

1. Overview

PART ONE: BASIC INFORMATION

I. INTRODUCTION

This information is provided by The Executive Office for Immigration Review (EOIR) Legal Orientation Program. The program gives people in detention, like you, information about immigration law. This packet includes basic information about immigration law. It will tell you about your legal rights and your responsibilities.

There are several legal procedures that DHS can use to remove you from the United States. This packet is for individuals who are in regular removal, deportation, or exclusion proceedings. It **does not apply** to individuals who are in Expedited Removal, Reinstatement of Removal or Administrative Removal. If you are in those types of proceedings, please read the other materials available, which explain the procedures for Expedited Removal, Reinstatement of Removal and Administrative Removal.

II. WHY ARE YOU HERE?

A. You are being detained by the U.S. Department of Homeland Security, or DHS, which is part of the U.S. federal government, also known as “Immigration.” You are here because the U.S. government thinks you broke an immigration law. You may have come into the U.S. illegally. You may have come legally but have stayed here too long. You may have committed a crime that affects your immigration status.

B. The government is trying to remove you from the U.S. This process is called “removal” or “deportation.” If you do not fight your case, you will be ordered to leave the U.S. and may not be able to legally return to the U.S. for many years. If you are still in detention when you receive a final removal order, the U.S. government will physically send you back to your home country.

C. You may qualify to stay in this country. Or you may be able to do things in a way that makes it easier to return in the future. If you do not fight your case, or if the judge decides that you don’t qualify to stay in the U.S., the judge will order you to leave the U.S.

III. WHAT ARE YOUR RIGHTS?

A. You have the right to talk with the judge. If you do not speak or understand English, the court will give you an interpreter who speaks your language and who will help you talk and understand what happens while you are in court.

B. You have the right to a hearing. At that hearing, you can have a lawyer, who can help you explain to the court why you should be allowed to stay in the U.S. But the government will not pay for your lawyer.

C. You have the right to give the judge information that will support your case.

D. You have the right to ask questions to anyone who speaks against you in court.

E. If the judge decides that you cannot stay in the U.S., you have the right to have another court, the Board of Immigration Appeals, hear your case. This is called an “appeal.”

PART TWO: THE HEARINGS

I. What happens at the Hearings?

A. The judge usually sits at the front of the courtroom. There are usually two additional tables. The lawyer for Immigration, or DHS, sits at one table, and you sit at the other table with your lawyer if you have one. Sometimes, the judge or government lawyer will be on a television.

B. At the first hearing be prepared to answer these questions:

1. Is the information the court has about you correct?
2. Do you want to fight against removal from the U.S.?
3. Do you have a lawyer?
4. Do you want to try to find a lawyer?
5. Do you want to ask for voluntary departure?
6. Do you want to ask to be removed (deported)?

Below we give you information about each of these questions.

1. Is the information the court has about you correct?

a.) You should have received a paper called a “Notice to Appear” (sometimes called simply an “NTA”). This paper is very important. If you do not have this paper with you, you will get a copy when you go to court. The “Notice to Appear” shows what the government thinks is your name, your country of nationality (where you will be returned if you are ordered removed), your immigration number, the date you entered the U.S., how you entered, and the reasons why they are trying to deport you. You must look at this paper very carefully.

b.) If there is an error in the information about you that is written on your “Notice to Appear,” tell the judge. If you cannot read the paper, the interpreter who speaks your language will read it to you in the courtroom. In the hearing, the judge should read the information from the “Notice to Appear” and ask you if it is correct. You should answer: “Yes, it is correct” if all the information is correct, or “No, it is not correct” when there is something wrong.

2. Do you want to fight against removal from the U.S.?

If you want to fight your case, you need a reason the government should let you stay in the U.S. There are many reasons why the judge may cancel your removal (also known as “deportation”) and let you stay in the U.S.

a) Are you a U.S. citizen?

Some people are U.S. citizens and don’t even know it. If you are a U.S. citizen, the government cannot detain you or deport you from the U.S. You may be a citizen if:

- You were born in the U.S.,
- Your parents or grandparents were born in the U.S., or
- Your parents became U.S. citizens before you were 18 years old,

It is possible that you are a U.S. citizen even if only one of your parents is a U.S. citizen.

b) Did you enter the U.S. legally, with a visa?

