

# Know Your Rights

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

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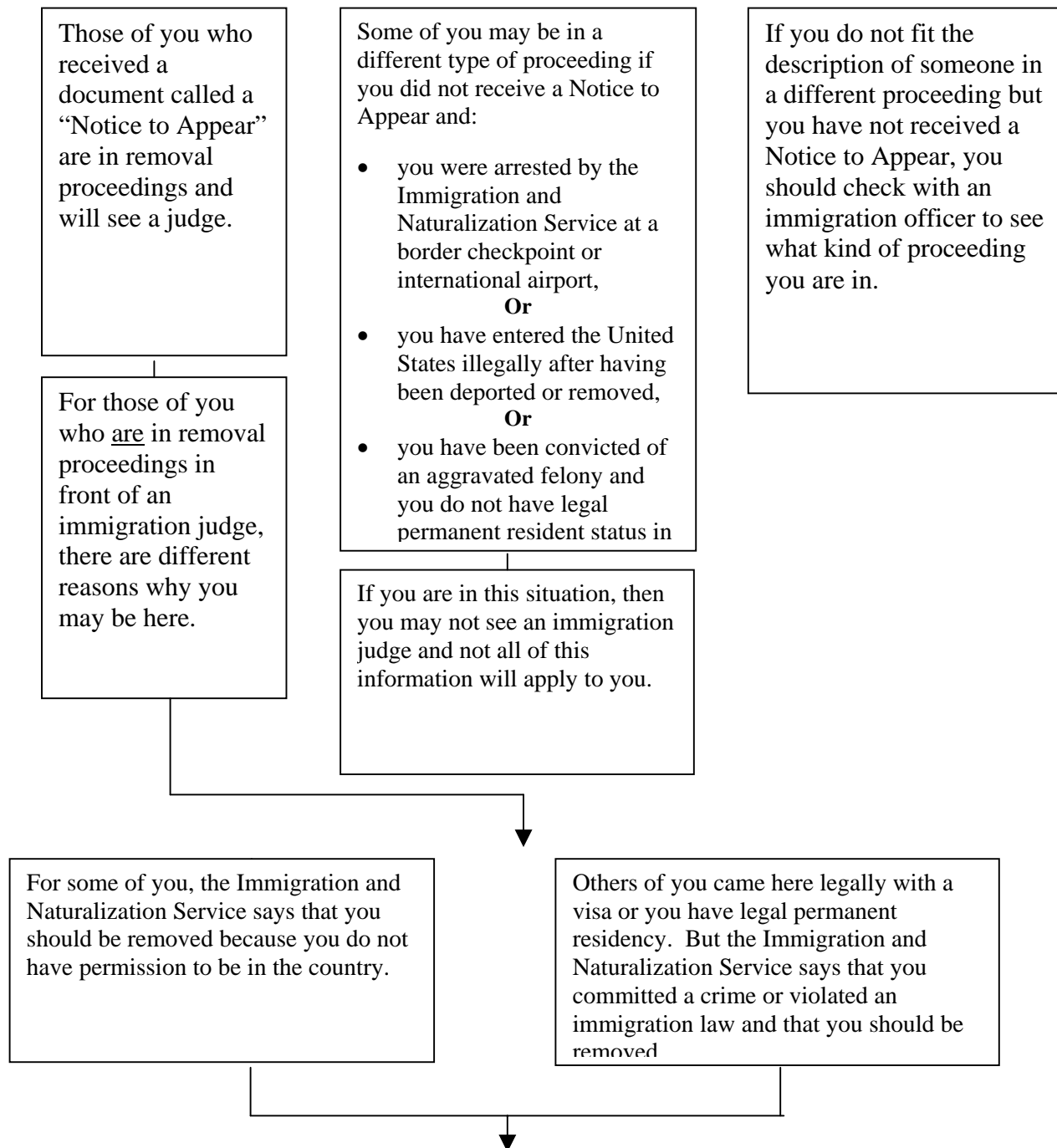
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## THE COURT PROCESS



You are currently being detained by the Immigration and Naturalization Service (“INS”), an agency of the United States Government. INS 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 INS 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.





