

**Vera Institute of Justice**  
**Legal Orientation Program**  
**Overview: Information About Immigration Law**  
*Last updated December 2021*

**1. Overview**

**PART ONE: BASIC INFORMATION**<sup>1</sup>

**I. INTRODUCTION**

My name is \_\_\_\_\_, and I am an [attorney/DOJ Accredited Representative] with \_\_\_\_\_. \_\_\_\_\_ is a non-profit organization that provides information to people in immigration detention. I do not work for ICE, the Immigration Court, or any other part of the government. The Legal Orientation Program (LOP) was developed with Executive Office for Immigration Review (EOIR) oversight and EOIR is funding this group orientation presentation and they have reviewed the materials for this presentation in advance. The program gives people in detention, like you, information about immigration law. It is important to understand that even though I am a lawyer/legal representative, I am not going to be your lawyer/legal representative. That means that I cannot represent you in Immigration Court, and I cannot tell you what I think you should do—I can only give you information about what the immigration law says and how it might apply to your case. I am here today to give a group orientation presentation about why you are in immigration detention, your rights in detention and in Immigration Court, and how you can get out of detention. The information that I tell you during the class will help you figure out whether or not you might qualify for an immigration bond or a way to stay in the United States.

There are several legal procedures that the Department of Homeland Security (DHS) can use to remove you from the United States. This group orientation presentation 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 ask for materials that may be 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 Immigration and Customs Enforcement (ICE), an agency of DHS, which is part of the U.S. federal government, also known as “Immigration.” You are here because the U.S. government believes you broke an immigration law. You may have come into the U.S. without permission. You may have come legally but have stayed beyond the period you were authorized to remain in the U.S. Or you may have committed a crime that affects your immigration status.

B. The government is trying to deport 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

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<sup>1</sup> Please note that while this English version was updated in December 2021, there are other GO scripts in several languages available on SharePoint that have not concurrently been updated. To the extent a script is being used for non-English and Spanish speakers, please use this version and provide the updated information via an interpreter.

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 take certain steps to make it easier for you to return to the U.S. in the future. If you do not fight your case, or if the judge decides that you do not qualify to stay in the U.S., the judge will order you deported from the U.S.

### **III. UNDERSTANDING FRAUD**

In the immigration detention and deportation process, fraud can happen to you and to the government.

For people in your situation, fraud often occurs when trying to find and hire a legal representative to represent you in your case. Only two groups of people may provide legal advice and services in your immigration case, including in your bond hearing: attorneys and accredited representatives.

In the U.S., an attorney (also called a “lawyer”) is someone who attended law school and received a Juris Doctor (J.D.) degree. They must be a licensed member of a state bar association, in “good standing” and must have passed an exam given by the state bar association. Attorneys can give legal advice and provide legal services. They can file documents and applications, and represent you in immigration court, the asylum office, and during your appeal to the Board of Immigration Appeals (BIA). You can ask to see your attorney’s licensing documents. You can also make a note of the attorney’s admission number if possible.

An accredited representative is one who has been given permission by the Department of Justice (DOJ) to provide immigration legal services. Generally, a fully accredited representative may represent you before the immigration court, the asylum office, and during your appeal to the BIA. An accredited representative cannot represent you in state court on non-immigration matters. The best way to know that an individual is a legitimate accredited representative is to ask to see a copy of the DOJ decision confirming their status.

You have the right to hire or fire your attorney or accredited representative, and you do not need to accept any legal representation that you do not understand or that makes you feel uncomfortable.

Get help if you think your legal representative has cheated you or works for traffickers. You can terminate your representation if you want to. You may also be able to file a complaint against your legal representative. You can ask for more information about this later when we have the opportunity to meet one-on-one during an individual orientation.

A notary public, notario, or a notario público is NOT an attorney or an accredited representative and CANNOT provide legal advice or services in your immigration case unless they have been accredited by the DOJ and work for an organization recognized by the DOJ. In the U.S., a notary public is a public officer who is authorized by law to certify documents, take affidavits, and

administer oaths. Immigration consultants and immigration assistance providers are not attorneys and cannot give legal advice or provide legal services.