If you entered legally, and:

- You have a husband or wife who is a U.S. citizen, or
- You have a son or daughter who is at least 21 years old and is a U.S. citizen, or
- You are single, younger than 21 years old, and have a parent who is a U.S. citizen,

You may be eligible to become a permanent resident. If you are allowed to become a permanent resident in the immigration court, the government probably cannot remove (deport) you now.

c) Did you enter the U.S. illegally, without permission?

If you entered the U.S. illegally, and

- Someone filed an application with immigration for you before April 2001, or
- You were abused by a U.S. citizen spouse or parent,

You may be able to become a permanent resident in the U.S. If you are allowed to become a permanent resident in the immigration court, the government probably cannot remove (deport) you now.

d) Do you have a “green card”? Are you a lawful permanent resident of the U.S.?

If you are a lawful permanent U.S. resident and

- You have had your green card for at least 5 years, and
- You have resided continuously in the U.S. for 7 years since being legally admitted, and
- You have not been convicted of a serious crime, (These serious crimes, called aggravated felonies, include: murder, rape, sexual abuse of a minor, drug trafficking, violent crimes with a sentence of one year or more, and theft with a sentence of one year or more.)

You may qualify for “cancellation of removal,” and the judge may allow you to stay in the U.S. and keep your “green card,” also called your permanent residency.

e) Would your deportation be extremely difficult for your family? Does your family have special problems?

If you do not have a green card – you are not a lawful permanent resident of the U.S. – but:

- Your spouse, your children, or your parents are U.S. citizens or lawful permanent residents, and your deportation would be extremely difficult for them because there are special or unusual problems, AND
- You have lived in the U.S. continuously for the last 10 years (you have not been deported during this time and you have not left the U.S. for a long period of time), AND
- You have been a person of “good moral character” during these 10 years,

You may qualify for a “cancellation of removal,” and the judge may allow you to stay in the U.S. If you are granted cancellation of removal, you will get a “green card,” also called permanent residency.

f) Are you a victim of domestic violence?

If you are a victim of domestic violence, and

- Your spouse or parent is a citizen or lawful permanent resident of the U.S. and physically or psychologically abused you, or
- Your child’s parent physically or psychologically abused your child, and this person is a U.S. citizen or lawful permanent resident

AND

- You have lived in the U.S. for at least 3 years, and
- You have been a person of “good moral character,”

You may qualify for a “cancellation of removal for victims of domestic violence,” and the judge may allow you to stay in the U.S. If you are granted cancellation of removal for victims of domestic violence, you will get a “green card,” also called permanent residency.

g) Did you plead guilty to a crime before April 1997?

If:

- You are a lawful permanent resident, or have a “green card,”
- You pled guilty to, or in some circuits, were convicted of a crime before April 1997, and
- You did not serve more than 5 years in prison for your conviction,

You may be able to stay in the U.S. with special permission – a 212(c) Waiver.

You may also qualify for this special waiver if:

- You are a lawful permanent resident, and
- You pled guilty to a crime before November 29, 1990, even if you served more than 5 years in prison.

If you are granted a 212(c) waiver, you will be allowed to stay in the U.S. and keep your “green card,” also called permanent residency.

h) Are you afraid to return to your country?

If you have been harmed in the past or believe you would be harmed if returned to your country, you may qualify for “asylum.” The harm must be because of your:

- race
- religion

- nationality
- political opinion (Political opinion may include resistance or opposition to forced abortions or other forms of coerced population control measures.)
- membership in a particular social group (A particular social group can include victims of domestic violence in their home country; people who are gay or transgender; people who have life-threatening diseases or mental illness; and sometimes people who are ex-gang members or victims of gang members.)

If you have been convicted of a serious crime, you may not be eligible to receive a grant of asylum. Generally, you must apply for asylum within one year of arriving in the U.S. or you may not be able to apply for asylum except for certain limited reasons. But there are alternative forms of protection available to people who have been in the U.S. for more than one year or who have been convicted of a serious crime. (This is known as “withholding of removal.”) Try to talk to an attorney if you are afraid to return to your country of origin to see if you qualify.

If you are granted asylum, you can apply for your green card after one year and you can apply to bring your spouse and children to the U.S. You may also qualify for employment, housing, and medical benefits. However, be careful not to travel to your home country if you are granted asylum, because your green card and lawful status might be taken away.