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 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 Immigration and Naturalization Service should have given you a document called a Notice to Appear. It contains information the Immigration and Naturalization Service believes about you including 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 Immigration and Naturalization Service thinks you may have to leave the United States.

U.S. Department of Justice  
**Immigration and Naturalization Service** **Notice to Appear**

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: \_\_\_\_\_

In the matter of:

Respondent: \_\_\_\_\_ currently residing at: \_\_\_\_\_  
(Number, street, city state and ZIP code) (area code and phone number)

1. You are arriving an alien.  
 2. You are an alien in the United States who has not been admitted or paroled.  
 3. You have been admitted to the United States, but are deportable for the reasons below.

The Service alleges that you:

1. Are not a citizen of the United States;
2. You are a native of \_\_\_\_\_ and citizen of \_\_\_\_\_;
3. You entered the United States at or near \_\_\_\_\_ on or about \_\_\_\_\_;
4. You were then not admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(a) of law:

Section 212(a)(6)(A)(I) of the Immigration and Nationality Act, as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.  
 Section 235(b)(1) order was vacated pursuant to:  8 CFR 208.30(f)(2)  8 CFR 235.3(b)(5)(iv)

**YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: \_\_\_\_\_ To be calendared and notice provided.**  
**On \_\_\_\_\_ at \_\_\_\_\_ to show why you should not be removed from the United States based on the charge(s) set forth above.**

Date: \_\_\_\_\_

**See attached Notice to the Respondent for important information**

**Your name should be listed here.** (points to Respondent field)

**The charges** (points to The Service alleges that you: section)

**Notice of court hearing, date and time.** (points to YOU ARE ORDERED to appear... section)

**Notice to Appear** (points to the title)

**This is the “A” number assigned to you by INS.** (points to File No: field)

If you do not think that you received a Notice to Appear from the Immigration and Naturalization Service, 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 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 INS 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:*

- *trafficking in drugs, which includes possession for sale or transportation or importation of drugs.*
- *a crime of violence for which the judge sentenced you to at least 1 year.*
- *a crime of theft or burglary for which the judge sentenced you to at least 1 year.*
- *sexual abuse of a minor.*
- *murder or rape.*
- *most firearms offenses.*
- *alien smuggling.*
- *unlawful entry or attempted re-entry to the United States after prior deportation for an aggravated felony.*

*The law is still new and there are questions about how to interpret it. Some misdemeanor convictions can be aggravated felonies. Ask a lawyer if you have questions.*

If you have criminal convictions, the immigration judge cannot change the decision of the criminal court. However, if your criminal conviction is on direct appeal in criminal court, then you are not removable for that offense because your conviction is not yet final. You should tell the judge that you have a direct appeal pending in the criminal court.

In some limited circumstances it may be also 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 11 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 removed, you cannot legally return to the United States for at least ten years or more depending on your case.

If this is your second removal, you cannot return for twenty years. If you were convicted for an aggravated felony, you may never be able to return. Sometimes, you can get permission from the Immigration and Naturalization Service to come back before the waiting period is over, but it is very difficult to get this permission. Even after the waiting period is over, you will have to have a way to come back legally, for example, with a tourist visa, visitor's visa, or family visa.

Remember, it is a crime to reenter the United States without permission after you have been removed from the country. If found guilty, you can be sentenced to prison for up to twenty years. The sentence varies depending on your criminal history. The Immigration and Naturalization Service can also deny you permission to ever return to the United States if you reenter illegally after being ordered deported or removed. In addition, if you reenter without permission, the Immigration and Naturalization Service 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 Midwest Immigrant 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.

