?**

**Yes**. You can tell the Immigration Judge that you want to return to your country immediately. If you do this, you will be giving up your legal rights. If you have your green card and get deported for an aggravated felony, you are giving up your right to live here legally and will never be able to return to the U.S. to live here permanently. You probably could not return even for a visit. Think carefully about the life you are leaving behind before agreeing to be deported.

**If the Immigration Judge ordered me deported, when do I leave?**

If you tell the Immigration Judge you want to appeal, ICE cannot deport you for at least 30 days to give you time to file your Notice of Appeal. If you tell the Judge you do not want to appeal, the government can deport you after only 3 days. However, it usually takes some time before ICE can deport you. Before deporting someone, the government has to get a travel document from the country you are going to, which could take weeks, a month, or more. The length of time can depend on your home country and whether your country recognizes you as a citizen. Some countries are much easier to return to than others. Your friends or relatives who have legal status can help you. They can bring your identity papers to ICE's office:

**ICE/Enforcement and Removal (ERO)**
**Boston Field Office**
**1000 District Avenue**
**Burlington, MA 01803**

ICE's phone number is 781-359-7500, and it is open from 8 a.m. - 4:00 p.m., Monday through Friday. Your friends or relatives should make copies first before giving any ID or

other documents to ICE. Someone without legal status should not go to ICE's office. He or she could be arrested.

**What if I do not speak English and the Immigration Court did not have a good interpreter?**

You can ask for a new hearing with a good interpreter if you do not understand what happened in Immigration Court. You need to tell the Immigration Judge that you do not understand English or that the interpreter was not doing a good job. You should tell the judge this at the hearing. After the hearing you can write to the judge explaining this, but it is better to tell the judge at the hearing if you do not understand.

## GETTING IMMIGRATION RECORDS THROUGH A FREEDOM OF INFORMATION ACT REQUEST

**How do I find out what information the government has about me?**

You can file a **Freedom of Information Act (FOIA)** request to get a copy of information Immigration has about you. To find information about your case from the Chelmsford Immigration Court, write a letter to: Chelmsford Immigration Court, Executive Office for Immigration Review, 150 Apollo Drive, Chelmsford, MA 01824. In the letter, include your full name, your A# and the records that you want. If you have a Notice to Appear in Immigration Court, you can also write: National Records Center Fast Track (FOIA/PA Office), P.O. Box 648010, Lee's Summit, MO 64064-8010, and include a copy of your Notice to Appear, G-639 Freedom of Information Act Request form, and written notice of your next Master Calendar Hearing date. If you were ever arrested by the Border Patrol (CBP), ask for records from: CBP (FOIA), 1300 Pennsylvania Avenue NW, Mail Stop 1181, Washington, DC 20229

## GETTING OUT OF DETENTION AND BONDS

**How do I get released from detention during my immigration case?**

Some people in Immigration detention have a right to be released on bond while others do not.

**What is a bond?**

A bond is an amount set by ICE or the Immigration Judge that you must pay before being released from immigration detention. It helps guarantee that you will show up for your court hearings and leave the U.S. at the end of your case if you do not win. If the bond is paid, you will be released from detention during your case. At the end of your case, the person who paid the bond will get the money back if you win or if you leave the U.S. when you are ordered to do so. If you miss a hearing or if you do not leave the U.S. by the date ordered, the person who paid the bond will lose the money. Bonds can be set as low

as $1,500, but usually they are in the range of $3,500-12,500.

**Does everyone have a right to ask for bond?**

**No**. Many people do not have a right to ask for bond. You are not eligible for bond if:

- you have certain criminal convictions and are subject to "mandatory detention" or
- a final order of removal or
- you entered the U.S. at a port of entry and requested asylum ("arriving alien"), or
- you have passed a Credible Fear Interview (CFI). Even if you have been convicted of certain types of crimes, you can still ask for bond.

You are in mandatory detention (not bond eligible) if you have been convicted of an aggravated felony, nearly any drug conviction, or most crimes of moral turpitude. 8 U.S.C 1226(c).[1]

**When can I ask for bond or for a lower bond?**

Usually, you only get one bond hearing, so it is important to gather the evidence you need before asking for a bond hearing. You can ask for a bond hearing at any time before your Individual Hearing (which is when the Immigration Judge hears your case for immigration relief.) Before your bond hearing, you should send the Immigration Court evidence that (1) you are not a danger to the community; (2) you are not a threat to national security; and (3) you are not a flight risk. It is usually better to tell the Judge that you do not want a bond hearing right away and need more time to collect evidence. When you have your evidence, mail it to the Chelmsford Immigration Court, Clerk's Office, 150 Apollo Drive, Chelmsford, MA 01824. Be sure that your A number is on everything you mail to the Court to file in your case. The PAIR Project has additional information that it can provide you on requesting bond.

**What happens at the bond hearing?**

The Immigration Judge will first decide whether you have a right to ask for bond or whether you are required to stay in detention without bond due to certain criminal convictions described above. If you have a right to seek bond, the Judge will usually ask you questions about your background. The government (ICE) has the burden to show by clear and convincing evidence that you are a danger to the community. The government also has the burden to show that it is more likely than not that you are a flight risk. Because the government has the burden to prove to the judge that you should stay detained, the government's lawyer will present his or her arguments first.

Specifically, the lawyer for the government (ICE) will present evidence to the Judge

[1] However, if you have been convicted of these types of crimes but you finished serving your criminal sentence before October 9, 1998, you can still seek a bond.

about any of your arrests and criminal convictions, and your past immigration history. The evidence will likely include any police reports if you were arrested. You should assume that the judge will believe as true any information in the police reports, even if they are not.

The Judge will ask you questions about any criminal charges or conviction you may have and about any drug or alcohol use you may engaged in. The Judge will consider the same kind of evidence used for bail in a criminal case, to decide whether you are a danger to the community, a flight risk, or a threat to security, including:

(1) your ties to the community
(2) your length of residence in the U.S.
(3) your family members in the U.S. and their immigration status
(4) your employment history and job offer in writing
(5) your history of appearance in other court cases
(6) whether you are a danger to the community or a security threat
(7) your criminal record and rehabilitation
(8) your likelihood of winning your immigration case

If you have a criminal conviction, it does not help to tell the Immigration Judge that you did not commit the crime or that it was a misunderstanding and that you are innocent. The Immigration Judge cannot change your criminal record and she will not grant bond if she does not believe you are honest. You want to focus on your ties to your family and community and tell the Judge how long you have lived in the U.S., where your family is, whether you have a job offer, how you have changed if you have been in prison, what type of relief you are seeking in Immigration Court (like asylum, or cancellation of removal), and how much money you have to pay a bond. If you have not lived in the U.S. before, it will help if you have a sponsor who is someone close to you and if you have a strong asylum claim.

Try to gather as much written evidence as you can, and to have at least one or two witnesses attend your bond hearing by video (Webex) so that they can testify for you. Your witnesses can find the Webex video link for your hearing at this website: https://www.justice.gov/eoir/find-immigration-court-and-access-internet-based-hearings. They must know the name of your Immigration Judge at the Chelmsford Immigration Court in order to find the Webex address.

