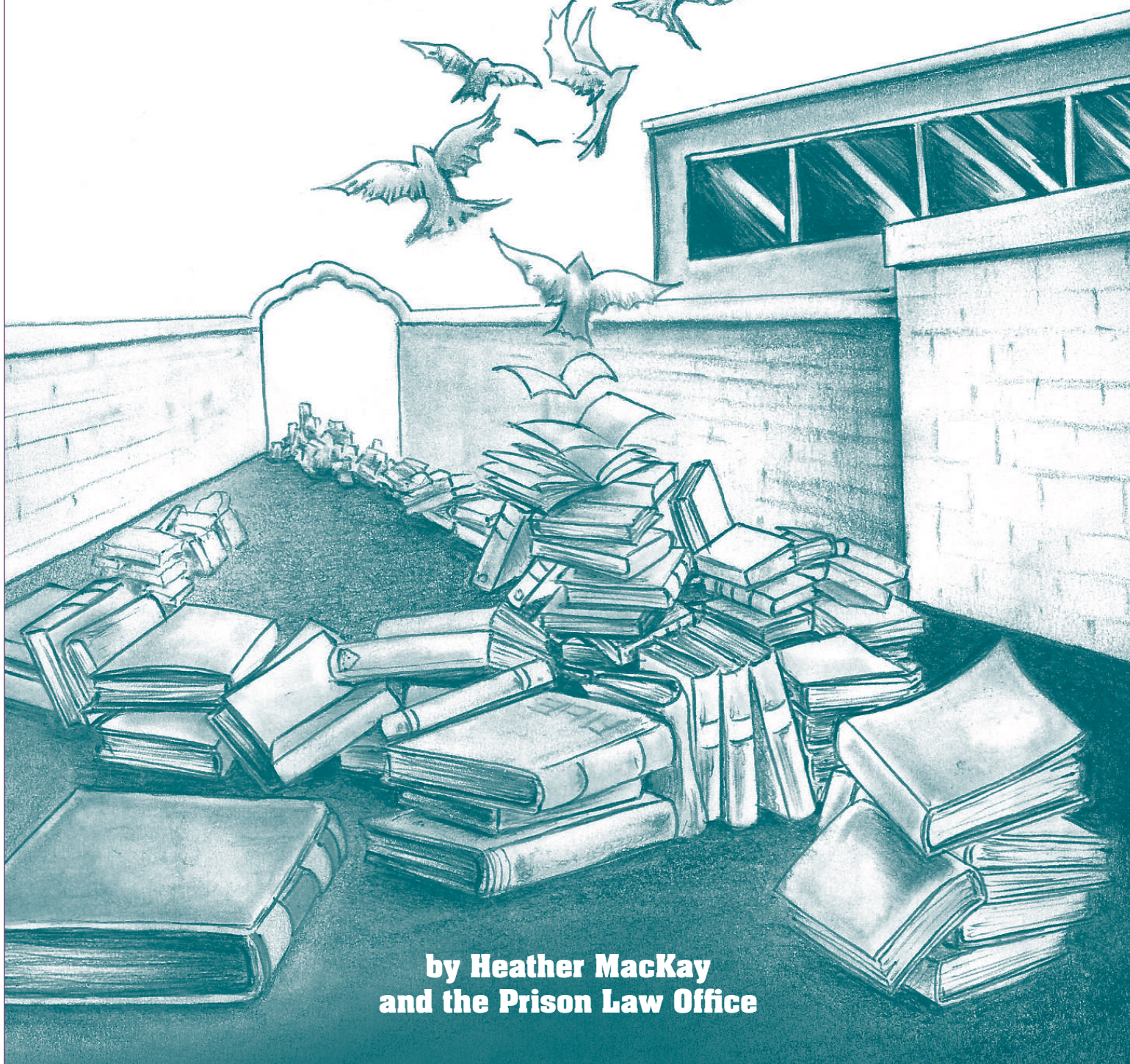


The California Prison and Parole Law Handbook



**by Heather MacKay
and the Prison Law Office**

THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

**BY HEATHER MACKAY
&
THE PRISON LAW OFFICE**

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The Prison Law Office is a non-profit public interest law firm that strives to protect the rights and improve the living conditions of people in state prisons, juvenile facilities, jails and immigration detention in California and elsewhere. The Prison Law Office represents individuals, engages in class actions and other impact litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country.

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YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in a prison law library or in a public county law library.

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13.1 Introduction

Up to 19 percent of people incarcerated in the California Department of Corrections and Rehabilitations (CDCR) were born outside the United States.¹ Many of these people are not U.S. citizens and may be subjected to removal (deportation) proceedings due to immigration laws, criminal convictions, or both. However, they must first serve their full California prison terms.² Although there are laws that could allow some people to be removed prior to completing their prison terms,³ those laws are never or very rarely used in California, and a person has no legal right to force the government to consider a request for early removal.⁴ Likewise, a person may request a transfer to serve their California sentence in a prison in their home country, but such transfers are rarely approved (see § 4.40).

¹ Public Policy Institute of California, *California's Changing Prison Population*, available at www.ppic.org/publication/californias-changing-prison-population.

² *Campos v. INS* (9th Cir. 1995) 62 F.3d 311.

³ 8 U.S.C. § 1101(a)(43)(E); 8 U.S.C. § 1231(b)(4).

⁴ See *United States v. Aispuro* (9th Cir. 1997) 127 F.3d 1133 (no right of action under a similar statute).

People who are not U.S. citizens should be aware that there have been significant changes in immigration laws and policies in recent years, and that the laws and policies may continue changing. For example, under a prior California law, state and local law enforcement agencies were required to cooperate with immigration officials and to inform immigration officials about people who might be in violation of immigration laws; this law was repealed in 2014.⁵ A new California law that took effect in 2018, called “SB 54” or the “California Values Act,” forbids law enforcement from many types of cooperation with immigration officers, but makes exceptions for the CDCR.⁶ However, there continue to be legal and policy questions as to whether and how the CDCR cooperates with immigration authorities.

13.2 Resources about Immigration Laws

This chapter provides only a general overview of the very complex immigration laws that may affect people in California prisons. There are several organizations that have detailed information and practice guides concerning grounds for removal, relief from removal, and removal procedures, and challenges to removal orders. Sources of more in-depth information include:

- ◆ Immigrant Legal Resource Center (ILRC): 1663 Mission Street, Suite 602 San Francisco, CA 94103 or www.ilrc.org;
- ◆ American Immigration Council (AIC): 1331 G St. NW, Suite 200, Washington, D.C., 20005 or www.americanimmigrationcouncil.org;
- ◆ The National Immigration Project of the National Lawyers Guild: 14 Beacon Street, Suite 602, Boston, MA 02108 or www.nationalimmigrationproject.org;
- ◆ The National Immigration Law Center: 3450 Wilshire Blvd. #108-62, Los Angeles, CA 90010 or www.nilc.org;
- ◆ The National Immigrant Justice Center: 208 S. LaSalle St., Suite 1300, Chicago, IL 60604 or www.immigrantjustice.org.

13.3 Overview of Immigration Agencies and Sources of Immigration Law

The U.S. Department of Homeland Security (DHS)⁷ is a federal agency that has three sub-agencies that carry out immigration laws:

- ◆ U.S. Citizenship and Immigration Services (USCIS) handles immigration benefits and services, such as processing family-sponsored and employment-based petitions, naturalization applications, and asylum and refugee cases.

⁵ Former Penal Code § 834b required every California law enforcement agency to cooperate with immigration officials.

⁶ Government Code §§ 7282-7284.6.

⁷ The previous name for the federal immigration agency was the Immigration and Naturalization Service (INS).

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- ◆ U.S. Immigration and Customs Enforcement (ICE) enforces immigration and customs laws through detention and removal programs, investigation programs, and inspection programs. ICE attorneys represent the government in removal proceedings.
- ◆ U.S. Customs and Border Protection (CBP) enforces immigration and customs laws at the border and ports of entry into the United States.

There is also a special federal court system for deciding the cases of people who are facing removal. The Executive Office for Immigration Review (EOIR) has immigration judges (IJs) who hear and decide removal cases. The Board of Immigration Appeals (BIA) considers appeals from orders made by IJs. Many of the forms for immigration matters and BIA appeals, an *Immigration Courts Practice Manual*, and a *BLA Practice Manual* are available on the U.S. Department of Justice website at www.justice.gov/eoir.

The U.S. District Courts, Courts of Appeals, and U.S. Supreme Court hear cases challenging IJ and BIA decisions.

The legal authorities that govern removal of people from the U.S. are the Immigration and Nationality Act (INA), which is in the United States Code (U.S.C.); the Code of Federal Regulations (C.F.R.); decisions of the Board of Immigration Appeals (BIA); and decisions of federal courts, particularly the Ninth Circuit Court of Appeals, which has jurisdiction over ICE and IJs in California.

13.4 Overview of Considerations for Removal Cases

A person who is likely to be facing removal proceedings at the end of their prison term should learn about their rights and options so that they can be prepared to act in their own best interests. The law is very complex and, if possible, the person should consult with an immigration attorney. Alternatively, a person may try to seek advice from the U.S. consulate of their nation's government.⁸

This chapter summarizes information that may help a person understand whether they are likely to be removed, what proceedings they might have to go through, and whether there are any steps they can take – either while they are still in prison or during the removal proceedings – that might help them stay in the U.S. or at least to make it possible for them to return to the U.S. legally in the future. The information may also help a person decide whether they want to cooperate with removal in order to spend the least possible amount of time in ICE custody.

Generally, a person who is facing removal should consider the following factors:

- ◆ Do they have a lawful immigration status? In other words, are they undocumented, did they enter the U.S. on a visa (and if so, did they violate the terms of their visa), or have they become a permanent resident with a “green card.” Might they actually be a U.S. citizen due to birth in the U.S., descent from a U.S. citizen parent, or naturalization (see § 13.15)?

⁸ Police must tell arrested people “without delay” that they have a right to speak to an official from their country's consulate; if a person chooses to exercise that right, a law enforcement official shall notify the consulate. Penal Code § 834c (codifying Vienna Convention on Consular Relations, Article 36 (1)(b)). Unfortunately, violation of this law does not entitle a person to any sort of individual remedy. See *Medellin v Texas* (2008) 552 U.S. 491 [128 S.Ct. 1346; 170 L.Ed.2d 190]; *Cornejo v. San Diego* (9th Cir. 2007) 504 F.3d 853.

- ◆ What grounds might ICE have to remove them based on their convictions or substance use (see §§ 13.9–13.14)?
- ◆ Might they be eligible to ask for pre-hearing voluntary departure, which would require them to leave the U.S. but would avoid a removal order and make it more likely they could legally return to the U.S. someday (see § 13.18)?
- ◆ Might they be eligible for some type of discretionary or mandatory relief from removal that would allow them to stay in the U.S. (see §§ 13.17, 13.19–13.20)?
- ◆ Might they be able to challenge the validity of one or more of their criminal convictions prior to the removal proceedings (see §§ 13.24–13.28) in order to avoid removal on the basis of that conviction, become eligible for relief from removal, or be more likely to be granted voluntary departure?

IMMIGRATION (ICE) DETAINERS ON PEOPLE IN CDCR PRISONS

13.5 ICE Detainers (Immigration Holds)

If ICE officials believe that a person in a CDCR prison can be put through removal proceedings, ICE sends a detainer or “immigration hold” (“hold de migración”) to the CDCR.⁹ The detainer asks the CDCR to inform ICE when the person’s term is about to end.¹⁰ Neither the Board of Immigration Appeals (BIA) nor the courts will review an ICE decision to place a hold.¹¹

13.6 ICE Interviews in CDCR Prisons

When ICE learns that a person who might not be a U.S. citizen is in CDCR custody, ICE may send an agent to review the person’s CDCR Central File (which contains information about their background, criminal history, and current conviction and sentence) and to interview the person. The purpose of the file review and interview is to determine whether or not the person is a U.S. citizen, whether there may be grounds for removing the person from the U.S., and whether the person is already subject to a removal order (§ 13.31), can be put through a stream-lined expedited removal proceeding (see § 13.32) or is entitled to a standard removal proceeding in front of an IJ (see § 13.33).

Before an ICE interview, the CDCR must provide the person with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may refuse to be interviewed, or may choose to be interviewed only with their attorney present. The written consent form must be made available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.¹²

⁹ 8 C.F.R. § 287.7(a), (c).

¹⁰ 8 C.F.R. § 287.7(a).

¹¹ See *Campos v. I.N.S.* (9th Cir. 1995) 62 F.3d 311, 314 (habeas corpus action cannot be used to challenge ICE detainer against a person in CDCR custody).

¹² Government Code § 7284.10(a); CDCR, *Memorandum Re: Implementation of California Senate Bill 54, “The California Values Act”* (Jan. 2, 2018).

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Receiving legal advice can help a person make an informed decision about whether to speak to an ICE agent. Unfortunately, except in a few situations, a person who is facing removal proceedings does not have a right to appointment of a lawyer at government expense (see more about the limited right to counsel at § 13.33).

If a person does speak to the ICE agent, they should not assume that the information the agent conveys is complete and accurate. Moreover, any information the person provides may make it more difficult or impossible for them to defend against removal. People do not have the right in immigration proceedings to have their statements to government officials suppressed if they are not warned that their statements may be used against them.¹³

13.7 The Impact of an Active or Potential ICE Detainer on CDCR Placement and Programming

The CDCR cannot add points to a person's classification score (see §§ 4.6-4.9 regarding classification score calculations) based on having or being likely to get an ICE detainer.¹⁴ However, an active or potential ICE detainer will be noted in the person's CDCR classification documents as special case factor "A" (active hold) or "P" (potential hold) and administrative determinant "HOL".¹⁵

Previously, the CDCR policy was to bar people with active or potential ICE detainers from participating in some programs, such as the Family Foundations Program,¹⁶ cognitive behavioral treatment and substance abuse programs,¹⁷ or the alternative custody program.¹⁸ However a new state law provides that the CDCR shall not "restrict access to any in-person educational or rehabilitative programming, or credit-earning opportunity on the sole basis of citizenship or immigration status, including, but not limited to, whether the person is in removal proceedings, or immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual."¹⁹ As of June 2018, the CDCR rules have not been updated to reflect this law.

The CDCR has recently re-affirmed a policy that excludes some people from being placed in conservation camps or minimum support facilities (MSFs) based on their immigration status. The policy applies a CDCR rule stating that a person with an ICE detainer who is likely to be deported

¹³ See *Samayoa-Martínez v. Holder* (9th Cir. 2009) 558 F.3d 897. For a more comprehensive overview of motions to suppress, see Elliott Ozment and ILRC attorneys, *Motions to Suppress: Protecting the Constitutional Rights of Immigrants in Removal Proceedings* (4th ed. 2017).

¹⁴ Government Code § 7284.10(b)(2) [prohibiting the CDCR from "consider[ing] citizenship and immigration status as a factor in determining a person's custodial classifications level, including, but not limited to, whether the person is in removal proceedings, or whether immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual"]; CDCR, *Memorandum Re: Implementation of California Senate Bill 54, "The California Values Act"* (Jan. 2, 2018).

¹⁵ See 15 CCR § 3375.3(f); 15 CCR § 3375.2(b)(13).

¹⁶ 15 CCR § 3074.3(c).

¹⁷ 15 CCR § 3040.1(c)(5).

¹⁸ 15 CCR § 3078.3(a)(6).

¹⁹ Government Code § 7284.10(b)(1); CDCR, *Memorandum Re: Implementation of California Senate Bill 54, "The California Values Act"* (Jan. 2, 2018).

cannot be placed at a Level I minimum security facility which does not have perimeter gun towers.²⁰ Under the policy, the following people are not eligible for camp or MSF placements:

- ◆ Anyone who has previously been deported, unless they are a naturalized U.S. citizen or a U.S. permanent resident and ICE confirms the person is not deportable; and
- ◆ Anyone who has a potential or actual ICE hold, unless they have family ties in California or 12 months total work history in California.²¹

13.8 Carrying out the Detainer at the End of the CDCR Prison Term

Federal Law allows ICE to conduct removal proceedings at federal, state and local correctional facilities.²² CDCR has an Institutional Hearing Program (IHP) for some people to have their removal proceedings at Centinela State Prison or R.J. Donovan State Prison.²³ The CDCR can transfer a person who is in general population housing to one of these prisons when the person has 45 days or less to serve before their CDCR release date (or within 15 days if the person is in a reception center).²⁴ The person should continue to earn credits at the same rate as prior to the transfer.²⁵ Currently, there are no IHP facilities for people in CDCR women's prisons.

If a person who has an ICE hold is not transferred to an IHP facility for their removal hearing, then immigration authorities should “effectively and expeditiously” take custody of the person when their term ends.²⁶ The CDCR policy is to hold a person with an ICE hold for 48 hours to allow ICE time to take them into custody for deportation proceedings; as of spring 2018, the policy is being challenged by immigration rights organizations.²⁷

People who are being detained by ICE during their removal proceedings are usually housed in ICE Service Processing Centers or Contract Detention Centers.²⁸ ICE has developed conditions of confinement standards for these facilities.²⁹

²⁰ 15 CCR § 3375.2(a)(4).

²¹ CDCR, *Memorandum Re: Implementation of California Senate Bill 54, “The California Values Act”* (Jan. 2, 2018); CDCR, *Memorandum Re: Modification to Minimum Custody Determinations of Foreign-Born Inmates* (Feb. 12, 2013).

²² 8 U.S.C. § 1228(a)(1)- (2).

²³ CDCR website, Facilities Location Information, available at www.cdcr.ca.gov/Facilities_Locator.

²⁴ DOM § 6102017.1.

²⁵ Penal Code § 7284.10(b)(1).

²⁶ 8 U.S.C. § 1357(d); see also 8 C.F.R. § 287.7.

²⁷ Asian Law Caucus, National Day Laborer Organizing Network, ACLU of California and Immigrant Legal Resource Center, *Letter to CDCR Re: Implementation of the California Values Act (SB 54) and Legal Issues with Immigration Detainers* (Jan. 26, 2018).

²⁸ ICE, Public Information on Immigration Detention Facilities: www.ice.gov/pi/dro/facilities.htm.

²⁹ ICE, Detentions Operations Manual: www.ice.gov/partners/dro/opsmanual/index.htm.