## 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 parent or grandparent born in the United States?
3. Do you have a parent or grandparent who became a U.S. citizen before you were born?
4. Did at least one of your parents become a citizen before you turned 18 years old?
5. Have you ever served in the U.S. military and been honorably discharged?

If you answered yes to any of these questions, you should tell an immigration officer and the immigration judge that you think you may be a U.S. citizen. It is very important to provide as much specific information as possible in order for the Immigration and Naturalization Service to be able to verify your claim to United States citizenship, for example, your parents’ identity, their dates and places of birth, and their periods of residence in the United States.



To learn more, call the Immigration Detention Information Line of the Midwest Immigrant 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.

## 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. You may be eligible for one or more of these types of protection, depending on when you entered the U.S., the type of conviction that you may have, and why you fear that you will be harmed or tortured if the Immigration and Naturalization Service 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 Immigration and Naturalization Service and/or the immigration court. **If you are afraid to return to your country, tell the immigration judge or the Immigration and Naturalization Service (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.

If you entered the United States before April 1997, you were required to file your asylum application by April 1, 1998. If you did not file your asylum application by April 1, 1998 and

the reason you are afraid to return to your country existed before April 1, 1998, you may still be eligible for withholding of removal.

If you entered after April 1, 1997, you have up to one year from the date you entered to file your application. You may still be able to apply after these deadlines if there were special reasons why you were not able to apply on time or if the conditions in your country have gotten worse since you came to the United States.

### 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 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

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 Immigration and Naturalization Service if you fear torture in your home country.

To learn more, call the Immigration Detention Information Line of the Midwest Immigrant Rights Center at (312) 263-0901. The Information Line is available Wednesdays 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 also call our general intake line (312) 660-1370, extension 0, Tuesdays from 11:00 a.m. – 2:00 p.m.

## 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, an INS 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 INS 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 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 INS should take approximately 14 days from your preliminary interview at the port of entry in giving you an interview.

If after your interview, INS determines you have credible fear, you may ask INS 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 INS 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 INS 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.

To learn more, call the Immigration Detention Information Line of the Midwest Immigrant Rights Center at (312) 263-0901. The Information Line is available Wednesdays 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 also call our general intake line (312) 660-1370, extension 0, Tuesdays from 11:00 a.m. – 2:00 p.m.

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 legal permanent residence and you can remain in the country legally.

You must meet three 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 very extreme hardship if you were removed from the United States; AND
3. 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 of 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.

Under U.S. immigration law, anyone who is not a U.S. citizen can be removed if he or she commits certain crimes or acts. For example, a person can be removed for just about any crime having to do with drugs.

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 includes:
    - Transportation, distribution, importation;
    - Sale and possession for sale;
    - Possession of over 5 grams of cocaine base (different from “cocaine”);
    - May include two convictions for simple possession of drugs.
- A certain crime for which you received a sentence of one year or more, (whether you served time or not), including the following:
  - 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
  - Certain gambling crimes (if you have another gambling conviction)
- 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
- Failure to appear (if you were convicted of missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years.
- 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 Midwest Immigrant 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.

## ADJUSTMENT OF STATUS/FAMILY PETITIONS

It may be possible for you to remain legally in the U.S. by having your close relative file papers for you so that you can “adjust status” to become a lawful permanent resident in the U.S. Your relative must be a legal 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.”

You may be able to get legal status through a relative petition if you are:

- The husband or wife of a U.S. citizen or lawful permanent resident (a lawful permanent resident is someone with a “green card” or “mica”);
- The son or daughter of a U.S. citizen;
- The unmarried son or daughter of a lawful permanent resident;
- The brother or sister of a U.S. citizen who is 21 or older; or
- The parent of a U.S. citizen who is 21 years or older.

If you last entered the U.S. with inspection, then you may be able to apply for lawful permanent resident status in the U.S. regardless of the date that your relative filed the petition for you.

