NATIONAL IMMIGRANT JUSTICE CENTER

a HEARTLAND ALLIANCE partner

Know Your Rights

Information Packet About Detention, Deportation, and Defenses Under U.S. Immigration Law

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Heartland Alliance | National Immigrant Justice Center
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INTRODUCTION

You are currently being detained by the Department of Homeland Security (effective March 1, 2003, the Immigration and Naturalization Service ("INS") became part of the Department of Homeland Security ("DHS"), an agency of the United States Government. DHS says that you may not have the right to stay in the United States and you may have to leave the country.

There are several legal procedures DHS can use to remove you from the country. This document is specifically for those of you who are in removal proceedings before an immigration judge.

Those of you who received a document called a "Notice to Appear" are in removal proceedings and will see a judge.

For those of you who <u>are</u> in removal proceedings in front of an immigration judge, there are different reasons why you may be here.

Some of you may be in a different type of proceeding if you did not receive a Notice to Appear and:

- you were arrested by the DHS at a border checkpoint or international airport,

Or

- you have entered the United States illegally after having been deported or removed,

Or

- you have been convicted of an aggravated felony and you do not have legal permanent resident status in this country.

If you are in this situation, then you may not see an immigration judge and not all of this information will apply to you.

If you do not fit the description of someone in a different proceeding but you have not received a Notice to Appear, you should check with an immigration officer to see what kind of proceeding you are in.

For some of you, the DHS says that you should be removed because you do not have permission to be in the country.

Others of you came here legally with a visa or you have legal permanent residency. But the DHS says that you committed a crime or violated an immigration law and that you should be removed.

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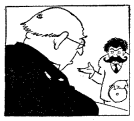
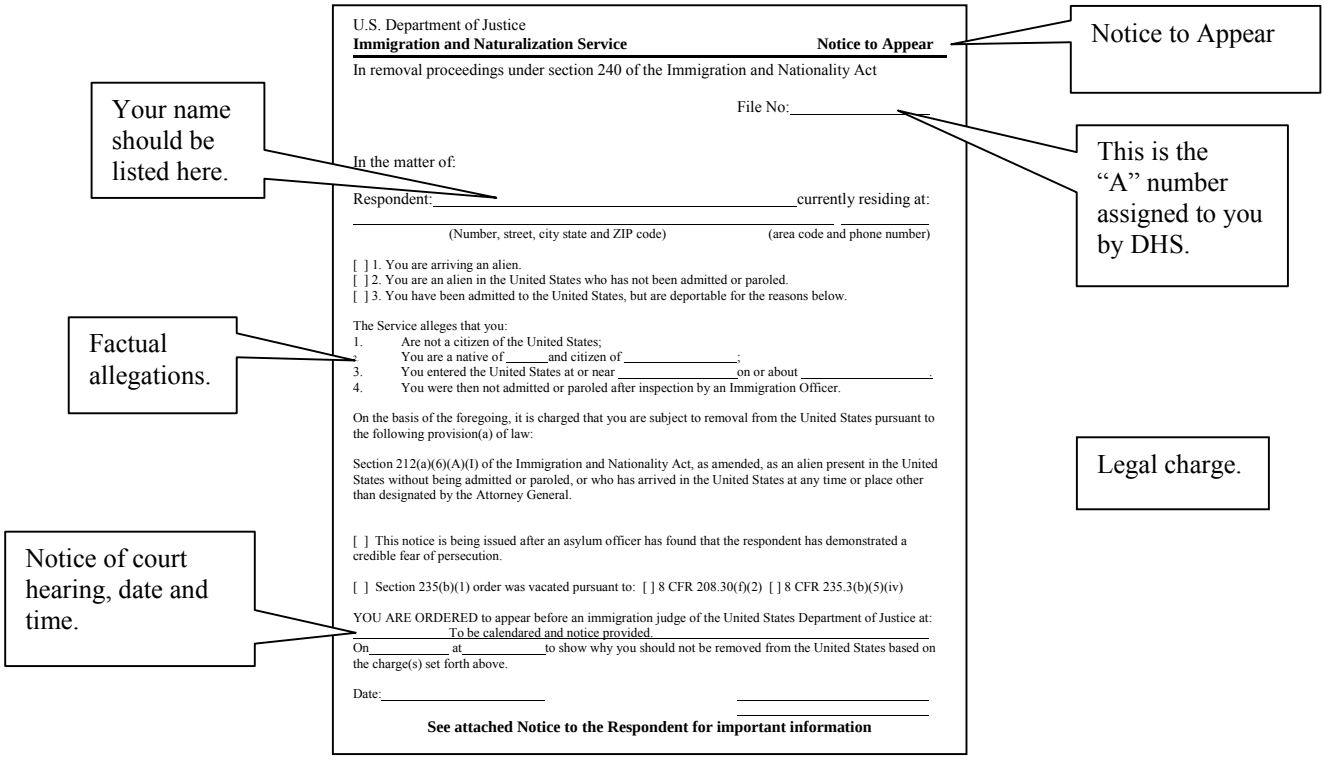
THE COURT PROCESS



Your first hearing will be either a "Master Calendar" hearing to review why you may have to leave the United States, or a "bond hearing."

At your first Master Calendar hearing the judge will explain your rights. You have the right to hire a lawyer, but the government will not pay for or provide that lawyer. In other words, there are no public defenders for Immigration Court. Before your hearing, an immigration officer should have already given you a list of free or low cost legal services in the area. If you did not receive this list, you can ask the judge for a copy. You can also ask the judge for more time to find a lawyer if you need it.

If you are ready to talk to the judge at your first Master Calendar hearing, the judge will ask whether you agree or disagree with each charge in the Notice to Appear. If you are in removal proceedings before an immigration judge the DHS should have given you a document called a Notice to Appear. It contains information the DHS believes about you including, your street address, where you were born, the date you came to the United States, and whether you violated any criminal or immigration laws. It also explains why the DHS thinks you may have to leave the United States.



If you do not think that you received a Notice to Appear from the DHS, you should ask an immigration officer for a copy as soon as possible. If you still do not receive a Notice, you should ask the judge for a copy at your first hearing.

It is very important for you to review the charges and allegations contained in the Notice to Appear carefully. If you do not think the charges are correct or you want to see evidence about your charges, you can deny the charges and ask the government to prove its case.
Take special note to see if DHS says that you have been convicted of an aggravated felony. This charge has very serious consequences.

What is an aggravated felony?

It is a name Congress has given to certain crimes that have very serious immigration consequences.