Ask your witnesses to write letters of support that you can give to the Immigration Judge. Witnesses could include your spouse or children or other family members who have legal status, or the victim of the crime, or your employer or someone offering you a job, or your pastor or other religious leader, or a probation officer, or a social worker. Other helpful evidence to give the Judge could be:

- If you are married to a U.S. citizen or lawful permanent resident, a copy of the marriage certificate, the birth certificate or certificate of naturalization or green card of your spouse.

- If your children have legal status, a copy of their birth certificates and green cards.

- If you have a medical condition, a letter from your doctor.

- If you have professional training or education in the U.S., a copy of your GED, or diploma or other certificates.

- Proof of the length of time you have lived in the U.S.

**How does someone post a bond?**

The person who pays the bond needs to have legal status. He or she is called the "obligor" and is the only person who can ask for the bond money back at the end of the case. The obligor can pay your bond at any ICE/ERO Field Office around the country. If they are paying the bond locally, they must bring a bank check or money order in the amount of the bond payable to: "U.S. Department of Homeland Security"

ICE/Enforcement and Removal Operations
Boston Field Office
1000 District Avenue
Burlington, MA 01083
Phone: 781-359-7500
Open for bond Monday to Friday 9 a.m. to 3 p.m.

The obligor must bring his or her driver's license, green card, passport or other valid identification. The obligor will pay the bond money and sign some papers stating that he or she will get the money back at the end of the case if you go to all your court hearings and leave if the Judge orders deportation. The obligor must keep these original bond papers since he or she will need them to get the money back at the end of the case. If you flee the area or miss any court hearings, the obligor will lose the bond money and you can be deported if the Judge issued a final order of deportation.

**If the Immigration Judge ordered me deported, but my country will not accept me, will I be released from detention?**

The government has 90 days after a final order to deport you from the U.S. 8 U.S.C. §1231(a). After that, the government may release you from detention. However, you will remain detained after 90 days if the government thinks it will still be able to deport you, or if ICE believes you are a danger to the community or a flight risk. See 8 U.S.C. §1231(a)(6).

Within 90 days after a deportation order, the government must review your case for possible release. You may have a "custody review" even if you are currently in Immigration Court proceedings because you have returned to the U.S. after being deported and are seeking protection under Withholding of Removal or the Convention Against

Torture (CAT). ICE rarely releases people at 90 days unless ICE has determined that it will not be able to deport them in the future.

If you want to be considered for release, you should write the government about where you will be living, if you have a job offer, whether your family and friends will support you, why you are not a danger to the community, and why you are not going to miss any appointments. See the sample letter in Appendix C requesting release under supervision. Send this information to:

ICE/Enforcement and Removal Operations
Boston Field Office
1000 District Avenue
Burlington, MA 01803

If the government does not deport you after six months, then in most cases the government should release you. The law says that if your deportation is not reasonably foreseeable, the government must release most people after six months following your deportation order becoming final. Your order is final only after any appeal to the Board of Immigration Appeals is concluded. If you appealed your deportation order, and the appeal is still pending, the six-month time period for release has not yet started.

You can write to the address listed above and request your release. You can also write to ICE headquarters in Washington, D.C. asking for release after waiting six months from your final deportation order. You write to:

ICE, Office of Enforcement and Removal
Headquarters
500 12th St SW #5600
Washington, DC 20024
Phone: +1 703 603-3400

In order for ICE to consider you for release, you must cooperate with ICE in helping them get travel documents for you to return to your home country. You must give ICE a copy of your birth certificate or your passport, or you must contact your consulate for travel documents so that ICE can try to start your deportation. If you do not cooperate with ICE, this six-month time period does not start, and ICE can detain you even longer. If you appeal your immigration case to the Board of Immigration Appeals (BIA) or have a stay of removal, the six-month time period does not begin to run.

If you are not released, and six months or more has passed since your order of removal became final, you can file a habeas corpus petition in federal court. For sample habeas forms, and a self-help manual on how to file a habeas petition, call or write the PAIR Project.

## GROUNDS OF DEPORTATION FOR CRIMINAL CONVICTIONS

**<u>If I am an LPR, can ICE deport me for any criminal conviction</u>?**

**No**. If you are a lawful permanent resident (LPR), only certain criminal convictions lead to your deportation. Some of the main ones are:

**(1) Aggravated Felonies.** The immigration law calls certain crimes aggravated felonies. 8 U.S.C. §1101(a)(43). These are the most serious crimes in immigration law even though they may not be very serious in criminal law. An "aggravated felony" is not the same as aggravated assault. Immigration law has its own definition "aggravated felony," which can be very confusing. For example, possession with intent to distribute cocaine is an aggravated felony even if you did not serve any jail time for it. Aggravated felonies include the following crimes:

- Murder
- Drug trafficking
- Money laundering involving over $10,000
- Trafficking in firearms or explosives
- A crime of violence with a sentence of at least 1 year
- Theft, receipt of stolen property or burglary with a sentence of at least 1 year
- Crimes involving ransom
- Rape or sexual abuse of a minor
- Child pornography
- Gambling where a sentence of at least 1 year may be imposed
- Racketeering where a sentence of at least 1 year may be imposed
- Engaging in the business of prostitution or slavery
- Spying
- Fraud or deceit worth over $10,000 or tax evasion worth over $10,000
- Smuggling of undocumented people, except a first offense to assist your spouse, child or parent
- Illegal entry or reentry after a deportation based on an aggravated felony
- Document fraud with a sentence of at least 1 year
- Failure to appear to serve a sentence for a crime if the underlying offense is punishable by imprisonment for a term of 5 years or more
- Commercial bribery, counterfeiting, forgery or trafficking in vehicles with a sentence of at least 1 year
- Obstruction of justice, perjury or bribery of a witness with a sentence of at least 1 year
- Failure to appear in court under a court order for a felony charge for which a sentence of at least 2 years' imprisonment may be imposed
- An attempt or conspiracy to commit any of the offenses described above.

You can be deported for an aggravated felony (see 8 U.S.C. §1227(a)(2)(A)(iii)), and you will only have a few defenses. See pages 14-23.

**(2) Drug Conviction.** Immigration can start a deportation case against you for nearly any drug conviction unless you are charged with being deportable for simple possession for your own use of 30 grams or less of marijuana. 8 U.S.C. §1227(a)(2)(B)(i). You can also be removed for being a drug abuser or addict even if you do not have a conviction. 8 U.S.C. §1227(a)(2)(B)(ii). For certain drug crimes, you may still have a defense to deportation. See pages 14-23.

**(3) Crime of Moral Turpitude (CIMT).** You can be deported for one CIMT committed within 5 years of admission into the U.S. if you could have received a sentence of one year or longer. 8 U.S.C. §1227(a)(2)(A)(i). Your actual sentence or your time served does not matter. You can also be removed for 2 crimes of moral turpitude committed at any time unless they were in a "single scheme of criminal misconduct." 8 U.S.C. §1227(a)(2)(A)(ii).