However, if you entered the U.S. illegally, you may be eligible to apply for lawful permanent resident status in the U.S. depending on the date that your relative filed the petition for you. If your relative filed a relative petition for you on or before January 14, 1998 and you have not departed from the U.S., you can apply to adjust your status in the U.S. If your relative filed a relative petition for you after January 14, 1998 but before April 30, 2001, you were physically present in the U.S. on December 21, 2000, and you have not departed from the U.S., then you can apply to adjust your status in the U.S. If your relative filed a petition for you after April 30, 2001, then you will not be eligible to apply to adjust your status in the U.S. and you must attend a consular appointment in your home country.

Even if your relative has filed a petition and the petition is approved, this is only the first step of the process. 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 INS 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.

If you are eligible to apply for adjustment of status, but have had prior encounters with INS, 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. If you have a criminal conviction, you may be eligible for adjustment of status with a “212(h) waiver.”

If you are already a lawful permanent resident and now face removal from the U.S., you may be able to readjust your status through a U.S. citizen or legal permanent resident family member if he or she files papers for you AND you are eligible to apply for “adjustment of status.” However, if you have been convicted of a crime since you became a lawful permanent resident

and the INS is charging that your conviction is an aggravated felony, you will not be eligible for a 212(h) waiver unless the immigration judge decides that your conviction is not an aggravated felony or that your crime does not require a 212(h) waiver.

If your spouse, parent, stepparent or child is an LPR or U.S. citizen and has been threatening you or beating you, you may be able to apply for a family petition under a special law for victims of domestic violence.

To learn more, call the Immigration Detention Information Line of the Midwest Immigrant 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.

## 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 brochures 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 a bond.

The most time you can ask for before having to leave the U.S. is 120 days at this stage.

## 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 can pay a bond of at least \$500.

At the end of proceedings, the maximum time the judge will give you is 60 days to leave the country. The bond will be returned to you as long as you comply with the order of voluntary departure and comply with all INS appointments and hearing dates.

If you are granted voluntary departure, but fail to pay a bond 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.

To learn more, call the Immigration Detention Information Line of the Midwest Immigrant 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.

## BOND REDETERMINATION HEARING

If you are in INS custody because of your immigration status and you have a previous criminal conviction, the type of conviction, the sentence imposed by the criminal court, and your immigration status will determine whether you are eligible to be released from INS custody.

Not all convictions will result in removal or deportation. Common types of crimes for which a person can be removed or deported include drugs, guns, sex crimes, crimes involving moral turpitude (i.e. theft, burglary, robbery, shoplifting), drunk driving, and crimes considered to be aggravated felonies under the immigration laws. For more information about the types of crimes that are considered to be aggravated felonies, see pages 3 and 11 of these materials.

If the INS has charged that you are deportable for having been convicted of a certain crime or crimes, you may be eligible to be released from INS custody under bond if:

- You were released from local, state, or federal criminal custody before October 9, 1998  
OR
- You were transferred from federal or state custody directly to INS custody on or after October 9, 1998 and
  1. you have only one conviction for which you can be deported, and
  2. your crime is classified as either a crime of moral turpitude (with a sentence of less than one year) or a crime of domestic violence, and
  3. your crime is not considered to be an “aggravated felony.”

### WHAT IS A BOND?

A bond is an amount of money paid to the I.N.S. to guarantee that you will appear in court for all of your hearings and obey the order of the immigration judge. If you pay a bond, 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

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

- 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 INS 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 INS. 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 INS 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.

Please note that, in addition to a money bond, a person can be released on his or her own recognizance, similar to an "own recognizance" bond that is used in the criminal courts. 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 REDETERMINATION HEARING

#### 1. **In-court testimony of close family members who have a legal status in the U.S.**

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 notarized letter may be submitted to the court.
- All 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 greencard 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.



**Remember**, family members who want to go to court for persons in INS custody must go to the basement of the INS building at 10 W. Jackson Blvd., Chicago, IL 60604.

