

The background of the entire page is a faded, light blue image of the Statue of Liberty. The statue's head with its crown and one arm raised holding a torch are visible in the upper half, while the lower half shows the body and the other arm holding a tablet.

KNOW YOUR RIGHTS



The information provided in this manual will help you understand your rights in the immigration removal process, and will help prepare you to make good decisions and participate in your own defense. Remember: each person's situation is different.

This manual does not provide legal advice and is no substitute for qualified legal help.

This manual was created by human rights lawyers and organizations that specialize in helping detained immigrants understand their legal rights.

This manual will help you understand the basic legal process, and immigration court; whether you may be able to remain in the United States legally; get a bond or be released from custody; or be returned to your country of origin quickly.

If you have any questions, comments, or would like to request more legal information, please contact us at:

American Bar Association
Commission on Immigration
1050 Connecticut Ave. NW Suite 400.

Washington, DC 20036
Telephone: (202) 442-3363
Fax: (202) 638-3844
Email: immcenter@americanbar.org
Website: www.americanbar.org/immigration

The American Bar Association hereby grants permission for copies of the materials herein to be made, in whole or in part, for classroom use in an institution of higher learning or for use by not-for-profit legal service organizations, provided that the use is for informational, non-commercial purposes only and any copy of the materials or portion thereof acknowledges original publication by the ABA, including the title of the publication, the name of the author, and the legend: "Reprinted by permission of the American Bar Association. All rights reserved." No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher. To request permission, contact the ABA's Department of Copyrights and Contracts at: www.abanet.org/reprint.

The materials contained herein represent the opinions of the authors and editors and should not be construed to be those of the American Bar Association unless adopted pursuant to the bylaws of the Association. Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

© American Bar Association 2013
All rights reserved

This manual is based on the ABA Know Your Rights Video (2012) available at www.ambar.org/knowyourrights.

The American Bar Association is grateful to the many organizations and individuals who contributed to the production of the video and this manual, including:

ABA Commission on Immigration
ABA Communications and Media Relations
American Immigration Lawyers Association
Detention Watch Network
Florence Immigrant and Refugee Rights Project
National Immigrant Justice Center
Professor Susan Terrio
Winston & Strawn LLP
Mark D. Agrast
Macarena Tamayo Calabrese
Karen M. Castillo
Karen T. Grisez
Laura L. Lichter
Megan H. Mack
Stephanie Ortvals-Tibbs
Irena Lieberman Sullivan

Table of Contents

I. Know Your Rights	7
A. In the Court Room	7
B. Representation.....	7
C. Notice to Appear (NTA).....	8
D. Reasons Why You Might Be Able to Stay in the United States	11
II. Know the Court Process	12
A. Know What to Expect in Court.....	12
B. Your Rights in Court	13
C. The Board of Immigration Appeals	14
D. What Happens If You are Removed (Deported).....	15
E. What to do if Held in Custody for a Long Time after Removal Order	16
III. Know Your Defenses	17
A. Challenging Removability	17
B. U.S. Citizenship.....	18
C. Asylum, Withholding of Removal, Convention Against Torture (CAT)	18
D. Temporary Protected Status (TPS)	20
E. LPR Cancellation of Removal	20
F. Non-LPR Cancellation of Removal.....	21
G. Special Rule Cancellation of Removal for Victims of Domestic Violence and their Children	22
H. T and U Visas for Victims of Trafficking and Other Crimes.....	23
I. Permanent Residency by Family Visa Petition	24
J. Other Defenses: Registry, NACARA, HRIFA, Cuban Adjustment Act	25
IV. Release from Detention: Bond	27

V. Departure from the U.S.: Removal and Voluntary Departure..... 29
VI. For More Information 31

I. KNOW YOUR RIGHTS

A. WHAT YOU NEED TO KNOW: Your Rights

- ♦ **Immigration court procedures**
- ♦ **Can you stay in the U.S. legally?**
- ♦ **Can you get a bond or be released from custody?**
- ♦ **How can you be returned home most quickly?**

In The Courtroom

The people you will usually see in court include the immigration judge, the government attorney, and the interpreter. The immigration judge will listen to you (or your representative) and the government attorney and then decide your case. The interpreter will translate what everyone is saying but cannot give you advice about your case. Interpreters have the duty to interpret everything you tell them to the immigration judge and the government attorney. So, never address them directly with a question relating to your case.

Immigration law is very complicated, and it is best to get help from a lawyer or an “accredited representative.”

Lawyer (or Attorney):

Licensed to provide legal advice and represent you in court.

Accredited Representative:

- *Works for a non-profit agency;*
- *Certified by the Board of Immigration Appeals (“BIA”); and*
- *Supervised by a lawyer to provide legal advice and represent you in court.*

B. WHAT YOU NEED TO KNOW: Representation

- ♦ **Communications with lawyers are confidential**
- ♦ **No “free lawyer” or public defender in immigration court**
- ♦ **Free and low-cost services may be available — ask for a list**
- ♦ **Calls to legal service providers should be free**

Remember, whatever you tell your lawyer or accredited representative is strictly private and confidential. Lawyers and accredited representatives cannot tell anyone what you tell them, unless you give permission first.

Although you have the right to be represented by an attorney or accredited

representative in immigration proceedings, the U.S. government will not find you a lawyer or pay for one. You are not entitled to a public defender or a court-appointed lawyer that is paid for by the government. If you want help with your case but cannot afford a lawyer, legal help may be available for free or low cost. Ask an ICE officer or the immigration judge for the list of lawyers and organizations that provide free or low cost legal services. You have the right to make free telephone calls to these lawyers while you are detained.

Beware of immigration consultants, or “*notarios*,” who pretend to be lawyers or pretend to work for lawyers. Attorneys or accredited representatives usually can provide proof that they can represent you in court.

ATTENTION!