There are a number of crimes which are considered aggravated felonies, but the most common are:

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- *Trafficking in drugs, which includes possession for sale or transportation or importation of drugs.*
- *A crime of violence (most crimes involving force or injury to others). These are aggravated felonies if the judge sentenced you to imprisonment for at least 1 year.*
- *A crime of theft or burglary for which the judge sentenced you to imprisonment for at least 1 year.*
- *Sexual abuse of a minor.*
- *Murder or rape.*
- *Alien smuggling.*

The law is still new and there are questions about how to interpret it. Some misdemeanor convictions can be aggravated felonies and the law may depend on the state in which you are detained. Ask a lawyer if you have questions.

If you have criminal convictions, the immigration judge cannot change the decision of the criminal court.

In some limited circumstances it may be possible to go back to a criminal court to fight your conviction even after it has become final. You may need to file motions to vacate a guilty plea, to reduce a sentence, or to request post-conviction relief with the criminal court. These are complicated cases and difficult to win. You may also be eligible for a gubernatorial pardon which may eliminate your conviction for immigration purposes. If you want to explore this option further, we recommend that you talk to a lawyer who knows both criminal and immigration law.

If the judge decides that the charges against you are correct, the judge will then decide whether you have a way to legally stay in the United States. If you are a lawful permanent resident who has been convicted of a crime, you may be eligible for cancellation of removal. Cancellation of removal is discussed at page 10 of these materials.

Before making the decision whether or not to fight your case, it is important for you to understand the consequences of removal. First, if you are removed, you lose any permission you have to stay in the United States. Second, if you are ordered removed, you cannot return to the

United States for at least ten years, unless you obtain special permission from the United States government to return.

Finally, it is a crime to reenter the United States illegally after you have been removed from the country. If found guilty, you can be sentenced to prison for up to twenty years, depending on your criminal history. In addition, if you reenter without permission, the Department of Homeland Security can reinstate or use the old order of deportation or removal against you without allowing you to see an immigration judge.

To learn more, call the Immigration Detention Information Line of the National Immigrant Justice Center at (312) 263-0901. The Information Line is available Tuesdays from 11:00 a.m. to 2:00 p.m. You may call collect if you are detained. You may also call any of the agencies on the list of free legal services you have been given.

CITIZENSHIP

"Citizenship" is one of the ways that you may be able to stay in the United States legally. Sometimes people are United States citizens but do not realize it. **United States citizens cannot be removed from the United States and must be released from detention**. You ***may*** be a citizen if you answer "yes" to one of the following questions:

1. Were you born in the United States?
2. Do you have a grand-parent or parent born in the United States?
3. If married, did your parents become citizens before you turned 18 years old and you turned 18 *before* **February 27, 2001**?
4. Did one at least one your parents become a citizens before you turned 18 years old and you turned 18 *after* **February 27, 2001**?
5. Have you ever served in the U.S. military and been honorably discharged?

If you answered yes to any of these questions, it is possible that you have obtained citizenship automatically and you should tell an immigration officer and the immigration judge. **Citizenship law is very complicated, so you should consult with a lawyer if you think yo may be a U.S. citizen.** It is very important to provide as much specific information as possible in order for the DHS to be able to decide whether you have United States citizenship, for example, your parents' identity, their dates and places of birth, and their periods of residence in the United States.

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ASYLUM, WITHHOLDING, AND PROTECTION FROM TORTURE

There are three forms of protection for persons who fear harm or torture if they are returned to their home countries: asylum, withholding of removal and relief under the Convention against Torture (CAT). You may be eligible for one or more of these types of protection, depending on when you entered the U.S., any criminal convictions that you have, and the reason you fear that you will be harmed or tortured if the DHS deports you to your home country. Even if you are a lawful permanent resident, you may be eligible for protection from harm or torture. To apply for asylum, withholding of removal, or relief under the Convention against Torture, you will need to complete Form I-589 which you can request from the DHS and/or the immigration court. **If you are afraid to return to your country, tell the immigration judge or the DHS (if you do not see the judge).**

Asylum

"Asylum" is one of the possible ways that you may be able to stay in the country legally. You may be able to ask for this protection in the United States if you fear you will be harmed if you return to your own country or if you have suffered harm there in the past. The threat or harm must come from the government or someone the government cannot or will not control.

You must show that the threat or harm is because of your:

- **Race**
- **Religion**
- **Nationality**
- **Political beliefs**
- **Or your membership in a particular social group**

This group could be:

- *a village*
- *family*
- *clan*
- *union*
- *political party*
- *religious organization*
- *student or human rights group*

Or some other threatened group such as:

- *women*
- *homosexuals*
- *women who oppose certain practices in their home countries such as genital mutilation*
- *or people who oppose their government's policy on birth control and family planning.*

However, if the only reason you left your country was to look for work and you do not have any fear of returning or have not been harmed in the past, then you probably do not qualify for asylum.

You have one year from the date you last entered to apply for asylum. You may still be able to apply after these deadlines if there were special reasons why you were not able to apply on time, if the conditions in your country have gotten worse since you came to the United States or if you

apply for asylum within six months after you have lost lawful status in the United States. Otherwise, you can apply for "withholding of removal", which is described below. It is harder to win withholding of removal cases because the standard of proof is higher than that of asylum.

Withholding of Removal

Withholding of removal is a form of protection that is similar to asylum. To qualify for withholding of removal, you must show that it is more likely than not (more than 50% likely) that you will be harmed if you return to your home country based on your race, religion, nationality, political beliefs or your membership in a particular social group.

It is more difficult to win a case for withholding of removal than for asylum. People generally apply for withholding when they are ineligible to apply for asylum. You might wish to apply for withholding of removal if you fear returning to your country and:

- you have been in the United States for more than one year and did not apply for asylum within one year of coming to the United States, or
- you have been convicted of an aggravated felony.

If you committed an Aggravated Felony, you can only apply for withholding of removal if the sentence you received for the aggravated felony was less than five years and the judge finds that your crime was not "particularly serious."

Convention against Torture (CAT)

A separate form of protection is available if you are likely to be **tortured** by a government official in your country. The United States has signed a treaty promising that it will not return anyone who fears being tortured in their home country. You may have rights under this treaty if you have this fear. Tell the immigration judge or the DHS if you fear torture in your home country.

To learn more, call the Immigration Detention Information Line of the National Immigrant Justice Center at (312) 263-0901. The Information Line is available Tuesdays from 11:00 a.m. to 2:00 p.m. You may call collect if you are detained. If you have questions about asylum, you can call our general intake line (312) 660-1370, extension 0, Wednesdays from 11:00 a.m. – 2:00 p.m. You may also call any of the agencies listed on the free legal services list you have been given.