Fraud also happens against the government and the consequences can be severe. It is very important that you always make truthful statements at court and in the paperwork that you submit to the government in support of your case. In the United States legal system, everything that is said in court or to an immigration officer, or included in an application or piece of evidence submitted to the government, must be true. Making untrue statements and presenting false evidence is against the law and the government can prosecute you. It will also hurt your case, oftentimes leading to permanent consequences.

#### **IV. WHAT ARE YOUR RIGHTS?**

A. You have the right to speak to an immigration judge. If you do not speak or understand English, the court will provide an interpreter who speaks your language and who will translate what is said in court to help you understand what happens during your court hearings.

B. You have the right to a hearing in Immigration Court. At a hearing, you can have a lawyer or a fully DOJ accredited representative 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 legal representative. If you cannot find a legal representative or afford one, you will have to represent yourself in court.

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. You also have the right to ask people to speak on your behalf in court. These people are called witnesses.

E. If the judge decides that you cannot stay in the U.S., you have the right to have the appeals court, the BIA, 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 government lawyer for Immigration, or DHS, sits at one table, and you sit at the other table with your legal representative, if you have one. If you do not speak or understand English, an interpreter may be present in court, or be on speakerphone. 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 legal representative?
4. Do you want to try to find legal representation?

5. Do you want to ask for voluntary departure?
6. Do you want to ask to be removed (deported)?

Below is information about each of these questions.

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

**a)** You may have received a document called a “Notice to Appear” (sometimes called an “NTA”). This document is very important. If you do not have this document with you, you may receive it before you go to court, or you can ask the judge for a copy when you are in court. The “Notice to Appear” contains what the government believes is: your name, your country of nationality (where you will be returned if you are ordered removed), your immigration number (or “A number”), the date you entered the U.S., how you entered, and the reasons why they are trying to deport you. It is important to review this document very carefully.

**b)** If there is an error in the information about you on your “Notice to Appear,” you have the right to 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 will read the information from the “Notice to Appear” and ask you if it is correct. You can 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 can let you stay in the U.S. There are many reasons why the judge may cancel your removal (or “deportation”) and let you stay in the U.S. Below we have listed some reasons, or defenses. Please keep in mind that this is a general overview and your eligibility for each defense ultimately rests on the specific facts of your case and current law and policy.

#### **a) Are you a U.S. citizen?**

Some people are U.S. citizens and do not 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 spouse who is a U.S. citizen, or
- You are the parent of a U.S. citizen who is at least 21 years old, or

- You are unmarried, younger than 21 years old, and have a U.S. citizen parent,

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

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

If you entered the U.S. without permission, and

- Someone filed an application with Immigration for you before April 2001,
- You were abused by a spouse or parent who is a U.S. citizen or U.S. lawful permanent resident, or
- You were abused by a U.S. citizen son or daughter who is at least 21 years old,

You may be able to become a lawful permanent resident in the U.S. If you are allowed to become a lawful permanent resident in 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 U.S. lawful permanent resident and,

- You have had your green card for at least 5 years
- You have continuously resided in the U.S. for 7 years since being legally admitted in any status, and
- You have not been convicted of an aggravated felony, (this includes: 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 lawful permanent residence (“green card”).

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

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

- Your spouse, children, or parents are U.S. citizens or U.S. lawful permanent residents,
- Your deportation would be extremely difficult for them because they would face unique or unusual problems,
- You have continuously lived in the U.S. 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 be given lawful permanent residence (a “green card”).

**f) Are you a victim of domestic violence?**

If you are a victim of domestic violence, and

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

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 be given lawful permanent residency (a “green card”).

**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 a special waiver called a 212(c) waiver and keep your green card.

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 remain as a lawful permanent resident and keep your “green card.”