If you are granted withholding of removal, you will be able to live and work lawfully in the U.S., but you will not be able to get a green card nor will you be able to bring your spouse or children to the U.S. Withholding of removal just means that you cannot be returned to the country where you fear harm. You should also know that if you leave the U.S. without getting permission from DHS first, you may not be able to return to the U.S., especially if you return to the country where you fear harm. You should talk to a lawyer if you are not sure.

i) Would you be tortured if you returned to your country?

If you were returned to your country and you would be in danger of being tortured by the government or people acting for the government, you may be granted protection under the “Convention Against Torture.” This will not lead to a green card nor can you apply to bring your spouse or children to the U.S. If you are granted protection under the Convention Against Torture, you can stay in the United States, but you may not be allowed back in if you ever leave. It is also possible for you to be removed to another country where you will not be tortured and you may have to stay in detention, depending on your own personal situation.

j) Have you lived in the U.S. since January 1, 1972?

If you have lived in the U.S. since January 1, 1972 and you have been a person of good moral character, you may qualify for “registry.” You would become a lawful permanent resident and receive a green card.

k) Are you from Nicaragua, Cuba, El Salvador, Guatemala, Haiti or a national from a former Soviet Union bloc country?

You may qualify for legal immigration status under something called NACARA if you a) have never been deported before, b) have “good moral character,” c) have not been convicted of an aggravated felony, and if:

- You are from Nicaragua or Cuba, you entered the U.S. before December 1, 1995, and you filed an application for special benefits before April 1, 2000,
- You are from El Salvador, you entered the U.S. before September 20, 1990, and you registered for special benefits,
- You are from Guatemala, you entered the U.S. before October 2, 1990, and registered for special benefits, or
- You are from El Salvador or Guatemala and you applied for asylum before April 2, 1990,
- You are a national from a former Soviet Bloc country and you entered the U.S. before January 1, 1991 and you applied for asylum before January 1, 1992,

If you are granted a NACARA claim, you will be allowed to stay in the U.S.

Also, if you are from Haiti, have not been convicted of an aggravated felony or two or more misdemeanors, have lived in the U.S. since January 12, 2011 or before, and applied for Temporary Protected Status (TPS) by November 15, 2011, you may be able to remain in the U.S.

l) Have you been a victim of a crime that caused you great harm?

If you have:

- Been a victim of a crime in the U.S.,
- Suffered substantial physical or mental pain as a result of being a victim, and
- Been helpful or will be helpful to law enforcement officials,

You may be able to apply for a special visa called a U Visa.

If you are granted a U visa, you will be able to stay in the United States lawfully for a temporary period of time. However, after a certain period of time, you might also be able to apply for and get a “green card,” also known as permanent residency.

m) Do you have important information about a criminal organization?

If:

- You have critical and reliable information about a criminal organization,
- You have given this information to law enforcement authorities or you are willing to give this information to law enforcement authorities, and
- Law enforcement authorities determine that you need to be in the U.S. for their investigation of the crime organization,

You may be able to get a special visa called an S Visa.

If you are granted an S visa, you will be able to stay in the United States lawfully. After a certain period of time, you might also be able to apply for and get a “green card,” also known as permanent residency.

n) Have you been subject to human trafficking in the U.S.?

Human trafficking is when someone is forced, threatened, or tricked into forced labor or sexual exploitation. Some examples are: Girls and women are sometimes trafficked into forced prostitution or forced domestic servitude. Boys and men are sometimes trafficked into forced construction, agriculture, or factory work. Of course, women also can be trafficked for labor and men can be trafficked for sex. Sometimes, victims of human trafficking are told that they must stay in their situation to pay off a debt, usually related to the cost of bringing them to the U.S. and paying for their food and shelter. Victims of human trafficking are sometimes isolated and told they cannot leave their situation. Sometimes trafficking victims have their passports, identification, and money taken away to make sure they can't escape. Also, victims of human trafficking are sometimes threatened with physical violence against themselves or their families if they do not do as they are told.

If:

- You have been subject to human trafficking in the U.S.,
- You are willing to assist law enforcement authorities in the investigation or prosecution of trafficking (this is only required for adults), and
- You would suffer extreme harm if you were deported from the U.S.,

You may be able to get a special visa, a T Visa, or temporary status known as “continued presence” if you are helping law enforcement authorities in the prosecution of the people who trafficked you.