BEWARE of immigration consultants, or “*notarios*,” who are not allowed to give legal advice and may cause problems with your case.

If you will represent yourself, you may use resources in the law library to prepare your case. You may also ask the immigration judge for more time to prepare your case, if necessary.

REPRESENTING YOURSELF

- ♦ **Be careful! Immigration law is very complicated.**
- ♦ **Use resources in the law library to help prepare your case.**
- ♦ **You may ask the immigration judge for more time to find help or prepare your case if necessary**

If you are under age 18, you may be eligible for special treatment, including legal help and possible placement at a special, less restrictive detention center.

ATTENTION!

TELL AN ICE OFFICER AND THE IMMIGRATION JUDGE IF YOU ARE UNDER 18; YOU MAY BE ELIGIBLE FOR SPECIAL TREATMENT.

C. Notice to Appear (NTA)

There is an important document called the “Notice to Appear” or “NTA.” Most of this manual is for people who have received an NTA and, for that reason, have the right to

see an immigration judge. The NTA is the document that tells the judge why U.S. Immigration and Customs Enforcement, or "ICE," an agency within the Department of Homeland Security, believes you should be removed from the United States.

Sample NTA:

U.S. Department of Homeland Security	Notice to Appear
In removal proceedings under section 240 of the Immigration and Nationality Act:	
File No: <u>A055-555-555</u>	
In the Matter of:	
Respondent: <u>RAMOS, Jorge</u>	currently residing at:
<u>Port Isabel, SPC, 27991 Buena Vista Blvd., Los Fresnos, TX 78566</u>	
<small>(Number, street, city and ZIP code) (Area code and phone number)</small>	
<input type="checkbox"/> 1. You are an arriving alien.	
<input checked="" type="checkbox"/> 2. You are an alien present in the United States who has not been admitted or paroled.	
<input type="checkbox"/> 3. You have been admitted to the United States, but are removable for the reasons stated below.	
The Department of Homeland Security alleges that you:	
1) You are not a citizen of the United States.	
2) You are a native of Mexico and a citizen of Mexico.	
3) You entered the United States at or near Hidalgo, TX on or about 6/11/2010.	
4) You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document.	
5) You were not then admitted or paroled after inspection by an immigration officer.	
6) You were, on August 18, 2009,, convicted in the Superior Court of Los Angeles for the offense of Receive Etc Known Stolen Property.	
On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:	
Section 212(a)(7)(A)(i)(I)- of the Immigration and Nationality Act, as amended, as immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the AG.	
<input type="checkbox"/> This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.	
<input type="checkbox"/> Section 235(b)(1) order was vacated pursuant to: <input type="checkbox"/> 8CFR 208.30(f)(2) <input type="checkbox"/> 8CFR 235.3(b)(5)(iv)	
YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:	
<u>Harlingen EOIR, 2009 West Jefferson, Ste. 300, Harlingen, TX 7855</u>	
<small>(Complete Address of Immigration Court, including Room Number, if any)</small>	
on to be set _____ at _____ to show why you should not be removed from the United States based on the	
<small>(Date)</small>	<small>(Time)</small>
charge(s) set forth above.	<u>Monte Sandoz</u> SDDO
Date: <u>9/21/10</u>	<small>(Signature and Title of Issuing Officer)</small>
<u>Harlingen, TX</u>	<small>(City and State)</small>
See reverse for important information	
Form I-862 (Rev. 08/01/07)	

CASES NOT BEFORE AN IMMIGRATION JUDGE:

Some of you may not receive an NTA. You will ordinarily not receive an NTA or be entitled to see an immigration judge and defend your case if one of the following 8 situations is true in your case.

1. You were found “inadmissible” at the border or airport when you entered because you entered without documents or made a misrepresentation.
2. You were arrested within 100 miles of the border without documents, and could not prove you had been in the United States for more than 14 days.
3. You arrived by sea and were in the United States for less than 2 years.
4. You entered the United States without inspection after being deported or overstaying a voluntary departure grant in the past.
5. You entered the United States with a Visa Waiver, through filling out a green Visa Waiver form on the plane or at a port of entry.
6. You have been convicted of an “aggravated felony,” and you do not have lawful permanent resident status in this country.

Aggravated Felony:

A broad category of crimes that have certain serious consequences under immigration law, including murder, rape, and other violent crimes, drug trafficking, and certain theft and fraud offenses.

7. A judge ordered you deported or granted voluntary departure in the past, but you did not leave the country as required.
8. You signed a stipulated removal order to return to your country of origin and therefore gave up your right to have your case heard in court by an immigration judge.

Stipulated Removal:

You agree to return to your country of origin and sign an order indicating that you do not want your case heard by an immigration judge.

D. KNOW YOUR RIGHT TO STAY: Reasons Why You Might Be Able to Stay in the United States

Even if you fit into one of these 8 categories, you may still be eligible to stay in the United States if you are afraid you will be persecuted in your home country. You may also be able to stay in the U.S. if you have been the victim of domestic violence, or human trafficking, or certain other crimes like kidnapping or rape.

ATTENTION!

IF YOU FEAR RETURNING TO YOUR COUNTRY OR ARE A VICTIM OF DOMESTIC VIOLENCE, HUMAN TRAFFICKING, OR CERTAIN OTHER CRIMES, YOU MAY BE ABLE TO STAY IN THE UNITED STATES.

Domestic Violence:

Physical or mental abuse or extreme cruelty by someone in your family or household, like your husband or wife, or boyfriend or girlfriend, even if you are no longer together.

Human Trafficking:

When you are forced or tricked into performing forced labor or forced sex acts.

If you fear persecution or have been the victim of one of these crimes, you should talk to a lawyer and notify an ICE officer immediately.

ATTENTION!