**h) Are you afraid to return to your country?**

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

- race
- religion
- nationality
- political opinion (including resistance or opposition to forced abortions or other forms of coerced population control measures.)
- membership in a particular social group (including people who are gay or transgender; people who are targeted because of their gender, people who have life-threatening diseases or mental illness; and sometimes people who are ex-gang members.)

If you have been convicted of a particularly 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. If one year has passed since your arrival, you have to demonstrate changed or extraordinary circumstances that prevented you from filing within one year. Moreover, 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 type of relief is called “withholding of removal.” 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 lawful permanent residence 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 permanent residence 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 obtain lawful permanent residence 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. Please be aware 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 previously claimed to fear harm. You may talk to a legal representative if you are unsure.

**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 the government will not protect you from being tortured by a third party, you may be granted protection under the “Convention Against Torture.” This will not lead to lawful permanent residence 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.

**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 ever since, 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, a national from a former Soviet Union bloc country, or from a country designated for Temporary Protected Status?**

You may qualify for legal immigration status under 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. on or before December 1, 1995, and you filed an application for special benefits before April 1, 2000,
- You are from El Salvador, you first entered the U.S. on or before September 19, 1990, you registered for special benefits or Temporary Protected Status on or before October 31, 1991,
- You are from Guatemala, you first entered the U.S. on or before October 1, 1990, and registered for special benefits on or before December 31, 1991,
- You are from El Salvador or Guatemala and you applied for asylum on or before April 1, 1990, or
- You are a national from a former Soviet Bloc country and you entered the U.S. on or before December 31, 1990 and you applied for asylum on or before December 31, 1991.

If you are the:

- Spouse,
- Unmarried child and under 21 years old, or
- Unmarried son or daughter and over 21 years old who entered the U.S. on or before October 1, 1990

of a NACARA grantee, you may also qualify for legal immigration status under NACARA.

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

If you are from Haiti, you may qualify for lawful permanent resident status if you are the:

- Spouse
- Unmarried child and under 21 years old, or
- Unmarried son or daughter and over 21 years old who has lived in the U.S. since December 31, 1995.

of a Haitian national at the time they were granted relief under the Haitian Refugee and Immigrant Fairness Act (HRIFA).

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

Also, if you are from one of the following countries and have not been convicted of any felony or two or more misdemeanors you may be able to remain in the U.S. depending on the date you arrived: Burma (Myanmar), El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, Yemen, or Venezuela. Please consult with an attorney if you think you may qualify for **Temporary Protected Status** based on your nationality.

**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 lawfully stay in the United States for a temporary period of time. However, after a certain period of time, you may be able to apply for lawful permanent residence (a green card).

**m) Is anyone under 21 years old?**

If:

- You are under 21 years old,
- Unmarried, and
- Have been abandoned, abused, neglected, or a similar basis by one or both parents.

You may be eligible for Special Immigrant Juvenile (SIJ) which is a type of immigration relief for those that are under 21 years old. In order to apply for SIJ, an individual will first go through a state court and ask a judge to declare that they have been abused, abandoned, neglected, or a similar basis under law by one or both parents. After that, such an individual can apply for SIJS with USCIS, which may allow such an individual to apply for lawful permanent residence (a green card).

**n) Have you previously been convicted of a crime?**

In some cases, if an individual is otherwise eligible for a defense to removal, but has been convicted of a crime that makes them ineligible for that defense, it might still be possible to go back into the criminal court and ask the judge to modify their conviction. This is called Post-Conviction Relief.

Post-Conviction Relief can be very complicated, and the procedure for applying for it varies by state. If an individual believes that they may have had contact with a law enforcement, it is essential for them to request their criminal history. An immigration judge cannot do anything to change someone's criminal conviction, and the judge might not give an individual extra time to have their conviction changed, so an individual may seek assistance immediately.

If an individual pled guilty (but not if they were convicted by a judge or jury) to a crime and their lawyer told them that it would not affect their immigration status, or did not tell them that it would, they might be able to go back into the criminal court and have their conviction altered because of a Supreme Court case called *Padilla v. Kentucky*. This is only possible if they pled guilty after the *Padilla* decision was announced in 2010. You can ask for more information about this later when we have the opportunity to meet one-on-one during an individual orientation.