If you are granted a T visa, you will be able to stay in the United States lawfully. After a certain period of time, you might also be able to apply for and get a “green card,” also known as permanent residency.

3. Do you have a lawyer?

a) A lawyer can answer your legal questions and represent you at hearings.

- If you have a lawyer, call the lawyer to represent you.

b) If you have a lawyer, your lawyer should be with you at your first hearing and tell the judge that he or she is your lawyer. If you are having problems with your lawyer, and you would like to fire him or her, please tell the judge or speak with a volunteer lawyer.

4. Do you want to try to find a lawyer?

a) If you do not have a lawyer, but have money to hire one, get a lawyer as soon as possible.

b) If you want to look for a lawyer, but the lawyer will not be with you at your first hearing, ask the judge for time to look for a lawyer. The judge is able to give you another date for your hearing.

c) If you do not have money for a lawyer, you will need to find a lawyer who will take your case for free. You can ask the court for a list of free lawyers.

5. Do you want to ask for Voluntary Departure?

If you do not want to fight your case, you may want to request “Voluntary Departure.”

a) Leaving the U.S. voluntarily may be the best choice if:

- You have no serious criminal convictions, and
- You do not have a defense against deportation.

b) The benefits of taking Voluntary Departure are:

- It is usually easier to return to the U.S. legally in the future if you are granted Voluntary Departure instead of receiving a deportation order.
- If you receive Voluntary Departure, you might not be barred as long from returning to the U.S. as you would be if you receive a removal (deportation) order.

The criminal offense of coming back to the U.S. unlawfully after a removal (deportation) order can be fines and up to 20 years of jail time. The criminal offense of coming back to the U.S. unlawfully after having received voluntary departure is much shorter.

c) If you want to leave the U.S. voluntarily, at your first hearing you must:

- Ask the judge for Voluntary Departure,
- Admit you are removable from the U.S., and
- Admit you are not going to fight or appeal your case.

You cannot get Voluntary Departure if you have been convicted of serious crimes or if you were granted Voluntary Departure in the past.

d) If you are granted Voluntary Departure:

- You must get any travel documents you are told you need. This includes your passport. Immigration will NOT help you get any of these documents,
- You must leave the U.S., and
- You must pay for your own ticket.

You should also know that you can only be granted one Voluntary Departure in your lifetime. If you do not think you can get travel documents or pay for your return ticket, then you might consider taking a removal (deportation) order. Again, if you are granted Voluntary Departure, there is no order of removal on your record. This may make it easier for you to return legally in the future.

e) Starting April 1, 1997, if you are granted Voluntary Departure and have been in the U.S. illegally for more than one year after turning 18 years old, you cannot legally return for 10 years. If you have been in the U.S. illegally for more than 180 days (that’s about 6 months) after turning 18 years old, you cannot legally return for 3 years. However, if you can show that not being in the U.S. would cause extreme hardship for your spouse, parent, or child who is a U.S. citizen or Lawful Permanent Resident, you may apply for a special waiver to enter before 3 or 10 years.

f) If you are granted Voluntary Departure and you fail to leave within the specified Voluntary Departure period, the order automatically becomes a deportation order. You may be subject to civil fines, and you may be ineligible to later change your immigration status for 10 years.

g) If you are granted Voluntary Departure and you return to the U.S. without permission illegally, you may be detained and removed (deported) from the U.S.

6. Do you want to ask to be removed (deported)?

If you do not want to fight your case and you do not qualify for Voluntary Departure, you may ask to be removed (deported). If you do not fight your case, you will be ordered to leave the U.S.

II. How does the judge make a decision?

If you decide to fight your case, you will have additional hearings. In these additional hearings, you provide the judge with any information explaining why you should not be removed (deported). If you do not have a lawyer, you will have to speak for yourself. The government lawyer is trying to show why you should be removed (deported) from the U.S. The judge has to listen to both of you and make a decision. After the judge has all the information, the judge will make a decision.

III. Can the decision be changed?

A. If you think the judge in your hearing made a mistake, you have the right to appeal your case. This means that another judge will review your case.

B. If you want to appeal, you must tell the judge at the end of your hearing and you must file your Notice of Appeal with the Board of Immigration Appeals within thirty (30) days of the judge's decision.