GROUNDS FOR REMOVAL

13.9 Grounds for Removal: Overview

People who are not U.S. citizens may be deported for violating immigration laws, such as entering the country without documentation or overstaying a work or tourist visa. Also, people who are not U.S. citizens may be deported because of many types of criminal convictions. In addition, people who are not U.S. citizens can be deported for drug abuse problems, even if they have not been convicted of drug crimes.

To remove a person from the U.S., the government must prove by clear and convincing evidence that the person is removable³⁰ and an immigration judge (IJ) must find legal grounds for removal. Sometimes, there will be multiple grounds for removing someone. The specific grounds for removal can be crucial in determining whether the IJ has discretion to grant either voluntary departure from the U.S. or relief from removal that would allow the person to stay in the U.S.

13.10 Grounds for Removal: Violations of Immigration Law

People can be removed from the U.S. for violations of immigration law. For example, a person is removable if they entered the U.S. without being inspected and admitted by U.S. immigration officers; this is called being “undocumented.” As another example, a person is removable if they came to the U.S. lawfully on a visa, but then stayed longer than the time period for the visa or failed to comply with other visa conditions. People are removable if they used false documents to enter or stay in the U.S., or got married for the purpose of evading immigration laws.³¹ Also, some people may be removable if they failed to get advance permission from U.S. immigration officials to reenter the country; for example, this applies to people who were previously ordered removed.³²

In many cases, a person who is facing removal solely due to violation of immigration laws is more likely to be able to get relief from removal (see §§ 13.17-13.23) than a person who is removable because of criminal convictions.

³⁰ 8 U.S.C. § 1229a(c)(3)(A).

³¹ 8 U.S.C. § 1227(a)(1), (3). In 2012, the federal government announced a Deferred Action for Childhood Arrivals (or “DACA”) policy, under which ICE would not deport certain undocumented people who entered the U.S. as children. People who fit the DACA requirements are subject to “deferred action,” which means that even though they are deportable, the government will not take any action to remove them. However, people who are finishing CDCR terms will not normally be eligible for deferred action because this form of relief is not available to anyone who has been convicted of a felony, a “significant misdemeanor,” or three or more misdemeanors, or to anyone who poses a threat to public safety or national security. As of May 2018, President Trump had attempted to rescind the DACA policy, but USCIS is still processing renewals for some DACA holders while the issue is being considered by the courts.

³² 8 U.S.C. § 1182(a)(9)(A). In some cases, an immigration judge has the discretion to waive removal that is based on failure to get advance permission to reenter the country. 8 U.S.C. § 1182(a)(9)(A)(ii) and (iii). This type of relief will not normally be available to people who recently were released from CDCR prisons, for whom there will almost always also be additional criminal grounds for removal. *Matter of Garcia-Linares* (BIA 1996) 21 I. & N. Dec. 254; *Matter of Ducret* (BIA 1976) 15 I. & N. Dec. 620.

13.11 Grounds for Removal: Drug Addiction or Abuse

A person is removable if they have been a “drug abuser or addict” use at any time after they were admitted to the U.S.³³ ICE does not need to prove the person was convicted of any drug-related crime. A person who is facing removal solely for drug addiction or abuse is more likely to be eligible for relief from removal (see §§ 13.17-.23) than a person who is removable because of criminal convictions.

13.12 Grounds for Removal: Criminal Convictions -- General Rules

Under the immigration laws, some types of criminal convictions are grounds for removing (deporting) a person from the U.S., even if they have been lawfully visiting in or living in the U.S. Some types of crimes have particularly serious immigration consequences because they are classified under immigration law as being aggravated felonies or crimes involving moral turpitude (CIMT); these types of crimes make it more difficult or impossible for a court to exercise discretion to grant relief from removal. This section discusses crimes that make a person removable and summarizes the rules that courts use to decide whether a crime is a removable offense, an aggravated felony, or a CIMT. §§ 13.13-13.14 provide more information about how charges are classified as aggravated felonies and CIMTs and how an aggravated felony or CIMT affects removability.

The immigration law lists general categories of crimes for which a person may be removed from the U.S.³⁴ The list of removable offenses includes some crimes that California law considers relatively minor and that might result in only misdemeanor conviction. For example, removable offenses include some controlled substance offenses (but not a first-time offense of possession of 30 grams of marijuana or less for personal use) and violating a protective order.³⁵

People may be removed based on criminal grounds while they are still challenging their convictions on direct appeal.³⁶ Likewise, filing a habeas petition or other petition challenging a conviction will not stop ICE from going ahead with removal based on the conviction.³⁷

Getting a conviction expunged or vacated a conviction for in the interests of justice or for rehabilitation or immigration hardship reasons does not eliminate the immigration law consequences of a conviction (except in regards to some first-time drug possessions prior to 2011). But if a court vacates a conviction because of a “procedural or substantive defect,” the conviction cannot serve as a

³³ 8 U.S.C. § 1227(a)(2)(B)(ii).

³⁴ 8 U.S.C. § 1227(a)(2); 8 U.S.C. § 1101(a)(43).

³⁵ 8 U.S.C. § 1227(a)(2)(B)(i) (controlled substances); 8 U.S.C. § 1227(a)(2)(E)(ii) (violating protective order).

³⁶ 8 U.S.C. § 1101(a)(48)(A); *Planes v. Holder* (9th Cir. 2011) 652 F.3d 991, 996 (conviction may be ground for removal even when appeal pending).

³⁷ *Pino v. Landon* (1955) 349 U.S. 901 [75 S.Ct. 576; 99 L.Ed. 1239]; *Morales-Alvarado v. INS* (9th Cir. 1981) 655 F.2d 172.

ground for removability.³⁸ Also, a modification or reduction of a criminal sentence retroactively governs use of that conviction for removal purposes, regardless of the court’s reason for making the change.³⁹ Chapters 14 through 16 describe general procedures for challenging criminal convictions and sentences. § 9.49 and § 13.28 discuss commutations and pardons. §§ 13.24–13.27 discuss particular ways in which a person can try to get a conviction vacated due to failure to understand the immigration consequences when they decided whether to go to trial or to plead guilty or no contest.

ICE has the burden of proving that a conviction is a removable offense, and also whether it is an aggravated felony or CIMT. Sometimes, ICE claims that people have aggravated felonies, CIMTs, or removable offenses even though their crimes do not actually meet the legal criteria for those categories. Indeed, figuring out which charges fall into which categories can be complicated because removal based on criminal grounds requires the courts to apply federal immigration law to criminal convictions under state law -- and the two sets of laws do not always directly correspond. Just knowing the name and number of the California statute under which the person was convicted and the length of their sentence does not always provide enough information to determine how the person’s conviction is classified under immigration law. Also, in some situations a person who was convicted under a particular statute might or might not be removable (and might or might not have an aggravated felony or CIMT) depending on how the charge was pled and proven. Thus, courts use a series of steps to decide whether a state law crime is a removable offense, aggravated felony, or CIMT. *Recent cases have made changes to the process for deciding whether or not a state criminal conviction is a match for the federal offense, and there are likely to be further developments in the law. Persons considering challenging the government’s classification of their convictions should seek the advice of immigration defense counsel.*

Courts start by doing a “categorical” comparison of the definition of the crime in the state statute and the definition of the removable offense, aggravated felony, and/or CIMT in the immigration law. If the immigration law refers to a federal criminal statute, the court will use the federal statute’s definition; otherwise the court will use a “generic” definition of the offense as commonly understood. The question is whether the least of the acts criminalized by the state criminal statute falls within the federal crime definition. Sentencing courts may “look only to the statutory definitions”—i.e., the elements—of a defendant’s offenses, and *not* “to the particular facts underlying those convictions.” In other words, under the categorical approach, an offense is an aggravated felony only if the full range of conduct covered by the criminal statute falls within the definition of an aggravated felony.⁴⁰ Here is an example: California Penal Code § 261.5(c) makes it a crime to have

³⁸ *Matter of Pickering* (BIA 2003) 23 I. & N. Dec. 621, 624; *Nath v. Gonzales* (9th Cir. 2006) 467 F.3d 1185; see also *Cardoso-Tlaseca v. Gonzales* (9th Cir. 2006) 460 F.3d 1102, 1107. Regarding first-time drug possession convictions, see *Nunez-Reyes v. Holder* (9th Cir. 2011) 646 F.3d 684 (guarantee of equal protection, for immigration purposes, did not require treating expunged state conviction of drug crime same as federal drug conviction expunged under Federal First Offender Act (FFOA), 18 U.S.C. § 3607(a)); but see *Villavicencio-Rojas v. Lynch* (9th Cir. 2016) 811 F.3d 1216 (*Nunez-Reyes* not retroactive, so that expungement of first-time drug possession conviction from before July 14, 2011 is excused under the FFOA).

³⁹ *In re Cota-Vargas* (BIA 2005) 23 I. & N. Dec. 849.

⁴⁰ *Descamps v. United States* (2013) 570 U.S. 254 [133 S.Ct. 2276; 186 L.Ed.2d 438] (under federal law, burglary requires that the entry to the building be without privilege or consent (in other words, by “breaking and entering”) but Penal Code § 459 does not require such an element); *Moncreiffe v. Holder* (2013) 569 U.S. 184 [133 S.Ct. 1678; 185 L.Ed.2d 727] (to be aggravated felony, crime must not be punishable as a misdemeanor under state law); *Taylor v. United States* (1990) 495 U.S. 575 [110 S.Ct. 2143; 109 L.Ed.2d 607]. Note that many of the cases on categorical comparisons and divisibility involve analysis of prior state crimes used to enhance sentences under the federal Armed Career Criminal Act (ACCA); courts use similar analyses for deciding how a state crime is classified under federal immigration law.

sexual intercourse with a minor and defines a minor as someone under the age of 18. However, the federal definition of “sexual abuse of a minor,” an aggravated felony, requires the minor to be less than 16 years old. Since the nature of a person’s conviction and not their actual conduct is what matters, California Penal Code section 261.5(c) cannot ever be a “sexual abuse of a minor” aggravated felony because the least of the acts covered by the statute (sex with a minor one day before their 18th birthday) falls outside the federal crime definition.⁴¹ Similarly, many California firearms offenses are not firearm offenses that make a person categorically removable because California law includes antique firearms in the definition of firearms, and federal law does not.⁴²

Sometimes, a state criminal statute describes several alternative ways in which a crime can be committed, some of which meet the federal immigration law criteria for being a removable offense, aggravated felony, or CIMT, and some of which do not. When such state statutes are “divisible,” courts can use a “modified categorical” analysis to decide if they fit an immigration law category. The first question is whether the statute is actually divisible. A criminal statute is divisible only if it (1) lists multiple discrete offenses as separate alternatives or defines a single offense by reference to mutually exclusive sets of “elements,” and (2) at least one (but not all) of those offenses or combinations of elements is a “categorical match” to the relevant generic federal crime. “Elements” are the “constituent parts” of a crime’s legal definition -- what the jury must find beyond a reasonable doubt to convict a person and what a person necessarily admits when they plead guilty or no contest. On the other hand, a criminal statute is not divisible if the statutory alternatives describe only “brute facts” that are various means or methods by which the offense can be committed. Facts are real-world circumstances or events that have no “legal effect [or] consequence” and that do not need to be found by a jury or admitted as part of a guilty plea.⁴³

If the state criminal statute *is* divisible, courts apply a “modified categorical” approach in which they look at the specific state criminal charges that were pled and proven and then decide if the person’s crime is a removable offense, aggravated felony, or CIMT. Under this approach, the court looks to the record of the conviction to determine whether the specific crime committed by the person meets the definition of an aggravated felony. The information that the court can consider is limited to the charging document, jury instructions and verdicts, written plea agreement, transcript of the plea hearing, sentence, and any specific findings by the trial judge to which the person agreed.⁴⁴ However, charging papers alone are never sufficient evidence to prove the nature of the conviction.⁴⁵ Moreover, statements in police reports or pre-sentence probation reports cannot be used to establish the nature of the crime (unless the person stipulates to those documents as establishing a factual basis for their guilty or no contest plea).⁴⁶

Some aggravated felony definitions are based on the existence of “non-elemental” specific circumstances (for example, whether more than a certain amount of money was taken). In those

⁴¹ *Esquivel-Santana v. Sessions* (2017) __ U.S. __ [137 S.Ct. 1562; 198 L.Ed.2d 22].

⁴² *United States v. Aguilera-Rios* (9th Cir. 2014) 769 F.3d 626.

⁴³ *Mathis v. United States* (2016) __ U.S. __ [136 S.Ct. 2243; 195 L.Ed.2d 604]; *Descamps v. United States* (2013) 570 U.S. 254, 260-264 [133 S.Ct. 2276; 186 L.Ed.2d 438]; *Matter of Chairez* (BIA 2016) 26 I. & N. Dec. 819.

⁴⁴ *Shepard v. United States* (2005) 544 U.S. 13, 26 [125 S.Ct. 1254; 161 L.Ed.2d 205]; *Matter of Short* (BIA 1989) 20 I. & N. Dec. 136, 137-138.

⁴⁵ *United States v. Corona-Sanchez* (9th Cir. 2002) 291 F.3d 1201, 1211.

⁴⁶ *Oliva-Motta v. Holder* (9th Cir. 2013) 746 F.3d 907.

situations, an immigration court may inquire into the underlying facts to determine whether there is clear and convincing evidence that such circumstances were present.⁴⁷

More in-depth overviews of how to apply these general considerations and be found in Kramer, *Immigration Consequences of Criminal Activity: A Guide to Representing Foreign-Born Defendants* (American Immigration Law Association, 7th Ed. 2017), and the Immigrant Legal Resource Center's *Quick Reference Chart for Determining Key Consequences of California Offenses* (Jan. 2016), available at www.ilrc.org/chart.

13.13 Grounds for Removal: Criminal Convictions -- Aggravated Felonies

Under immigration law, some convictions are classified as “aggravated felonies.” A person “who is convicted of an aggravated felony any time after admission [to the U.S.] is deportable.”⁴⁸ As discussed in §§ 13.17-13.23, a person who is convicted of an aggravated felony will have few possibilities for avoiding deportation, even if the person has a green card, lived in the U.S. a long time, or has close family members who are citizens.

Federal immigration law has a long list of crimes that are aggravated felonies. Many of these are identified by generic names, without defining the elements required for a state conviction to qualify as an aggravated felony. The generic aggravated felonies include murder, rape, sexual abuse of a minor, theft, receipt of stolen property, burglary, ransom, child pornography, gambling and racketeering, prostitution, fraud, deceit, failure to appear, commercial bribery and forgery, perjury, obstruction of justice, and bribery of a witness.

Some types of offenses are aggravated felonies only if the court actually sentences the person to a term in custody of at least one year: “crimes of violence,” theft and burglary, including receipt of stolen property, commercial bribery, counterfeiting, and forgery, obstruction of justice, perjury, subornation of perjury, or bribing a witness.⁴⁹ However, a conviction will no longer be an aggravated felony if the court initially imposed a term of a year or more but later reduces the sentence to under one year.⁵⁰ Also, note that California law sets the maximum sentence for all misdemeanors at less than

⁴⁷ *Nijhawan v. Holder* (2009) 557 U.S. 29, 33-38 [129 S.Ct. 2294; 174 L.Ed.2d 22] (where “non-elemental fact” of loss of more than \$10,000 is required for fraud crime to be aggravated felony, court could review evidence not allowable under a categorical or modified categorical approach such as the person’s stipulation regarding loss for sentencing purposes and the sentencing court’s restitution order); *Fuentes v. Lynch* (9th Cir. 2015) 788 F.3d 1177, 1183 (relying on presentence report to show amount involved in money laundering offense).

⁴⁸ 8 U.S.C. § 1227(a)(2)(iii). A person who is trying to determine whether a conviction is an aggravated felony should be aware that the courts and the BIA distinguish the meaning of “aggravated felony” depending on the context of the case. One line of cases deals with whether the person has been convicted of an aggravated felony for purposes of determining removability or eligibility for discretionary relief from removal, as discussed in this section. Another line of cases addresses whether a person has been convicted of an aggravated felony for purposes of enhanced penalties for the federal crime of illegal reentry (see § 13.37). The illegal reentry cases do not control the definitions of aggravated felonies for removal cases.

⁴⁹ See, e.g., 8 U.S.C. § 1101(a)(43). The portion of a sentence received for a recidivist enhancement counts toward the sentence length. *United States v. Rodriguez* (2008) 553 U.S. 377 [128 S.Ct. 1783; 170 L.Ed.2d 719]; *United States v. Rivera* (9th Cir. 2011) 658 F.3d 1073, 1076. Also, a prison or jail term imposed after a probation violation is included in the sentence. See, e.g., *United States v. Jimenez* (9th Cir. 2001) 258 F.3d 1120.

⁵⁰ *Matter of Song* (BIA 2001) 23 I. & N. Dec. 173.

a year (364 days); this law applies retroactively to convictions dating from prior to January 1, 2015 (when misdemeanors could be punished by up to a one year (365-day) jail term).⁵¹

People with California convictions should be aware that their convictions may not necessarily qualify as aggravated felonies due to differences between the federal and state definitions of various offense. Also, the list of aggravated felonies includes “crimes of violence” (any offense “that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense”), but the United States Supreme Court recently found that this provision is invalid because it is unconstitutionally vague.⁵² For example, a California crime of burglary under Penal Code § 459 used to be considered an aggravated felony in many cases, but under recent law it is not an aggravated felony because it (a) does not categorically include all the elements of the federal crime of burglary,⁵³ (b) is not divisible so that a court cannot use the modified categorical approach to consider whether the offense contains all the elements of the federal crime of attempted theft,⁵⁴ and (c) cannot lawfully be deemed a crime of violence.⁵⁵ See § 13.12 for more information on how courts conduct these analyses.

13.14 Grounds for Removal: Criminal Convictions -- Crimes Involving Moral Turpitude (CIMTs)

“Crimes involving moral turpitude” (CIMTs) is another category of convictions that have harsh consequences under immigration law. A person is removable if they have been:

- ◆ convicted of a CIMT that was committed within five years after the date they were admitted to the U.S. (or, for people who are permanent residents with “green cards,” within 10 years after the date of admission), for which a sentence of one year or longer may be imposed (regardless of whether the person actually got a lesser sentence); OR
- ◆ convicted of two or more CIMTs at “any time after admission. . . not arising out of a single scheme of criminal misconduct,” regardless of the sentences or whether the charges were brought in a single case.⁵⁶

CIMTs also may limit the availability of discretionary relief from removal (see §§ 13.17-13.23).