IF YOU HAVE A PRIOR REMOVAL ORDER, YOU MAY BE ELIGIBLE TO FILE A MOTION TO REOPEN YOUR EARLIER CASE.

IF YOU HAVE NOT RECEIVED AN NTA AND BELIEVE YOU SHOULD, CONTACT A LAWYER AND ICE OFFICER RIGHT AWAY.

II. KNOW THE COURT PROCESS

A. IMMIGRATION COURT PROCEEDINGS: Know What to Expect in Court

If your case is before an immigration judge, this judge will make the decisions in your case. The immigration judge is not an employee of ICE. He or she represents a different government agency: the Department of Justice.

Even if you go in front of the immigration judge with a group of detainees, be sure to ask to speak with the immigration judge separately and ask about your own concerns. You can also ask to speak to the immigration judge alone, without having other detainees present.

If you do not have a lawyer, the immigration judge must explain to you why you are in court and why ICE believes you should be removed from the United States. The judge will also tell you about your legal rights, including any options, or “defenses” against removal, that you might have. However, the immigration judge cannot give you a legal advice on your case and will not know your specific circumstances. It is ultimately up to you to take care of your case. The immigration judge will let you tell your side of the case. He or she will also let you bring your own witnesses, ask questions of any government witnesses and present any other evidence or information that you think might be important to your case.

Over the course of one or more hearings, the immigration judge will decide one of the following three things:

1. May the government remove you from the country?
2. Do you have a legal right to stay in the U.S.?
3. Does the immigration judge believe you should be allowed to stay?

At your first appearance in immigration court, the judge will ask if you speak English. If you do not, or if you understand some English but not everything you hear, the court will provide a free interpreter for your case. The interpreter will help you understand what is being said in court, but cannot give you legal advice.

ATTENTION!

IF YOU DON'T SPEAK ENGLISH, ASK FOR A FREE INTERPRETER.

AN INTERPRETER WILL ONLY TRANSLATE; INTERPRETERS CANNOT GIVE LEGAL ADVICE.

Next, the immigration judge should ask whether you have a lawyer or other

representative, and will offer you a list of free lawyers and organizations. Don't be afraid to ask for more time if you don't have a lawyer and want to try to find one.

ATTENTION!

**YOU CAN ASK FOR MORE TIME TO FIND LEGAL HELP OR
PREPARE YOUR OWN CASE.**

B. KNOW YOUR RIGHTS IN COURT. You Have the Right to:

- ♦ **Review and deny charges**
- ♦ **Give information about your case**
- ♦ **Examine evidence (documents, etc.)**
- ♦ **Ask questions of any witnesses (anyone) speaking against you**

When you are ready to begin your case, the immigration judge will ask whether you received the "Notice to Appear" or "NTA." See the sample NTA on page 9. If you do not have the NTA, ask the immigration judge for a copy. If you do not understand what is written on the NTA, the immigration judge will explain it. The NTA has facts about you and your case. It also has legal "charges," or reasons why ICE believes you can be removed/deported. The immigration judge will ask you whether the facts and legal charges on the NTA are correct.

It is very important that you review the facts and charges in the NTA carefully because these may determine whether you can ask for a bond or successfully fight removal.

If any of the facts or charges are not correct, tell the immigration judge. You have the right to admit or deny the charges in your NTA. This is called "pleading to the charges."

You also have the right to see any evidence against you before you admit or deny the charges.

At your hearing, you will have the right to give the immigration judge information that will support your case, by bringing witnesses and records, reports, letters from your friends, your religious authority—such as your pastor, your employer or other documents. You also have the right to carefully review or "examine" any documents and ask questions of any witness who speaks against you at your hearing.

If you have a criminal conviction, the immigration judge cannot change the decision of the criminal court. If the criminal case is still on appeal, in some places it cannot be used against you because your conviction is not yet final. If you feel that a criminal court decision was wrong, or that you didn't understand how the criminal case would

affect your immigration status, you or a lawyer can try to correct the record in your criminal case. Remember, the immigration court is not the criminal court, so don't ask the immigration judge to change anything decided by the criminal court judge. But, you can ask the immigration judge to continue your immigration case to a future date so you can correct your criminal record.

If you have a criminal conviction and your criminal defense lawyer gave you incorrect advice or did not discuss the immigration consequences with you, it may be possible to vacate your conviction under a U.S. Supreme Court case decided in 2010 called ***Padilla v. Kentucky***.

In order to "vacate," or cancel, your criminal conviction under *Padilla*, you have to show:

1. that your criminal defense lawyer gave you incorrect advice or else didn't discuss immigration consequences with you at all, and
2. that the outcome of your criminal case would have been different if your lawyer had not given you the wrong advice or no advice.

ATTENTION!

IF YOU HAVE CONCERNS ABOUT YOUR CRIMINAL CASE, OR YOU THINK YOUR CONVICTION MAY BE VACATED UNDER PADILLA, YOU SHOULD TALK TO A LAWYER RIGHT AWAY.

THERE MAY NOT BE MUCH TIME TO MAKE ANY CORRECTIONS THAT MAY BE ALLOWED.

C. THE BOARD OF IMMIGRATION APPEALS (BIA)

YOU HAVE THE RIGHT TO APPEAL TO THE BOARD OF IMMIGRATION APPEALS ("BIA").

If an immigration judge denies your case, you have the right to appeal to the Board of Immigration Appeals, also known as the BIA.

Appeal:

To make a request to a higher court for a rehearing or review of the immigration judge's decision in your case.

To appeal means to ask the BIA or a higher court for a rehearing or to review your case

for any mistakes made by the immigration judge. In order to file an appeal you must send a "Notice of Appeal" to the BIA and it must reach the BIA within 30 days of the immigration judge's decision.

ATTENTION!

YOU ONLY HAVE 30 DAYS FOR YOUR APPEAL FILING TO REACH THE BIA.