CREDIBLE FEAR AND PAROLE

Those of you who came to the United States through a port of entry (such as, an airport or a bridge) and expressed a fear of returning to your country will soon be interviewed in what is known as a "credible fear interview". In this interview, a DHS asylum officer will ask you about your fear of returning to your country. You, as an asylum-seeker, may consult with a person or persons of your choice (including a lawyer or legal representative) prior to your credible fear interview. Any person with whom you choose to consult may be present at the interview and may be permitted to present a statement at the end of the interview.

After your interview, if the DHS official determines there is a significant possibility that you are eligible for asylum, your case will be referred to an immigration court for a hearing. If you are not found to have a credible fear of torture or persecution you will be returned to your home country, but you may be able to request that a judge review this decision before you are deported. The immigration judge must review the negative decision within 7 days of the negative credible fear determination

If you have not been interviewed in a "credible fear interview", you should request one. In the Chicago District, the DHS should take approximately 14 days from your preliminary interview at the port of entry in giving you an interview.

If after your interview, DHS determines you have credible fear, you may ask DHS to be released on "parole" from detention. For a granting of parole, you must establish you have a "sponsor" with whom you can live.

Other proof that will support a granting of parole include:

- Proof of your identification (a valid passport, state id, birth certificate)
- Proof that you passed your credible fear interview (copy of the DHS decision)
- Proof that you are not barred from seeking asylum
- Proof of a sponsor (see sworn statement of sponsor on back)
- Proof of ties to the community (e.g. letters from church groups, etc.)
- Proof of legal assistance from a not-for-profit organization (such as a letter)
- Proof of willingness to report to DHS and to obey any order
- Proof of other humanitarian factors

(Please see the other side of this page to view an affidavit of support by a sponsor)

Even if you are released from detention, you must still appear before the court. You will receive a Notice to Appear in court. If you do not attend your court hearing, the judge may order you deported in your absence. If you change your address, you must notify the court in writing.

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SWORN STATEMENT IN SUPPORT OF
(NAME OF DETAINEE) APPLICATION FOR PAROLE

A-- --- ---

State of_____
County of_____

I, (name of sponsor), hereby state under oath as follows:

1. I am a (legal permanent resident/US citizen) of the United States (please see attached).
2. I am a (relation) of (name of detainee), a political asylum applicant from (home country) who is currently detained at (name of detention facility).
3. I work as a (position) for (company/employer) at (address).
4. I am prepared to provide food and lodging for (name of detainee) for as long as his case is pending. If (name of detainee) is paroled, s/he will reside with me at the following address:

   (address)
   (phone number)

5. While (name of detainee) case is pending, we will do everything in our power to make sure that s/he attends all hearings in court.
6. If you require any further information, please call or write me at the above address.

(sponsor's signature) _____ (date)_____

(notary's signature) _____ (date)_____

CANCELLATION OF REMOVAL

"Cancellation of Removal" is one of the possible ways that you may be able to stay in the United States legally. There are two types of Cancellation of Removal, one for persons who have lived in the United States, with or without permission, for a long time and another for persons who are lawful permanent residents (have "green cards").

Cancellation of Removal for People who are Not Lawful Permanent Residents

If you win this type of cancellation of removal, you will receive lawful permanent residence and you can remain in the country legally.

You must meet four requirements to ask for this type of Cancellation:

1. You have lived in the United States continuously for at least the last ten years, either legally or illegally; AND
2. You have a spouse, parent, or child who is a U.S. citizen or legal permanent resident and you can show that they would suffer extremely unusual hardship (this is difficult to prove) if you were removed from the United States; AND
3. You are a person of good moral character, AND
4. You have not had certain criminal problems. If you have served time in jail for any criminal sentences for a total of six months or more during the last ten years, then you may not qualify. Most felonies and drug crimes, with a few exceptions, prevent you from applying for cancellation of removal. Also two misdemeanor crimes such as for theft or fraud may prevent you from applying for cancellation of removal.

For this type of cancellation, special rules apply if you have been physically or psychologically abused by a spouse or parent who is a U.S. citizen or legal permanent resident. These rules also apply if your child has been abused by his or her other parent. In this type of cancellation, you only need to show that you have lived in the U.S. continuously for the last three years. You must also show good moral character and extreme hardship to yourself if you were to be deported.

Cancellation of Removal for Lawful Permanent Residents

If you are a lawful permanent resident ("LPR") in removal proceedings because you have been convicted of a crime or have another type of violation of the immigration law, you may still be able to keep your LPR status and avoid removal through "cancellation of removal" if you meet certain requirements.

To be eligible for "cancellation of removal," you must show:

1. You have been a legal permanent resident for at least 5 years.
2. You have lawfully resided in the U.S. for 7 continuous years after being legally admitted to the U.S.
3. You have no aggravated felony convictions.

Examples of aggravated felonies include:

- Certain drug crimes or trafficking in firearms, explosive devices or drugs.

- Drug trafficking, including:
    - Transportation, distribution, importation;
    - Sale and possession for sale;
    - May include possession of drugs, if it is a felony, or two or more convictions for felony possession of drugs, depending on the law in your part of the country.
- If you received a sentence of imprisonment of one year or more (whether you served time or not) for one of the following crimes:
    - Theft (including receipt of stolen property)
    - Burglary
    - A crime of violence (including anything with a risk that force will be used against a person or property, even if no force was used)
    - Document fraud (including possessing, using, or making false papers, unless it was your first time and you did it only to help your husband, wife, child, or parent)
    - Obstruction of justice, perjury, bribing a witness
    - Commercial bribery, counterfeiting, forgery, trafficking in stolen vehicles with altered identification numbers
- Rape
- Sexual Abuse of a Minor
- Murder or attempted murder
- Felony alien smuggling (unless it was your first and you were helping only your husband, wife, child or parent)
- Fraud or income tax evasion, if the victim lost over $10,000
- Money laundering (over $10,000)

If you were convicted of one of the above-listed crimes in a state court, there may be an argument that your crime is not an aggravated felony if the state law is in some way different from federal law or if you are being charged with an aggravated felony with a sentence of one year or more and are able to get the sentence reduced. Speak to an attorney to find out more information.

If you are not eligible for cancellation of removal and you are not eligible for any other defense to deportation, you will be ordered removed. If you are eligible for cancellation of removal, then you will be scheduled to go to court again to file your application. You will be given some forms and a date by which to file the forms with the court. Once the forms are filed, you will have a hearing to prove you deserve cancellation of removal. It may be weeks or months before this hearing, depending on the court's schedule.