The immigration statutes do not define what convictions are classified as CIMTs. Although the U.S. Supreme Court has held that the phrase CIMT is not unconstitutionally vague,⁵⁷ courts struggle with interpreting the term in a way that sets meaningful standards and courts sometimes

⁵¹ Penal Code § 18.5.

⁵² *Sessions v. Dimaya* (2018) __ U.S. __ [138 S. Ct. 1204; 200 L.Ed.2d 549]; 8 U.S.C. § 1101(a)(43)(F); 18 U.S.C. § 16.

⁵³ *Descamps v. United States* (2013) 570 U.S. 254 [133 S.Ct. 2276; 186 L.Ed.2d 438].

⁵⁴ *Rendon v. Holder* (9th Cir. 2014) 764 F.3d.1077.

⁵⁵ *Sessions v. Dimaya* (2018) __ U.S. __ [138 S. Ct. 1204; 200 L.Ed.2d 549].

⁵⁶ 8 U.S.C. § 1227(a)(2)(A). The maximum penalty for California misdemeanors is less than a year (364 days); this law is retroactive. Penal Code § 18.5. Immigration officials may use a prior conviction that existed but was not brought up during a previous immigration proceeding to show that a person has two convictions for crimes of moral turpitude. *Poblete Mendoza v. Holder* (9th Cir. 2010) 606 F.3d 1137, 1140-1141.

⁵⁷ *Jordan v. De George* (1951) 341 U.S. 223 [71 S.Ct. 73; 95 L.Ed. 886].

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disagree about which crimes are CIMTs.⁵⁸ Moral turpitude refers generally to conduct which is “inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.”⁵⁹ In practice, the two main varieties of CIMTs are those involving fraud and those involving “depraved” or “reprehensible” acts. Most CIMTs are offenses that includes an element of fraud or larceny, or of aggravated assault due to arming with a weapon, serious injury, or the victim’s vulnerable status.⁶⁰ There is extensive federal administrative and judicial case law interpreting and applying the term CIMT. See § 13.12 for additional information on how courts analyze whether a state crime fits into federal immigration categories.

DEFENSES TO REMOVAL AND RELIEF FROM REMOVAL

13.15 Citizenship: Forms of Citizenship

United States citizens cannot be removed from the U.S. This means that U.S. citizenship is a complete defense to removal proceedings.⁶¹ The following sections summarize ways in which a person may be a citizen.

Citizenship may be acquired in the following ways:

Birth in the USA. All people born in the U.S. are citizens. People born after specific dates in U.S. territories are also full citizens.⁶² However, people born in U.S. territories, including American Samoa and Swains Island, are noncitizen nationals rather than citizens.⁶³

Descent from Citizen Parent. A person who was born outside of the U.S.⁶⁴ can sometimes automatically be a U.S. citizen based on the U.S. citizenship of one or both of their parents. A person is a citizen under any of the following circumstances:

⁵⁸ See, e.g., *Arias v. Holder* (7th Cir. 2016) 834 F.3d 823.

⁵⁹ *In re Ajami* (BIA 1999) 22 I. & N. Dec. 949, 950.

⁶⁰ See, e.g., *Jordan v. De George* (1951) 341 U.S. 223 [71 S.Ct. 73; 95 L.Ed. 886] (fraud or larceny); *Matter of Short* (BIA 1989) 20 I. & N. Dec. 136 (aggravated assault).

⁶¹ *Trop v. Dulles* (1957) 356 U.S. 86 [78 S.Ct. 590; 2 L.Ed.2d 630]. If a person claiming to be a citizen is subject to removal proceedings, they may request that the U.S.C.IS cancel the notice to appear or move to terminate the proceedings. 8 C.F.R. § 239(a)(1), (f).

⁶² United States citizenship extends to persons born in the 50 states. It also extends to those born in Puerto Rico on or after January 13, 1941; persons born in the Virgin Islands on or after February 25, 1927; persons born on Guam on or after August 1, 1950; and persons who are residents of the Northern Marianas Islands as of November 4, 1986.

⁶³ Persons born in the Panama Canal Zone between February 26, 1904 and September 27, 1977, and in the Philippine Islands between April 11, 1899 and July 4, 1946 and inhabitants of the Trust Territories (Micronesia, Marshall Islands and Palau) are also noncitizen nationals. 8 U.S.C. § 1101(a)(22).

⁶⁴ For purposes of 8 U.S.C. § 1401, the “United States” means the 50 states and the outlying U.S. territories. Note that some types of military or civilian service abroad may count toward parental residency requirements.

- ◆ The person has two U.S. citizen parents, at least one of whom resided in the U.S. sometime in their life before the person's birth;⁶⁵ or
- ◆ The person has one U.S. national parent and one U.S. citizen parent who has been physically present in the U.S. for a continuous period of at least one year before the person's birth;⁶⁶ or,
- ◆ The person has one noncitizen parent and one U.S. citizen parent who has been physically present in the U.S. for a continuous period of five years before the person's birth (two years of which were after the parent turned age 14);⁶⁷ or,
- ◆ At some time on or after February 27, 2001, while the person was under age 18, the person had one noncitizen parent and one U.S. citizen parent and person was a lawful permanent resident residing in the U.S. in the custody of the U.S. citizen parent;⁶⁸ or,
- ◆ The person was born out of wedlock to a U.S. citizen mother who previously resided for some period of time in the U.S. For a person born after December 24, 1952, the citizen mother has resided for one continuous year in the U.S.;⁶⁹ or,
- ◆ The person was born out of wedlock to a U.S. citizen father and noncitizen mother, if the person can show: (1) a blood relationship with the father by clear and convincing evidence; (2) the father was a U.S. citizen at the time of the person's birth; (3) if the person is still a minor, the father's written agreement to provide financial support for the person until the person's 18th birthday (unless the father is deceased); and (4) for a person who was not yet 18 years old on or before November 14, 1986, that the person was declared legitimate under the laws of the person's residence country before the person turned 18 years old, or the father acknowledges paternity under oath, or the paternity of the person is established by a court;⁷⁰ or,
- ◆ The person was born out of wedlock to a U.S. citizen father and noncitizen mother, and the father served in the U.S. armed forces during World War II and resided in the U.S. at least 10 years (of which at least five were after the father was age of 12).⁷¹

⁶⁵ 8 U.S.C. § 1401(c). For a person born between January 13, 1941 and December 23, 1952, a citizen parent must have resided in the U.S. for 10 years at some time prior to the person's birth (at least five years of which must have been after the parent was more than 16 years old). For a person born after December 24, 1952 and before November 14, 1986, a citizen parent must have resided in the U.S. for 10 years sometime prior to the person's birth (at least five of which must have been after the parent was 14 years old). The law also used to say that a person born before October 10, 1978 must also have resided in the U.S. for specified periods, but this law was eliminated in 1994. A person who previously lost citizenship because of failure to meet a physical presence requirement before October 10, 1978 may regain citizenship by taking an oath of allegiance without refile for naturalization. 8 U.S.C. § 1435(d)(1).

⁶⁶ 8 U.S.C. § 1401(d).

⁶⁷ 8 U.S.C. § 1401(g).

⁶⁸ 8 U.S.C. § 1431.

⁶⁹ 8 U.S.C. § 1409(c).

⁷⁰ 8 U.S.C. § 1409(b).

⁷¹ Former 8 U.S.C. § 601(i); *Y.T. v. Bell* (W.D. Pa. 1979) 478 F.Supp. 828.

Derivative Citizenship from Naturalized Parent. A person who was born outside of the U.S. is a U.S. citizen in some circumstances where one or both parents became a naturalized citizen while the person was still a minor (see below for more information about naturalization). The laws have changed over the years and the specific law that applies is usually the version that was in effect at the time the critical events giving rise to eligibility occurred.⁷² Under these rules, some circumstances in which a person gets derivative citizenship are:

- ◆ On or after February 27, 2001, before the person turned 18 years old, one parent became a naturalized U.S. citizen, and at the time of the parent's naturalization the person was a lawful permanent resident in the U.S. in the custody of that parent; similar (but somewhat different) provisions apply to people who turned 18 at various times prior to that date.⁷³
- ◆ Prior to October 30, 2000, while the person was under age 18, two parents became naturalized U.S. citizens (or one parent became a citizen and the other parent was deceased, or one parent with custody of the child became a citizen and the parents were separated, or the mother became a citizen if the child was born out of wedlock and paternity was not established), and the person was in the U.S. as a permanent resident (green card) at the time the parent(s) became citizens or the person began to reside permanently in the U.S. after the parent became a citizen and while still under age 18.⁷⁴

Service in the Armed Forces. A person who is a lawful permanent resident may apply for U.S. citizenship if they have served honorably in the armed services for a total of three years. The person may file a petition for citizenship even if a removal proceeding is pending against them. Evidence of honorable service is acceptable as evidence of good moral character. If the service was not continuous, the normal naturalization requirements during the previous five-year period must be proven.⁷⁵

Naturalization. A person may apply to become a U.S. citizen by the process of "naturalization." Most people who are in prison will not be able to become naturalized U.S. citizens because they will not be able to meet the good moral character requirement (see discussion of good moral character at § 13.17).⁷⁶ However, some people who are in prison may have gone through the process of becoming naturalized citizens prior to their imprisonment.

⁷² *Minaryan v. Gonzales* (9th Cir. 2005) 401 F.3d 1069, 1075 (derivative citizenship is determined under law in effect at time of the events giving rise to eligibility). This type of citizenship is automatic, so a criminal record does not affect a person's right to claim derivative citizenship. *Zartarian v. Billings* (1907) 204 U.S. 170 [27 S.Ct. 182; 51 L. Ed. 428]; *Matter of Fuentes-Martinez* (BIA 1997) 21 I. & N. Dec. 893.

⁷³ 8 U.S.C. § 1431; see also *Matter of Fuentes-Martinez* (BIA 1997) 21 I. & N. Dec. 893; *Hughes v. Ashcroft* (9th Cir. 2001) 255 F.3d 752, 755. (8 U.S.C. § 1431 granted automatic citizenship only to those children who were under the age of 18, and who met the other criteria, on February 27, 2001).

⁷⁴ Former 8 U.S.C. § 1432 (repealed in 2000); Where the court does not award custody to one parent or the other, ICE will presume that the parent with actual custody has legal custody. *Matter of M-* (BIA 1950) 3 I. & N. Dec. 850.

⁷⁵ 8 U.S.C. § 328.

⁷⁶ See 8 U.S.C. § 1427.

13.16 Citizenship: Obtaining Proof of Citizenship

A person who is a U.S. citizen (by any of the forms of citizenship described above) may get documents proving their U.S. citizenship by applying for a Certificate of Citizenship⁷⁷ from the U.S. Citizen and Immigration Services (USCIS) or for a United States Passport through the post office.⁷⁸

Each of these options has pros and cons. A passport application can be resolved in about three to four months, but as of spring 2018, a USCIS Certificate of Citizenship process can take up to a year and a half.⁷⁹ On the other hand, that in a marginal case, an applicant for a passport will have a greater chance of being denied improperly; this is because the USCIS will conduct a personal interview for a Certificate of Citizenship application but the Department of State will not conduct a personal interview for a passport application.

To apply for a Certificate of Citizenship, a person must file a N-600 form at a USCIS field office (attached as Appendix 13-A). The form and information about filing fees and procedures are available on the USCIS website at www.uscis.gov. If the application for a Certificate of Citizenship is denied, the person may file an appeal with the field office administrative appeals unit within 15 days of the denial. After the administrative appeals is exhausted, the person can ask a federal district court to review the denial of the citizenship claim.⁸⁰

To apply for a Passport, a person must file State Department Form DS-11 (attached as Appendix 13-B). Application forms and information are at www.travel.state.gov/content/travel.html. Many post offices and some other government offices also can provide forms and accept passport applications. In passport cases (except in the case of expatriation or loss of nationality), there is no administrative appeal.⁸¹

Inquiries regarding passport records may be made to the Passport Office, Department of State, Washington D.C., 20520. Information from USCIS records can be requested on USCIS Form G-639 (attached as Appendix 13-C).

13.17 Relief from Removal: General Rules

Even if there are grounds for removing a person from the U.S., in some cases the immigration judge (IJ) may have the authority to let the person remain in the U.S. anyway. There are several types of “relief from removal,” and each type has its own eligibility criteria; most types can be granted or denied at the discretion of the IJ, but some types are mandatory if the person meets the eligibility criteria. Although criminal convictions may make a person ineligible for some types of relief; a few types of relief are available even to people who have been convicted of aggravated felonies or CIMTs. However, a person who has a conviction that is deemed by immigration officials to be a “violent or

⁷⁷ 8 U.S.C. § 1433.

⁷⁸ A United States passport, when issued for the maximum period, becomes a *prima facie* citizenship document. 22 U.S.C. § 2705.

⁷⁹ Local USCIS offices can provide estimated processing times for a certificate of citizenship. Processing time may be accelerated if the N-600 Form is presented, in lieu of proof of citizenship, with a petition for an immigration benefit.

⁸⁰ 28 U.S.C. § 2201.

⁸¹ 8 U.S.C. § 1481; 22 C.F.R. § 7.5(b).

dangerous crime” will be granted discretionary relief from removal only in extraordinary circumstances.⁸² Also, any person who has previously been ordered removed from the U.S. is not eligible for discretionary relief from removal.⁸³

A person who wants to apply for relief should always submit a written request for a standard removal hearing (see § 13.33); they will not be able to apply for most types of relief if their cases go through the expedited removal process (see § 13.32). To request relief, the person usually must fill out a specific ICE form and present it to the IJ before the IJ makes a final order of removal. The person has the burden of showing eligibility and convincing the judge that they deserve the relief.⁸⁴ Favorable factors may include such things as long-time residence in the U.S., a good work history, good deeds in the community, and strong family ties in the U.S.

A person’s own testimony may be sufficient by itself to meet the burden of proof for relief from removal, but only if it is credible, persuasive, and fact-specific. The IJ makes a credibility determination based on the totality of the circumstances, including certain specified factors. If the IJ requests corroborating evidence, the person must provide it unless they do not have the evidence and cannot reasonably obtain it.⁸⁵

There are some general factors that are likely to affect whether a person is eligible for many types of discretionary relief:

- ◆ **Good Moral Character (GMC) Requirement:** Many forms of discretionary relief require a person to show that they have been of good moral character (GMC) for a certain period of time prior to their request for relief from removal. To establish GMC for a time period, the person must not have: (1) been confined for 180 days in a prison, jail, or other penal institution as a result of a conviction; (2) been convicted of an aggravated felony any time after November 29, 1990; (3) committed a CIMT (except for a single misdemeanor offense); (3) committed a controlled substance offense (except a single offense of possession of 30 grams or less of marijuana); (4) been convicted of two or more offenses for which the aggregate jail or prison sentence was five years or more; (5) been convicted of two or more gambling offenses; (6) derived their principal income from illegal gambling; or (7) given false testimony for purposes of obtaining immigration benefits.⁸⁶ For the purpose the GMC requirement, a period of pre-trial detention that is credited toward a criminal sentence counts in determining whether a person has been

⁸² *Torres-Valdivias v. Lynch* (9th Cir. 2015) 786 F.3d 1147 (categorical approach does not apply to determination that crime is “violent or dangerous”); *Matter of Jean* (U.S. Atty Gen. 2002) 23 I. & N. Dec. 373.

⁸³ 8 U.S.C. § 1231(a)(5); see also *Fernandez-Vargas v. Gonzales* (2006) 548 U.S. 30 [126 S.Ct. 2422; 165 L.Ed.2d 323]; *Matter of Jean* (BIA 2002) 23 I. & N. Dec. 373.

⁸⁴ 8 C.F.R. § 1240.8(d).

⁸⁵ 8 U.S.C. § 1158(b)(1)(B)(ii)-(iii) (asylum); see also 8 U.S.C. § 1318; U.S.C. § 1231(b)(3)(C); 8 U.S.C. § 1229a(c)(4)(B) (applying burden of proof and credibility provisions to claims for withholding and other relief from removal); see also *Aden v. Holder* (9th Cir. 2009) 589 F.3d 1040, 1044. Higher courts will uphold an IJ’s determinations regarding credibility and eligibility if those determinations are supported by substantial evidence. See *Kin v. Holder* (9th Cir. 2010) 595 F.3d 1050, 1054; *Shrestha v. Holder* (9th Cir. 2010) 590 F.3d 1034, 1039-1045; *Malkandi v. Holder* (9th Cir. 2009) 576 F.3d 906, 914-917.

⁸⁶ 8 U.S.C. § 1101(f). See also *Matter of Reyes* (BIA 1994) 20 I. & N. Dec. 789; 8 C.F.R. § 316.10. An aggravated felony conviction before November 29, 1990, does not necessarily bar a person from establishing GMC, unless the conviction was for murder. *Matter of Reyes* (BIA 1994) 20 I. & N. Dec. 789; 8 C.F.R. § 316.10.

confined to a penal institution for 180 days or more.⁸⁷ Under these criteria, almost no one who is going to removal proceedings directly after CDCR custody will be able to demonstrate GMC when their removal case is considered at the end of their prison term; thus, this chapter does not discuss forms of discretionary relief that require a showing of GMC.

- ◆ **No Aggravated Felony Conviction Requirement:** Some forms of relief will not be available if the person has ever been convicted of an aggravated felony.
- ◆ **Admissibility Requirement:** To be eligible for some forms of relief, a person must demonstrate admissibility, meaning that they are qualified for legal entry into the U.S. Criminal grounds for inadmissibility include conviction of a felony CIMT, a controlled substance charge, or any combination of charges which resulted in an aggregate sentence of five or more years. A person may also be inadmissible if they engaged in prostitution, commercial vice, or alien smuggling, or if they have a communicable disease, a drug addiction, or a mental or physical disorder which may pose a threat to the safety of the alien or others.⁸⁸

As with criminal grounds for removal and the definitions of aggravated felonies and CIMTs, the offenses in the laws that authorize relief from removability do not necessarily correspond exactly with California definitions of crimes. See § 13.12 for more information on how courts decide whether a crime defined by state law matches a crime defined by federal immigration law.

§§ 13.18–13.23 discuss types of relief that may be available to at least some people who have just finished serving their CDCR terms.

13.18 Voluntary Departure Prior to a Removal Order

A person who believes they are likely to be ordered removed from the U.S. may consider requesting voluntary departure prior to the removal hearing. If voluntary departure is granted, the person may be in a better position to get lawfully admitted to the U.S. in the future.⁸⁹ Also, if a person is granted pre-hearing voluntary departure and later reenters the U.S. illegally, they cannot be convicted of a crime of illegally reentering the U.S. (see § 13.37). In addition, under voluntary departure, a person will be able to go to any country that will permit them to enter, rather than being forced to go to their country of nationality.

