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## GUIDE FOR NON-DETAINED IMMIGRANTS

The National Immigrant Justice Center (NIJC) is a non-profit organization. **NIJC is not part of the government.**

This pamphlet is intended to provide general information and should not be considered specific legal advice for your case.

If you would like to speak with us and have not had the chance to attend a Group or Individual Information Session with us, please stop by the Immigration Court Helpdesk, Monday to Thursday between the hours of 9-11:45am and 1-3pm.

**All information you share with us will be confidential.**



### Important Terms

**Department of Homeland Security (DHS):** U.S. government agency that oversees immigration matters inside the United States. DHS replaced the Immigration & Naturalization Service (INS).

**Immigration & Customs Enforcement (ICE):** The enforcement arm of DHS, in charge of detaining and deporting non-citizens who are in the United States in violation of the law. The deportation officers and government attorneys who appear in court are part of ICE. If you are currently in removal proceedings, ICE thinks you are in violation of immigration law and is trying to deport you.

**U.S. Citizenship & Immigration Services (USCIS):** Another branch of DHS, mainly in charge of deciding certain types of applications and granting citizenship.

**Alien Registration Number (A#):** This is your case number with DHS. You can use this number to find out when and where you have court. If you had contact with DHS or the former INS before, you will already have an A# from the past. If this is your first contact with immigration authorities, you will receive a new A#.

**Removal/Deportation:** These words mean the same thing. If you are ordered removed, or deported, from the United States, this means that the U.S. government has decided that you cannot live lawfully in the United States and must return to your home country.

**Immigration Court:** The court that decides whether you can and should be deported from the United States, or if you can stay in the United States. The judge will make the decision himself or herself; there are no juries in immigration court.

**Notice to Appear:** The document that tells you why the government thinks that you should be deported from the United States.

**Voluntary Departure:** A benefit that an immigration judge can give you to avoid having a removal order on your record. You will still have to return to your home country and will still have to have a lawful way to return to the United States before you can come back.

**Aggravated Felony:** A crime that DHS has defined as a very serious crime under the immigration law. Crimes can be aggravated felonies under the immigration law even if they are not “aggravated” under criminal law and even if they are not felonies. If you have an aggravated felony, you will not be eligible for voluntary departure.

**Crime Involving Moral Turpitude:** Certain types of crimes, including most theft offenses, fraud offenses, and certain offenses that involve intentionally hurting someone else.

**Master calendar hearing:** A short preliminary hearing at which the judge will explain the charges against you and inform you of your rights. If you are not prepared, you can request a continuance at your first master calendar. Once the judge begins your case, he or she will decide whether you can be deported. If you want to fight your removal by filing an application, you can file the application at a master calendar hearing as well. If you do not file an application or advise the judge that you are preparing your application, you will be ordered removed or granted voluntary departure at a master calendar hearing.

**Individual hearing:** Individual hearings, or merits hearings, usually only take place after you have filed an application with the court. At your individual hearing, the judge will hear testimony and review evidence to decide whether to grant your application. He or she will then decide whether you can stay in the United States or whether you have to return to your home country.

**Appeal:** If you disagree with the immigration judge's decision, you can appeal that decision to the Board of Immigration Appeals. To appeal means to argue that the judge's decision was wrong to a higher court. You will have to show that the judge made a legal error in your case.



## The Legal Process

- You have the right to have an attorney represent you, but a free attorney will not be given to you. You can either hire a lawyer or represent yourself. NIJC may be able to assist in finding a lawyer for you, but we cannot promise that we will find a lawyer for you. You should be prepared to represent yourself if you cannot obtain a lawyer.
- You have the right to present evidence and witnesses on your own behalf.
- You have the right to examine evidence presented by the government and question the government's witnesses.
- You have the right to appeal the judge's decision if you do not agree with it.



## Some Defenses to Removal

**U.S. Citizenship:** If you have a parent or grandparent who was born in the United States or who became a U.S. citizen before you turned 18, you might have a claim to citizenship. Citizenship claims are complicated, so if you think you have a claim speak to NIJC right away.