If you are eligible for cancellation of removal and you want to win your case, you will need to demonstrate more than your lawful permanent resident status. You will need to show the Immigration Judge that you deserve to win your case by showing positive factors such as:

- Family ties in the U.S. (LPR or U.S. citizen spouse, parents, children or siblings)
- Long residence in the U.S.
- Good work record (letters from employers) and any special responsibilities of the job
- Rehabilitation (from drug or alcohol abuse or criminal behavior)
- Ties to the community, e.g. church membership, participation in community/school projects

To learn more, call the Immigration Detention Information Line of the National Immigrant Justice Center at (312) 263-0901 on Tuesdays from 11:00 a.m. to 2:00 p.m. You may call collect if you are detained. You may also call any of the agencies listed on the free legal services list you have been given.

RELIEF UNDER FORMER INA § 212(c)

If you pled guilty to a crime before April 24, 1996, you may also be eligible for § 212(c) relief. This is especially so if you have not had any convictions since that time. Relief under § 212(c) is different from cancellation in that even if the crime to which you pled guilty is now deemed an "aggravated felony" you are still eligible so long as you fulfill the following criteria.

Eligibility for 212(c)

To qualify for a discretionary waiver under DHS Section 212(c), an applicant must demonstrate that:

- He or she has resided in the United States with permanent resident status for seven consecutive years.
- He or she has not been imprisoned for 5 years or more on account of the crimes which make you removable from the United States
- He or she plead guilty or *nolo contendere* to a crime or crimes prior to April 24, 1996,
- He or she has not committed other serious offenses since April 24, 1996
-

How to Apply for a 212 (c) Waiver: The 212 (c) waiver application is done on Form I-191, and can be obtained from the DHS.

Relief Under 212 (c) is Discretionary: Please be aware the Immigration Judge will also consider the following discretionary factors when deciding to grant a 212 (c) waiver: *immigration status, length of residence, family, criminal history, humanitarian concerns, immigration history, eligibility for relief, rehabilitation, cooperation with law enforcement, U.S. military service, community involvement.*

ADJUSTMENT OF STATUS THROUGH FAMILY PETITIONS

It may also be possible for you to remain legally in the U.S. through a family relative with legal status in this country. Your relative must be a lawful permanent resident or U.S. citizen in order to help you get legal status. He or she may be able to help you by filing a "relative petition."

Your relative may file a visa petition on your behalf if they are:
Categories without waiting periods:

- Your United States Citizen (USC) spouse, USC child over 21 years of age, your USC parents if you are under 21 years old and unmarried

Categories with waiting periods

- Your USC parent of you are over 21 years of age or married
- Your USC brothers or sisters if they are 21 or older
- Your Lawful Permanent Resident (LPR) spouse
- Your LPR parents if you are an unmarried permanent resident;

Finally, if you entered the country illegally, you can only adjust status if your relative filed their visa petition on your behalf, prior to April 30, 2001.

Everyone, except spouses, parents and minor children of U.S. citizens (under 21 years old) have to wait in line for a visa number before they can apply for legal permanent resident status. The "priority registration date"- the date that DHS received the petition filed by your relative determines your place in that line. If you are not currently "at the front of the line," you will not be able to apply for adjustment of status until your priority date moves to the front of the line. Practically speaking, unless you are in a category without a waiting period, you will be unable to avoid having to leave the United States unless your relative applied for you before you were detained.

If you are eligible to apply for adjustment of status, but have had prior encounters with DHS, a criminal history, fraud, health problems or, in certain cases, unlawful status, these issues may make the process of becoming a legal permanent resident more difficult or impossible. If you have a criminal conviction, you may be eligible for adjustment of status with a "212(h) waiver." If you remain in the United States unlawfully for more than one year, leave the country and enter again unlawfully you are basically barred from adjusting status. In addition, if you make false claims to being a United States citizen or smuggle aliens into the country you are also barred from adjustment of status.

"V" Visa

Another option for some people is the "V" visa. This is for spouses and children under 21 of LPR's. If your LPR spouse or parent applied for you more than 3 years ago, you may be eligible to obtain "V" visa status and remain here legally with work authorization until you can obtain your resident alien card. Certain criminal convictions or immigration violations may prevent you from obtaining a "V" visa.

SPECIAL PROTECTIONS FOR IMMIGRANT VICTIMS OF HUMAN TRAFFICKING AND OTHER CRIMES - "T" AND "U" VISAS

Two types of protection are available for individuals who have been victims of certain crimes in the United States: the "T" visa may be available for victims of human trafficking, and the "U" visa[1] may be available for victims of serious crimes, such as kidnapping, rape, domestic violence, and assault. In order to receive wither of these protections, victims must be willing to cooperate with law enforcement in the reporting, investigation and/or prosecution of these crimes. Protections under T and U visas include temporary legal status and work authorization. T visas also provide access to public benefits and the ability to later petition for permanent residency. Both protections may also be available to your immediate relatives (spouse, children, parents and siblings) in certain situations.

Trafficking & Slavery - "T" Visa

Trafficking happens where an person is forced to perform labor or services in violation of U.S. laws prohibiting slavery, involuntary servitude, debt bondage or other forced labor. You may be a victim of trafficking if you were:

Recruited, harbored, moved, or obtained by
force, **fraud**, or **coercion** (physically or psychologically)
for the purposes of involuntary servitude, debt bondage, slavery, or sexual exploitation

The type(s) of work you may have been forced to perform include (but are not limited to):

- Prostitution
- Domestic Service
- Factory Work
- Restaurant Work
- Stripping/exotic dancing
- Begging
- Agriculture / farmwork
- Janitorial
- Criminal Activities
- Other Informal Labor

If someone has imposed an unreasonable debt or condition on your labor or service, or has threatened you or your family members with harm if you fail to work or provide a service, you may be eligible for protection. *Even if you performed a labor or service that is considered illegal*, you may be able to obtain immigration relief. Additionally, you may still be eligible for protection if you voluntarily agreed to perform a particular type of labor or service, or agreed to be smuggled into the United States illegally, but were later forced to work or serve against your will.

[1] As of February 2004, the U.S. government had not issued regulations to access and receive "U" visas. The current "U" visa program is limited to short term immigration relief and protection against removal to allow the individual to apply for the visa once regulations have been finalized.

To obtain a T visa, you will be expected to help law enforcement in investigating and prosecuting the criminal activity and the people responsible for harming you. If you are under 18 years of age, you are not required to cooperate with law enforcement.

Victims of Other Violent Crimes - "U" Visa

Please note: While U visas are not yet available, immigration relief for persons who meet the U visa criteria *can* be obtained. If you have been a victim of one of the crimes listed below or a similar crime, you may be protected against removal. Contact an immigration attorney immediately for assistance.