⁸⁷ *Arreguin-Moreno v. Mukasey* (9th Cir. 2008) 511 F.3d 1229, 1233.

⁸⁸ 8 U.S.C. § 1182 sets forth grounds for inadmissibility.

⁸⁹ A person who has been ordered removed may not enter the U.S. for a period of time after the removal unless they get special permission from immigration authorities. Depending on the reason for removal, the bar can be for five, 10, or 20 years, or permanently. 8 U.S.C. § 1182(a)(9)(A). But see 8 U.S.C. § 1182(a)(9)(B) (time bars on admission to U.S. for people who were present unlawfully in the U.S. and then voluntarily departed).

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If ICE alleges that the person has committed an aggravated felony or been involved in terrorist activities, the person will not be eligible for pre-hearing voluntary departure.⁹⁰ Also, some people cannot get voluntary departure if they have been granted such relief previously.⁹¹

If a person is eligible, they may ask ICE to agree to voluntary departure at any time or ask the IJ to order voluntary departure before or on the date of the master calendar hearing.⁹² Pre-hearing voluntary departure is at the discretion of ICE or the IJ, and a person cannot appeal if their request is denied.⁹³

When a person accepts voluntary departure, they give up the right to pursue any claims for relief from removal that might otherwise allow them to stay in the U.S.⁹⁴

The actual departure must occur within 120 days of the agreement.⁹⁵

An order permitting voluntary departure should inform the person of the penalties for failing to depart (a civil fine and ineligibility for certain forms of immigration relief for 10 years).⁹⁶ Failure to depart is not “voluntary” if the person through no fault of their own was unaware of the grant of voluntary departure or was not physically able to depart within the time granted; however, neither exceptional hardship nor lack of funds are sufficient to show that failure to depart was involuntary.⁹⁷

⁹⁰ 8 U.S.C. § 1229c(a)(1); *Matter of Arguillas* (BIA 1999) Int. Dec. 3399.

⁹¹ 8 U.S.C. § 1229c(c).

⁹² 8 U.S.C. § 1229c(a); 8 C.F.R. § 240.25; 8 C.F.R. § 240.26. There is also a provision for people to apply for voluntary departure after the removal hearing, but this type of relief will not normally be available to people who have just finished CDCR terms because it requires a showing of GMC (see § 13.17). 8 U.S.C. § 1229c(b).

⁹³ 8 C.F.R. § 240.25(e).

⁹⁴ *Gutierrez v. Mukasey* (9th Cir. 2008) 521 F.3d 1114, 1118; see also *Landin-Zavala v. Gonzales* (9th Cir. 2007) 488 F.3d 1150, 1153; 8 C.F.R. § 1240.26(b)(1)(i)(B).

⁹⁵ 8 U.S.C. § 1229c(a)(2)(A). If the last day of the voluntary departure period falls on a weekend or holiday, a motion that would either toll, automatically withdraw, or otherwise affect the request for voluntary departure is timely if filed on the next business day. If the last day of the voluntary departure period falls on a weekend or holiday, a motion that would either toll, automatically withdraw, or otherwise affect the request for voluntary departure is timely if filed on the next business day. *Meza-Vallejos v. Holder* (9th Cir. 2012) 669 F.3d 920, 927.

⁹⁶ 8 U.S.C. § 1229c(d)(1), (3); 8 C.F.R. § 1240.26(a), (j). But see 8 U.S.C. § 1229c(d)(2) (certain penalties for failure to depart do not apply to applicants for protection under Violence Against Women Act if extreme cruelty or battery was a central reason for overstay of voluntary departure period). Also, the civil penalties do not apply in cases where an immigration judge granted voluntary departure prior to January 20, 2009 and the person failed to timely post a departure bond. *Matter of Velasco* (BIA 2009) 25 I. & N. Dec. 143.

⁹⁷ *Matter of Zmijevska* (BIA 2007) 24 I. & N. Dec. 87; *Singh v. Holder* (9th Cir. 2011) 658 F.3d 879, 887 (failure to depart was not “voluntary” when non-citizen was not aware of order of voluntary departure due to ineffective assistance of counsel).

An IJ may order that a person be held in detention until departure.⁹⁸ Also, the Field Office Director may hold a person in custody until bond is posted.⁹⁹ The person is still obligated to depart within the time set by the IJ even if the person is held in detention.¹⁰⁰

13.19 Waiver of Removal: INA § 212(h)

A law known as INA § 212(h) authorizes an immigration judge (IJ) to waive removability and let the person remain in the country (and also authorizes immigration officials to waive inadmissibility). A person who is asking for waiver of removal must show statutory eligibility and also must convince the IJ to exercise discretion to grant the waiver.

The waiver is authorized in the following circumstances:

- ◆ A person was convicted of a CIMT, a first-time possession of 30 grams or less of marijuana for personal use, or multiple crimes with an aggregate sentence of five years or more and the person is a spouse, parent, or child of a U.S. citizen or lawful permanent resident and removal would cause an extreme hardship to the U.S. citizen or permanent resident spouse, parent, or child; or
- ◆ A person was convicted of prostitution or commercial vice and the offense was committed more than 15 years previously and the person can show they are rehabilitated and a waiver would not be affect national security, safety, and welfare.¹⁰¹

However, there are limits on eligibility for a waiver:

- ◆ A lawful permanent resident is eligible for a waiver only if the person (1) has not been convicted of any aggravated felony since the date they were admitted to the U.S. and (2) has lawfully resided continuously in the U.S. for at least seven years before removal proceedings started.¹⁰²
- ◆ Waiver is never available, regardless of the person's immigration status, for some convictions including murder, torture, and conspiracy to commit murder or torture.¹⁰³

⁹⁸ *Matter of M-A-S-* (BIA 2009) 24 I. & N. Dec. 762.

⁹⁹ 8 C.F.R. § 1240.26(c)(4).

¹⁰⁰ *Matter of Zmijewska* (BIA 2007) 24 I. & N. Dec. 87.

¹⁰¹ 8 U.S.C. § 1182(h); see also, e.g., *United States v. Becerril-Lopez* (9th Cir. 2008) 541 F.3d 881, 886 (person failed to meet the standard of “extreme hardship” – i.e., that the consequences of his removal would go beyond the degree of hardship that typically results from deportation). Technically, § 212(h), and former § 212(c) involve only relief from inadmissibility. However, the authority to grant relief from exclusion or inadmissibility has been interpreted to carry with it a similar authority to grant relief from deportation. This can in rare cases result in disparities in how such relief applies to people hoping to avoid removal. For example, there is no authority to grant relief from removal when the conviction that is the basis for removability does not correspond to a conviction that is a basis for inadmissibility. *Abebe v. Gonzales* (9th Cir. 2007) 493 F.3d 1092.

¹⁰² 8 U.S.C. § 1182(h)(1)(b); *Matter of Yeung* (BIA 1996) 21 I. & N. Dec. 610; *Matter of Pineda-Castellanos* (BIA 1997) 21 I. & N. Dec. 1017; and *Matter of Ayala-Arevalo* (BIA 1998) Int. Dec. 3371. These additional requirements have been held not to violate equal protection principles. *Taniguchi v. Schultz* (9th Cir. 2002) 303 F.3d 950, 958.

¹⁰³ 8 U.S.C. § 1182(h).

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Waiver also is not available for anyone who has a controlled substance offense other than a one-time possession of 30 grams or less of marijuana for personal use.¹⁰⁴

- ◆ A person who has committed a “violent or dangerous” crime must show “extraordinary circumstances” such as “exceptional and extremely unusual hardship.”¹⁰⁵

13.20 Waiver of Removal: Former INA § 212(c)

In the past, some people who were removable on criminal grounds could apply for waiver of removal under another law, former INA § 212(c).¹⁰⁶ In the 1990s, Congress restricted and then eliminated the waiver. However, the relief is still available to people whose criminal convictions (whether by trial or guilty or no contest plea) date from time periods before the waiver was repealed. To qualify, a person:

- ◆ a person must be a lawful permanent resident who can demonstrate “lawful unrelinquished residence of seven consecutive years,” and must not a national security threat, and;
- ◆ if the person was convicted between November 29, 1990 and April 23, 1996, the conviction must not have been one or more aggravated felonies with an aggregate sentence of five years or more OR if the person was convicted on or after April 24, 1996 but before April 1, 1997 their conviction must not be an aggravated felony, controlled substance offense, some types of firearms convictions, or two or more CIMTs (if the CIMTs were committed within five years of entry and there was a sentence of one year or longer).¹⁰⁷

13.21 Cancellation of Removal

Another form of relief is cancellation of removal under INA § 240A(b).

A person who has been a lawful permanent resident for five years is eligible for cancellation of removal if they (1) have resided continuously in the U.S. for at least the previous seven years *and*

¹⁰⁴ 8 U.S.C. § 1182(h); *Sum v. Holder* (9th Cir.2010) 602 F.3d 1092, 1094; *Perez-Mejia v. Holder* (9th Cir 2011) 663 F.3d 403, 418-419.

¹⁰⁵ 8 C.F.R. § 1212.7(d); *Rivera-Peraza v. Holder* (9th Cir. 2012) 684 F.3d 906, 910-911; see also *Mejia v. Gonzales* (9th Cir. 2007) 499 F.3d 991.

¹⁰⁶ Former 8 U.S.C. § 1182(c).

¹⁰⁷ Former 8 U.S.C. § 1182(c); *Vartelas v. Holder* (2012) 566 U.S. 257 [132 S.Ct.1479; 182 L.Ed.2d 473] (changes to relief eligibility not retroactive); *Judulang v. Holder* (2011) 565 U.S. 42 [132 S.Ct. 476, 477; 181 L.Ed.2d 449] (striking down BIA’s former method of deciding eligibility); *INS v. St. Cyr* (2001) 533 U.S 289, 326 [121 S.Ct. 2271; 150 L.Ed.2d 347]; *Matter of Abdelghany* (BIA 2014) 26 I. & N. Dec 254; *Magana-Pizano v. INS (II)* (9th Cir. 1999) 200 F.3d 603, 610–14; see also *Armendariz-Montoya v. Sonchik* (9th Cir. 2002) 291 F.3d 1116; *Toia v. Fasano* (9th Cir. 2003) 334 F.3d 917.; *Cardenas-Delgado v. Holder* (9th Cir. 2013) 720 F.3d 1111, 1119; *Peng v. Holder* (9th Cir. 2012) 673 F.3d 1248, 1258-1259.

(2) have not ever been convicted of an aggravated felony.¹⁰⁸ Cancellation of removal is not available if the person has previously gotten § 240A(b) cancellation of removal or § 212(c) waiver of removal.¹⁰⁹ The person bears the burden of demonstrating eligibility for cancellation of removal. Thus, the person must show conclusively that prior convictions do not make them ineligible for cancellation of removal.¹¹⁰

If a person is eligible, the IJ will consider adverse and favorable factors to decide whether to exercise discretion to grant relief.¹¹¹

For purposes of cancellation of removal, a period of “continuous residence” ends either when ICE serves the person with a notice to appear or the person commits an offense that makes them inadmissible or removable, whichever occurs first.¹¹² However, there is an exception; continuous residence is not interrupted if the crime is a “petty offense,” for which the maximum possible sentence was not more than one year in custody and the person was not actually sentenced to a term of more than six months.¹¹³

13.22 Relief Because of Fear of Persecution

This section describes forms of relief for people who fear persecution if they are deported back to their country of nationality.

Asylum

A person may apply for asylum if they have a well-founded fear that they would be persecuted on account of their race, nationality, religion, political opinion, or membership in a social group if they

¹⁰⁸ 8 U.S.C. § 1229b(d)(1); *Holder v. Martinez Gutierrez* (2012) 566 U.S. 583 [132 S.Ct. 2011; 182 L.Ed.2d 922] (parent’s time of residence and/or lawful permanent resident status does not count toward their minor child meeting requirements). There is cancellation of removal for people who are not lawful permanent residents, but people finishing CDCR terms will rarely be eligible because this relief requires a showing of GMC. 8 U.S.C. § 1229b(b).

¹⁰⁹ 8 U.S.C. § 1229b(a); see also 8 U.S.C. § 1229a(b)(7); 8 U.S.C. § 1229b(c)(6); 8 U.S.C. § 1229c(b); 8 U.S.C. § 1229c(d); 8 U.S.C. § 1231(a)(5).

¹¹⁰ *Young v. Holder* (9th Cir. 2012) 697 F.3d 976, 988-989 abrogated in part by *Moncrieffe v. Holder* (2013) 569 U.S. 184 [133 S.Ct. 1678; 185 L.Ed.2d 727].

¹¹¹ Adverse factors include the nature of the deportation grounds, the presence of significant violations of immigration laws, the nature, recency, and seriousness of any criminal record, and other evidence of bad character. Favorable considerations include family ties within the U.S., long-time residence in the U.S. (particularly when residence began at a young age), hardship to the person and their family if deportation occurs, service in the U.S. armed forces, history of employment, property or business ties, and other evidence of good character. *Matter of Marin* (BIA 1978) 16 I. & N. Dec. 581, 584–85; see *Matter of C-V-T* (BIA 1998) Int. Dec. 3342, p. 6 (approving the *Marin* factors for cancellation of removal); *Gonzalez v. INS* (6th Cir. 1993) 996 F.2d 804, 810–11; *Yepes-Prado v. INS* (9th Cir. 1993) 10 F.3d 1363, 1371 (discussing drugs harmful effects without addressing nature of person’s conviction is abuse of discretion); *Georgin v. INS* (9th Cir. 1996) 90 F.3d 374 (reversing decision for failure to address factors related to rehabilitation).

¹¹² 8 U.S.C. § 1229b(d)(1). This rule does not apply retroactively to people who pled guilty to a charge before April 1, 1997. Otherwise, the provision does apply to a person convicted of an offense that occurred before that date. *Sinotes-Cruz v. Gonzalez* (9th Cir. 2006) 468 F.3d 1190; *Valencia-Alvarez v. Gonzalez* (9th Cir. 2006) 469 F.3d 1319. Also, the period of continuous residence requirement cannot be fulfilled by imputing a parent’s years of residence to a minor child. *Holder v. Martinez Gutierrez* (2012) 566 U.S. 583 [132 S.Ct. 2011; 182 L. Ed.2d 922]; *Sanyers v. Holder* (9th Cir. 2012) 684 F.3d 911, 912.

¹¹³ 8 U.S.C. § 1182(a)(2)(A)(ii)(II); *Castillo-Cruz v. Holder* (9th Cir. 2009) 581 F.3d 1154, 1162.

are returned to their home country. The person must show that race, religion, nationality, membership in a particular social group, or political opinion “was or will be at least one central reason” for persecuting them.¹¹⁴ Evidence of actual past persecution supports a presumption of future persecution, but the presumption may be rebutted if the government establishes that conditions have changed so that the person no longer has a “well-founded fear” of persecution or could reasonably relocate inside their home country to avoid persecution.¹¹⁵

Normally, a person must apply for asylum within one year of being admitted to the U.S. and there must not be any other safe country to which they can be sent.¹¹⁶ The exceptions to the one year restriction are: (1) changed circumstances -- the person now fears persecution for a reason which did not exist when they were first admitted to the U.S. or (2) extraordinary circumstances -- some extraordinary reason why the person waited so long before filing the application, such as a serious illness or mental or physical disability, being an unaccompanied minor, or ineffective assistance of counsel.¹¹⁷

A person is not eligible for political asylum they have been convicted of a “particularly serious crime or if they themselves engaged in persecution” All aggravated felonies are particularly serious crimes; some other convictions also qualify on a case-by-case basis considering the seriousness, nature, circumstances, and underlying facts, and whether these factors indicate that the person will be a danger to the community.¹¹⁸

Withholding of Removal

Withholding of removal is similar to asylum, but there are several important differences that could make it possible for a person to get withholding of removal even if they can’t get asylum.

To get withholding of removal, a person must show that their life or freedom would be threatened in their home country because of their race, religion, nationality, membership in a particular social group, or political opinion.¹¹⁹ However, these factors just need to be “a reason” for the threat to life or freedom, not necessarily a “central” reason.¹²⁰

¹¹⁴ 8 U.S.C. § 1158(b)(1)(B)(i); A circumstance is a “central reason” if the persecutor would not have harmed the person if the circumstance did not exist or if the circumstance by itself would have led the persecutor to harm the person. When persecution is for more than one central reason, a person need not prove which reason is dominant. *Parussimova v. Mukasey* (9th Cir. 2009) 555 F.3d 734, 740-741. For applications filed before May 11, 2005, the persecution must merely be “on account of” one or more of the listed grounds. See, e.g. *Sinha v. Holder* (9th Cir. 2009) 564 F.3d 1015, 1021; *Silaya v. Mukasey* (9th Cir. 2008) 524 F.3d 1066, 1070.

¹¹⁵ 8 C.F.R. § 1208.13(b)(1); *Silaya v. Mukasey* (9th Cir. 2008) 524 F.3d 1066, 1072–73.

¹¹⁶ 8 U.S.C. § 1158(a)(2)(B), (D).

¹¹⁷ 8 C.F.R. § 1208.4(a)(2)(ii). For criteria for ineffective assistance of counsel, see *Matter of Lozada* (BIA 1988) 19 I. & N. Dec. 637.

¹¹⁸ 8 U.S.C. § 1158(b)(2)(A)(ii), (B)(i); *Matter of S-S-* (BIA 1999) 21 I. & N. Dec. 900; *Matter of Frentescu* (BIA 1982) 18 I. & N. Dec. 244; *Mabini v. INS* (9th Cir. 1986) 779 F.2d 1419. Expungement of a conviction arguably eliminates a conviction for the purposes of determining eligibility for asylum (and Convention Against Torture (CAT) relief) because the law states that the bar applies to a person convicted by a “final judgment” of particularly serious crimes. See 8 U.S.C. § 1231(b)(3)(B)(ii) and 8 U.S.C. § 1158(b)(2)(A)(ii).

¹¹⁹ 8 U.S.C. § 1231(b)(3)(A).

¹²⁰ *Barajas-Romero v. Lynch* (9th Cir. 2017) 846 F.3d 351.