The immigration law does not define crimes of moral turpitude, but the courts have. Crimes of moral turpitude usually include theft, murder, voluntary manslaughter, and crimes involving vileness, such as rape or certain other sexual crimes. Driving Under the Influence (DUI or OUI) and Simple Assault are usually not crimes of moral turpitude. If Immigration is trying to remove you for a CIMT, tell the Immigration Judge that you do not know whether your conviction is a crime of moral turpitude, and ask for time to find a lawyer to help you. You may also have a defense to deportation. See pages 14-23.

**(4) Firearms Conviction.** You can be deported for a firearms conviction, such as unlawful possession of a gun. 8 U.S.C. §1227(a)(2)(C). You may have a defense to deportation. See pages 14-23.

**(5) Crime of Domestic Violence.** You can be deported for conviction of domestic violence, stalking, child abuse, child neglect or abandonment, or for violation of a protection order. 8 U.S.C. §1227(a)(2)(E). You may have a defense. See pages 14-23.

**(6) Other Criminal Activity.** Other criminal convictions may also lead to your deportation, such as espionage, sabotage, or treason, (8 U.S.C. §1227(a)(2)(D)), as well as activities relating to national security and terrorism. 8 U.S.C. §1227(a)(4).

**<u>Can I be deported even though I do not have a criminal conviction</u>?**

**Yes**. Immigration law has other grounds of deportation. For example, you can be deported if you are in the U.S. without any legal immigration status, overstayed your visa, committed marriage fraud, are a threat to the security of the U.S., voted unlawfully, or falsely claimed to be a U.S. citizen after September 30, 1996. 8 U.S.C. §1227(a).

**Can I be deported if my criminal conviction is on appeal?**

**No**. You cannot be deported if you have a criminal conviction on direct appeal, because your conviction is not final. However, a motion to vacate your criminal conviction does not mean your conviction is not final. ICE can deport you while you are waiting for the decision on a motion to vacate a criminal conviction (also called "post-conviction relief").

**How do I know if I have a conviction?**

**Ask for a copy of your criminal record from the state where you have a conviction**. In Massachusetts, if you have a social security number, send a request along with a check or money order made payable to the Commonwealth of Massachusetts in the amount of $25.00 to Department of Criminal Justice Information Services, 200 Arlington Street, Suite 2200, Chelsea, MA 02150, ATTN: CORI Unit. Give your full name, date of birth, address, and social security number and include a stamped, self-addressed envelope. You can also request a certified copy of the docket sheet if you contact each court where you have a criminal conviction.

**Can I do anything to change my criminal conviction?**

**Yes**. You can ask the criminal court (not the Immigration Court) to vacate or erase your criminal conviction for certain reasons. One reason is if you pled guilty but the judge did not warn you that pleading guilty could lead to deportation from the U.S. There may be other ways to vacate a conviction if you pled guilty and did not understand your rights. If the criminal court vacates your conviction, the prosecution can still bring the charges against you again, but sometimes the prosecution decides not to. Perhaps the lawyer who represented you in your criminal case can help you, or you can contact the Committee for Public Counsel Services, Criminal Appeals Unit, 75 Federal Street, 6th Floor, Boston, MA 02110, (tel) 781-338-0825.

You may also be able to lower your sentence by filing a motion to revise and revoke your sentence. Some crimes are aggravated felonies, such as theft or assault, only if you received a sentence of one year or more. If you lower the sentence to less than one year, the crime may not be an aggravated felony. An Immigration Judge, however, will usually not stop a deportation case just because you have asked the criminal court to vacate or dismiss the conviction or lower the sentence. So, it is important to get the conviction vacated or dismissed or lower the sentence as soon as possible.

**If I am deported for a criminal conviction, when can I come back?**

**After deportation**, a person must wait either 5 or 10 years (depending on the case) before returning to the U.S. legally. 8 U.S.C. §1182(a)(9)(A). After a second deportation the wait is 20 years to return legally. 8 U.S.C. §1182(a)(9)(A). You can ask ICE for permission to re-enter sooner but ICE may not allow it. If you are deported for an aggravated felony, you can probably never return to the U.S. legally. 8 U.S.C.

§1182(a)(6)(B).

## PREVENTING ICE FROM DEPORTING YOU FROM THE U.S.

There are only a few defenses against deportation from the U.S:

### (1) Citizenship

Immigration cannot remove a U.S. citizen. You may be a citizen if:

- you were born in the U.S., including Puerto Rico (8 U.S.C. §1401); or
- you were born in another country but one parent was a U.S. citizen and lived in the U.S. for certain periods of time prior to your birth (8 U.S.C. §1401(g)); or
- you were born in another country but one or both of your parents naturalized and became citizens when you were under 18 and living in the U.S. as a lawful permanent resident (8 U.S.C. §1432(a)); or
- you were in the U.S. while under the age of 5 and your parents are unknown (8 U.S.C. §1401(f)).

The law is complicated and has several other requirements. If your parent or grandparent was a U.S. citizen, you may be a U.S. citizen. It is important to know when you were born, when your citizen parent or grandparent lived in the U.S., when your citizen parent or grandparent was born, whether and when your parents were married and divorced, who had custody of you if your parents were separated, and whether your parents naturalized and became citizens before you turned 18. **If one or both of your parents or grandparents are U.S. citizens, tell the Immigration Judge.** Also, try to obtain legal counsel to advise you on whether you may be a U.S. citizen.

You may be able to apply for your own naturalization even if you have a criminal conviction. You need to show that you have had good moral character for the past five years. 8 U.S.C. §1101(f). Some activities prevent you from showing good moral character:

* An aggravated felony conviction after November 29, 1990
* A drug conviction (other than simple possession of 30 grams or less of marijuana)
* A crime of moral turpitude (CIMT) (unless it had a possible sentence of one year or less and you actually were sentenced to 6 months or less)
* two convictions where you received a sentence of 5 years or more
* giving false testimony to receive an immigration benefit
* serving 180 days or more in jail for any crime
* habitual drunkards, convicted gamblers, prostitutes, and smugglers.

A person with an Immigration Court case can file an application for naturalization

and ask the Immigration Judge to stop the deportation case if he can show "exceptionally appealing or humanitarian factors." 8 C.F.R. §1239.2(f). This might apply where you have an old conviction (even an aggravated felony conviction before Nov. 29, 1990). You must have exceptionally good behavior and meet other requirements for naturalization, such as having your green card for at least 5 years (or 3 years if you married a U.S. citizen). You will, however, need the lawyer representing the U.S. Department of Homeland Security (DHS) or US Citizenship & Immigration Services (USCIS) to agree that you are eligible for naturalization. This may be difficult with a criminal conviction. If you served honorably in the U.S. military in active duty during armed conflict, you need have only one year of good moral character. 8 U.S.C. §1440; 8 C.F.R. §329.2

**(2) Cancellation of Removal and 212(c) Waiver**

**LPR Cancellation of Removal** (7 years)

Cancellation of removal can be a defense to deportation if you have a criminal conviction that is **not** an aggravated felony. You must:

(1) have been a lawful permanent resident (green card) for at least 5 years;
(2) have resided in the U.S. continuously for 7 years after having been admitted to the U.S. in any status (and before you received a Notice to Appear in Immigration Court); and

(3) have not been convicted of an aggravated felony (see page 12).