The U visa provides immigration relief to victims of certain serious, violent crimes who have suffered substantial physical or mental abuse as a result of the crime. If you have been a victim of any of the following crimes in the United States, you may be eligible:

- Rape
- Kidnapping/Abduction
- Domestic Violence
- False imprisonment
- Being held hostage
- Forced prostitution
- Assault
- Involuntary servitude
- Trafficking
- Torture
- Incest
- Sexual exploitation
- Female genital mutilation
- Blackmail/extortion
- Witness tampering
- Unlawful criminal restraint
- Obstruction of justice
- Perjury

If you seek relief under a U visa, you will be expected to help law enforcement in investigating or prosecuting the criminal activity. If you are under 16 years of age, a relative or guardian will be expected to assist law enforcement.

If you have been harmed in any of the ways discussed above, contact an immigration attorney right away. To learn more, call the National Immigrant Justice Center at (312) 263-0901 (collect for individuals detained) or our Trafficking Hotline at 312-660-1331 (for individuals NOT detained). You may also call any of the agencies listed on the free legal services list you have been given.

VOLUNTARY DEPARTURE

If you have no defense or relief to removal that will allow you to remain in the United States, "voluntary departure" is a way to avoid an order of removal. With voluntary departure, you are still required to leave the United States and you must pay for your trip to your home country using your own money, but it has some advantages. Through voluntary departure, you can avoid some of the negative consequences of a deportation or removal order. You will not have a record of deportation or removal. Also, you will not have as many problems if you later want to return to the U.S. legally in the future.

Not everyone is eligible for voluntary departure. If you are deportable as an aggravated felon, you are not eligible for voluntary departure. (For an explanation of aggravated felony, please see sections on "the judicial process" or "cancellation of removal").

There are different stages of the immigration court proceedings you are under. The longer you wait to ask for voluntary departure in the immigration court proceedings, the more restrictions apply.

1

First Stage: Before your last hearing

You can ask for voluntary departure before your last hearing, which is usually the individual hearing. Voluntary departure has fewer restrictions at this stage. At this stage you qualify for voluntary departure as long as you are not:

- an aggravated felon,
- deportable for terrorist activities or
- a security risk to the U.S. government.

By asking the immigration judge for voluntary departure at this stage, you cannot go forward with any other defense to deportation and you must be able to:

- agree to give up your appeal rights:
- present your passport/other travel documents
- pay for your plane ticket

2

Second Stage: After your last hearing

You may also ask for voluntary departure at the end of your last hearing, even after the immigration judge has denied all other relief. Voluntary departure is harder to obtain at this stage if you have not been in the country for very long or have criminal problems. To be eligible for voluntary departure at the end of court proceedings, you must show:

- You have been physically present in the U.S. for 1 year before you were placed in removal proceedings;
- You have been a person of good moral character for the last 5 years;
- You have not been convicted of an aggravated felony;
- You are not deportable for terrorist activities;
- You have resources to pay your own way back;
- You have a passport and travel documents; and
- You may be required to post a bond within five days of an Immigration Judge's order

If you are granted voluntary departure, but fail to pay for your own plane ticket or leave by the required date, your grant of voluntary departure turns into a removal or deportation order. You will face additional bars if you try to re-enter the U.S. or try to apply for an immigration benefit in the future.

If you do not leave by the required date set by the Judge and it is of no fault of your own, the Service will normally extend your voluntary departure date. To learn more, call the Immigration Detention Information Line of the Midwest Immigrant and Human Rights Center at (312) 263-0901. The Information Line is available Tuesdays from 11:00 a.m. to 2:00 p.m. You may call collect if you are detained. You may also call any of the agencies listed on the free legal services list you have been given

BOND RE-DETERMINATION HEARING

Although the DHS has detained you, you may ask a Judge to order your release under bond while your case is proceeding. However, the Judge cannot order your release if you were detained while entering the United States (at an airport, for example) or if you have been convicted of crimes. Most criminal convictions render you ineligible for bond.

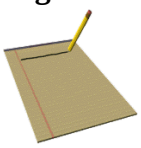
Even if you are in DHS detention after having committed crimes, you are still eligible for bond if you were convicted and released from local, state, or federal criminal custody before October 9, 1998

You also may be eligible for a bond if: (1) you have only one conviction; (2) it is not an aggravated felony; (3) it does not involve drugs and (4) you did not receive a year or more sentence. Consult an attorney to assess whether or not you are eligible for a bond.

WHAT IS A BOND?

A bond is an amount of money paid to the DHS to guarantee that you will appear in court for all of your hearings and obey the order of the immigration judge. If you attend all of your hearings, and obey the judge's order, then the money will be returned to the person who paid the bond at the end of the proceedings (regardless whether you win or lose). If you do not appear in court, the money is not returned and you may be ordered removed or deported by the immigration judge.

If you want to ask for a hearing to determine whether you are eligible for bond and what that bond amount should be, you can write to the Immigration Court and ask for a bond hearing:



Executive Office for Immigration Review
Office of the Immigration Judge
55 E. Monroe, Suite 1900
Chicago, IL 60603

If you are eligible for bond, the immigration judge has the power to set a bond, to raise the bond amount set by the DHS, and to lower the bond amount set by the DHS. The immigration judge will look at **two main factors** in deciding whether to set a bond or change the bond amount set by the DHS:

a. **Whether you will be danger to the community and**
b. **Whether you will be a flight risk if you are released.**

To decide whether you will be a **danger to the community** if you are released from DHS custody, the immigration judge will consider the nature and seriousness of the crime you committed. Also, the judge will look to see if you have made any effort to rehabilitate or reform yourself.

To decide whether you will be a **flight risk**, the immigration judge will look to see if you have ties to family in the U.S., ties to the community where you want to live, own any property in the U.S., and the possibility of any defense that you may have to removal or deportation. The immigration judge may also ask you if you promise to come to court for all of your hearings.

The law states that the minimum bond amount is $1500. You, your family, or friends will have to pay 100% of the bond amount to the DHS. The money will be returned to the person who pays the bond if you obey the judge's orders.

The amount of the bond will be negotiated before the immigration judge and the DHS trial attorney. You are encouraged to ask the immigration judge to set or lower the bond to the minimum amount that you can pay and, if necessary, work your way up to the maximum amount you can pay.

A person can be released on his or her "own recognizance" without having to pay any money. Normally, if you have a criminal conviction, the immigration judge will not release you on your own recognizance.