The laws states that a person cannot get withholding of removal if they have a conviction for a “particularly serious crime,” and defines this as one or more aggravated felonies for which the person has been sentenced to an aggregate prison term of five years or more. However, IJs have the power to decide on a case-by-case basis that any particular crime is particularly serious regardless of the length of the sentence. They also can deny withholding if there are reasonable grounds to believe that a person is a danger to the security of the United States, committed a serious non-political crime outside the U.S., or was involved in persecuting others.¹²¹

Withholding of removal is a mandatory remedy, which means the judge must grant relief if the person is eligible. This form of relief does not necessarily entitle a person to stay in the U.S if they could be deported to a country other than the country where they suffered or fear persecution. However, in most cases, people who are granted withholding of removal are released in the U.S.

Deferral of Removal Under the Convention Against Torture (CAT)

Some people can rely on the international Convention Against Torture (CAT) to avoid removal to a country where they would fear persecution. Unlike asylum and withholding of removal, CAT deferral of removal is available to people have been convicted of “particularly serious crimes” and to people who have persecuted others.¹²² Also, under CAT, there is no requirement that the torture be based on any particular ground such as religion, race, nationality, membership in a particular social group, or political opinion. However, lawful punishment or sanctions by a government are not considered torture.

To qualify for CAT deferral, a person must show that it is more likely than not that they would be tortured in their home country.¹²³ Applications for relief under CAT may be presented during a removal proceeding or by a motion to reopen the proceedings after a removal order.¹²⁴ CAT deferral is a mandatory remedy, which means the judge must grant deferral if the person is eligible.¹²⁵

To qualify for deferral of removal, a person must show that it is “more likely than not” that they would be tortured. The definition of “torture” is complex and sometimes open to dispute, but involves three basic requirements: the infliction of severe pain or suffering, either mental or physical; done with the intent to inflict severe pain or suffering for punishment or to obtain information or a confession, or for intimidation; and done by a public official, at the official’s request, or with the official’s consent or acquiescence.¹²⁶

A person who is applying for CAT deferral will have to testify about why they are likely to be tortured in their home country. If the IJ or BIA finds the person is not credible, a court can overturn

¹²¹ See 8 U.S.C. § 1231(b)(3)(B).

¹²² 8 C.F.R. § 208.17(a).

¹²³ 8 C.F.R. § 208.16(c)(2).

¹²⁴ 8 C.F.R. § 208.18(b)(2). See *Khourassany v. INS* (9th Cir. 2000) 208 F.3d 1096.

¹²⁵ 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.16-208.18.

¹²⁶ 8 C.F.R. § 208.18

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the finding and grant CAT deferral only “the reports alone compelled the conclusion that [the petitioner] is more likely than not to be tortured.”¹²⁷

If a person is granted deferral of removal, the IJ can still order that the person be deported to some country other than their home country.

A person who is granted CAT deferral may be kept in ICE detention.¹²⁸ However, the length of detention is subject to the limits announced by the United States Supreme Court and must end when removal ceases to be reasonably foreseeable (see §§ 13.34-13.36).¹²⁹

Refugee Waiver (INA § 209(c))

A person who is a refugee or who was granted asylum in the past may be eligible to apply for a waiver of inadmissibility and adjustment of status to become a lawful permanent resident. Being lawfully admitted and becoming a lawful permanent residence can give a person a better chance of being allowed to stay in the U.S.

A “refugee” is defined as a person who is unable or unwilling to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹³⁰

To be eligible for a waiver, the person must be admitted to the U.S. as a refugee or under a grant of asylum and have resided in the U.S. for a year. Conviction of a “particularly serious crime” or an aggravated felony is not a bar to a § 209(c) waiver application, but immigration officials will not grant a waiver for “violent or dangerous” convictions except in extraordinary circumstances or where denial would result in exceptional and extremely unusual hardship.¹³¹ Also, a person cannot get a refugee waiver if the government believes they have been involved in drug trafficking or are a security or terrorist threat, even if they don’t have charges related to drugs or terrorism.¹³²

13.23 Relief Due to Being a Victim of or Witness to a Crime in the U.S.

Some people who have been victims of or witnesses to a crime, may be eligible for visas that will allow them to stay in the U.S., even though they have a criminal record. There are several types of visas that apply in different situations. There are caps on the number of these visas that will be granted each year. Immigration officials have power to grant these visas even if a person would otherwise not be allowed to enter or stay in the U.S. due to criminal convictions; however, immigration officials can still consider a person’s criminal record in deciding whether to grant or deny a visa.

¹²⁷ *Shrestha v. Holder* (9th Cir. 2010) 590 F.3d 1034, 1048-1049 (citation and internal quotation marks omitted).

¹²⁸ 8 C.F.R. § 208.17(b)(1)(ii), (c).

¹²⁹ *Zadvydas v. Davis* (2001) 533 U.S. 678 [121 S.Ct. 2491; 150 L.Ed.2d 653]; *Clark v. Martinez* (2005) 543 U.S. 371 [125 S.Ct. 716; 160 L.Ed.2d 734] (holding *Zadvydas* applies to post-removal order detention).

¹³⁰ 8 U.S.C. § 1101(a)(42).

¹³¹ *Matter of Jean* (A.G. 2002) 23 I. & N. Dec. 373; *Rivas-Gomez v. Gonzales* (9th Cir. 2006) 441 F.3d. 1072.

¹³² 8 U.S.C. § 1159; 8 C.F.R. §§ 209.1-209.2.

The U Visa for Crime Victims

The U visa allows people who are crime victims to stay in the U.S. for a few years and possibly become lawful permanent residents. A person may be able to get a U visa if they have suffered serious physical or mental abuse as a victim of crimes such as sexual or physical assaults or exploitation, kidnapping, or extortion. They must also have assisted or be willing to assist law enforcement or another public agency in the investigation or prosecution of the crime. Along with the application for a U visa, the person must submit a form filled out by the investigating/prosecuting agency stating that the person has been and/or are being helpful.¹³³

The S Visa for Crime or Terrorism Informants

There are two kinds of S visas (S-5 and S-6); one is for criminal witnesses and informants and one is for terrorism informants. To be eligible for these visas, a person must have important information concerning criminal or terrorist activities and must be willing to give or have given this information to law enforcement authorities or to a court. For the criminal informant (S-5) visa, immigration officials must find that the person's continued presence in the U.S. is necessary for a law enforcement investigation or prosecution. For the terrorist informant (S-6) visa, immigration officials must believe that the person has been or will be placed in danger as a result of providing the information. A request for either of these types of visas must be filed by a state or federal law enforcement agency which agrees to take responsibility for the person until they either leave the U.S. or get a different immigration status. The length of stay for an S-5 or S-6 nonimmigrant is limited to 3 years, and there is a possibility of applying to become a legal permanent resident.¹³⁴

The T Visa for People Brought to the U.S. For Forced Labor or Sex

The T visa program might allow a person to stay in the U.S. and possibly become a permanent resident if they have been a victim of "a severe form of trafficking in persons." This means that someone else brought them or convinced them to come to the U.S. and then forced them to work or perform other services. The force could be physical or it might have been through threats or lies. The person must also show that they would suffer "extreme hardship involving unusual and severe harm" if they were to be deported from the U.S. They also must show that they have complied with any reasonable law enforcement agency request for assistance in the investigation or prosecution of the traffickers. If a person's own convictions were caused by or related to being a victim of trafficking, they should make sure immigration officials know that information.¹³⁵

CHALLENGING CRIMINAL CONVICTIONS THAT HAVE IMMIGRATION CONSEQUENCES

13.24 Challenging a California Criminal Conviction that Has Immigration Consequences -- Overview

A person who has a criminal conviction that has immigration consequences (such as being a ground for removal or ineligibility for relief from removal) may be able to improve their situation by

¹³³ 8 U.S.C. § 1101(a)(15)(U).

¹³⁴ 8 U.S.C. § 1101(a)(15)(S).

¹³⁵ 8 U.S.C. § 1101(a)(15)(T).

challenging the lawfulness of the conviction before they go to removal proceedings. Sometimes courts vacate or modify convictions or sentences for reasons that are unrelated to a person's immigration status. However, sometimes there are legal reasons to vacate or modify a conviction or sentence because someone did not understand the immigration consequences when they pled guilty or no contest or when they rejected a plea offer. §§ 13.25-13.28 discuss arguments and procedures for challenging criminal convictions for reasons related to the immigration consequences of the conviction.

Other portions of this book describe general methods for challenging a criminal conviction or seeking re-sentencing that may be useful to people who are facing removal based on a conviction:

- ◆ direct criminal appeals (Chapter 14);¹³⁶
- ◆ state petitions for writ of habeas corpus (Chapter 15);
- ◆ federal petitions for writ of habeas corpus (Chapter 16); and
- ◆ procedures and grounds for seeking recall of sentence and resentencing (Chapter 8).

People should be aware that even if they successfully challenge their conviction, the district attorney may still be able to pursue the original charges and either take the case to trial or offer the same or a worse plea deal. Still, in some cases, people who successfully challenge a conviction may be able to negotiate an outcome that has less harsh immigration consequences.

For a comprehensive overview of post-conviction relief available to people facing immigration consequences, see Tooby, *California Post-Conviction Relief For Immigrants*, published by the Continuing Education of the Bar (CEB).

13.25 Violation of the Judge's Duty to Warn About Immigration Consequences Before a Guilty or No Contest Plea

Many people in the CDCR have been convicted as a result of guilty or no contest pleas. Sometimes the charges and sentence that the person pleads to will have severe removal consequences that the person might have avoided by going to trial or negotiating a different plea. For this reason, Penal Code § 1016.5 requires judges to warn people about possible immigration consequences before accepting guilty or no contest pleas. The judge must give a general warning (either orally or in writing) that the plea may have consequences of deportation, exclusion from admission, and denial of naturalization; the judge does not need to discuss specific consequences.¹³⁷ The judge must give the warning during the proceedings at which the person enters their plea.¹³⁸

¹³⁶ For an example of an immigration-related argument raised on direct appeal, see *People v. Patterson* (2017) 2 Cal.5th 885 [216 Cal.Rptr.3d 95] (trial court's general advisement that plea could have immigration consequences did not bar person from seeking to withdraw their plea before the judgment became final based on lack of understanding of immigration consequences).

¹³⁷ Penal Code § 1016.5(a); see *People v. Araujo* (2016) 243 Cal.App.4th 759 [196 Cal.Rptr.3d 843] (the advisement does not need to be given orally; a written statement on a notice and waiver of rights form signed by the person was sufficient); *People v. Arendtsz* (2016) 247 Cal.App.4th 613 [202 Cal.Rptr.3d 232] (sufficient advisement given).

¹³⁸ *People v. Akhile* (2008) 167 Cal.App.4th 558, 564 [84 Cal.Rptr.3d 236].

The court's warning will be documented in the reporter's transcript and the clerk's minutes for the plea hearing. If there is no reporter's transcript and the court documents do not indicate that the warning was given, it will be presumed that the judge did not give the required warning unless the prosecutor can prove otherwise.¹³⁹

If the court failed to warn someone about the immigration consequences of the plea bargain, the person can bring a motion to vacate their criminal conviction pursuant to Penal Code § 1016.5.¹⁴⁰ The motion should be filed in the superior court in which the person was convicted.¹⁴¹ A person can file their motion while they are in state custody on the conviction. They also can bring a motion to vacate after they are no longer in state custody on the conviction, so long as they file with "reasonable diligence" after they receive a notice from ICE that their conviction is a ground for removal or after a final removal order is entered based on the conviction (see § 13.27).¹⁴²

The person must show that: (1) the court did not advise them at the time of their guilty or no contest plea of the possibility of deportation, exclusion, and denial of naturalization; (2) as a result of the conviction, they face immigration consequences; and (3) it is reasonably probable that they would not have entered the plea if they had been properly advised.¹⁴³ The person need not prove that they would likely have obtained a more favorable outcome if they had not pled guilty.¹⁴⁴

A person can appeal from the denial of a motion to vacate using the direct appeal process described in Chapter 14.¹⁴⁵

13.26 Violation of the Right to Effective Assistance of Counsel Regarding Advisement of the Immigration Consequences of a Guilty or No Contest Plea

A person facing criminal charges has a constitutional under the Sixth Amendment to the U.S. Constitution to effective assistance of counsel; this right is also guaranteed by Article I, § 15 of the California Constitution. The right to effective assistance is violated if a person's lawyer does not properly advise them of the immigration consequences that may result from entering a guilty or no contest plea. When the immigration law is clear, the lawyer must give correct and accurate advice; where the law is unclear, the lawyer must at least inform the person about the possibility of deportation or immigration consequences. To show ineffective assistance, a person must also show that there is a

¹³⁹ *People v. Arriaga* (2014) 58 Cal.4th 950, 961 [169 Cal.Rptr.3d 678, 685]

¹⁴⁰ Penal Code § 1016.5(b).

¹⁴¹ The addresses for the state superior courts are in Appendix 15-A.

¹⁴² Penal Code § 1473.7.

¹⁴³ *People v. Totari* (2002) 28 Cal.4th 876, 884 [123 Cal.Rptr.2d 76]; *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183 [96 Cal.Rptr.2d 463]; see also *People v. Asghedom* (2015) 243 Cal.App.4th 718 [196 Cal.Rptr.3d 586] (person failed to show reasonable probability that they would not have entered guilty plea if court had given advisement.) *People v. Akhile* (2008) 167 Cal.App.4th 558, 565 [84 Cal.Rptr.3d 236] (warning given at prior hearing could be considered in deciding whether it was likely that person would have entered guilty plea if properly warned at plea hearing).

¹⁴⁴ *People v. Martinez* (2013) 57 Cal.4th 555 [160 Cal.Rptr.3d 37].

¹⁴⁵ See, e.g., *People v. Totari* (2002) 28 Cal.4th 876 [123 Cal.Rptr.2d 76].

reasonable probability they would not have entered the plea (and instead would have gone to trial) if they had been accurately advised of the immigration consequences.¹⁴⁶

Alternatively, a person may be deprived of effective assistance of counsel even if they went to trial, if (a) their defense lawyer failed to communicate with them about a formal plea offer from the prosecution or (b) their defense lawyer gave them incorrect advice that resulted in their rejection of a plea offer. To show prejudice, the person must show that there was a reasonable probability they would have accepted the plea offer had they had effective assistance of counsel and a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it. The person must also show a reasonable probability that the outcome of the criminal process would have been more favorable in some way.¹⁴⁷ Although the cases that established these rights did not involve ineffective assistance related to immigration consequences, it appears that the same principles could apply in such situations.

If a person is still in state custody for the conviction that makes them removable, inadmissible, or ineligible for relief from removal (including service of a parole or post-release community supervision (PRCS) term), the proper way to challenge the plea based on ineffective assistance is a petition for writ of habeas corpus.¹⁴⁸ The motion should be filed in the superior court in which the person was convicted. The procedures for filing state court habeas corpus petitions are discussed in Chapter 15.

People who are not in state custody for the conviction cannot raise an ineffective assistance of counsel claim by filing a state petition for writ of habeas corpus, even if they are ICE custody due to the conviction.¹⁴⁹ However, people who are not in state custody can file a motion to vacate (see § 13.27).

13.27 Prejudicial Error that Affected Ability to Understand Potential Immigration Consequences of a Guilty or No Contest Plea

Penal Code § 1473.7 allows a person to bring a motion to vacate a criminal conviction or sentence on immigration grounds even after they are no longer in state custody based on that conviction. This means that people who are in CDCR custody on new charges (or who have been

¹⁴⁶ *Padilla v. Kentucky* (2010) 559 U.S. 356 [130 S.Ct. 1473; 176 L.Ed.2d 284]; *Lee v. United States* (2017) __ U.S. __ [137 S.Ct. 1958; 198 L.Ed.2d 476]; *People v. Soriano* (1987) 194 Cal.App.3d 1470, 1481 [240 Cal.Rptr. 328]; see also Penal Code § 1016.3 (requiring counsel to provide accurate and affirmative advice about immigration consequences). See also *People v. Shokur* (2012) 205 Cal.App.4th 1398, 1407 [141 Cal.Rptr.3d 283] (person failed to show they were prejudiced by erroneous advice). Note that the U.S. Supreme Court's March 31, 2010 *Padilla* decision, establishing the federal constitutional right to effective assistance of counsel as to advice about immigration consequences, does not apply to people whose convictions became final before that date. *Chaidez v. United States* (2013) 568 U.S. 342 [133 S.Ct. 1103; 185 L.Ed.2d 149]. However, the *Soriano* case previously established this right in California.

¹⁴⁷ *Missouri v. Frye* (2012) 566 U.S. 134 [132 S.Ct.1399; 182 L.Ed.2d 379]; *Lafler v. Cooper* (2012) 566 U.S. 156 [132 S.Ct. 1376; 182 L.Ed.2d 398].

¹⁴⁸ *People v. Soriano* (1987) 194 Cal.App.3d 1470, 1481 [240 Cal.Rptr. 328].

¹⁴⁹ *People v. Villa* (2009) 45 Cal.4th 1063, 1069 [90 Cal.Rptr.3d 344]. Courts also rejected attempts by people who were out of custody to use petitions for writ of error *coram nobis* to challenge their convictions on the basis that they were not aware of or misunderstood the immigration consequences of their plea. *People v. Kim* (2009) 45 Cal.4th 1078, 1105-1107 [90 Cal.Rptr.3d 355]; see also *People v. Mbaabu* (2013) 213 Cal.App.4th 1139, 1143 [152 Cal.Rptr.3d 818, 821]; *People v. Gari* (2011) 199 Cal.App.4th 510 [132 Cal.Rptr.3d 80].

released from CDCR custody and are now in ICE custody) can challenge a prior criminal conviction that could be used as a ground for removal, inadmissibility, or ineligibility for relief from removal. The motion should be filed in the superior court in which the person was convicted.¹⁵⁰

A person may bring a motion to vacate their conviction or sentence if they entered a no contest or guilty plea and there was a prejudicial error that affected their ability to meaningfully understand, defend against, or knowingly accept the actual or potential immigration consequences of the plea. The motion must be filed with “reasonable diligence” after the person receives a notice from ICE that their conviction is a ground for removal or after a removal order is entered based on the conviction. The court must hold a hearing in the presence of the person or their lawyer. If the motion is granted, the person must be allowed to withdraw their plea. An order granting or denying the motion to vacate can be appealed.¹⁵¹

13.28 Pardons

If a person is granted a full and unconditional pardon by the president of the U.S. or by the governor of a state, then the person will not be subject to removal based on that conviction.¹⁵² There is one important exception -- pardons do not prevent removal for controlled substance offenses.¹⁵³ Pardons by the governor of California are discussed in § 9.49.