8 U.S.C. §1229b(a). This law applies to cases started on or after April 1, 1997. You cannot apply for cancellation of removal if you have an aggravated felony (see page 12). Cancellation also waives gun possession or crimes of moral turpitude.

**212(c) Waiver**

If you have an old conviction, you might be able to use the old immigration law section 212(c), which allowed lawful permanent residents to waive or excuse criminal convictions under different rules. This law still applies to some cases where people were convicted before April 24, 1996 if:

(1) you are a lawful permanent resident (have a green card);

(2) you have lived in the U.S. lawfully for at least 7 years, including time as a lawful permanent resident or lawful temporary resident. If you were a minor when your parents had their green cards but you did not have yours yet, you may be able to add the time your parents had green cards to the time you had yours to equal 7 years. Call PAIR to discuss this issue.

(3) you have not served 5 years or more in prison for an aggravated felony.

If your conviction was after April 24, 1996, up until April 1, 1997, you might still be able to apply for a 212(c) waiver, but it would not waive aggravated felonies after April 24, 1996.

**Applying for Cancellation of Removal or 212(c) Waiver**. In seeking cancellation of removal or a 212(c) waiver, you have to convince the Immigration Judge that even though you have a criminal conviction, you have very good parts to your life. These include the length of time you have lived in the U.S., your family ties in the U. S., your job history, your payment of income taxes, your child support payments, rehabilitation, and hardship to you and your family if you were to be removed. You want to convince the Immigration Judge that you are sorry, that you will not commit any other crimes in the future and that you have changed your life. See page 23 for information about this process.

## Asylum

Asylum is for someone who has suffered harm or fears harm in his or her country because of race, religion, nationality, actual or suspected political opinion, or membership in a particular social group. 8 U.S.C. §1101(a)(42) & §1158. A "particular social group" or PSG can be a student or teacher group, the military or the guerrillas, a political party, a human rights group, a religious group, a union, your clan, your family, women opposed to certain practices, members of the LGBTQ+ community, or another persecuted group. If you are gay, you are in a PSG and can pursue a claim of asylum if you have been harmed or fear harm in your home country on the basis of your sexual orientation.

You must apply for asylum within one year of arrival in the U.S. unless you show changed circumstances or extraordinary circumstances. Changed circumstances can be changes in your home country or in your own circumstances outside your country. Extraordinary circumstances can be serious illness, fear of coming out if you are gay, or depression resulting from past harm, or changes in your immigration status. If you miss the one-year filing deadline and do not meet one of the exceptions, you can still apply for withholding of removal and relief under the Torture Convention if you would be harmed if you returned to your country.

Asylum is for people who fear harm or persecution by the government or by people the government will not or cannot control. Asylum is not usually available if you fear prosecution for a non-political crime, or you do not want to serve in the military, or, for example, if you owe a personal or private debt to someone that you cannot repay. However, if the government wants to prosecute you as punishment for political activities, religion, nationality, race or group membership, then you do have an asylum case.

**Crimes that Bar Asylum**: Some crimes prevent you from winning asylum. For example, you cannot win asylum if you were convicted of an aggravated felony (see page 12), or if you were convicted of a particularly serious crime and constitute a danger to the community. 8 U.S.C. §1158(b)(2). These crimes usually include burglary of a dwelling, robbery, shooting with intent to kill and other violent crimes. You also cannot win asylum if you assisted in the persecution of others, or engaged in terrorist activities, or committed

a serious nonpolitical crime in your home country. 8 U.S.C. §1158(b)(2).

You also may not be eligible for asylum if you have permanent legal status in another country and you can return there. For example, if you are a citizen of two countries, and you only fear harm in one of those countries, you may be removed to the other country and will not be able to prove asylum in the U.S.

**Withholding of Removal**

If you have an aggravated felony conviction, you can still apply for withholding of removal unless you were sentenced to five years' imprisonment. 8 U.S.C. §1231(b)(3). You must show that your life or freedom would more likely than not be threatened due to your race, religion, nationality, political opinion or membership in a particular group. 8 U.S.C. §1231(b)(3).

**Convention Against Torture (CAT)**

If you fear you would be tortured by government agents or with the government's acquiescence, ask the Immigration Judge for relief under the Convention Against Torture (also called CAT). Criminal convictions are not a bar. In other words, you can seek CAT protection regardless of the number or seriousness of your criminal conviction in the U.S. You can also seek CAT protection if you have been previously deported from the U.S.

**Preparing an Application**. You apply for asylum, withholding of removal and CAT by filling out Form I-589 that the Immigration Judge will ask the guards at the jail to give you. You need to explain why you left your country and what you think will happen to you if you return. You need to show why you would be in danger and who will harm you. Explain all the details. If you are not represented by an attorney, you can add any letters or newspaper articles or other evidence to your application or send them to the Immigration Court before your hearing. Instructions on how to do this are in Appendix E. If you have a lawyer, give your evidence to your lawyer. Do not send evidence to the Court without consulting with your lawyer first.

**(4) Adjustment of Status**

Adjustment of status means becoming a lawful permanent resident and getting your green card. The main way to adjust status in Immigration Court is if you are:

- married to a U.S. citizen or
- have a U.S. citizen child 21 years of age or older, or
- have a U.S. citizen parent.

Your U.S. citizen relative must file a family petition for you (Form I-130) with USCIS. After the petition is approved, you can file Form I-485 with the Immigration Judge and show that you are admissible to the U.S. Some of the crimes that cause problems are a crime of moral turpitude (unless it had a *possible* sentence of one year or less and you

*actually* were sentenced to 6 months or less), drug convictions, or two crimes where you received a sentence of 5 years or more.

Abused spouses, children and parents who have been abused by a U.S. citizen or lawful permanent resident spouse, parent or child can file a self-petition seeking legal status without asking the abuser to file the papers.

**(5) 212(h) Waiver**

Only certain people described below can apply for a 212(h) waiver, which waives some crimes of moral turpitude. This waiver is difficult to win, and it does not excuse murder or torture (or attempted murder or torture) or drug crimes (except simple possession of 30 grams or less of marijuana). 8 U.S.C. §1182(h). If you think you can apply for a 212(h) waiver, tell the Immigration Judge.

**Usually, a person applying for a 212(h) waiver** must also be seeking adjustment of status to become a lawful permanent resident (adjustment of status is described above). The person must also be married to a U.S. citizen or lawful permanent resident, or have a son, daughter or parent who is a U.S. citizen or lawful permanent resident. You must also show that removing you from the U.S. would cause extreme hardship to your spouse, parent, son or daughter who is a U.S. citizen or lawful permanent resident. If you have been convicted of a violent or dangerous crime, you have to show that your removal would cause exceptional and extremely unusual hardship to one of those relatives listed above. 8 C.F.R. § 212.7(d).

If you are returning from a trip abroad and are already a lawful permanent resident, you can apply for a 212(h) waiver to excuse these crimes without applying for adjustment of status all over again.

Lawful permanent residents applying for a 212(h) waiver have stricter rules than those who are not lawful permanent residents. Lawful permanent residents cannot receive a 212(h) waiver if convicted of an aggravated felony since admission to the U.S., or if not lawfully residing continuously in the U.S. for at least 7 years before removal proceedings.