The government can also appeal. If the immigration judge's order is not appealed within 30 days, either by you or the government, it becomes a final order of removal.

In some cases, it is possible to appeal a decision from the BIA to the U.S. Court of Appeals with jurisdiction over the location where you are detained.

D. WHAT HAPPENS IF I AM REMOVED (DEPORTED)?

It is important that you understand the consequences of being "removed," or deported.

Removed:

Removed means deported.

- ♦ **Once you have been ordered removed by a judge and left the U.S., you cannot legally return to the United States for at least 10 years, if at all, without special permission. You may be able to get special permission called a waiver to come back sooner than 10 years. However, it is very difficult to get this permission.**
- ♦ **If you have been removed twice you cannot return legally for 20 years, unless you get special permission which is very difficult to get. If you are removed after being convicted of an aggravated felony, you may never be able to return, unless you get special permission ten years after the removal. But, it is very difficult to get this permission.**
- ♦ **If you were removed but you reentered or attempted to reenter the U.S. without permission, you may never be able to return, unless you get special permission after ten years of being outside of the U.S.**
- ♦ **If you reentered or tried to reenter after previously being in the U.S. without permission for at least one year, you may never be able to return unless you get special permission after ten years of being outside of the U.S.**

- ♦ **If you return illegally after a prior removal, you may face criminal charges and imprisonment.**

If you are ordered removed, you may remain in custody until you are removed. You may be deported quickly, or it may take weeks or longer for ICE to remove you.

Remember, it is a serious crime to re-enter the United States without permission after you have been removed from the country. You can be sentenced for illegally returning for up to 20 years in prison if you have a criminal history.

E. WHAT CAN I DO IF I AM ORDERED REMOVED BUT I AM HELD IN CUSTODY FOR A LONG TIME?

If you are not deported right away, you will have custody reviews after 90 days and after 180 days. At these reviews, you can request that ICE release you from detention.

- ♦ After 90 days you will have a custody review, and can ask ICE to release you from detention while your deportation is pending.
- ♦ After 180 days you will have another custody review, and can ask ICE again to release you from detention.

Generally, after 180 days, ICE will release you unless you have failed to cooperate with your removal, or you have interfered with the government's efforts to remove you, or your removal is determined to be significantly likely in the reasonably foreseeable future.

III. KNOW YOUR DEFENSES

WAYS YOU MAY BE ABLE TO FIGHT YOUR REMOVAL CASE IN COURT

There are many possible “defenses” or ways you may be able to fight your case and remain in the United States legally. In this section, we will review 12 different defenses that you might be able to use, and we will help you identify defenses that might apply to your case. To get more information, you will need to get help from a lawyer or review materials in the law library.

ATTENTION!

IF YOU THINK YOU QUALIFY FOR ANY OF THE DEFENSES DESCRIBED IN THIS PART OF THE MANUAL, TELL THE IMMIGRATION JUDGE AND ICE RIGHT AWAY.

A. FIGHT YOUR CASE IN COURT — KNOW YOUR RIGHT TO CHALLENGE REMOVABILITY

IS YOUR NTA CORRECT?

You have the right to disagree with statements that are made on your NTA, and if the immigration judge agrees with you, it is possible that your case will be terminated and you will not be removed or deported.

Your NTA is divided into two parts (see sample NTA on page 9). The top part has what’s known as the “factual allegations.” These are the facts that are related to your case, such as your citizenship, when and how you entered the U.S., if you have legal status, and if you’ve been convicted of certain crimes.

The bottom part has the charges of removal, which are the legal reasons from sections of immigration law that ICE believes can be used to remove you from the U.S.

If the factual allegations on the top part are true, then the immigration judge may use them to decide that you can be removed for the legal reasons on the bottom part. You have the right to disagree with the NTA. For example, if the NTA says that you came to the U.S. in 2001, but you actually came in 1998, or says that you entered illegally, but you actually came in on a visa, it is very important that you tell this to the immigration judge.

A lawyer can help you write a legal argument if the immigration judge requests it. If you do not have a lawyer, you can go to the library in this detention center to write something to tell the immigration judge why you believe the charges are wrong, or, if

you can't write anything, you can also tell the immigration judge in court that you deny the charge of removal and why.

Now we will review several "defenses," or forms of relief, beginning with citizenship.

B. DEFENSE #1: U.S. CITIZENSHIP — ARE YOU A U.S. CITIZEN?

Are you a U.S. citizen? U.S. citizens cannot be removed from the United States and must be released from detention.

YOU MAY BE A U.S. CITIZEN IF ANY OF THE FOLLOWING ARE TRUE:

- ♦ **You were you born in the United States.**
- ♦ **One of your parents or grandparents was born in the United States, or is a U.S. national.**
- ♦ **One of your parents or grandparents became a U.S. citizen before you were born.**
- ♦ **You are a permanent resident and one or both of your parents became a U.S. citizen before you turned 18 years old.**
- ♦ **You are a permanent resident and have served in the U.S. military and been honorably discharged.**
- ♦ **You were born abroad to a U.S. citizen parent(s).**
- ♦ **One of your parents served in the armed forces of the U.S. or worked for the U.S. government abroad.**

The rules are pretty complicated, but if you can prove you qualify, you cannot be deported or detained! If you think you might be a U.S. citizen, you should tell an ICE officer and the immigration judge.

C. ASYLUM, WITHHOLDING OF REMOVAL, OR CONVENTION AGAINST TORTURE (CAT)

DEFENSE #2: ASYLUM

If you are afraid to return to your country, you may be eligible for a form of relief called asylum or a related defense. These forms of relief may be available to you even if you already have a removal order or agreed to voluntarily depart the country; they are also based on asking the judge not to deport you because it would be dangerous for you to return to your country.