Although a Governor’s pardon eliminates grounds for removal based on that criminal conviction, a pardon does not eliminate a criminal ground for inadmissibility.¹⁵⁴

REMOVAL PROCEEDINGS

13.29 Prosecutorial Discretion and Negotiation of Charges and Disposition

ICE has “prosecutorial discretion” about whether or not to start removal proceedings and what grounds for removal to allege in any individual case. ICE also has discretion about whether to use an expedited removal process (§ 13.32) or standard removal process (§ 13.33). There is no constitutional due process right to have ICE weigh the interests of justice in deciding whether, when, and on what grounds to bring removal proceedings.¹⁵⁵

¹⁵⁰ The addresses for the state superior courts are in Appendix 15-A.

¹⁵¹ Penal Code § 1473.7. This type of motion can be brought by people who entered their pleas before the effective date of the statute. *People v. Perez* (2018) 19 Cal.App.5th 818 [228 Cal.Rptr.3d 95]. See also *People v. Ogunmowo* (2018) 23 Cal.App.5th 67 [232 Cal.Rptr.3d 529] (granting motion due to ineffective assistance of counsel regarding immigration advice); *People v. Olvera* (2018) 24 Cal.App.5th 1112 [235 Cal.Rptr.3d 200] (denying motion where no ineffective assistance of counsel).

¹⁵² 8 U.S.C. § 1227(a)(2)(A)(vi).

¹⁵³ 8 U.S.C. § 1227(a)(2)(A)(vi); *Aguilera-Montero v. Mukasey* (9th Cir. 2008) 548 F.3d 1248 (lack of a pardon-based relief from deportability for controlled substance convictions does not violate U.S. Constitution’s Fifth Amendment guarantee of equal protection).

¹⁵⁴ *Aguilera-Montero v. Mukasey* (9th Cir. 2008) 548 F.3d 1248.

¹⁵⁵ *Carranza v. INS* (1st Cir. 2002) 277 F.3d 65, 72-73.

In matters over which ICE has discretion, a person who is facing removal might be able to try to negotiate a more favorable outcome. For example, a person might request that ICE not prosecute the case or not charge an aggravated felony, ask ICE to let them voluntarily depart the country, or ask ICE to agree to deportation for noncriminal reasons or for criminal offenses that are not aggravated felonies.¹⁵⁶ However, under the Trump Administration’s current policies, ICE’s use of discretion in prosecuting removal cases has been greatly limited.¹⁵⁷

Another concern is that if a person has not yet been identified by ICE as being removable, a request for favorable exercise of discretion may have the unintended consequence of prompting ICE to initiate removal proceedings. Whenever possible, a person should seek the advice and assistance of a lawyer as to whether and how to seek ICE’s favorable exercise of discretion.

13.30 Applying for Release from ICE Detention Before the Final Order of Removal

A person who is facing removal based on only *non*-criminal grounds may seek to be released on bond while their removal proceedings are pending.¹⁵⁸

In contrast, the law requires that a person who is facing removable based on criminal grounds must be kept in ICE detention while the person’s removal proceeding is pending before an IJ or the BIA.¹⁵⁹ The U.S. Supreme Court has held that mandatory detention for a “brief period necessary” for removal proceedings does not violate due process rights, and approved of a six-month detention.¹⁶⁰ However, there is currently litigation over whether due process requires ICE to make individualized determinations about whether continued detention is appropriate when the removal proceedings last for longer than 6 months.¹⁶¹ As of summer 2018, there is an injunction in the Central District of California that requires ICE to provide bond hearings after six months. People in other districts can file a federal habeas petition¹⁶² in the federal district court with jurisdiction over the ICE detention facility, seeking a bond hearing.¹⁶³ (See Appendix 16-A for a list of federal district courts.) When filing a petition, the person should describe the factors demonstrating that they are not a flight risk or a danger to the community.

¹⁵⁶ See 8 U.S.C. § 1229a(d).

¹⁵⁷ The memorandum implementing Executive Order 13768 “Enhancing Safety in the Interior of the United States” (82 FR 8799, Jan. 30, 2017) states that “prosecutorial discretion shall not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws.”

¹⁵⁸ 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(d); 8 C.F.R. § 1003.19; see also *Casas-Castrillon v. DHS* (9th Cir. 2008) 535 F.3d 942, 946, 951-952.

¹⁵⁹ 8 U.S.C. § 1226(c).

¹⁶⁰ *Demore v. Kim* (2003) 538 U.S. 510 [123 S.Ct. 1708, 1712; 155 L.Ed.2d 724].

¹⁶¹ *Jennings v. Rodriguez* (2018) ___ U.S. ___ [138 S.Ct. 830; 200 L.Ed.2d 122] (INA authorizes detention of certain people without hearing during removal cases, but remanding to the Ninth Circuit Court of Appeals to address whether the Fifth Amendment right to due process entitles people to hearing for prolonged detention).

¹⁶² See *Leonardo v. Crawford* (9th Cir. 2011) 646 F.3d 1157, 1159.

¹⁶³ 28 U.S.C. § 2241 (authorizing challenges to detentions that are “in violation of the Constitution or laws or treaties of the United States”); *Sandoval v. Reno* (3d Cir. 1999) 166 F.3d 225, 238.

At a bond hearing, the government must prove by clear and convincing evidence that the person is a flight risk or a danger to the community.¹⁶⁴

After a person has a bond hearing, they may appeal a denial of bond to the BIA (see § 13.39). If dissatisfied with the BIA's decision, the person may then file a habeas petition in the federal district court, challenging the continued detention (§ 13.43).

13.31 Reinstatement of a Prior Removal Order

A person who reenters the U.S. illegally after getting a removal order can be removed based on the prior removal order, with no right to a new hearing. This is called “reinstatement.”¹⁶⁵ A person who is being subject to reinstatement will receive a Notice of Intent/Decision to Reinstate Prior Order.

Before reinstating a removal order, an ICE officer must (1) obtain the prior removal order, (2) confirm that the person is the same person who was previously removed, and (3) confirm that the person unlawfully reentered the U.S.¹⁶⁶ The person must also be given opportunity to make an oral or written statement contesting the reinstatement.¹⁶⁷

If a person who is subject to reinstatement of a removal order expresses fear of returning to the receiving country, the case must be referred to an asylum officer to determine whether the person has a reasonable fear of persecution or torture and should be considered for withholding or deferral or removal (see § 13.22).¹⁶⁸

The reinstatement of a removal order cannot be appealed to the BIA.¹⁶⁹ However, the validity of the prior removal order may be challenged by a petition for review in the federal court of appeals (see § 13.42).¹⁷⁰

¹⁶⁴ *Singh v. Holder* (9th Cir. 2011) 638 F.3d 1196 (application of incorrect standard of proof warranted habeas relief unless person was provided with a new bond hearing).

¹⁶⁵ 8 U.S.C. § 1231(a)(5). This rule applies even if the person was granted post-hearing voluntary departure. It also applies even if the person reentered the U.S. before this law took effect on April 1, 1997. *Fernandez-Vargas v. Gonzales* (2006) 548 U.S. 30 [126 S.Ct. 2422; 165 L.Ed.2d 323]; *Morales-Izquierdo v. Gonzales* (9th Cir. 2007) 486 F.3d 484.

¹⁶⁶ 8 C.F.R. § 241.8(a).

¹⁶⁷ 8 C.F.R. § 241.8(b) (“[i]f the alien wishes to make a statement, the officer shall allow the alien to do so and shall consider whether the alien’s statement warrants reconsideration of the determination.”).

¹⁶⁸ 8 C.F.R. § 241.8(e). Also, if a person has applied for adjustment of status under the Haitian Refugee Immigrant Fairness Act (HRIFA) or the Nicaraguan Adjustment and Central American Relief Act (NACARA), the prior removal order will not be reinstated until there is a final decision to deny adjustment of status. 8 C.F.R. § 241.8(d).

¹⁶⁹ 8 U.S.C. § 1231(a)(5); see also generally 8 C.F.R. § 241.8; *Matter of G-N-C-* (BIA 1998) Int. Dec. 3366.

¹⁷⁰ See *Morales de Soto v. Lynch* (9th Cir. 2016) 824 F.3d 822, 825.

13.32 Expedited Removal Proceedings

ICE can deport some people under an “expedited removal” procedure conducted by an ICE officer, without a hearing and decision by an IJ.¹⁷¹ This process can be used only against people who are not lawful permanent residents or conditional permanent residents and who have been convicted of aggravated felonies.¹⁷²

A person who wants to challenge the removal or wants to seek relief from removal should assert that there are contested issues of fact or law and request a standard removal hearing. ICE may or may not agree to provide a standard removal hearing;¹⁷³ if ICE denies the request, then at least the person will have preserved their right to seek judicial review of the expedited removal decision.

A person who is put through the expedited removal process is “conclusively presumed” removable, and will be barred from seeking “any grant of relief from removal.”¹⁷⁴ The exception is that a person who is subject to expedited removal may request withholding of removal due to fear of torture or persecution in their home country (see § 13.22).¹⁷⁵

In an expedited removal proceeding, a person has the following very minimal rights:

- ◆ “reasonable” notice of the charges, and the opportunity to inspect the evidence and rebut the charges;
- ◆ representation by a lawyer if they can hire one or find a volunteer lawyer;
- ◆ a decision that they are the person named in the notice to appear; and,
- ◆ a record of the proceedings.¹⁷⁶

¹⁷¹ 8 U.S.C. § 1228(b)(1); see also *United States v. Calderon-Segura* (9th Cir. 2008) 512 F.3d 1104, 1107-1108 (allowing government to choose between administrative and regular hearing proceedings does not violate the right to equal protection).

¹⁷² 8 U.S.C. § 1228(b); 8 C.F.R. § 238.1; see also *United States v. Hernandez-Vermudez* (9th Cir. 2004) 356 F.3d 1011 (administrative removal can be applied to undocumented person who commits an aggravated felony).

¹⁷³ 8 C.F.R. § 238.1(d)(2)(ii)-(iii) [ICE official conducting the administrative removal has authority to issue a Notice to Appear for a standard removal proceeding if the person “raises a genuine issue of material fact” or “where appropriate.”

¹⁷⁴ 8 U.S.C. § 1228(b)(5)-(c).

¹⁷⁵ See 8 U.S.C. § 1182(h).

¹⁷⁶ 8 U.S.C. § 1228(b)(4)(A)-(E); 8 C.F.R. § 238.1(b)(2)(I).

13.33 Standard Removal Proceedings

People who are not who are not subjected to reinstatement of a prior removal order or to the expedited removal process will go through a standard removal proceeding in front of an immigration judge (IJ). There is a constitutional due process right to a fair removal hearing.¹⁷⁷

ICE starts a standard removal proceeding by filing a “Notice to Appear” with the Immigration Court and serving the notice on the person (who is called the “respondent”).¹⁷⁸ The Notice advises the person of the nature of the proceeding, the right to seek counsel, and the contact information for any free legal services that may be available.¹⁷⁹ The Notice to Appear does not have to state the possible grounds on which a person could be denied relief from removal.¹⁸⁰ The government may send a Notice to Appear stating that the date and time of hearing will be sent later, and then sending a separate notice of the hearing date and time.¹⁸¹ If a lawyer has informed the Immigration Court that they are representing a person, then the hearing notice must be served on the lawyer.¹⁸²

In California (and in Arizona and Washington) immigration authorities must appoint a lawyer at government expense for people who have serious mental disabilities.¹⁸³ Also, ICE may have to provide a lawyer at government expense if a lawyer is necessary for a fair hearing.¹⁸⁴

Otherwise, there is no right to have counsel appointed at government expense for a removal hearing. A person facing a removal hearing has a right to be represented by a lawyer only if they can hire a paid attorney or find a free volunteer lawyer.¹⁸⁵ Immigration officials should allow the person a

¹⁷⁷ *Kaoru Yamataya v. Fisher* (1901) 189 U.S. 86 [23 S.Ct. 611; 47 L.Ed. 721] (due process clause of the Fifth Amendment protects against arbitrary deprivation of life, liberty or property); *Bridges v. Wixon* (1945) 326 U.S. 135, 154 [65 S.Ct. 1443; 89 L.Ed. 2103]; *United States v. Barraza-Leon* (9th Cir. 1978) 575 F.2d 218, 220.

¹⁷⁸ *INS v. Lopez-Mendoza* (1984) 468 U.S. 1032 [104 S.Ct. 3479; 82 L.Ed.2d 778], citing *Matter of Toro* (BIA 1980) 17 I. & N. Dec. 340, 343.

¹⁷⁹ 8 U.S.C. § 1362; 8 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. § 292.5(b).

¹⁸⁰ *United States v. Reveles-Espinoza* (9th Cir. 2008) 522 F.3d 1044, 1048–49.

¹⁸¹ *Popa v. Holder* (9th Cir. 2009) 571 F.3d 890.

¹⁸² *Hamazaspyan v. Holder* (9th Cir. 2009) 590 F.3d 744; see 8 C.F.R. § 1003.17 (governing entry of appearance by attorney).

¹⁸³ *Franco-Gonzalez v. Holder* (C.D. Cal. Apr. 23, 2013) No. 10-02211, Orders re: Plaintiffs’ Motion for Partial Summary Judgment and Preliminary Injunction and Partial Judgment and Permanent Injunction.

¹⁸⁴ *Aguilera-Enriquez v. INS* (6th Cir. 1975) 516 F.2d 565, 568 (test of whether free counsel must be appointed is whether person requires attorney to present position adequately and whether denial would be fundamentally unfair). It is not clear whether a person who is denied an appointed attorney must show that their case was prejudiced by denial of this limited right to counsel; however, a person who can show prejudice will be more likely to get the order of removal set aside. *Colindres-Aguilar v. INS* (9th Cir. 1987) 819 F.2d 259, 260 (unclear whether prejudice must be shown); *Matter of Lozada* (BIA 1988) 19 I. & N. Dec. 637 (as related matter, the BIA suggested that prejudice must be shown on a claim of ineffective assistance of counsel).

¹⁸⁵ 8 U.S.C. §§ 1252(b)(2), 1362; *Magallanes-Damian v. INS* (9th Cir. 1986) 783 F.2d 931, 933; *Rios-Berrios v. INS* (9th Cir. 1986) 776 F.2d 859, 862-864 (no Sixth Amendment right to counsel).

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reasonable opportunity to try to find a lawyer.¹⁸⁶ A person who wants more time to look for a lawyer should ask the IJ to continue or postpone their removal hearing. If a person does find a lawyer, it may be a violation of due process for the IJ to proceed with the case without notifying the lawyer or allowing the lawyer to appear.¹⁸⁷

A respondent who does not understand English should request an interpreter for the removal proceedings. Failure to provide an interpreter upon request may violate due process.¹⁸⁸

At the preliminary stage or “master calendar” hearing, the IJ will advise the person of their rights and ask them to admit or deny the allegations in the Notice to Appear.¹⁸⁹ Admitting the allegations is essentially agreeing to removability, similar to pleading guilty in a criminal case.

If a person denies the allegations, the matter will be set for a “regular calendar hearing.” The hearing will be held in front of an IJ, who will decide whether ICE has established grounds for removal and, if so, whether the person can and should be granted relief from removal.¹⁹⁰

The IJ can receive evidence and question the person and any witnesses.¹⁹¹ Both sides should be allowed to submit any evidence that is material and relevant to the issues.¹⁹² An IJ’s refusal to permit testimony of relevant witnesses may be challenged as a violation of due process.¹⁹³ Likewise, an IJ might violate due process by considering outside information that is controversial without giving the person an opportunity to rebut the accuracy of that information.¹⁹⁴

The criminal law rules requiring exclusion of illegally-obtained evidence generally do not apply in immigration proceedings. However, evidence from an unlawful search should be excluded in a removal hearing if agents acted “egregiously” by deliberately violating the law or engaging in conduct that a reasonable officer should have known was an unreasonable search and seizure.¹⁹⁵ Also,

¹⁸⁶ *Siaba-Fernandez v. Rosenberg* (9th Cir. 1962) 302 F.2d 139. In *Orantes-Hernandez v. INS* (9th Cir. 1990) 919 F.2d 549, the court found that the following may be violations of this right: (1) lists of legal services not available or containing incomplete and inaccurate information; (2) failure to permit people to consult with counsel before signing for voluntary departure; (3) detention of people far from where counsel was located; (4) limited attorney visiting hours; (5) lack of meaningful access to legal materials; and (6) severe limitation of access to telephones. But see *Committee on Central American Refugees v. INS* (9th Cir. 1986) 795 F.2d 1434, rehearing denied with amended opinion, (9th Cir. 1987) 807 F.2d 769 (transferring detainees to remote detention location did not interfere with right to counsel unless an attorney-client relationship had already been established).

¹⁸⁷ *Singh v. Waters* (9th Cir. 1996) 87 F.3d 346; *Garcia-Guzman v. Reno* (N.D. Cal 1999) 65 F.Supp.2d 1077; *Escobar-Grijalva v. INS* (9th Cir. 2000) 206 F.3d 1331.

¹⁸⁸ *Niarchos v. INS* (7th Cir. 1968) 393 F.2d 509.

¹⁸⁹ 8 C.F.R. § 1240.10; *Matter of Cordova* (BIA 1999) Int. Dec. 3408.

¹⁹⁰ 8 U.S.C. § 1229.

¹⁹¹ 8 U.S.C. § 1229a(b)(1).

¹⁹² 8 C.F.R. § 1240.2; 8 C.F.R. § 1240.7.

¹⁹³ *Zolotukhin v. Gonzales* (9th Cir. 2005) 417 F.3d 1073; see also *Coleman v. INS* (9th Cir. 2000) 210 F.3d 967.

¹⁹⁴ See *Circu v. Gonzales* (9th Cir. 2006) 450 F.3d 990.