For extreme hardship, the Immigration Judge will consider your age now, your age when you entered the U.S., family ties in the U.S. and in other countries, the amount of time you have lived in the U.S., your health and the health of your citizen or lawful permanent resident children, the political and economic conditions in your home country, the economic problems in leaving the U.S., the possibility of other ways of gaining legal status in the U.S., your involvement in the community, and your immigration history. You and your relatives who are U.S. citizens and lawful permanent residents should write statements about these points. You can also ask teachers, employers, church officials, probation officers, neighbors, and others to write letters about your good qualities. You should also file any past income taxes. The application form for a 212(h) waiver is Form I-601.

**(6) Cancellation of Removal and Suspension of Deportation**

**Non-LPR Cancellation of Removal** (10-years)

There is another type of cancellation of removal, which allows people to remain legally in the U.S. even if they never had a green card or legal status before. You must meet certain requirements:

(1) you must have been physically present in the U.S. for 10 years before you received a Notice to Appear in the Immigration Court;

(2) you must have good moral character during that time; and

(3) you must show "exceptional and extremely unusual" hardship to your U.S. citizen or lawful permanent resident spouse, parent or child if you were to be deported. Hardship to yourself does not count. Unfortunately, the fundamental hardship from being deportation and separated from your family also does not count.

8 U.S.C. §1229b(b). Most criminal convictions bar you from this type of cancellation of removal since it means you cannot show good moral character. 8 U.S.C. §1101(f). These convictions include: any conviction resulting in imprisonment for 180 days or more; any drug conviction; any aggravated felony; and others.

**Cancellation for Battered Immigrant Women and Children**

There are special rules if a person has suffered battering or extreme cruelty from a U.S. citizen or lawful permanent resident spouse or parent. For example, a battered spouse can apply for cancellation of removal after being in the U.S. for only 3 years. 8 U.S.C. §1229b(b)(2). In addition, people suffering abuse from a U.S. citizen or lawful permanent resident spouse or parent can also file a self-petition seeking legal status without having to rely on her abuser.

**(7) Voluntary Departure**

Voluntary departure allows you to leave the U.S. without receiving a removal or deportation order. This makes it easier to return legally to the U.S. Most criminal convictions make it difficult to receive voluntary departure, however. You may request voluntary departure in Immigration Court **at the beginning of your case** if you are not removable for terrorist activities or for an aggravated felony (see page 14). 8 U.S.C. §1229c(a)(1). If you request it at the beginning, you do not need to show good moral character. This means that even if you have a criminal conviction, you may still be able to get voluntary departure.

At the **end** of your case (after you have presented any other defenses to deportation), you may receive voluntary departure if you: (1) show physical presence in the U.S. for at least one year before the Notice to Appear; (2) have good moral character

for at least the previous 5 years; (3) are not removable for an aggravated felony or terrorism; (4) can pay your way back to your country; (5) post a voluntary departure bond; and (6) have not received voluntary departure before after being in the U.S. without admission or parole. 8 U.S.C. §1229c(b).

**(8) Refugee Waiver**

Refugees who have a criminal conviction and never applied for adjustment of status to get a green card may apply for a refugee waiver. You apply for the waiver on Form I-602 and for adjustment of status on Form I-485. You must show humanitarian reasons why you should not be deported. 8 U.S.C. §1159(c). You should include a declaration about why you fled your country and the harm you face if deported, human rights reports that support your declaration, and declarations from family and others who know the situation. This waiver does not apply if the government has a reason to believe you are or have been a drug trafficker, or a security or terrorist threat. Arrests on suspicion of drug distribution can be a problem even if charges were dismissed. If you think you can apply for a refugee waiver, be sure to tell the Immigration Judge.

## IMMIGRATION ADDRESSES

To file applications and other papers, send or deliver them to the Immigration Court at the following address unless the Judge tells you to file them at another address:

Immigration Judge -- Detained Docket
Chelmsford Immigration Court
150 Apollo Drive, Chelmsford, MA 01824
Phone: (978) 497-9000

When you send anything to the Immigration Court, **you must send a copy to the government (DHS)**. Make sure your A-number is on the documents you send to the Court and the government. You must also send a Certificate of Service to the Immigration Court showing that you sent a copy to the government's lawyers. See sample Certificate of Service below. You mail the copies to:

Office of the Principal Legal Advisor
Department of Homeland Security
JFK Federal Building, Room 425
15 New Sudbury Street
Boston, MA 02203
Telephone: 617-565-3140

## MAKING A CERTIFICATE OF SERVICE

To make a Certificate of Service (see also Appendix A), write on a piece of paper the following information, sign it, date it, and mail it to the following address with copies of what you sent the Immigration Court or the Board of Immigration Appeals:

I certify that on this date I served a copy of the attached materials on the Department of Homeland Security by causing them to be placed in first class mail, postage prepaid, addressed as follows:

Office of the Principal Legal Advisor
Department of Homeland Security
John F. Kennedy Federal Building, Room 425
15 New Sudbury Street
Boston, MA 02203.

Date: _____

Name: _____ Signature: _____

## CHANGE OF ADDRESS

If you move after you are released from detention, you must tell the government and the Immigration Court of your new address. If you do not tell them and the Court sends a notice of a hearing to an old address and you miss the hearing, the Immigration Judge can order you deported. Send your change of address to the Immigration Court and the Department of Homeland Security (DHS), listed above, for cases heard in the Chelmsford Immigration Court. You are also required to inform the U.S. Citizenship and Immigration Services (USCIS) of a change of address within 10 days of completing your move. You fill out USCIS Form AR-11 and mail it to the address shown on the form. You can find this form at www.uscis.gov.

If you are released from detention and your case is continuing in the Immigration Court, you MUST file a Motion to Change Venue to have your court case move to where you are living. Your court case will not move automatically just by notifying the court of your new address. You can download a pro se Motion to Change Venue at the Immigration Court's website: https://www.justice.gov/eoir/page/file/1480756/dl. You should also keep checking the court to find out when and where your next hearing is. You can call the EOIR case hotline: 800-898-7180. You can also check your case status on line: https://acis.eoir.justice.gov/en/. **If you miss your court date, you will be ordered deported, so make sure to check often.**

## APPLYING FOR CANCELLATION OF REMOVAL OR 212(c) OR 212(h) WAIVER

**What forms are required?**

You have to fill out the following forms:

- **Immigration Forms:**
  **EOIR-42A** - Application for Cancellation of Removal
  **I-191** - Application to Return to Unrelinquished Domicile (for 212(c)); or
  **I-601** - Application for 212(h) waiver
- **Form G-325A** - Biographic Information Form
- **Filing fee or Fee waiver** (ask the Immigration Judge for the fee waiver form, called EOIR-26A)
- **Copy of both sides of your green card** (if you still have it)
- **Certificate of Service** (see sample in Appendix A)

The Immigration Judge should give you the application forms. You should also be able to get them from the ICE Officer in detention. You should list all of your criminal convictions on Form EOIR-42A in response to question #50. If you win your case, the Immigration Judge will only excuse the convictions you list. So, if you do not list all of your convictions, you could still be deported for the ones you did not list.