**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 will need **three copies of each document** that you want to give to the immigration judge to consider. The immigration judge, the INS 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 Midwest Immigrant 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.

## **NOTICE OF INTENT TO ISSUE A FINAL ADMINISTRATIVE REMOVAL ORDER**

The Immigration and Naturalization Service (INS) 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 or you are a conditional 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 INS believes is an aggravated felony, the INS 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 INS wants to issue a removal order against you.

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

**If the INS 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 INS has against you;
- admit that the charges are correct and waive the right to appeal a final administrative removal order to a federal court;
- 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 INS 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 INS. 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 INS has placed against you, you must answer the INS in writing very quickly. If an INS officer gave you the Notice of Intent, then you must write to the INS within **10 days** of receiving the Notice. If you received the Notice of Intent through the U.S. mail, you must write to the INS within **13 days**. If you are detained in Illinois, Indiana, or Wisconsin, your written response must be sent to:

Deportation Section  
 Immigration and Naturalization Service  
 10 W. Jackson Blvd., Fifth Floor  
 Chicago, IL 60604.

### **How will the INS respond to your written response to the Notice of Intent?**

If you respond to the INS in writing, the INS will decide whether to issue a final administrative removal order or to place you in removal proceedings before an immigration judge. If the INS decides to place you in removal proceedings before an immigration judge, the INS 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 INS 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 judicial review”. You must file your petition for judicial review with the federal circuit court of appeals within 14 calendar days after the INS issues the order. The federal circuit court of appeals for Illinois, Indiana, and Wisconsin is the Seventh Circuit Court of Appeals. You must also ask the court of appeals for a “stay of removal”; this means that you need to ask the court to order the INS 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 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.

## ORDERS OF SUPERVISION

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

### **When will the INS 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 INS has 90 days to remove or deport you from the U.S. to another country which will accept you. If the INS cannot remove you from the U.S. within 90 days, then the INS 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, or Cambodia), 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 INS custody under an order of supervision. If you are a Mariel Cuban who became a lawful permanent resident (“green card”), then you may ask for an order of supervision. If you are a Mariel Cuban who never became a lawful permanent resident, then you will be eligible for parole from INS custody. Parole is described on page 25 of these materials.



### **The new regulations for orders of supervision**

On December 21, 2000, the INS issued new regulations or rules for persons who are eligible for orders of supervision. Previously, the INS 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 INS Headquarters until you are removed from the U.S. or released from INS custody under an order of supervision.** At each review you will have an opportunity to show the INS 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 INS deportation officer will review your immigration file to determine whether you should be released from INS custody under an order of supervision. The deportation officer will consider whether you are a **flight risk** and a **danger to the community**. The INS will look at the following factors:

- the nature and number of **disciplinary infractions or incident reports you received while in federal, state, county, or INS 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 INS has in its file by filing a Freedom of Information/Privacy Act (FOIA) request, Form G-639, with the INS. More information about filing a FOIA is located on page 28 of these materials.

Some of the documents that you can provide to the INS 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 INS custody

- **a letter from you to the INS**, 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 INS 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 INS. **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 INS office, you can send your documents to:

Deportation Section  
Immigration and Naturalization Service  
10 W. Jackson Blvd.  
Chicago, IL 60604.

**You should send the documents to the INS Deportation Section before the 90 days have passed from the date that your removal order becomes final.**

- ◆ If the local INS 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 INS Headquarters in Washington, D.C. approximately 3 months later.
- ◆ If the INS Headquarters denies your request, then you will have an interview with a panel of two or more INS officers approximately one year later.
- ◆ If the INS Headquarters decides that it cannot release you after the first interview, then you will have another interview every year until you are released under an order of supervision or removed from the U.S.

To contact the INS Headquarters to submit additional information for your request, to request a decision in your case, or to obtain the date of your next interview, you can write to:



Director of PDU  
INS  
801 I. St., N.W.  
Washington, D.C. 20536

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

To learn more, call the Immigration Detention Information Line of the Midwest Immigrant 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.