¹⁹⁵ *Lopez-Rodriguez v. Mukasey* (9th Cir. 2008) 536 F.3d 1012, 1015-1017.

evidence obtained from a confession should not be considered if the circumstances surrounding the interrogation would make use of that evidence “fundamentally unfair.”¹⁹⁶

Also, a person who is represented by a lawyer in a removal proceeding has a due process right to effective assistance of counsel.¹⁹⁷ However a person who relies on the advice of someone other than a lawyer cannot claim that they received ineffective assistance of counsel.¹⁹⁸

If a person admits removability or the IJ finds the person is removable, the IJ will then consider any request for discretionary relief. If the person is deemed removable and their requests for discretionary relief (if any) are denied, the IJ will issue a removal order.¹⁹⁹ The IJ will also ask the person to designate a country to which they wish to be sent.²⁰⁰

If a person does not file a BIA appeal (see § 13.39) and does not waive the right to appeal, the removal order becomes final 30 days after the IJ makes the order.²⁰¹

13.34 The Timeline for Removal

ICE has 90 days after a removal order becomes final to remove the person from the country.²⁰² A removal order becomes final when the BIA appeal deadline expires or the BIA dismisses or denies an appeal.²⁰³ If a court issues a stay of removal pending a petition for review (see § 13.42), the 90-day removal period begins upon the date of the court’s final order.²⁰⁴

The removal period can be “tolled” (extended) beyond 90 days and the person may remain in detention during the extended period if they refuse to assist with the government’s efforts to carry out their removal. The 90-day clock will restart immediately after the most recent date on which the person obstructed removal.²⁰⁵

13.35 Applying for Release from Detention After the Final Order of Removal

A person who is ordered removed based on criminal grounds will be detained until they are removed from the country.²⁰⁶ However, ICE has discretion to release people who are ordered removed

¹⁹⁶ *INS v. Lopez-Mendoza* (1984) 468 U.S. 1032 [104 S.Ct. 3479; 82 L.Ed.2d 778], citing *Matter of Toro* (BIA 1980) 17 I. & N. Dec. 340, 343.

¹⁹⁷ *Lopez v. INS* (9th Cir. 1985) 775 F.2d 1015, 1017.

¹⁹⁸ *Hernandez v. Mukasey* (9th Cir. 2008) 524 F.3d 1014.

¹⁹⁹ 8 C.F.R. §§ 1240.11-1240.12.

²⁰⁰ 8 U.S.C. § 1231(b).

²⁰¹ 8 C.F.R. § 1003.39; 8 U.S.C. § 1101(a)(47)(B).

²⁰² 8 U.S.C. § 1231(a)(1)(A), (B).

²⁰³ 8 U.S.C. § 1101(a)(47)(B).

²⁰⁴ 8 U.S.C. § 1231(a)(1)(A), (B)(ii).

²⁰⁵ A good-faith attempt to use legally available judicial review and remedies is not a failure or refusal to cooperate in one’s removal. *Diouf v. Mukasey* (9th Cir. 2008) 542 F.3d 1222, 1231–32; *Prieto-Romero v. Clark* (9th Cir. 2008) 534 F.3d 1053, 1060-1061.

²⁰⁶ 8 U.S.C. § 1231(a)(2).

for criminal grounds and who have not been removed by the end of the 90-day period if the person can demonstrate that they no longer are a danger to the community and are not a flight risk.²⁰⁷

The federal regulations set forth factors that ICE officers should consider in determining whether a person may be released from detention if they have not been removed within 90 days. The factors are: (1) the nature and seriousness of the person's criminal convictions; (2) other criminal history; (3) sentences imposed and time actually served; (4) history of failures to appear for court; (5) probation history; (6) disciplinary problems in custody; (7) evidence of rehabilitation or recidivism; (8) equities in the U.S.; and (9) prior immigration violations and history.²⁰⁸ If possible, the person should present a written request for release under supervision and evidence supporting the request²⁰⁹ shortly before the expiration of the 90-day removal period. The ICE district director or director of the Detention and Removal Field Office will then decide whether to release the person.

Somewhat similar to parole, ICE can require a released person to comply with conditions of release, such as obeying the law, not associating with anyone involved in criminal activity, not associating without permission with people who have felonies, not carrying firearms or other dangerous weapons, or other appropriate conditions.²¹⁰ ICE officials have discretion to authorize a person to worked while release only if it appears that the person cannot be returned to their country of origin or that their removal is impracticable or contrary to the public interest.²¹¹

If ICE denies a request for release, the person may file an appeal with the BIA within 10 days after the denial.²¹² While a BIA appeal is pending, the person may continue requesting release and supplement their requests with motions to reopen or reconsider the matter. It is useful for the person to include a memorandum setting forth why they are likely to win their BIA appeal or pointing out why it is likely to be impractical to remove them from the U.S.

13.36 Repatriation Failure and Indefinite Detention

Sometimes a final removal order that cannot be carried out because a person is stateless or from a country that lacks diplomatic ties with the U.S., refuses to accept its expatriate nationals, or has a broken-down government.

The U.S. Supreme Court has held that there is a limit on the period in which someone can be held in detention after a removal order is issued. If DHS does not remove a person within six months after the removal order becomes final, and the person can show that there is no significant likelihood of removal in the foreseeable future, then the person must be released from ICE detention.²¹³

²⁰⁷ 8 U.S.C. § 1231(a)(6); *Matter of Joseph* (BIA 1999) Int. Dec. 3387 (mandatory detention provision is cut off after removal order becomes final); *Matter of Saelee* (BIA 2000) Int. Dec. 3427 (aggravated felon alien subject to final removal order eligible for discretionary release under 8 U.S.C. § 1231(a)(6) when removal fails).

²⁰⁸ 8 C.F.R. § 241 et seq.

²⁰⁹ 8 C.F.R. § 241.5.

²¹⁰ 8 C.F.R. § 212.5(c); 8 C.F.R. § 241.5.

²¹¹ 8 C.F.R. § 241.5(c).

²¹² 8 C.F.R. § 236.1(d)(3)(ii).

²¹³ *Zadvydas v. Davis* (2001) 533 U.S. 678 [121 S.Ct. 2491; 150 L.Ed.2d 653]; see also *Ma v. Ashcroft* (9th Cir. 2001) 257 F.3d 1095; 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13.

However, release is not required if the detention is during legal challenges and there is no reason to believe that the government will not be able to remove the person if the person loses their legal challenges.²¹⁴

Authorization to work may be granted to people who cannot be removed in a timely manner or whose removal is found to be impracticable or contrary to the public interest.²¹⁵

13.37 Federal Crime of Illegal Reentry after Removal

It is a crime for a person who has been ordered removed to then enter, attempt to enter, or be found in the U.S. without getting lawful admission to the U.S. This crime is called “illegal reentry.” To prove illegal reentry, the government must show that: (1) the person is not a U.S. citizen; (2) the person was previously ordered removed, and (3) the person then reentered the U.S. without permission.²¹⁶

A person may try to defend against a charge of illegal reentry by attacking the prosecution’s evidence or by raising some affirmative defense. A person may also raise a “collateral” challenge to the validity of the prior order of removal²¹⁷ or the validity of a felony conviction that formed the basis for the prior order of removal.²¹⁸

A person who commits the crime of illegal reentry may receive a maximum punishment of two to twenty years, depending on whether they have previously been convicted of crimes in the U.S. and the severity and number of those convictions.²¹⁹

ADMINISTRATIVE AND JUDICIAL REVIEW OF REMOVAL ORDERS AND IMMIGRATION DETENTION

13.38 Filing a Motion to Reconsider with the Immigration Judge (IJ)

A person can file a motion to reconsider a removal order and/or denial of relief from removal if the IJ’s decision was based on an error of fact or law. Generally, a motion to reconsider must be filed within 30 days after the date of the final removal order, and a person may file only one motion

²¹⁴ Detention is not considered “indefinite” simply because there is uncertainty as to when it will end. *Dionf v. Mukasey* (9th Cir. 2008) 542 F.3d 1222, 1233; *Prieto-Romero v. Clark* (9th Cir. 2008) 534 F.3d 1053, 1063 (detention not indefinite where there was no reason to believe that person could not be deported if and when legal challenges to deportation were adversely decided). But see *Clark v. Martinez* (2005) 543 U.S. 371, 381 [125 S.Ct. 716; 160 L.Ed.2d 734] (person entitled to habeas relief after a six-month detention if they can show it is improbable that they could be removed even if the government prevailed in ongoing legal proceeding); *Nadarajah v. Gonzales* (9th Cir. 2006) 443 F.3d 1069.

²¹⁵ 8 C.F.R. § 241.5(c).

²¹⁶ 8 U.S.C. § 1326.

²¹⁷ *United States v. Gonzalez-Flores* (9th Cir. 2015) 804 F.3d 920.

²¹⁸ *Custis v. United States* (1994) 511 U.S. 485, 493-497 [114 S.Ct. 1732; 128 L.Ed.2d 517]; *United States v. Gutierrez-Cervantes* (9th Cir. 1997) 132 F.3d 460.

²¹⁹ 8 U.S.C. § 1326(a)-(b). A person is subject to sentence enhancements for illegal reentry after deportation due to an aggravated felony even if the crime was not considered an aggravated felony at the time of the original deportation. *United States v. Maria-Gonzalez* (9th Cir. 2001) 268 F.3d 664, 669; See United States Sentencing Commission, *Federal Sentencing Guidelines Manual* § 1B1.1.

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to reconsider.²²⁰ With some exceptions, a fee or fee waiver is required for filing a motion to reconsider.²²¹

13.39 Filing a Board of Immigration Appeals (BIA) Administrative Appeal

A person can challenge a removal finding and/or denial of relief from removal by filing an administrative appeal with the federal Board of Immigration Appeals (BIA). Filing a BIA appeal is usually also necessary if a person wants to seek higher judicial review of the issues (see §§ 13.42-13.43).

The IJ must furnish the person with an EOIR Form 26 Notice of Appeal (attached as Appendix 13-D). To file the appeal, the person must fill out the form and send it so that it is *received* by the BIA within 30 days of the removal decision.²²² The person must state the basis for their appeal so that the BIA is put on notice of the issues and has an opportunity to resolve the controversy or correct the error.²²³ The person must also serve a copy of the appeal on the Assistant Chief Counsel of ICE and submit a proof of service to the BIA. In addition, if a person is represented by a lawyer, the lawyer must file a Notice of Entry of Appearance as Attorney or Representative Before the Board (EOIR-27).²²⁴

There is a fee for filing a notice of appeal, but a person who is indigent (without money) may submit an Appeal Fee Waiver Request (EOIR Form 26-A) (attached as Appendix 13-E_ instead of paying the fee.²²⁵

If a person misses the notice of appeal filing deadline or does not either pay the fee or file a fee waiver request, they forfeit the right to appeal and the IJ's decision becomes final.²²⁶ Also, the right to appeal is waived if the person leaves the U.S. prior to filing a notice of appeal.²²⁷

A removal decision will not be reversed for most types of due process violations unless the person can show prejudice, meaning that the outcome of the proceeding may have been affected by

²²⁰ 8 U.S.C. § 1229a(c)(6).

²²¹ 8 C.F.R. § 1003.8(a)(1); see 8 C.F.R. § 1003.8(a)(2) (exceptions to fee requirement); see also 8 C.F.R. § 1003.2(g) (filing procedures for motions to reconsider).

²²² 8 C.F.R. § 240.15; 8 C.F.R. § 1003.3; 8 C.F.R. § 1003.8.

²²³ *Figueroa v. Mukasey* (9th Cir. 2008) 543 F.3d 487, 492; see also *Young v. Holder* (9th Cir. 2012) 697 F.3d 976 (same); *Arsdi v. Holder* (9th Cir. 2011) 659 F.3d 925, 930 (where person did not exhaust issue before the BIA, court had no jurisdiction to consider whether or not the crime was “particularly serious”).

²²⁴ 8 C.F.R. § 1003.3; 8 C.F.R. § 1003.8.

²²⁵ 8 C.F.R. § 1003.3; 8 C.F.R. § 1003.8.

²²⁶ 8 C.F.R. § 1003.3.

²²⁷ 8 C.F.R. § 1003.4.

the violation.²²⁸ There are two exceptions. A person who was denied the right to an opportunity to seek representation need not show that he was prejudiced by the absence of a lawyer.²²⁹ Also, prejudice need not be shown if an IJ acted in excess of their legal authority.²³⁰

13.40 Filing a Motion to Reconsider with the BIA

A person can file a motion asking the BIA to reconsider a decision that is based on errors of fact or law. The motion usually must be filed within 30 days after the BIA decision and generally only one motion to reconsider may be filed.²³¹

13.41 Filing a Motion to Reopen with the IJ or the BIA

Also, a person can file a motion to reopen if new factual information becomes available that would have affected the outcome of the case if the IJ had known about it.²³² The new evidence must be “material” (important to the issues) and must be evidence that could not have been discovered or presented at the original hearing.²³³ For example, a person can move to reopen the removal proceedings if a criminal conviction that was a key part of their removal case is subsequently vacated.²³⁴

Usually, a motion to reopen must be filed within 90 days after the final removal order, but some courts will allow exceptions where there is good cause.²³⁵ If the person has not appealed the removal order to the BIA, the motion to reopen should be filed with the IJ. If the person has an appeal

²²⁸ See, e.g., *Ibarra-Flores v. Gonzales* (9th Cir. 2006) 439 F.3d 614, 620-621; *Cruz Rendon v. Holder* (9th Cir. 2010) 603 F.3d 1104 (fair hearing denied by unreasonable limits on person’s testimony and by denying request for continuance); *Lacina Pangilinan v. Holder* (9th Cir. 2009) 568 F.3d 708, 709-710 (person prejudicially deprived of right to develop record where judge did not fulfill duty to probe into all relevant facts); *Cinapian v. Holder* (9th Cir. 2009) 567 F.3d 1067 (person deprived of fair hearing where government failed to disclose forensic reports before hearing or to make reports’ author available for cross-examination); *Morgan v. Mukasey* (9th Cir. 2008) 529 F.3d 1202 (due process denied where IJ excluded witnesses based on prejudgment of what testimony would be); *Vilchez v. Holder* (9th Cir. 2012) 682 F.3d 1195, 1198 (removal hearing by video conference did not violate due process where the person failed to show that the outcome of hearing was affected); *Cui v. Mukasey* (9th Cir. 2008) 538 F.3d 1289, 1292 (prejudicial error where IJ arbitrarily denied reasonable request for a continuance).

²²⁹ *Montes-Lopez v. Holder* (9th Cir. 2012) 694 F.3d 1085; *Villa-Anguiano v. Holder* (9th Cir. 2013) 727 F.3d 873; *Hernandez-Gil v. Gonzales* (9th Cir. 2007) 476 F.3d 803, 808; *Ram v. Mukasey* (9th Cir. 2008) 529 F.3d 1238, 1241-1242 (IJs must inquire whether person wants counsel, provide a reasonable period for obtaining counsel, and assess whether any waiver of counsel is knowing and voluntary).

²³⁰ *Lazaro v. Mukasey* (9th Cir. 2008) 527 F.3d 977, 981.

²³¹ 8 C.F.R. § 1003.2.

²³² 8 U.S.C. § 1229a(c)(7).

²³³ 8 C.F.R. § 1003.2(c).

²³⁴ *Estrada-Rosales v. INS* (9th Cir. 1981) 645 F.2d 819, 821; *Weidersperg v. INS* (9th Cir. 1990) 896 F.2d 1179; *Cardoso-Tlaseca v. Gonzales* (9th Cir. 2006) 460 F.3d 1102.

²³⁵ 8 U.S.C. § 1229a(c)(7)(C); see also *Socop-Gonzalez v. INS* (9th Cir. 2001) 272 F.3d 1176; but see *Dela Cruz v. Mukasey* (9th Cir. 2008) 532 F.3d 946 (petition for review of a final removal order does not toll the deadline for filing a motion to reopen).

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pending before the BIA, or wants to reopen the case after the BIA denies an appeal, then the motion to reopen should be filed with the BIA.²³⁶

With some exceptions, a person must pay a fee or request a fee waiver for filing a motion to reopen.²³⁷

Generally, a person may file only one motion to reopen.²³⁸

13.42 Filing a Petition for Review in the Federal Court of Appeals

If the BIA appeal and any motions to reconsider or to reopen are unsuccessful, a person may be able to seek court (judicial) review of the removal decision. A petition for review filed in a federal court of appeals is the “sole and exclusive means for judicial review” for nearly all final orders of removal or exclusion.²³⁹ However, there are some circumstances in which a person can challenge an IJ or BIA action by filing a habeas corpus petition in federal district court (see § 13.43).

Before filing a petition for review, a person must exhaust administrative remedies in regards to most types of issues by filing a BIA appeal, as discussed in § 13.39.²⁴⁰ If a person did not file an appeal brief, they will be deemed to have exhausted all issues raised in their Notice of Appeal. If the person did file an appeal brief, they will have exhausted only those issues raised in the brief.²⁴¹ Also, an issue will be exhausted if the BIA actually addressed it, even if the person did not raise the issue or the BIA was not required to address the issue.²⁴²

The law limits the sorts of claims that may be raised to a court of appeals in a petition for review. Courts of appeal may hear claims that a person is actually a citizen of the U.S.²⁴³ Courts of appeals also have power to review cases that raise “constitutional claims or questions of law.”²⁴⁴ Courts have some limited power to review removal orders that were entered in absentia.²⁴⁵ Also, unless subject

²³⁶ BIA Practice Manual, Ch. 5.6(a).

²³⁷ 8 C.F.R. § 1003.8(a)(1); see 8 C.F.R. § 1003.8(a)(2) (exceptions to fee requirement); see also 8 C.F.R. § 1003.2(g) (filing procedures for motions to reopen).

²³⁸ 8 U.S.C. § 1229a(c)(7)(A).

²³⁹ 8 U.S.C. § 1252(a)(5); *Iasu v. Smith* (9th Cir. 2007) 511 F.3d 881.

²⁴⁰ 8 U.S.C. § 1252(d)(1); but see *Theogene v. Gonzales* (9th Cir. 2005) 411 F.3d 1107 (no need to exhaust administrative remedies by raising nationality claim to the BIA).

²⁴¹ *Abebe v. Mukasey* (9th Cir. 2009) 554 F.3d 1203, 1208; *Ayala-Villanueva v. Holder* (9th Cir. 2009) 572 F.3d 736, 738.

²⁴² *Kin v. Holder* (9th Cir. 2010) 595 F.3d 1050, 1055.

²⁴³ 8 U.S.C. § 1252(b)(5);).

²⁴⁴ 8 U.S.C. § 1252(a)(2)(D). Questions of law include both pure questions of law, such as those of statutory interpretation, and mixed questions of law and fact involving application of law to undisputed facts. *Ramadan v. Gonzales* (9th Cir. 2007) 479 F.3d 646, 648, 650; see also *Bunty Ngaeth v. Mukasey* (9th Cir. 2008) 545 F.3d 796, 800 (jurisdiction to review constitutional claims or questions of law regarding removal order/denial of motion to reopen).