C. An appeal can take approximately 3 to 6 months, sometimes longer and sometimes shorter. Usually, you have to stay in detention while you wait. If you lose your first appeal, and you decide to appeal again to another court (a federal circuit court of appeals), the appeal can take longer, sometimes as long as 1-2 years.

IV. Is it possible to leave the detention center?

A. Some people may leave the detention center if they pay money, called a bond. If you pay money, a bond, you must promise that you will come to every court hearing. A bond is at least \$1,500, sometimes a lot more. If you miss a court hearing, you will lose the money you paid. The money will still be paid back if you are ordered removed (deported). However, to get the money back, you will need to prove to the government that you actually left the U.S. after you were ordered removed (deported). Usually, you have to go to a U.S. Consulate or Embassy in your

home country, get a form filled out by the U.S. office, and then send that form back to the bond office of Immigration in the United States.

B. Another person can pay the bond, or give money to the court, for you. This person should be a US citizen or lawful permanent resident (“greencard holder”). If you do everything that is asked, the person who paid the bond will get all of the money back. It is very important that you show up for all your court hearings in order to get the bond money back.

C. If you can pay your bond, you can leave the detention center. All of your court hearings will be in a court outside the detention center.

D. If you live far away from where you were in detention, you may ask the judge to move your case to an Immigration Court closer to where you live. The judge may say no. You have to go to court where the judge says your court hearing will be. If you miss a hearing, the judge will order you removed (deported) simply for not appearing, and you will lose the money paid for your bond.

E. You must notify the Immigration Court of any changes in your address within 5 days of such a change. You must also notify DHS of your new address within 10 days of moving. If you do not provide this information to the court and DHS you may not receive important hearing notices and you risk being ordered removed.

V. What are Bond Hearings?

A. Sometimes you have not been given a bond before you go to court, so you cannot pay money to leave the detention center. Sometimes the bond costs a lot of money. If you want a judge to give you a bond or to give you a bond for less money, ask for a bond hearing. But, be careful.

- Be very well prepared. You might have the right to only one bond hearing.
- You might want the judge to give you a bond that costs less money. But the judge can also decide to give you a bond that costs more money. Or the judge can decide not to give you a bond at all and decide that you cannot leave the detention center.

B. In your bond hearing, you want to show the judge: (1) you are not a dangerous person, and (2) you will attend all your hearings. To show the judge that, you can:

- Give the judge letters from employers, family, religious leaders, or friends that say you are a good person. If they are legal immigrants in the U.S., they can come to the hearing to tell the judge about you. If someone cannot come to the hearing, you may ask the judge to call them on the telephone.
- Give the judge copies of the birth certificates for any family members who were born in the U.S., and copies of the papers or cards that any of your relatives have showing that they are lawfully present in the U.S. If you are married to a U.S. citizen, give the judge a copy of your marriage certificate, and proof that your spouse is a U.S. citizen.
- If you were convicted of any crimes, give the judge proof that you have changed, especially any certificates of rehabilitation programs or classes you have attended.

- If you went to school or classes in the U.S. – such as for English, anger management or parenting skills – give the judge graduation certificates.
- Give the judge copies of your tax papers.
- Give the judge copies of your work salary check stubs.

C. You need to be prepared.

- Collect and organize all your documents.
- If you can, make extra copies for the government lawyer and the judge, 3 copies altogether.

VI. What happens after you are removed (deported)?

A. If this is your first removal (deportation) order and you have not been convicted of a serious crime, you cannot legally return for 10 years. Sometimes, you might be able to get a waiver of this time and come back sooner, but you have to prove that you or your family have particularly compelling reasons for you to be allowed to come back sooner.

B. If you were ordered removed or deported before, you cannot legally return for 20 years.

C. If you are removed (deported) from the U.S. with a serious crime, you may never return legally. If you return illegally, you can be prosecuted for this crime and be fined and serve time in a federal prison, up to 20 years in prison.

D. If you are removed (deported) from the U.S., and you return to the U.S. without permission and get caught, you may be prosecuted federally and may be fined and spend time in federal prison before being sent back to your home country.

PART THREE: CLOSING

If you have additional questions about specific issues discussed in this packet, please refer to the other documents on this CD.