WHAT YOU WILL NEED FOR A BOND RE-DETERMINATION HEARING

1. **In-court testimony of close family members <u>who have a legal status in the U.S.</u>**
They need not speak English as the court will provide a translator if advance notice is given. Your family members should be prepared to discuss the nature of their relationship with you, how they have seen you change, if at all, what kind of person you are, and what hardship they will suffer if you continue to be detained or are deported to your country.

- If the family member(s) cannot go to court, a <u>notarized</u> letter may be submitted to the court.
- <u>All</u> letters submitted should have the person's address and a telephone number where he/she can be reached. Also, each family member should submit proof of his/her lawful immigration status, such as a copy of his/her green card or a copy of his/her U.S. birth certificate or naturalization certificate. Your family members should have the original documents with them if they come to court for your hearing.

Family members who want to go to court for master hearings of persons in DHS custody must now go to 101 W. Congress, Chicago, Illinois. The initial court hearings as well as Merits hearings are now usually being held via tele-video. The detainee is at the DHS Servicing Center in Broadview, Illinois, while the lawyers, Judge and family are in the Courtroom at 101 W. Congress. Have your family members call the court at (312) 353-7313 to confirm where your hearing is being held.

2. **A letter from an employer which states that if you are released, then you will have a position waiting for you.**
This letter should be on official letterhead. If the company does not have letterhead, it should be notarized.

If you have worked previously for this company, the letter should also state the length of employment and what kind of employee you have been (at least state you have not had any disciplinary problems). The letter may also state what your job duties were.

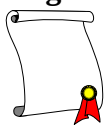
3. **Evidence of rehabilitation.**
Evidence of rehabilitation can include participation in drug or alcohol programs, certificates for the completion of coursework while detained, a statement from a counselor/psychologist, an affidavit from a family member, a letter from your probation officer, and/or proof of employment while you were incarcerated.

If you have the possibility of participating in any of those programs, courses or therapies now, you should consider the possibility of doing so.

4. **Evidence of community involvement**.
If you have had any involvement in community organizations (such as a church, mosque, synagogue, soccer club, neighborhood organization, school organization, etc.), submit a letter, preferably on letterhead or notarized, from the organization. If you have done any volunteer work, submit a letter from the volunteer organization about the work that you did.

5. **Evidence of involvement in religious activities**.
If you attend religious services regularly, submit a letter from the leader if the religious organization.

6. **Evidence that you completed high school or a vocational, college, or university degree**.
Proof can include proof of registration and attendance in the courses, such as a transcript or a copy of school records.



7. **Copies of titles of property that you own, such as a home or car**.

8. **Copies of recent income tax returns that you filed**.

You should bring **three copies of each document** that you want to give to the immigration judge to consider. The immigration judge, the DHS trial attorney, and you should each have a copy of the documents. You should keep a copy of the documents for your own records.

To learn more, call the Immigration Detention Information Line of the National Immigrant Justice Center at (312) 263-0901. The Information Line is available Tuesdays from 11:00 a.m. to 2:00 p.m. You may call collect if you are detained. You may also call any of the agencies listed on the free legal services list you have been given

NOTICE OF INTENT TO ISSUE A FINAL ADMINISTRATIVE REMOVAL ORDER

The DHS may be able to order you removed from the U.S. without allowing you the opportunity to see an immigration judge if

- you have been convicted of an aggravated felony and
- you are not a lawful permanent resident

A conditional permanent resident has a temporary "green card" for two years based on marriage to a U.S. citizen and must apply near the end of the two years to obtain lawful permanent residence.

When will you receive a Notice of Intent?

If you are not a lawful permanent resident and have been convicted of a crime which the DHS believes is an aggravated felony, the DHS will give you Form I-851, Notice of Intent to Issue a Final Administrative Removal Order ("Notice of Intent"). It is similar to the Notice to Appear which others may have received to place them in removal proceedings. The Notice of Intent contains the reasons why the DHS wants to issue a removal order against you.

What can you do when you receive a Notice of Intent?

If the DHS has given you a Notice of Intent, you have the right to:

- ask for more time to answer the charges against you;
- deny the charges and state why the charges are incorrect;
- ask for an opportunity to see the evidence that the DHS has against you;
- admit that the charges are correct and waive the right to appeal a final administrative removal order to a federal court;
- if you are afraid to go back to your country state that you fear that you will be persecuted (harmed) or tortured in your home country or the country where you last lived if you are stateless; and/or
- state the country to which you want to be removed if a final order of removal is entered against you. (The DHS may not be able to send you to the country to which you state that you want to be removed if you are not a citizen of that country.).
- have an attorney or accredited representative represent you before the DHS. If you cannot afford an attorney, you can contact one of the legal assistance organizations on the last page of this information.

If you do not agree with the charges that the DHS has placed against you, you must answer the DHS in writing very quickly. If a DHS officer gave you the Notice of Intent, then you must write to the DHS within **10 days** of receiving the Notice. If you received the Notice of Intent through the U.S. mail, you must write to the DHS within **13 days**. If you are detained in Illinois, Indiana, or Wisconsin, your written response must be sent to:

U.S. Immigration and Customs Enforcement
Department of Homeland Security
10 W. Jackson Blvd., Fifth Floor
Chicago, IL 60604.

How will the DHS respond to your written response to the Notice of Intent?

If you respond to the DHS in writing, the DHS will decide whether to issue a final administrative removal order or to place you in removal proceedings before an immigration judge. If the DHS decides to place you in removal proceedings before an immigration judge, the DHS will give you a document called a Notice to Appear and you will have the same rights and opportunities to apply for relief from removal described in these materials.

What can you do if a final administrative removal order is issued?

If the DHS does not place you in removal proceedings before an immigration judge but issues a final administrative removal order in your case, you have the right to appeal the order to the federal circuit court of appeals. The appeal is called a "petition for review". You must file your petition for review with the federal circuit court of appeals within 14 calendar days after the DHS issues the order. The federal circuit court of appeals for Illinois, Indiana, and Wisconsin is the Seventh Circuit Court of Appeals. You should also ask the court of appeals for a "stay of removal"; this means that you need to ask the court to order the DHS not to remove you from the U.S. while you appeal your case. A filing fee is required. If you are unable to pay the filing fee, a form to request that the court waive the filing fee is available from the court of appeals.

For more information and to obtain the forms for filing a petition for judicial review and a stay of removal, you can contact:

Seventh Circuit Court of Appeals
219 S. Dearborn Street
Chicago, IL 60604
phone: (312) 435-5850.