You may qualify for asylum if you fear "persecution," which includes threats to your personal safety, or your life or liberty, as well as discrimination that is so serious that it makes normal life impossible. In order to qualify, you have to show the judge that the reason you would be persecuted is related to one of five protected reasons:

1. Race
2. Religion
3. Nationality
4. Political opinion (even if people simply think you hold a certain opinion)
5. Social group.

For social group, this means that people might try to harm you because of an actual group you have been part of like a union, student group, or political or ethnic group, or because of something that is part of your identity, like your skin color, the tribe you belong to or your ethnicity, your education, or whether you are female, or gay or lesbian. For example, you may be afraid because some people from your church have been arrested and treated very badly.

You must also show the judge that the harm you fear would be at the hands of either your own government or a group your government cannot or will not control. That is, that the government is unable or unwilling to protect you from the persecution you fear.

Finally, you must ordinarily apply for asylum within one year of your last entry into the United States. If you have already been here longer than one year, you will have to show that there are special circumstances that excuse filing after one year, such as recently losing legal status, a change in your country conditions, a change in your circumstances, serious illness or mental/physical disability, or legal disability like being a minor.

If you file late and don't have a good reason, or you have been convicted of a serious crime, you may not be eligible for asylum, but you may be able to apply for other similar defenses, including "withholding of removal" or protection under the "Convention Against Torture," also called "CAT."

**DEFENSE #3: WITHHOLDING OF REMOVAL
and
DEFENSE #4: CONVENTION AGAINST TORTURE ("CAT")**

Qualifying for withholding of removal is different from asylum, because you don't need to apply within one year, and you can apply as long as you don't have a "particularly serious" crime in your record, and are not otherwise disqualified.

Withholding of Removal:

No need to apply within one year. You can qualify as long as you meet the requirements, including no conviction for a particularly serious crime.

For relief under the Convention Against Torture, or CAT, you can qualify after one year, and receive deferral of removal even if you have committed certain serious crimes, if you can prove that you will be tortured (or severely harmed) by your government, or the government accepts or is willfully blind to the torture.

Convention Against Torture (“CAT”):

Even if you have committed certain serious crimes, you can receive deferral of removal under CAT if you will be tortured (severely harmed) by your government, or the government accepts or is willfully blind to the torture.

Even if you are granted withholding or CAT, you can still be deported to a country other than your own if there is one that will take you.

You may be eligible for protection from removal if you fear harm upon return to your home country, even if you have not been given an NTA and you have been told that you are not eligible to go to court and see the immigration judge. If you don't have a lawyer, tell an ICE officer and the immigration judge immediately if you are afraid to return home for any reason.

D. DEFENSE #5: TEMPORARY PROTECTED STATUS (“TPS”)

The U.S. government offers special Temporary Protected Status (or “TPS”) for nationals of specific countries after a natural disaster, such as a flood or earthquake, or political upheaval, such as a war or civil conflict. Not all countries suffering from disasters are on the list.

For a list of TPS countries, ask an ICE officer or the judge, or see www.uscis.gov.

E. DEFENSE #6: LPR CANCELLATION OF REMOVAL

Another form of relief is called “cancellation of removal.” There are three different types of “cancellation of removal,” including one for lawful permanent residents (or “LPRs”). A grant of cancellation of removal acts like a pardon to excuse your past immigration violations, and you may be eligible even if you have committed certain crimes.

YOU MAY QUALIFY FOR LPR CANCELLATION IF YOU CAN SHOW:

1. Have been a permanent resident for at least 5 years;
2. Continuous residence in U.S. for 7 years after having entered legally in any status; and
3. No “aggravated felony” conviction.

If you came in with a visa, even if you were here illegally for some time before you got your green card, you may still qualify, as long as you have already been a permanent resident for 5 years now.

You need to make sure that you have not been convicted of any crime called an “aggravated felony” under immigration law.

Aggravated Felony:

A broad category of crimes that have certain serious consequences under immigration law, including murder, rape, sexual abuse of a minor and other violent crimes, drug trafficking, and certain theft and fraud offenses, certain offenses relating to gambling and prostitution.

Even if a conviction may not have seemed that serious in criminal court, immigration law has its own definition of what is an “aggravated felony,” and any aggravated felony would disqualify you from cancellation of removal. The most common aggravated felonies include violent crimes and certain drug and theft offenses.

If your conviction was a long time ago — before April 24, 1996 — then you might still qualify for something called Section 212(c) relief, which is available so long as the conviction was not for certain crimes and depending on your sentence.

Even if you meet the 3 requirements for cancellation of removal, you will still have to show the judge that you deserve a second chance because of things like long residence in U.S., close family in the U.S., history of employment, whether you own any property — such as a home or a business, whether you contribute to the community, whether you pay your taxes, and other ties to your community as well as your behavior after you were convicted.

Section 212(c) Relief:

May be available depending on the crime committed, if the conviction was before April 24, 1996.

If you are a permanent resident, you should talk to a lawyer or ask the judge if you might qualify for cancellation of removal or Section 212(c) relief for a criminal conviction before April 24, 1996.

F. DEFENSE #7: NON-LPR CANCELLATION OF REMOVAL

The second type of cancellation of removal, called “non-LPR cancellation,” helps people who are undocumented if they have lived in the U.S. for at least 10 years.

YOU MAY QUALIFY FOR NON-LPR CANCELLATION OF REMOVAL IF YOU CAN SHOW:

1. You have a U.S.-citizen or lawful permanent resident (“LPR”) husband or wife, children, or parents who would suffer exceptional and extremely unusual hardship;
2. You have been in the U.S. for more than 10 years;
3. You have not been convicted of certain crimes, such as aggravated felony or a crime involving moral turpitude;
4. You have been a person of good moral character for 10 years before application; and
5. You deserve a favorable exercise of discretion — you deserve to be granted the relief.