## PAROLE FROM INS CUSTODY FOR MARIEL CUBANS

### Who is a Mariel Cuban?

The INS considers Mariel Cubans to be persons who came to the U.S. from Cuba during the 1980 boatlifts and who never became lawful permanent residents. Mariel Cubans were “paroled” into the U.S. by the INS after they arrived in U.S. waters or on land.

If you are a Mariel Cuban who became a lawful permanent resident (“green card”), then you may ask for an order of supervision. Orders of supervision are described on page 22 of these materials.



Many Mariel Cubans, however, did not apply for lawful permanent residence and do not have “green cards.” If you are a Mariel Cuban currently in INS custody and you did not obtain a “green card”, then you may be eligible for parole.

Under the parole regulations or rules, the INS will review your file within 90 days of the revocation of your parole. If the INS does not parole you after reviewing your file, you will have an interview by an INS panel of two or more officers every year until you are removed from the U.S. or paroled from INS custody.

Those panel reviews are called **Cuban Review Panels**. At each review you will have an opportunity to show the INS that you should be paroled from INS custody. **You have the right to have a person that you choose, including an attorney, represent you for the file review and panel reviews.**

### The INS will look at the following factors in your case:

- the **nature and number of disciplinary infractions or incident reports you received while in federal, state, county, or INS 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 in custody
- 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, not pose a danger to yourself or the community, and not violate the conditions of your parole
- any other positive and negative information about you

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



**Some of the documents that you can provide to the INS to show that you should be paroled from INS custody include:**

- a notarized (sworn) **letter from your family or a friend who agrees to sponsor you** to live with him or her
- 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)
- **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 INS custody
- a **letter from you to the INS**, 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 INS 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 the documents that you need before the INS tells you that you will have a file review or a panel. Always keep a copy of any documents that you send to the INS. **Any document that you submit must be written in English or have an English translation with it.**

If the INS denies your request for parole for the 90 day file review, then you will have a Cuban Panel Review with two or more INS officers approximately one year later. If the INS denies your request for parole after the panel review, then you will have another panel review every year until you are paroled from INS custody or removed from the U.S.

To contact the INS Headquarters to submit additional information for your request for parole, to request a decision in your case, or to obtain the date of your next panel review, you can write to:



Director of the Cuban Panel Review Program  
INS  
801 I. St., N.W.  
Washington, D.C. 20536

**If you are paroled from INS custody, you will need to obey the conditions of your release, including reporting to the INS as required, avoiding criminal activity, etc. If you do not follow the conditions of your release, the INS can revoke your parole, arrest you, and detain you again.**

To learn more, call the Immigration Detention Information Line of the Midwest Immigrant 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.

## OBTAINING CRIMINAL, INS, 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.

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 \$6.00 dollars.

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.

### INS 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 INS 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 INS office where your file is located. In Chicago, you should send your request to:

FOIA Officer  
U.S. Immigration & Naturalization Service  
10 W. Jackson  
Chicago, IL 60604

**FBI RECORDS**

If you have criminal convictions, one of the documents the Immigration and Naturalization Service 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 INS 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 Immigration and Naturalization Service.**

## 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  
149 East Wilson Street,  
P.O. Box 7925  
Madison, Wisconsin 53707-7925

### Indiana

Requests must be made in writing to:

Attention: Sue Searcy  
State of Indiana Department of Corrections  
Records Department  
E334, IGCS, 302 West Washington Street  
Indianapolis, Indiana 46204

or **fax** your request to: Sue Searcy at 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

TRAVELERS & IMMIGRANTS AID OF CHICAGO  
TIA/Chicago Connections  
208 S. LaSalle, Suite 1818  
(312) 660-1370, ext. 0  
*(may charge nominal fees)*  
*(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)*