To learn more, call the Immigration Detention Information Line of the Midwest Immigrant and Human Rights Center at (312) 263-0901. The Information Line is available Tuesdays from 11:00 a.m. to 2:00 p.m. You may call collect if you are detained. You may also call any of the agencies listed on the free legal services list you have been given

REINSTATEMENT OF PREVIOUS REMOVAL ORDERS AND STIPULATED REMOVAL ORDERS

If you have previously been ordered removed and subsequently reentered the United States unlawfully the DHS can reinstate your removal order and remove you without ever going before an Immigration Judge. The DHS will issue you a Notice of Intent to Reinstate Prior Removal Order. If you did not receive a previous removal order or did not unlawfully re-enter you can contest this reinstatement in the same manner in which you would contest a final administrative removal order (p.20-21).

You may also be asked by the DHS to sign a stipulated order of removal. This is a document which states that you would like to be ordered removed without seeing an immigration judge. You have the right to consult an attorney before signing such a document. You may be eligible for relief from removal and will not be able to pursue that relief if you sign a stipulated order of removal.

ORDERS OF SUPERVISION

Orders of supervision can be granted by the DHS to release persons in DHS custody that the DHS cannot remove or deport from the U.S.

When will the DHS consider releasing you under an order of supervision?

To be eligible for an order of supervision, you must have a final removal or deportation order. A removal or deportation order becomes final once you have waived your right to appeal or have exhausted all appeals. To have exhausted all your appeals means that you do not have an appeal pending before a higher court. Once your removal or deportation order is final, the DHS has 90 days to remove or deport you from the U.S. to another country which will accept you. If the DHS cannot remove you from the U.S. within 90 days, then the DHS must consider whether to release you from its custody.

Who is eligible for release under an order of supervision?

Persons who are from countries with whom the U.S. government does not currently have an agreement to return its citizens (such as Vietnam, Laos, Cambodia, or Cuba), citizens of countries which no longer exist (such as Somalia, the former Yugoslavia, or the former U.S.S.R.), or are not citizens of any country (such as Palestinians) may be eligible for release from DHS custody under an order of supervision, whether or not they have been admitted to the United States. Please note, however, that individuals who are released under an order of supervision may be removed at any time if a travel document is obtained or removal becomes possible.

(SPECIAL NOTICE TO MARIEL CUBANS:)

If you are a Mariel Cuban, then you may also request to be released under an order of supervision. The DHS considers Mariel Cubans to be persons who came to the U.S. from Cuba during the 1980 boatlifts. In light of the Supreme Court decision Clark v. Martinez, the Department of Homeland Security had discontinued using Cuban Review Panels. Thus, Mariel Cubans are eligible for release under an order of supervision regardless of whether they have been admitted or paroled into the United States.

The new regulations for orders of supervision

On December 21, 2000, the DHS issued new regulations or rules for persons who are eligible for orders of supervision. Previously, the DHS reviewed your request every six months, alternating between file reviews and interviews. Under the new regulations, **you will generally receive a file review within 90 days of your final removal order and then an interview every year with officers from DHS Headquarters until you are removed from the U.S. or released from DHS custody under an order of supervision**. At each review you will have an opportunity to show the DHS that you should be released under an order of supervision. **You have the right to have an attorney or other approved person represent you for the file review and interviews**.

Within 90 days after your removal order is final, a local DHS deportation officer will review your immigration file to determine whether you should be released from DHS custody under an order of supervision. The deportation officer will consider whether you are a **flight risk** and a **danger to the community**. The DHS will look at the following factors:

- the nature and number of **disciplinary infractions or incident reports you received while in federal, state, county, or DHS custody**
- **your criminal history**, including:
  - criminal conduct and conviction record
  - the nature and severity of the convictions
  - the sentences imposed for the convictions and time actually served
  - probation and criminal parole history and
  - evidence of recidivism or repeated criminal behavior
- any **psychiatric and psychological reports** about your mental health
- evidence that you are rehabilitated from any criminal past, including your **participation in work, educational, and vocational programs available at the facility where you were or are incarcerated**
- favorable factors, including **family members in the U.S. and ties to the community** where you would like to live
- **your immigration history**, including any prior violations of immigration laws
- any history of escapes or attempted escapes from custody, failures to appear for immigration or other proceedings, or absences without leave from any halfway house or other sponsorship program
- any other information that can demonstrate your ability to adjust to life in a community, remain free of violence and future criminal activity, and not pose a danger to yourself or the community.
- any other positive and negative information about you

You can obtain a copy of the information that the DHS has in its file by filing a Freedom of Information/Privacy Act (FOIA) request, Form G-639, with the DHS. More information about filing a FOIA is located on page 28 of these materials.

Some of the documents that you can provide to the DHS to show that you should be released under an order of supervision include:

- a notarized (sworn) **letter from your family or a friend who agrees that you can live with them**
- a **job offer** from an employer on company letterhead
- a **letter from your probation officer**, stating how you did on probation and the amount of time left to complete probation, if any
- a **letter from any facilities where you have been** to document good behavior, employment at the facility, and progress in rehabilitative classes
- a copy of any **certificates from any classes that you may have completed** or **a letter from the Instructor** to show that you are currently in classes, including English as a Second Language (ESL), anger management, career skills, life skills, G.E.D., vocational classes (i.e. mechanics, maintenance, cooking, computers, etc.), religious education (i.e. Bible study), drug education, etc.
- a **letter from the leader of meetings for Alcoholics Anonymous and/or Narcotics Anonymous** (if you have used/abused alcohol or drugs in the past) showing that you have participated in meetings
- **letters from people in the community where you would like to live**, showing that you are a good person who has changed his/her ways
- a **letter from drug education or other rehabilitative programs which state that you will be enrolled in their programs** upon your release
- a **letter of acceptance into a mental health treatment program**, if you need ongoing treatment
- a copy of any **relevant medical records**, particularly if you have a disease or condition for which you are not receiving adequate treatment while in DHS custody
- **a letter from you to the DHS**, explaining why you will not be a flight risk or a danger to the community if you are released, including why you should be released from DHS custody, how you have changed your life while in custody from your past criminal activity, what your plans are for the future if you are released, etc.

You can begin gathering these documents before your order of removal becomes final. Always keep a copy of any documents that you send to the DHS. **Any document that you submit must be written in English or have an English translation with it.**

For the 90 day file review of your case by the Chicago DHS office, you can send your documents to:

Bureau of Immigration and Customs Enforcement
Department of Homeland Security
10 W. Jackson Blvd, Room 553
Chicago, IL 60604.

You should send the documents to the DHS BICE before the 90 days have passed from the date that your removal order becomes final.