You may qualify even if you have left the U.S. for a short time in the past 10 years, but if you left the U.S. for more than 90 days in a single trip or 180 days total over the whole 10 years, you will be ineligible for this relief. You will have to gather proof that you have been present in the U.S. for the past 10 years with evidence like rent receipts, employment and school records, your children’s birth certificates, tax records, utility receipts, and letters from your friends and community leaders in the U.S.

G. DEFENSE #8: SPECIAL RULE CANCELLATION OF REMOVAL FOR VICTIMS OF DOMESTIC VIOLENCE AND THEIR CHILDREN

The last form of cancellation of removal is for victims of domestic violence and is called “special rule cancellation of removal.”

YOU MAY QUALIFY FOR SPECIAL RULE CANCELLATION IF YOU CAN SHOW:

1. Domestic violence:
 - a. You were abused by your U.S. citizen or LPR spouse, or parent; or
 - b. Your child was abused by his or her U.S.-citizen or LPR father or mother;
2. You have lived in the U.S. for at least 3 years;
3. You have good moral character; and
4. You have not committed certain crimes.

Domestic Violence:

Physical or mental abuse or extreme cruelty by someone in your family or household, like your husband or wife, or boyfriend or girlfriend, even if you are no longer together. For example, your husband may have ordered you to stay in the house everyday cooking and cleaning and threatened that he would hurt you and call immigration on you if you left him.

There are other special visas or sponsorship for victims of domestic violence. If you or your child has ever been the victim of physical or mental abuse in the home, discuss your options with your lawyer, or tell the immigration judge.

**H. DEFENSE #9: T VISA
and
DEFENSE #10: U VISA**

There are also special visas for victims of human trafficking or certain other crimes that may provide a defense to removal.

Defense #9: T Visa for Trafficking Victims

The T visa may be available to you if you are a victim of severe human trafficking.

Human Trafficking:

When you are forced, threatened, or tricked into performing forced labor or forced sex acts.

For example, sometimes victims of human trafficking are told by their smugglers that they must work to pay off a debt, or else they or their family members will be physically harmed, which leaves the victim feeling trapped and vulnerable. Or a victim might be forced to work as a prostitute or face the same type of threats of violence against themselves or their family members.

YOU MAY QUALIFY FOR A T VISA IF YOU CAN SHOW:

1. You are a victim of a severe form of human trafficking;
2. You are in the U.S. or its territories as a result of this trafficking;
3. You have cooperated or are willing to cooperate with law enforcement officials in investigating the trafficking — unless you are under the age of 18, or you are unable to cooperate due to physical or psychological trauma; and
4. You can show that you would suffer extreme hardship if you were removed

from the U.S.

If you think you are a victim of trafficking, you should talk to your lawyer, the immigration judge, or an ICE officer. For more information, see www.uscis.gov.

Defense #10: U Visa for Certain Crime Victims

If you are a victim of certain types of violent or serious crimes that took place in the United States, you may qualify for a U visa.

If you or a close relative were the victim of domestic violence or other violence including rape, torture, trafficking, incest, sexual assault or sexual exploitation, kidnapping, blackmail, serious assault, murder, abduction, abusive sexual contact, extortion, false imprisonment, genital female mutilation, felonious assault, hostage, involuntary servitude, obstruction of justice, peonage, perjury, prostitution, slave trader, witness tampering, unlawful criminal restraint or other related crime, you may qualify for a U visa. For example, if you suffered domestic violence by your husband and he was not a U.S. citizen or permanent resident, you may be eligible. (If your husband was a U.S. citizen or resident, see Defense #8: Special Rule Cancellation of Removal for Victims of Domestic Violence and their Children.) For more information, see www.uscis.gov.

YOU MAY QUALIFY FOR A U VISA IF:

1. You suffered serious physical or mental abuse as a result of certain crimes that violate U.S. law or occurred where U.S. law applies;
2. You have information about the crime; and
3. A law enforcement agency states that you can help in the investigation of the crime.

I. DEFENSE #11: PERMANENT RESIDENCY BY FAMILY VISA PETITION OR A PETITIONED FILED BY YOUR EMPLOYER

If you have a close family member who is a U.S. citizen or lawful permanent resident (LPR), he or she may be able to file a visa petition to make you eligible for lawful permanent resident status. However, there are often very long wait times before you can adjust your status to be an LPR and legally stay in the United States.

The following family members can file a family petition for you:

- ♦ **your husband or wife who is a U.S. citizen or LPR;**
- ♦ **your parent who is a U.S. citizen or LPR;**
- ♦ **your adult child if he or she is 21 years old or older and is a U.S. citizen; or**
- ♦ **your adult brother or sister if he or she is 21 years old or older and is a U.S. citizen.**

If it looks like a family petition will give you the chance to apply for residence, ask the immigration judge for time to file the petition. Even if you have an approved family petition, you may still have to leave the United States to apply for residence from the U.S. consulate in your home country, through a process called “consular processing.”

Consular Processing:

Processing an application for U.S. residence from a U.S. consulate outside of the United States.

Unfortunately, some people who have to leave the country and process at home will not qualify to come back into the U.S. Also, you may have problems for certain immigration violations or crimes that can't be fixed. In cases that do not require you to leave the U.S., however, the immigration judge or USCIS can look at your case and decide whether you are eligible for a “waiver” to excuse certain problems. Waivers can be based on hardship to your family members who are legally here.

In some cases, your employer may also sponsor you if you are working in an area that requires special skills and you may receive a green card. If you are working at such work and your employer is willing to sponsor you, talk to an attorney about your case.

If you have a close U.S. citizen or permanent resident relative, or were ever sponsored by a relative or employer, you may be eligible to apply for residence before the judge. For more information and to download the forms for family or employment based petition, see www.uscis.gov.