**o) 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: 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 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 cannot 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 are the victim of a severe form of human trafficking in the U.S.,
- You are physically present in the U.S. on account of such trafficking
- You have assisted or are willing to assist law enforcement authorities in the investigation or prosecution of trafficking (this is only required for those older than 18 years old), 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 lawfully stay in the United States. After a certain period of time, you may be able to apply for lawful permanent residence (a green card).

### **3. Do you have a legal representative?**

- a) A legal representative can answer your legal questions and represent you at hearings.
- If you have a legal representative, call them to represent you.
- b) If you have a legal representative, you can have your legal representative present at your first hearing to tell the judge that they are representing you. If you are having problems with your legal representative, and you would like to fire them, please tell the judge or speak with a volunteer legal representative.

### **4. Do you want to try to find a legal representative?**

- a) If you do not have a legal representative, but have money to hire one, you can get a legal representative.
- b) If you want to look for a legal representative, but a legal representative will not be with you at your first hearing, you may ask the judge for time to look for one. The judge may give you another date for your hearing.
- c) If you do not have money for a legal representative, you can look for a legal representative who will take your case for free. You can ask the court for a list of free legal representatives.

### **5. Do you want to ask for Voluntary Departure?**

If you do not want to fight your case and you want to return to your home country, you may want to request “Voluntary Departure” from the Immigration Judge.

- a) Leaving the U.S. voluntarily may be an option for an individual 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 legally return to the U.S. 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 from returning to the U.S. for as long as you would be if you were deported.

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

- c) If you want to voluntarily leave the U.S., at your first hearing you can:
- Ask the judge for Voluntary Departure,
  - Admit the charges on your NTA,
  - 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, if you were granted Voluntary Departure in the past or if you have been previously deported.

d) If you are granted Voluntary Departure:

- You must get any travel documents you are told you need, including your passport (Immigration will NOT help you get any of these documents, unless they already have it in their possession),
- You must leave the U.S., and
- You must pay for your own transportation to your home country.

You can only be granted Voluntary Departure once 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 legally return in the future.

e) Starting April 1, 1997, if you are granted Voluntary Departure and have been in the U.S. unlawfully 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. unlawfully for more than 180 days (that is 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 to your U.S. citizen or Lawful Permanent Resident spouse or parent, you may apply for a special waiver to enter before the 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, 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 deported from 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 legal representative, you will have to represent yourself. The government lawyer will argue why you should be removed (deported) from the U.S. The judge

will listen to the both of you. After the judge has all the information, the judge will issue a decision.

### **III. Can the judge's 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. Please be aware that the government lawyer can also appeal the judge's decision.

C. An appeal can take approximately 3 to 6 months, sometimes longer and sometimes shorter. Usually, you must 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. To learn more about filing an appeal to a federal circuit court, please contact a legal representative.

### **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 a bond you must promise that you will go to every court hearing upon your release from detention. A bond is at least \$1,500, sometimes a lot more as there is no defined maximum amount. If you miss a court hearing, you will lose the money you paid. The money will be returned to you 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 must 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 Immigration bond office in the United States.

B. Another person can pay the bond on your behalf. This person must be a U.S. citizen or lawful permanent resident ("green card holder"). If you do everything that is asked by the judge, the person who paid the bond will get all their money back. It is very important that you show up to 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. Your next court hearings will likely 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 must go to the 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 bond money.

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.

F. You may also request ICE to exercise “Prosecutorial Discretion” and release you from detention. Prosecutorial Discretion refers to the power that ICE and U.S. immigration agencies have in deciding whether to detain, open an immigration case, and/or to release an individual.