You may also want to include other evidence supporting your case, such as letters of support, school records, job evaluations, or results of drug tests, described below.

**Where do I file the application?**

To file your application, mail the original application form to the Chelmsford Immigration Court and send one copy to DHS (the government's attorney). Keep another copy of the application for yourself. See page 23 for addresses of the Immigration Court and DHS.

**What other documents should I file?**

You should include as much evidence as possible for your case. File these with your application or before your full hearing. Do not send original documents to the Immigration Court. Instead include copies of documents with your application and bring the originals to your hearing. Below are examples of documents for each topic:

Family in the U.S.

__ marriage certificate if you are married
__ birth certificate of your spouse and children
__ green card of your spouse and children
__ birth certificates or green cards of other relatives
__ letter or declaration from your spouse and children about their relationship to you, your good qualities, and their feelings and the hardship if Immigration removes you
__ letters or declarations from other relatives about your good qualities

Friends and Others Who Know You

__ letters or declarations from friends, teachers, employers, probation officers, or

neighbors about your good qualities
__ letters from people in the community whom you have helped

Rehabilitation
__ attendance records at Alcoholics Anonymous, drug treatment programs, or other support groups in or out of prison
__ declaration or letter from your parole or probation officer
__ declaration or letter from drug counsellors or social workers
__ records from classes or rehabilitation programs in prison
__ copy of disciplinary record in prison

Employment
__ your employment records
__ your income tax returns. Call 1-800-829-1040, ask for the Accounts Department at the Internal Revenue Service (IRS), and request an Adjusted Gross Income letter for the last 7 years. (You may need to file a Change of Address to receive it at the detention facility). You can also send a form to the IRS asking for tax transcripts on IRS Form 4506-T.
__ Social Security Records. To request a record of earnings from the Social Security Administration, call 1-800-772-1213.
__ declaration or letter from your supervisor at each job about when you worked, what you did, and how well you did your job
__ letter offering you a job

Schooling
__ school records
__ high school diploma or GED
__ declaration or letter from a teacher
__ certificates of achievement or any prizes, awards or classes from school or prison
__ school records of your spouse and children who are citizens or lawful residents

Military Service
__ evidence of registering for the draft in the U.S. If you registered and do not have proof, send your name, social security number, date of birth and return address to: Selective Service System, ATTN: SIL, P.O. Box 94638, Palatine, IL 60094-4638.

Medical Conditions
__ medical records and letters from doctors about medical conditions that you or members of your family have

Community or Religious Involvement
__ records of your volunteer work or membership in groups or clubs
__ letters from other members of the congregation

Problems in Your Home Country
__ newspaper articles or reports about political and economic problems in your

country, such as civil war or persecution. If you entered the U.S. as a refugee or won asylum, tell the judge.

Hardship to Your Family Members if You Are Deported

__ medical information about your health and the health of your citizen or lawful permanent resident children
__ Economic problems for your family in the U.S. if you are deported
__ Economic problems of relocating your family if you are deported
__ Declarations from experts about the difficulty of U.S. citizen children adjusting to life in your country, including their ability to speak the language, the quality of schools, medical care, and location of family members and friends.

**What is a declaration or affidavit?**

A declaration or affidavit is a **sworn statement** from someone that you can give the Immigration Judge as evidence in your case. An affidavit must be signed and sworn before a notary, but a declaration does not need to be notarized. So a declaration is easier for a person to prepare than an affidavit. A declaration starts with the words: "I [the person's name] hereby declare as follows:" The person should explain if he or she is a U.S. citizen or a lawful permanent resident, and give his or her name, address and telephone number. If the witness is a professional, he or she should include a job title and qualifications. The witness should explain how he or she knows you and why he or she thinks you should not be removed. A declaration ends with the words: "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct." The person signs and dates it.

You should include as many declarations and other documents as possible with your application. You can add more evidence at your hearing. Attach an English translation of all documents in a foreign language with a certificate of translation. The government attorney may object to your documents and tell the judge not to consider them. Tell the judge why you think the document is important to your case. To get records from a school, prison, counseling center, hospital, or other institution, send a letter asking for the information.

**Who should be a witness?**

The best witnesses are close family members, employers, and counselors. They should all be here legally. They might be asked about their criminal records. Your witnesses should talk about the good things in your life:

- Your family ties to the U.S., particularly spouse, children or parents with legal status. Include long-term girlfriend or boyfriend or other lawful family members
- Length of time you have lived in the U.S.
- Ability to speak English
- Lack of knowledge of language and customs in home country
- Schooling in the U.S.

- Hardship on you and your family if you are removed
- Military service for the U.S.
- Good work history in the U.S. and a job offer
- Payment of income tax in the U.S.
- Property or business ties in the U.S.
- Service to your community or volunteer work in the U.S.
- Rehabilitation programs
- Good character

Make sure your witnesses discuss the good things they know about you. They should describe the relationship with you and how hard it would be without you. For example, does your family depend on you to pay the rent or other bills? Do you help a sick or old family member? How often did your family see or write you in prison?

Your witnesses should talk about how you have changed since prison. If they think you will not have any more problems with crime again, they should explain why. If you have a drug or alcohol problem and have received counseling, bring witnesses who know about it. Both the Immigration Judge and the government lawyer will ask them many hard questions about who they are, how they know you, and whether they know about your criminal record. Practice questions with them.

## PREPARING FOR YOUR INDIVIDUAL HEARING IN THE IMMIGRATION COURT

When you first see an Immigration Judge in the Immigration Court, your hearing will be called a "Master Calendar Hearing" or MCH. These are typically shorter hearings where the judge may give you more time to find an attorney, or to file an application for protection. He or she may also ask you questions about your background and ask if you are afraid of returning home. After you have filed an application or protection, the judge will set your Individual Hearing. This is when you will present your evidence, testify, and the judge will decide whether to grant you another hearing date where you will have several hours to explain your case.

### What will happen at the hearing?

At your full hearing, called your "Individual Hearing," the Immigration Judge will speak first. The government lawyer will also be there and will likely argue that the judge should deny your application and remove you from the U.S.

You will go next. The judge will question you about your case and your life. Then the government lawyer will question you. Be sure to tell the truth. If you have any criminal charges or convictions, the Immigration Judge will want to know that you are sorry for what happened and that you will not get into trouble again. It is also important to be polite

to the judge, sit up straight in your seat, and try to look your best. Look at the judge when you are answering his or her questions. Be sure to speak loudly and clearly so that the recording of the hearing will be clear. You should ask the Immigration Judge if you can make a statement at the beginning or the end of your testimony. When the judge has finished asking you questions, be sure to tell the judge anything else you think is important about your case and your life.

The government lawyer will have a copy of your full criminal record, including police reports, and will want the Immigration Judge to know about it. Usually, it is better to tell the judge yourself about your criminal record, so that the judge is not surprised to hear about other convictions from the government lawyer when they are asking you questions. You can explain what happened for each conviction and why these events will not happen again in the future.