J. OTHER DEFENSES

Some people who have been in the U.S. for long periods of time may qualify for other special defenses or forms of relief. **For more information, see www.uscis.gov.**

DEFENSE #12: REGISTRY

If you have been in the U.S since January 1, 1972, you may qualify for residency through “registry,” even if you do not have any hardship or qualifying relatives. **For more information, see www.uscis.gov.**

DEFENSE #13: NACARA

Nationals of certain countries, Nicaragua, El Salvador, Guatemala, Cuba and the former Soviet bloc, as well as their spouses or unmarried children, may qualify for NACARA if they have lived in the U.S. for many years and have filed certain applications. **For more information, see www.uscis.gov.**

DEFENSE #14: HRIFA

Haitians who have been in the country since 1995 and have filed certain applications may also be eligible for relief from removal under a law called HRIFA. **For more information, see www.uscis.gov.**

DEFENSE #15: CUBAN ADJUSTMENT ACT

Cubans and their spouses and children may be eligible for relief under the Cuban Adjustment Act.

If you think that you may qualify for one of these defenses, tell the immigration judge where you are from and how long you have been in the United States. For more information, see www.uscis.gov.

IV. RELEASE FROM DETENTION — BOND

You should have received an ICE Custody Determination form (Form 286) at the same time you were served the NTA. The custody determination form will indicate whether you can post a bond, and if so, what amount you need to pay before you may be released.

Bond:

Money that you or someone else pays on your behalf to guarantee that you will attend all your immigration hearings and appointments with ICE officers. You may receive this money back at the end of your case if you comply with all orders.

If you are released on bond, you promise to follow the immigration judge's order at the end of your case, including any appeals, even if it means you have to leave the United States. If you keep your promise and you paid your bond directly to ICE, you will get your money back with interest after your case is over. In order to get your money back, you have to follow all of the orders of the immigration judge or appeals court if there is an appeal. The forms to request bond are located on the internet at "www.ice.gov/news/library/forms". In addition, instructions for how to get your bond back see "<http://www.ice.gov/doclib/news/library/forms/pdf/i352.pdf>".

If you pay your bond through a bonding agency, you only pay a certain percentage of your bond but you don't usually get anything back at the end.

If the form shows a bond that is too high for you to pay, or "no bond," or indicates that you are subject to mandatory detention, you have the right to have this custody determination reviewed by the immigration judge in a bond hearing. Usually, the immigration judge can review your bond amount and set a new amount. Keep in mind that the immigration judge will not conduct a bond hearing unless you ask for it. So, you or your attorney needs to request a bond hearing from the immigration judge. **Be aware that the immigration judge can also increase your bond or take it away.**

People who are considered "arriving aliens," meaning those who were arrested at an international bridge or airport port of entry, are **not** eligible for a bond hearing before the immigration judge, but can ask ICE deportation officers or "parole," or release from detention.

Who Can Ask For a Bond?

Some individuals whose cases are in immigration court are not eligible for release on a bond. For example, if you were arrested at a border checkpoint or international airport, or if you have committed certain crimes or there are national security concerns in your case, you may not be eligible for bond. Others, such as individuals with an expedited

removal or administrative removal order, or those who illegally reentered the U.S. after a prior removal, cannot be granted a bond because they do not have the right to go to immigration court. Generally, these individuals will not be released unless ICE is unable to remove them to their home country. Finally, people who overstay their visa time limit or violate the terms of the Visa Waiver program, or who were ordered removed but never left the U.S., will not be eligible for a bond or a court hearing.

YOU ARE NOT ELIGIBLE FOR A BOND IF:

- ♦ **You were arrested at a border checkpoint or international airport**
- ♦ **You have committed certain crimes**
- ♦ **There are national security concerns**
- ♦ **You have an expedited removal or administrative removal order**
- ♦ **You illegally reentered after a prior removal**
- ♦ **You overstay or violate the terms of the Visa Waiver program**
- ♦ **You were already ordered removed but never left the U.S.**

Even if a judge cannot release you on bond, you may be eligible for another form of release called parole, which is granted by ICE, not the immigration judge.

TO BE ELIGIBLE FOR BOND, YOU MUST SHOW:

- ♦ **You are not a “flight risk”**
- ♦ **You are not a danger to the community**
- ♦ **Proof of any family or community ties, and**
- ♦ **You are a responsible person.**

A bond hearing is a separate hearing from your removal case. To be eligible for a bond, you must show the immigration judge that you are not a “flight risk,” meaning you will attend your hearings and any appointments with ICE if you are released from detention.

You must also show that you are not a danger to the community. It is also important to show the immigration judge proof of any family you have in the United States or other ties to your community, and that you are a responsible person — such as you don’t drive without a valid license, you don’t drive drunk, you have an auto insurance, you are employed, you pay your taxes, you contribute to your community by volunteering and helping other members of the community, or you take care of your family. You can bring witnesses, as well as letters or other evidence showing your family relations and community ties, and the reasons it is important for you to be released from detention.

If the immigration judge decides not to give you a bond, or you feel that the bond the immigration judge sets is too high, you have the right to appeal the immigration judge’s decision to the Board of Immigration Appeals within 30 days of the immigration judge’s decision.

V. DEPARTURE FROM THE U.S.: REMOVAL AND VOLUNTARY DEPARTURE

Types of Departure from the U.S:

- ♦ **Removal (deportation)**
- ♦ **Voluntary Departure or Voluntary Return**
- ♦ **Stipulated Removal (also called Voluntary Removal)**

Removal (deportation)

If you are ordered removed from the United States by an immigration judge, you will be barred from reentering for at least 10 years, unless you have special permission to return.

If you reenter without permission after removal, you may be committing a serious crime. You may also lose any right to obtain legal status in the future.