**Asylum, Withholding of Removal, and Protection under the Convention Against Torture (Form I-589):** Asylum is for individuals who fear they will be harmed if they return to their home country. You must show that the harm you face is because of your race, religion, nationality, political opinion, or membership in a particular social group. Normally you must apply for asylum within one year of coming to the United States. If you have an aggravated felony, you will not be eligible for asylum. Usually being afraid of returning to your home country because of general violence is not sufficient to win asylum. Withholding of removal is for people who cannot qualify for asylum because of their immigration history or criminal record. You have to show that there is more than a 50% chance that you will be seriously harmed if sent back to your country. Finally, protection under the Convention Against Torture is for people who do not qualify for asylum or withholding and who can show that they will be tortured or killed if deported to their home country, by their home government or with their government's permission or knowledge.

**Cancellation of Removal for Lawful Permanent Residents (Form EOIR-42A):** If you are a lawful permanent resident (LPR or green card holder), you may qualify for cancellation of removal if you (1) have lived in the United States for at least seven years after a lawful admission and before committing certain criminal offenses and being placed in removal proceedings, (2) have had LPR status for at least five years, and (3) do not have an aggravated felony.

**212(c) Waiver (Form I-191):** If you are an LPR who does not qualify for cancellation of removal because you have an aggravated felony or cannot demonstrate 7 years of lawful presence, and if all of your crimes happened before April 1, 1997 and you served less than 5 years for those crimes, you may qualify for this waiver.

**Cancellation of Removal for Non-Lawful Permanent Residents (Form EOIR-42B):** If you do not have lawful status but have been in the United States for at least 10 years, do not have certain types of crimes, and have a U.S. citizen or LPR parent, spouse, or child who would suffer exceptional and

extremely unusual hardship if you are deported, you may qualify for this type of cancellation, known as 10-year cancellation.

**Cancellation of Removal for Victims of Domestic Violence (Form EOIR-42B):** If you do not have lawful status but have been in the United States for at least 3 years, do not have certain types of crimes, and have a U.S. citizen or LPR parent, spouse, or child who abused you or your child, you may qualify for this type of cancellation, known as VAWA cancellation.

**Adjustment of Status through Family (Forms I-130, I-485, G-325A, I-864):** If you entered the United States lawfully, or if someone filed a petition for you before April 30, 2001, and if you have a citizen wife, adult child, or you are under 21 and have a citizen parent, you may be able to adjust your status in front of the immigration judge. In addition, if a family member filed a petition for you a long time ago, you might be able to use that petition now. If you have crimes, you may be able to seek a § 212(h) waiver for those crimes, which is filed on Form I-601. Drug crimes, except for a single offense for possession of marijuana under 30 grams, cannot be waived.

**Adjustment of Status for Refugees/Asylees (Forms I-485, G-325A):** If you are a refugee or asylee and are in removal proceedings because of crimes, you may be able to adjust your status with a waiver for your crimes. You can apply for this waiver, called a §209(c) waiver, on form I-602. If you are a refugee and have never applied for your green card before, you will have to file your application with USCIS before the immigration judge will be able to look at it.

**U Visa (Forms I-918, I-918, Supplement B):** This is a special visa for people who have been the victims of certain types of crimes in the United States, and who cooperated with authorities to investigate that crime. To qualify, a law enforcement official, prosecutor, or judge must sign Form I-918-Supplement B certifying that you were a victim of a certain crime and that you cooperated. Once you have this signature, you can file your application (Form I-918) with USCIS's office in Vermont. If you need a waiver for coming to the United States without inspection or for crimes, you will also need to send Form I-192.

**T Visa (Form I-914):** If you have been the victim of human trafficking and have cooperated or are willing to cooperate in an investigation of this crime, you may qualify for a T visa. This application must be submitted to USCIS's office in Vermont.

**Deferred Action for Childhood Arrivals (DACA) (Form I-821D):** If you came to the United States when you were under age 16, do not have certain crimes, and you either went to school here or are enrolled in a GED program or are serving in or have served in the military, you may be eligible for DACA.

*Good luck!*