It will not help to tell the judge that you did not commit any crimes and that your lawyer told you to plead guilty. It is important to accept responsibility for your record. Your criminal case is over and the Immigration Judge cannot change it. You should get a copy of your criminal record so that you are prepared to talk about every arrest in your criminal history. Even charges that were dismissed are things the Judge and government lawyer can ask you about. **It is very important that the judge believes you are telling the truth. If the judge thinks you are lying about anything, you could lose your entire case. Be honest.**

After you testify, your witnesses will come next. You will have to ask your witnesses questions. They cannot just get up and speak, although it is possible that the judge will ask them questions, as will the government lawyer. To prepare, you should write out all of your questions before the hearing. At the hearing you can read or look at your written questions so you will not forget. You can ask each witness if he or she has anything else to tell the judge about why you deserve a second chance.

Make sure that your witnesses know the dates that important things happened in your life. For example, your employer should know the dates of your employment, and your spouse should know dates of important events in your life together.

Usually, the government does not have any witnesses. If he or she does, you have the right to question them.

You have the right to object to any documents that the government lawyer may try to give the judge if it would be unfair or untrue. Ask to see the document and take time to review it. Ask the judge for your own copy of the document. If you do not understand the document or what it means, tell this to the judge.

The judge will decide the case at the end of your hearing. After you and all the witnesses have spoken, the Immigration Judge will usually decide the case. The Judge may, however, postpone the decision for another date.

**What questions will you be asked?**

The Immigration Judge may ask you many questions. The types of questions you are asked will depend on the applications you have filed with the Immigration Court. You must tell the truth and answer the question asked. It is important to accept responsibility for your mistakes and show that you have changed. If you are afraid of returning to your home country, you must explain exactly why, how you were hurt, and what you fear will happen to you if you return. Make sure you provide this information to the judge even if you aren't asked. If you do not understand a question, tell the Immigration Judge. If the judge does not ask you the questions, but there is still information you want to provide, be prepared to tell the judge this information.

## APPEALING THE IMMIGRATION JUDGE'S DECISION

### Board of Immigration Appeals

If the Immigration Judge denies your case, you can appeal to the Board of Immigration Appeals. The judge will give you a Notice of Appeal and a Fee Waiver if you cannot pay the fee. **The Board of Immigration Appeals must receive your Notice of Appeal and $110 fee or Fee Waiver Request within 30 days of the Immigration Judge's decision**. If you are detained, the Board will likely grant your fee waiver request.

You must send in your Notice of Appeal on time or you will lose your right to appeal. Send your Notice of Appeal and Fee Waiver Request to:

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

Telephone: 703-605-1007

On the Notice of Appeal, list the reasons why you believe the decision of the Immigration Judge was wrong. List the mistakes in the law and the mistakes in the facts that the judge made. Also state that you will file a brief in support of your appeal. Send a copy of the Notice of Appeal and Fee Waiver to DHS. The address is on page 23.

If you appeal your case, the ICE cannot remove you from the U.S. Appeals are complicated and require written explanations. Having a lawyer helps. After filing your Notice of Appeal, you will receive a written record of the hearing and will have time to write out reasons why the Immigration Judge's decision was wrong and why you should not be deported.

### Federal Court Appeal

If you lose your appeal to the Board of Immigration Appeals, you may be able to appeal to the First Circuit Court of Appeals but the rules are complicated. It is a good idea to hire a lawyer. File a Petition for Review with the First Circuit within 30 days of the Board of Immigration Appeals decision. You must ask for a "stay" to stop your deportation during the appeal. Send the original Petition (and 3 copies), the Board of Immigration Appeals decision, a stay request and filing fee of $500 (or Fee Waiver Request) to: Clerk, First Circuit Court of Appeals, One Court House Way, Suite 2500, Boston, MA 02210. Call: 617-748-9057.

## MISSING A HEARING AND WHAT TO DO

### What will happen to me if I miss my Immigration Court hearing?

If you miss your Immigration Court hearing, the Immigration Judge will order you deported without you being there. It is very important you attend your Immigration Court hearing so you don't get ordered deported. This is called an *in absentia* order. Make sure to check your case to find out when your next court date is. You can call 800-898-7180 or you can check on-line if you are not in detention: https://acis.eoir.justice.gov/en/. All you need is your A-number.

If you move to a new city or state after you are released from ICE custody, you have to file a "Motion to Change Venue" so your Immigration Court case is moved to the place where you live. Your case will not be moved automatically. You will be expected to appear in court wherever your case is, even if it is all the way across the country. You can ask the PAIR Project for a guide to help you file a Motion to Change Venue.

If you do miss your Immigration Court hearing and you are ordered deported, ICE can pick you up at home or at work and arrest you. After 3 days, ICE can deport you without giving you another court hearing. ICE must, however, have travel documents ready for your deportation, which usually takes at least a few weeks.

If ICE has arrested you but not given you a Notice to Appear, you may have been ordered deported sometime in the past for missing a court hearing. ICE will deport you as soon as it gets the papers from your country, so you must act quickly to stop your deportation.

## GETTING A JUDGE TO REOPEN OR RECONSIDER YOUR CASE

### Can I reopen my case after the Immigration Judge orders my removal?

**Yes**. You can ask the Immigration Court to reopen your case if you missed your hearing for the reasons explained above, or if your situation has changed and you have new evidence about your case. You can also ask to reopen your case if the Immigration Judge did not explain to you your rights or tell you that you had the defenses to deportation, listed on pages 14-23, if any of them apply to you. You can also reopen your case if the law has changed in a way that helps you. This process is complicated, and it is a good idea to have

a lawyer help you.

**If you missed your hearing, you need to file a motion to reopen with the Immigration Judge and request a stay of deportation**. You must explain why you missed your hearing. For example, if you can prove that you never got notice of your hearing, the Immigration Judge will reopen your case. If you were in jail at the time of your Immigration Court hearing, the Immigration Judge will reopen your case. If there were exceptional circumstances for missing your hearing, the judge may reopen your case. You must act quickly. You can ask the PAIR Project (617-742-9296) for a guide to help you file a Motion to Reopen.

## REQUESTING AN INTERNATIONAL TRANSFER TO ANOTHER COUNTRY

**I am in criminal custody. Can I be deported before I have finished serving my time in prison?**

**Yes, under certain circumstances**. Some people may be able to finish serving time in a prison in their home country. To do this, the U.S. must have an international transfer treaty with that country. The state Department of Corrections, the U.S. government, and authorities in your home country must approve the transfer. Not many people request transfers, and a little more than a third of transfer requests are approved. Additional specific conditions of eligibility are delineated in the various treaties. Much of the practice and procedure for prisoner transfers is governed by 18 U.S.C. §§ 4100, *et seq*.

You can request a transfer by filling out a Transfer Request Application Form with your case worker in prison. A consular official from your home country might also be able to advise and assist you with this process. A federal magistrate will hold a hearing on your request and ask you if you agree to the transfer and agree to give up all rights to appeal or attack your conviction. You cannot get a transfer if you are attacking your conviction.

**Will this affect my criminal sentence?**

**No**. Your home country must follow the sentence you already received. Therefore, you will remain in prison after being sent back to your country.