Voluntary Departure or Voluntary Return

A person who is allowed to voluntarily return to his or her home country, or leaves under a judge's order of voluntary departure, may be able to return immediately, but only if he or she has a legal basis to do so. Not everyone is eligible for voluntary departure.

You should be aware that there is something called the "unlawful presence bar" or "3 and 10 year bars" for people who depart after having been in the U.S. illegally for a certain amount of time. If you leave the U.S. after having been in the U.S. illegally for over 180 days (about 6 months), you will be ineligible to return to the U.S. for 3 years. After one year of illegal presence in the U.S., you will be ineligible to return for 10 years.

Unlawful Presence Bar:

If you leave the U.S. after having been in the U.S. illegally for over 180 days (about 6 months), you will be ineligible to return for 3 years.

If you leave the U.S. after having been in the U.S. illegally for at least one year, you will be barred for 10 years.

There is a waiver for this unlawful presence bar if you have a wife, husband, or parents who are U.S. citizens or permanent residents, but it is difficult to obtain. You can apply for this waiver, without departing from the U.S. for consular processing of your visa application. However, you still need to depart the U.S. to receive your waiver

once the consulate made a decision on your case.

You must follow certain requirements to avoid serious consequences:

- ♦ **If you are granted voluntary departure, you lose any permission you had to stay here, and you must leave the U.S. on time.**
- ♦ **If you do not leave on time, the judge's order automatically becomes a removal order, with the same serious consequences as any other formal removal order.**

There are additional serious consequences for failing to comply with the order and for reentering the U.S. without permission. You may have problems upon illegally returning to the U.S., some of which may include criminal charges.

You may not qualify for voluntary departure if you have been convicted of a serious crime or have previously been granted voluntary departure by an immigration judge. Individuals who entered the country using the Visa Waiver program are not eligible for voluntary departure.

Stipulated Removal (also called Voluntary Removal)

It is important to know that agreeing to “stipulated removal” — also called voluntary removal — is not the same as voluntary departure. Stipulated or voluntary removal carries the same serious consequences as being ordered removed by an immigration judge.

If you sign a stipulated removal order, you “waive” or give up certain rights. You will have:

- ♦ **No right to a hearing before an immigration judge**
- ♦ **No right to hire a lawyer to represent you if have not already hired one**
- ♦ **No right to appeal the removal order.**

Removal/Departure

If you are ordered removed, you will leave from the detention center without being released first. If you are granted voluntary departure, and remain detained because you cannot post a bond or the grant of a voluntary departure was under safeguards (without a bond), it is important that you work with your ICE officer and consulate to leave in the time period set by the immigration judge. If you have posted a voluntary departure bond, ICE will provide you with important information regarding how to prove your timely departure. If you do not follow these instructions exactly, you risk losing your bond.

VI. FOR MORE INFORMATION

For more specific information about U.S. immigration laws and procedures, you have the right to use your detention facility's law library.

If you have questions or complaints about conditions in detention, including your access to legal materials, visitors, and medical care, you have the right to complain and to file a written grievance with ICE.

KNOW YOUR RIGHT TO USE YOUR DETENTION FACILITY LIBRARY AND TO FILE A GRIEVANCE WITH ICE AND OTHER GOVERNMENT OFFICES:

- ♦ **You have the right to complain or file a written grievance (complaint) with ICE.**
- ♦ **The detention facility must provide grievance information to you, or you may ask an ICE officer for information.**
- ♦ **You also have the right to get help writing a grievance from another detainee or an officer.**

DHS INSPECTOR GENERAL

You may also file a complaint with other government offices. You have the right to call or write to the Department of Homeland Security Inspector General free of charge.

You may call the Inspector General at **1-800-323-8603**.

Even if you are unable to dial an 800 number from your facility, you will be able to dial the Inspector General from your phone system.

You may also write to the Inspector General at:

**Department of Homeland Security
Office of the Inspector General
Washington, DC 20528**

DHS OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES

The Department of Homeland Security's Office for Civil Rights and Civil Liberties (CRCL) reviews and assesses complaints alleging violations of civil rights or civil liberties by DHS employees, activities or programs. You may want to contact the Office for Civil Rights and Civil Liberties if you have experienced any of the following:

- ♦ **Discrimination based on your race, ethnicity, national origin, religion, gender, or**

disability;

- ♦ Violation of your rights while in immigration detention or as a subject of immigration enforcement;
- ♦ Discrimination or inappropriate questioning related to entry into the United States;
- ♦ Violation of your right to due process, such as your right to timely notice of charges or access to your lawyer;
- ♦ Violation of the Violence Against Women's Act confidentiality requirements;
- ♦ Physical abuse or any other type of abuse inflicted upon you;
- ♦ Any other civil rights or civil liberties violation related to a DHS program or activity.

You may contact the office by telephone at **1-866-644-8360 (TTY 1-866-644-8361)** or send complaints to:

**Department of Homeland Security
Office for Civil Rights and Civil Liberties
Building 140, Mail Stop #0190
Washington, DC 20528**

**Fax: 202-401-4708
Email: crcl@dhs.gov**

For additional information, you may visit the CRCL website at <https://www.dhs.gov/office-civil-rights-and-civil-liberties>.

YOU SHOULD INCLUDE AS MUCH DETAIL AS POSSIBLE WHEN FILING A GRIEVANCE OR WRITING TO THESE OFFICES.

DHS ICE DETAINEE HELPLINE

DHS Immigration and Customs Enforcement (ICE) has an ICE Detainee Helpline that you may call free of charge, at **9116#**, or **1-888-351-4024**.

You may call the ICE Detainee Helpline to:

- ♦ Obtain basic immigration case information;
- ♦ Report an incident of sexual or physical assault or abuse;
- ♦ Report serious or unresolved problems;
- ♦ Report that you are a victim of human trafficking;
- ♦ Let ICE know that your detention separated you from your minor child who is

dependent on you.