♦ If the local DHS office denies your request for release under an order of supervision for the 90-day review, your file will be reviewed by officers at the DHS Headquarters in Washington, D.C. approximately 3 months later.

RELEASE FOR LONG-TERM DETAINEES

If the local DHS office denies your request for release, then you must request release from the DHS Headquarters in Washington, D.C. If you have been in DHS Custody for six months after a final removal order (for example, if you waive appeal at Immigration Court that is your final order of removal; if you appeal to the Board of Immigration Appeals you must wait for that decision before you begin counting the six months) then you should be released from DHS Custody as long as it is not likely that you will be removed to your country of origin in the reasonably foreseeable future and as long as you fully cooperate with DHS in your removal. Send a request for release along with any documentation indicating that you have cooperated and attempted to facilitate your removal to your country of origin. Sample documents are:

- letters to your Consulate requesting travel documents and any receipts or responses from these Consulates
- letters to your Deportation Officer indicating your willingness to cooperate in your removal
- copies of your birth certificate, passport (even if expired) or any nationality document

The address of the Post Order Custody Review Headquarters for the Department of Homeland Security is:

DHS-HQPDU
801 I. St., N.W., Room 800
Washington, D.C. 20536

If you are released from DHS custody under an order of supervision, you will need to obey the conditions of your release, including reporting to the DHS as required, avoiding criminal activity, etc. If you do not follow the conditions of your release, the DHS can revoke your order of supervision, arrest you, and detain you again.

To learn more, call the Immigration Detention Information Line of the National Immigrant Justice Center at (312) 263-0901. The Information Line is available Tuesdays from 11:00 a.m. to 2:00 p.m. You may call collect if you are detained. You may also call any of the agencies listed on the free legal services list you have been given.

OBTAINING CRIMINAL, DHS, and FBI RECORDS

CRIMINAL RECORDS

Criminal convictions can result in deportation proceedings. In order to determine whether or not you should apply for any immigration benefit it may be necessary to first obtain copies of your criminal records and consult with an expert in immigration law.

You can do this by calling or going to the courthouse in the county where the criminal case took place and asking the clerk to make copies of your case. Normally you will need to obtain a copy of the information/indictment or charging document AND a copy of the final disposition in each case. Request a copy of the documents from the clerk by referring to your case number. If you don't have the case number, ask the court clerk for assistance.

Be prepared to pay copying costs which are typically $2.00 for the first page and $.50 for each additional page. Certified dispositions are $9.00 dollars (in Illinois, fee may vary depending on the State in which your conviction occurred).

For Cook County: Phone of the Circuit Court Clerk: (312) 443-4743
Daley Center (Washington and Clark) Room 1006
Chicago, Illinois

Direct line to Criminal Court Clerk (for certified dispositions):
312/603-4641 from 8:30 a.m.-4:30 p.m.

For **felony conviction** records, you may need to contact the courthouse at 26th and California--5th floor, office side.
Phone: 773/869-3140

DuPage County: Phone: 630/682-7626
501 N. County Farm Road, Wheaton, IL

If you never went to court, or your case was not resolved, contact an attorney to resolve your case prior to trying to obtain your records.

DHS RECORDS

To obtain a copy of what is in your immigration file, you can make a "Freedom of Information/Privacy Act Request by completing an DHS Form G-693. You may ask an immigration officer for one. You do not have to complete the entire form. You should at least include your name and address and "A" Immigration File number and date of birth, and you need to sign the form. Make sure to keep a copy for your self and mark the envelope you are sending out "FOIA Request." Also, if you are detained, your address will be that of the detention center where you are currently detained.

Mail this form to the DHS office where your file is located. In Chicago, you should send your request to:

FOIA Officer
Department of Homeland Security
10 W. Jackson
Chicago, IL 60604

FBI RECORDS

If you have criminal convictions, one of the documents the Department of Homeland Security has in your file is a "rap sheet" from the FBI which lists your criminal history, including any arrests, even if you were not convicted. You can usually get this faster than you can get a copy of your DHS file. Send 1) a completed fingerprint card, 2) a money order for $18 made out to the "FBI," and 3)a letter asking for your rap sheet to:

U.S. Department of Justice
Criminal Justice Information Services Division
Clarksburg, WV 26306

Do NOT send a copy to the Court or the Department of Homeland Security.

OBTAINING DEPARTMENT OF CORRECTIONS RECORDS

These include attendance records, work evaluations, disciplinary records, visitors' lists, GED certificates, and medical and mental health records. Remember to be specific in your written request.

Illinois

In order to obtain your records from the Illinois Department of Corrections, you should send a letter requesting those records along with an authorization for release of information form. All requests must be made to the address of the **last facility** in which you were incarcerated. If you do not know the address of the last facility, you may request it by calling 217/522-2666 or writing to:

Illinois Department of Corrections
1301 Concordia Court
PO Box 19277
Springfield, IL 62794

Wisconsin

Written inquiries must be made to:

Records Custodian
3099 East Washington
P.O. Box 8980
Madison, Wisconsin 53704

Indiana

Requests must be made in writing to:

State of Indiana Department of Corrections
Records Department
E334, IGCS, 302 West Washington Street
Indianapolis, Indiana 46204

or **fax** your request to: Attention: Records 317/232-5728

AGENCIES OFFERING FREE OR LOW-COST LEGAL SERVICES

ILLINOIS

LEGAL ASSISTANCE FOUNDATION OF CHICAGO,
LEGAL SERVICES CENTER FOR IMMIGRANTS
111 West Jackson Boulevard
Chicago, Illinois 60604
(312) 341-9617

NATIONAL IMMIGRANT JUSTICE CENTER
Travelers and Immigrants Aid/Chicago Connections
208 S. LaSalle, Suite 1818
(312) 660-1370, ext. 0
if detained call collect on Tuesdays and Thursdays from 11-2: (312) 263-0901
if at a facility where blue pre-paid phones are installed dial the code for Chicago Connections/National Immigrant Justice Center to be connected to us

(represent those 200% below poverty level)

KANSAS AND MISSOURI

LEGAL AID OF WESTERN MISSOURI
920 Southwest Boulevard
Kansas City, Missouri 64108

LEGAL SERVICES OF EASTERN MISSOURI, INC.
4232 Forest Park Boulevard
St. Louis, Missouri 63108
(314) 534–4200

IOWA AND NEBRASKA

CLINICAL LAW PROGRAM
University of Iowa Law College
Boyd Law Building
Iowa City, Iowa 52242
(319) 335-9023
(limited geographical area)

If you need information on additional agencies, refer to the free legal service list provided to you by the arresting officer or request another list from the deportation officer assigned to your case.