**How will a transfer affect my immigration rights?**

Think carefully before asking for a transfer. If you are transferred to your country before you have an Immigration Court hearing, you will lose the chance to go before an Immigration Judge and ask the judge to excuse your criminal conviction and remain in the U.S. If you accept an international transfer, you will lose that right. This means that if you have a conviction for certain crimes, such as an aggravated felony, you will forever lose

the right to live permanently in the U.S. You will never be allowed to return to the U.S. (except maybe for short visits) even if you are married to a U.S. citizen and have children in the U.S. People who need to be particularly careful about giving up their rights are:

- lawful permanent residents (someone with a green card)
- someone with a spouse, parent, son or daughter who is a lawful permanent resident or a U.S. citizen
- someone who is afraid to go back to their home country

**What if my conviction is for a non-violent offense?**

You may also be deported before finishing your sentence if you have been convicted of a non-violent offense, and deportation is appropriate and in the best interest of the U.S. or the state where you are imprisoned. 8 U.S.C. §1231(a)(4). There are some additional requirements.

**How is the decision to approve or deny my transfer request made?**

The Department of Justice makes the decision to approve or deny a proposed transfer based on your entire record. The Department of Justice considers the seriousness of the offense and your role in it, the existence of outstanding fines or restitution orders, your prior criminal record (if any), the strength of your ties to each country, and the likelihood that the transfer will promote your rehabilitation. Sometimes the government also considers special humanitarian concerns - - such as terminal illness of you or a close family member. Before making a decision, the Department of Justice collects information from many places about each person seeking a transfer. The process usually takes at least three months.

For more information, visit the website of the Department of Justice, Criminal Division, Office of Enforcement Operations, International Prisoner Transfer Program at https://www.justice.gov/criminal/criminal-oia/iptu.

# APPENDIX

# Appendix A

Sample certificate of service to add to any document you send to the Court:

**Certificate of Service**

I hereby certify that I sent a copy of the foregoing document by first-class mail to the Office of the Principal Legal Advisor, Department of Homeland Security, JFK Federal Building, Room 425, Boston, MA 02203.

_____ _____

Signature Date

# Appendix B

**Sample request to ICE for a Credible Fear Interview or Reasonable Fear Interview if you are afraid to return to your home country [put it in ICE box in the unit you are detained in]**

Deportation Officer in charge of A# ____- ____- ____ *[write your A#]*
ICE/ERO
1000 District Avenue
Burlington, MA 01803

RE: REQUEST FOR A CREDIBLE OR REASONABLE FEAR INTERVIEW

Dear Officer:

My name is _____. My A# is _____. I am currently detained at _____. I am writing to request a Credible/Reasonable Fear Interview (CFI), because I am afraid to return to my home country of _____. Thank you for your attention to my request.

_____
Name:

Date:

# Appendix C

**Sample Request for Release if you have been detained for more than 90 days after a final order of removal**

U.S. Department of Homeland Security
Immigration and Customs Enforcement/ERO
1000 District Avenue
Burlington, MA 01803

DATE: _____

Deportation Officer in Charge of A# _____:

I am currently being detained at _____ Jail in _____ *[insert place]*. I have been detained by the Department of Homeland Security for _____ months, since ____/____/____ (*insert mm/dd/yy).* As I have been detained for more than 90 days since my order of removal became final, I respectfully request that I be released subject to an order of supervision pursuant to section 241 (a) of the Immigration and Nationality Act.

I was ordered deported _____ *[insert date]*. However, my home country of _____ *[insert name of country]* has refused to issue travel documents for me. Consequently, I have been incarcerated in this facility for over _____ [*insert months/years – length of detention by ICE*]. I believe that I should not be forced to remain in detention indefinitely solely because the government of my home country refuses to issue a travel document in my case.

I am not a flight risk. I have extensive ties to the community. When I am released, I will be living at _____ *(address)* with my _____ *(wife, children, mother).* I will be employed at the _____ by my _____ *(relative or friend)*. I will attend the _____ church along with my family. I will be participating in the _____ *(drug/alcohol rehabilitation)* program. My _____ *(mother, wife and children)* have suffered greatly due to my extended incarceration. For the above reasons, I ask that I be given freedom until there is a resolution in my case.

Sincerely,

[Name & A#]

# Appendix D

CERTIFICATE OF TRANSLATION

I, _____ *[insert name of translator]*, certify that I am fluent in the English and _____ *[insert name of foreign language]* languages , that I am competent to translate between the _____ *[insert name of foreign language]* and English languages, and that I have accurately and completely translated the attached document from _____ *[insert name of foreign language]* into English to the best of my ability.

Signed: _____
Name of translator

Address of translator:

Dated: _____

# Appendix E

## Instructions For How To Submit Applications And Evidence To The Immigration Court While You Are Detained

### Evidence Package Contents:

Before you submit it, there are a few documents that should be included in the evidence package, in addition to the evidence itself:

1. **Translations and translation certificate**

   Any document that is not written in English must be accompanied by an **English translation**.

   Each translation must be accompanied by an **English translation certificate** with the date and signature of the translator. This certificate can be written and signed by hand or on the computer, as long as it is signed by the person who did the translation.

   Then, each document in any language other than English must consist of three parts: 1) a copy of the original document, 2) a translation of that document into English, 3) a translation certificate.

   Here is an example of what the Certificate of Translation should state:

**CERTIFICATE OF TRANSLATION**

I, _____, am competent to translate from
(*name of translator*)

_____ language into English and certify that the translation of
(*language*)

_____
(*names of documents*)

is true and accurate to the best of my abilities.

_____ _____
(*signature of translator*) (*typed/printed name of translator*)

_____
(*address of translator*)

_____
(*address of translator*)

_____
(*telephone number of translator*)

2. **Certificate of Service**

   At the end of the package of all the evidence, you have to add a document called a "**certificate of service**." See also Appendix A.

   This document serves to affirm to the court that you have sent a copy of the same evidence to the government's attorney.

   Below are examples in English and Spanish of what the certificate should say. The one you send has to be in English; Spanish is only there for you to understand what it says.

**Certificate of Service**

I certify that I caused a copy of the attached materials to be sent by first class mail on

Office of the Principal Legal Advisor
Department of Homeland Security
John F. Kennedy Federal Building, Room 425
15 New Sudbury Street
Boston, MA 02203.

[*Your signature*]_____ Date: _____
Signature

3. **Information of the person arrested**

   On the first page of the evidence packet, you must write the following in large letters: **"DETAINED," your name, and your A-number**.

**Copies**

Before sending any evidence or application to the Immigration Court, make sure to keep at least two copies of all the documents you send so you have:

1. The original packet to send to the Immigration Court
2. A copy to send to the government (Department of Homeland Security)
3. A copy to keep for yourself

**Mailing Address for the Immigration Court:**

Send your applications or evidence to the Immigration Court at this

address:

[*Your first and last name.*]
[*Your address*]

Detention Docket
Chelmsford Immigration Court
150 Apollo Drive, Suite 100
Chelmsford, MA 01824

**4.** Send another copy to the government (Department of Homeland Security) at the following address:

[*Your first and last name.*]
[*Your address]*

Office of the Principal Legal Advisor
Department of Homeland Security
John F. Kennedy Federal Building, Room 425
15 New Sudbury Street
Boston, MA 02203