Under recent ICE and DHS enforcement memos, ICE should be prioritizing the detention of the following categories of individuals:

- “National Security” – individuals who have engaged in terrorism, spying, espionage, or other threats to “national security.”
- “Border Security” – individuals apprehended at the border or ports of entry while attempting to unlawfully enter the United States, as well as people who entered the U.S. without permission after November 1, 2020.
- “Public Safety” – individuals whom the DHS believes are a “current threat to public safety, typically because of serious criminal conduct.” However, there are **no absolute bars** to receiving prosecutorial discretion based on contact with the criminal legal system. A bar is a circumstance that would disqualify an individual for applying for prosecutorial discretion. The DHS will consider these factors in determining whether someone is a “current threat to public safety.”

Whether you fall or do not fall under one of these three categories, you may request release under prosecutorial discretion as there are no categorical bars to receiving prosecutorial discretion and the DHS must consider the factors in each person’s case individually. When deciding whether to exercise prosecutorial discretion in your favor, ICE will consider the following:

### **Mitigating Factors**

- Age (if a person is young or elderly)
- Long presence in the U.S.
- Mental condition that contributed to the person committing the conduct (like cognitive disabilities, or other mental illness)
- Mental or physical health condition that requires care or treatment that contributed to the person committing the conduct
- Being a victim, witness, or being part of other legal proceedings
- Impact of the person’s deportation on family members in the U.S.
- Eligibility for immigration relief
- U.S. military or public service of the person or their immediate family members (parents, spouse, or children)
- Time since the offense and evidence of rehabilitation (such as completion of classes, attendance at Alcoholic Anonymous, etc.)
- Conviction was expunged or invalidated
- Family or community ties in the United States
- Circumstances of arrival in the United States and the manner of entry
- Prior immigration history

- Work and education history in the United States
- Compelling humanitarian factors present in the noncitizen’s case (including on the part of the noncitizen’s close family members), including:
  - Serious medical condition,
  - Age,
  - Pregnancy,
  - Status as a child, and
  - Status as a primary caregiver of a seriously ill relative in the United States.

### **Aggravating Factors**

- Criminal convictions, but ICE will consider the following:
  - Seriousness and recency of the crime
  - Nature and degree of harm the conduct caused
  - “Sophistication” of the crime (i.e., the amount of planning, intent, and resources that went into committing the crime, as well as the number of people involved)
  - Use or threat to use a gun or other weapon
- Person’s prior record of serious convictions
- Time and length of the sentence imposed, if any
- Subsequent criminal activity, if any
- Participation in persecution or other human rights violations
- Extensiveness and seriousness of prior immigration violations, such as:
  - Failure to comply with terms of release on bond
  - Prior entries without permission
  - Prior deportations
- Fraud or material misrepresentation

Prosecutorial discretion is evaluated on a case-by-case basis and it is discretionary. In other words, ICE is not obligated to release you. A grant of prosecutorial discretion is not a path to permanent lawful status. Additionally, please note that the above factors become effective on **November 29, 2021**, so please reach out to speak with the LOP to receive the latest information on prosecutorial discretion or to raise questions you may have.

### **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 a lower amount, 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 for a lower amount, but the judge can also decide to give you a higher bond. 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 this, 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 of 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, you may 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, you may give the judge proof that you have changed, especially any certificates from rehabilitation programs or classes you attended.
- If you went to school or took classes in the U.S. – such as for English, anger management or parenting skills – you may give the judge graduation certificates.
- Give the judge copies of your tax filings.
- Give the judge proof of your employment, such as 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 yourself, with the original going to the judge, 3 copies of each document 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 to the U.S. for 10 years. Sometimes, you might be able to get a waiver of this time and come back sooner, but you are required to prove that you or your family have particularly compelling reasons for you to be allowed to come back sooner.

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

C. If you are removed (deported) from the U.S. and have committed a serious crime, you will not be able to legally return to the U.S.

D. If you are removed (deported) from the U.S., and you return to the U.S. without permission and get caught, you can be prosecuted for a federal crime. If convicted, you will be fined and can serve as long as 20 years in federal prison before being sent back to your home country.