²⁴⁵ Unless a person claims to be a citizen, review of in absentia removal orders is limited to (1) the validity of the notice provided to the person; (2) the reasons why the person did not attend the proceeding; and (3) whether the person is removable. 8 U.S.C. § 1229a(b)(5)(D); *Hamazaspyan v. Holder* (9th Cir. 2009) 590 F.3d 744, 747; *Al Mutarreb v. Holder* (9th Cir. 2009) 561 F.3d 1023, 1026.

to a specific bar, courts of appeal may hear issues for which immigration officials' discretion is guided by legal standards.²⁴⁶

The law bars courts from hearing petitions for review on some types of issues:

- ◆ A court of appeals cannot review an order of removal that is based on criminal conviction grounds.²⁴⁷ However, there is an important exception in that courts of appeals still have power to review cases that raise constitutional claims or questions of law.²⁴⁸ Thus, courts can review petitions raising issues about whether a crime qualifies under the law as a removable offense, aggravated felony, or CIMT.²⁴⁹
- ◆ A court of appeals cannot review reinstatement of a prior removal order, except to review (1) whether the person is not a U.S. citizen; (2) whether the person was subject to a prior removal order, and (3) whether the person re-entered the U.S. illegally. Courts also cannot review the validity of a prior expedited removal order that has been reinstated.²⁵⁰
- ◆ A court of appeals cannot review claims that an IJ abused their discretion in denying discretionary relief from removal, such as voluntary departure, discretionary withholding of removal, or cancellation of removal.²⁵¹ However, courts still have the power to review claims involving discretionary relief that raise constitutional issues and questions of law, such as whether a person's conviction makes them ineligible for discretionary relief.²⁵² Also, courts can review cases involving mandatory forms of relief from removal that are

²⁴⁶ See, e.g., *Kucana v. Holder* (2010) 558 U.S. 233 [130 S.Ct.827; 175 L.Ed.2d 694] (allowing review of BIA denial of motion to reopen); *Sun v. Mukasey* (9th Cir. 2009) 555 F.3d 802, 805 (jurisdiction to review denial of motion to reopen because BIA determination that person failed to provide sufficient justification for untimely motion presented a mixed question of fact and law); *Irigoyen-Briones v. Holder* (9th Cir. 2011) 644 F.3d 943 (jurisdiction to review BIA decision that it had no authority to consider late appeal); *Garcia v. Lynch* (9th Cir. 2015) 798 F.3d 876 (court may review IJ's denial of motion for continuance to seek post-conviction relief regarding conviction that is basis for removal); *Sandoval-Luna v. Mukasey* (9th Cir. 2008) 526 F.3d 1243, 1246-1247 (jurisdiction to review denial of continuance); *Ahmed v. Holder* (9th Cir. 2009) 569 F.3d 1009, 1012, 1114 (same); *Singh v. Holder* (9th Cir. 2010) 591 F.3d 1190 (jurisdiction to review denial of petition for hardship waiver to remove conditional basis of permanent resident status).

²⁴⁷ 8 U.S.C. § 1252(a)(2)(C), (b)(6).

²⁴⁸ 8 U.S.C. § 1252(a)(2)(D). Questions of law include both pure questions of law, such as those involving statutory interpretation, and mixed questions of law and fact involving application of law to undisputed facts. *Ramadan v. Gonzales* (9th Cir. 2007) 479 F.3d 646, 648, 650.

²⁴⁹ See e.g., *Hernandez-Gonzalez v. Holder* (9th Cir. 2015) 778 F.3d 793 (finding gang enhancement does not make crime of possession of a weapon a CIMT); *Tall v. Mukasey* (9th Cir. 2008) 517 F.3d 1115, 1118-1119 (jurisdiction to determine whether convictions qualify as crimes involving moral turpitude).

²⁵⁰ 8 U.S.C. § 1252(a)(2)(A); *Pena v. Lynch* (9th Cir. 2015) 815 F.3d 452; *Garcia de Rincon v. DHS* (9th Cir. 2008) 539 F.3d 1133; *Mozquiedo v. Gonzales* (9th Cir. 2007) 486 F.3d 484, 495-497.

²⁵¹ 8 U.S.C. § 1252(a)(2)(B); 8 U.S.C. § 1229c(f); 8 U.S.C. § 1182(h); 8 U.S.C. § 1158 (a)(3), (b)(2)(D); *Negrete v. Holder* (9th Cir. 2009) 567 F.3d 419, 422 (no jurisdiction over abuse-of-discretion claim "repackaged" as a constitutional due process claim).

²⁵² See, e.g., *Almanza-Arenas v. Lynch* (9th Cir. 2015) 798 F.3d 876 (court decided that California crime of theft and unlawful driving or taking of a vehicle was not a CIMT, and thus did not make person ineligible for cancellation of removal); see also *Delgado v. Holder* (9th Cir. 2011) 648 F.3d 1095 (authority to review whether crime was properly classified as "particularly serious"); *Anaya-Ortiz v. Holder* (9th Cir. 2010) 594 F.3d 673, 676 (court has authority to determine whether IJ and BIA applied correct legal standard, failed to consider appropriate factors, or relied on improper evidence in deciding that crime was "particularly serious").

not subject to the discretion of the IJ, such as withholding of removal for fear of persecution or CAT deferral of removal.²⁵³

- ◆ The courts of appeals do not have authority to review matters that are totally within the discretion of immigration officials.²⁵⁴

For removal hearings that are held in California, a person should file their petition for review in the Ninth Circuit Court of Appeals (see Appendix 16-A for the court's address). The person has 30 days after the date of the BIA decision to file the petition.²⁵⁵ If ineffective assistance of counsel causes a person to miss the deadline for filing a petition for review, the person may be able to make the removal order non-final by filing a motion with the BIA to reopen the case, so long as they meet the deadline for such a motion (see § 13.41).²⁵⁶

In addition to filing a petition for review, a person who has been ordered removed can ask the court of appeals to issue for a temporary stay of the removal order.²⁵⁷ If a person files a timely petition for review and requests, the 90-day removal period (see § 13.34) will not begin until the court of appeals either denies the stay or (if the court grants the stay) denies the petition.²⁵⁸ The court has discretion whether to stay removal. The decision should be governed by the following factors: (1) whether the person has made a strong showing that they are likely to succeed on the merits; (2) whether the person will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure other parties interested in the proceeding; and (4) where the public interest lies.²⁵⁹

13.43 Filing a Habeas Corpus Petition in the Federal District Court

Some types of legal challenges can be raised in a petition for writ of habeas corpus filed in a federal district court.²⁶⁰ However, if the matter is one that can be presented in a petition for review to the court of appeals (such as a challenge as to whether a particular conviction qualifies as an aggravated felony), then the person must file a petition for review (see § 13.42).²⁶¹

A person must exhaust any available administrative remedies before filing a federal habeas petition. This means that a person must usually have filed and gotten a decision on a BIA appeal of

²⁵³ *Maldonado v. Holder* (9th Cir. 2015) 786 F.3d 1155 (court can review denial of CAT relief).

²⁵⁴ See, e.g., *Singh v. Holder* (9th Cir. 2010) 591 F.3d 1190, 1194-1197 (explaining when jurisdictional bar does and does not apply); *Diaz-Covarrubias v. Mukasey* (9th Cir. 2009) 551 F.3d 1114 (no jurisdiction to review denial of administrative closure request due to lack of "sufficiently meaningful standard" for evaluating BIA's decision).

²⁵⁵ 8 U.S.C. § 1252(b)(1), (3)(B). A person may not file a PFR before the final removal order. See *Alcala v. Holder* (9th Cir. 2009) 563 F.3d 1009; *Ortiz-Alfaro v. Holder* (9th Cir. 2012) 694 F.3d 955; *Abdisalan v. Holder* (9th Cir. 2013) 728 F.3d 1122, 1129-1130. If the person does not file a BIA appeal, the PFR deadline is 30 days after the removal order became final. *Minasyan v. Mukasey* (9th Cir. 2009) 553 F.3d 1224, 1229.

²⁵⁶ See, e.g., *Matter of Compean* (A.G. 2009) 25 I. & N. Dec. 1, 3 (BIA has authority to consider claims of ineffective assistance of counsel based on conduct that occurred after final order of removal).

²⁵⁷ See *DeLeon v. INS* (9th Cir. 1997) 115 F.3d 643, 644.

²⁵⁸ *Prieto-Romero v. Clark* (9th Cir. 2008) 534 F.3d 1053, 1059, fn. 5.

²⁵⁹ *Nken v. Holder* (2009) 556 U.S. 418 [129 S.Ct. 1749; 173 L.Ed.2d 550].

²⁶⁰ 8 U.S.C. § 2241; 8 U.S.C. § 1252(a)(5), (e)(2).

²⁶¹ *Acevedo-Carranza v. Ashcroft* (9th Cir. 2004) 371 F.3d 539.

the issue (see § 13.39) before pursuing a habeas action. However, a person might be allowed to proceed without exhausting administrative remedies when a BIA appeal would be futile because the BIA already has taken a firm position on the legal issue.²⁶²

The issues for which a federal district court may hear a habeas petition include:

- ◆ Ineffective assistance of counsel claims based on failure of counsel to file a timely and adequate petition for review challenging a removal order.²⁶³
- ◆ Challenges to an expedited removal order; however, review is limited to determining whether the person (1) is not a citizen, (2) was ordered removed under the expedited removal provision, and (3) can demonstrate by a preponderance of the evidence that they are a lawful permanent resident, was admitted as a refugee, or has been granted asylum, and that such status is still in effect. Habeas corpus may also be used to challenge the constitutionality or lawfulness of a regulation used to support an expedited removal order. Courts cannot hear a habeas corpus petition challenging the validity of a prior order of removal that has been reinstated.²⁶⁴
- ◆ Legal and constitutional challenges to a decision to detain a person, such as refusal to hold a bond hearing, application of the wrong legal standard resulting in denial of bond, a claim that a person is not subject to immigration detention because they are a U.S. citizen, or extended detention after a removal order.²⁶⁵

Denial of a federal habeas petition may be appealed to the federal court of appeals.²⁶⁶

Appendix 16-A lists the addresses of the federal district courts in California. However, note that the discussion of federal habeas corpus petitions in Chapter 16 applies to petitions filed by people held in state prisons challenging their criminal convictions – there are different forms, rules, and procedures for filing petitions challenging detention by federal immigration authorities.

²⁶² 8 U.S.C. § 1252(d); *Sun v. Ashcroft* (9th Cir. 2004) 370 F.3d 932 (distinguishing exhaustion requirement for immigration cases from that for federal civil rights cases); see e.g., *Singh v. Napolitano* (9th Cir. 2011) 649 F.3d 899, 900 (person must raise issue of ineffective assistance of counsel to the BIA to satisfy the exhaustion requirement).

²⁶³ *Singh v. Gonzales* (9th Cir. 2007) 499 F.3d 969.

²⁶⁴ 8 U.S.C. §1252(e)(2)-(3); *Garcia de Rincon v. DHS* (9th Cir. 2008) 539 F.3d 1133.

²⁶⁵ *Singh v. Holder* (9th Cir. 2011) 638 F.3d 1196, 1212 (application of incorrect standard of proof at a bond hearing warranted habeas relief); *Demore v. Kim* (2003) 538 U.S. 510 [123 S.Ct. 1708, 1712; 155 L.Ed.2d 724] (reviewing policy of mandatory detention of people removable for criminal convictions); *Flores-Torres v. Mukasey* (9th Cir. 2008) 548 F.3d 708, 711-712 (challenge to detention based on claim of nationality); *Zadvydas v. Davis* (2001) 533 U.S. 678, 687-688 [121 S.Ct. 2491; 150 L.Ed.2d 653] (extended detention after removal order).

²⁶⁶ 28 U.S.C. § 1291; 28 U.S.C. § 2253.



Instructions for Application for Certificate of Citizenship

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form N-600
OMB No. 1615-0057
Expires 12/31/2018

What Is the Purpose of Form N-600?

Form N-600, Application for Certificate of Citizenship, is an application for a Certificate of Citizenship.

Who Should File Form N-600?

You should file this application if:

1. You are requesting a Certificate of Citizenship because you were born outside the United States to a U.S. citizen parent; **or**
2. You are requesting a Certificate of Citizenship because you automatically became a citizen of the United States after birth, but before you turned 18 years of age. (A parent or legal guardian can also file Form N-600 on behalf of a minor child.)

Citizenship law has changed over the years and different laws apply to determine whether you automatically became a U.S. citizen at birth, or after birth but before you turned 18 years of age. If you are claiming U.S. citizenship based on your birth abroad to U.S. citizen parents, the law in effect on the date of your birth applies. For purposes of these provisions, you must be the biological child of your U.S. citizen parent, and different provisions apply depending on whether you were born in wedlock or out-of-wedlock.

If you are claiming U.S. citizenship after birth, but before you reached 18 years of age, the law in effect when the last qualifying condition was met is the law that applies to you. Generally, the conditions are listed below.

These conditions must be met before you turn 18 years of age:

1. Your parent must be a U.S. citizen;
2. You must be the biological child of that U.S. citizen parent;
3. You must be lawfully admitted to the United States for lawful permanent residence; **and**
4. You must be living in the United States in the legal and physical custody of your U.S. citizen parent.

You can file Form N-600 at any time if you became a U.S. citizen at birth or after birth, but before you turned 18 years of age. Filing this application is **NOT** a request to become a U.S. citizen. Filing this application is **ONLY** a request to obtain a Certificate of Citizenship which recognizes that you became a citizen on a particular date.

Adopted Child

An adopted child may also acquire U.S. citizenship through his or her adoptive U.S. citizen parent depending on the law being applied. Currently, an adopted child can acquire U.S. citizenship through his or her U.S. citizen parent. However, step children **CANNOT** acquire U.S. citizenship under this provision.

NOTE: If you are now 18 years of age, but all of the above conditions apply to you before your 18th birthday **and** you were under 18 years of age on February 27, 2001 (the date the law took effect), you may file this application to obtain a Certificate of Citizenship. However, if you were under 18 years of age on February 27, 2001, **BUT** not all of the conditions noted above were met prior to your 18th birthday, you must qualify for U.S. citizenship in your own right.

You may file this application if:

1. You claim to have acquired U.S. citizenship through a U.S. citizen parent and are now over 18 years of age; or
2. You are the U.S. citizen parent or legal guardian who has legal and physical custody of an adopted or biological child (under 18 years of age).

Law in Effect at the Time of Your Birth

To determine if you were born a U.S. citizen, U.S. Citizenship and Immigration Services (USCIS) must look at the law that was in effect at the time of your birth. The current law was enacted on November 14, 1986 **and** was last amended on February 27, 2001 (Child Citizenship Act). If you were born before November 14, 1986, and believe you may be a U.S. citizen, you should contact USCIS by visiting the USCIS website at www.uscis.gov or calling the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Who Should Not File Form N-600?

You should not file this application if:

1. You do not have at least one biological or adoptive U.S. citizen parent;
2. You are the child of U.S. citizen parents who regularly resides outside the United States. Refer to Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322;
3. You were born out-of-wedlock, you were not legitimated prior to your 16th birthday, and your U.S. citizen parent is your father;
NOTE: This does not affect you if you were born abroad to an eligible U.S. citizen mother. You may also be eligible for citizenship through the naturalization of your mother.
4. You are seeking to replace a lost or stolen certificate. Refer to Form N-565, Application for Replacement Naturalization/Citizenship Document, for information to replace a lost or stolen certificate; or
5. **You already filed Form N-600 and received a decision from USCIS on that previously filed Form N-600. USCIS will reject (not accept) any subsequently filed Form N-600. Review your Form N-600 denial notice for more information.**

General Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which you can download for free at <http://get.adobe.com/reader/>. If you do not have Internet access, you may call the USCIS National Customer Service Center at **1-800-375-5283** and ask that we mail a form to you. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Signature. Each application must be properly signed and filed. For all signatures on this application, USCIS will not accept a stamped or typewritten name in place of a signature. If you are under 14 years of age, your parent or legal guardian may sign the application on your behalf. A legal guardian may also sign for a mentally incompetent person.

Filing Fee. Each application must be accompanied by the appropriate filing fee. (See the **What Is the Filing Fee** section of these Instructions.)

Biometric Services Fee. If you file this application with USCIS, you do not need to include a biometric services fee at the time you submit your application. If you are later notified that you must submit biometrics, you will receive a biometric services appointment notice with instructions on how to submit the additional biometric services fee. If you file this application with an agency other than USCIS, please check with that agency to determine if and when you must submit a biometric services fee.

Evidence. At the time of filing, you must submit all evidence and supporting documentation listed in the **What Evidence Must You Submit** sections of these Instructions.

Biometric Services Appointment. USCIS may require that you appear for an interview or provide fingerprints, photograph, and/or signature at any time to verify your identity, obtain additional information, and conduct background and security checks, including a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your application, petition, or request. After USCIS receives your application and ensures it is complete, we will inform you in writing, if you need to attend a biometric services appointment. If an appointment is necessary, the notice will provide you the location of your local or designated USCIS Application Support Center (ASC) and the date and time of your appointment or, if you are currently overseas, instruct you to contact a U.S. Embassy, U.S. Consulate, or USCIS office outside the United States to set up an appointment.

If you are required to provide biometrics, at your appointment you must sign an oath reaffirming that:

1. You provided or authorized all information in the application;
2. You reviewed and understood all of the information contained in, and submitted with, your application; and
3. All of this information was complete, true, and correct at the time of filing.

If you fail to attend your biometric services appointment, USCIS may deny your application.

Copies. You should submit legible **photocopies** of documents requested, unless the Instructions specifically state that you must submit an original document. USCIS may request an original document at the time of filing or at any time during processing of an application, petition, or request. If USCIS requests an original document from you, it will be returned to you after USCIS determines it no longer needs your original.

NOTE: If you submit original documents when not required or requested by USCIS, **your original documents may be immediately destroyed upon receipt.**

Translations. If you submit a document with information in a foreign language, you must also submit a full English translation. The translator must sign a certification that the English language translation is complete and accurate, and that he or she is competent to translate from the foreign language into English. The certification should also include the date, the translator's signature and printed name, and may contain the translator's contact information.

How To Fill Out Form N-600

1. Type or print legibly in black ink.
2. If you need extra space to complete any item within this application, use the space provided in **Part 11. Additional Information** or attach a separate sheet of paper; type or print your name and Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.
3. Answer all questions fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks "Provide the name of your current spouse"), type or print "N/A," unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, "How many children do you have" or "How many times have you departed the United States"), type or print "None," unless otherwise directed.

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4. Provide your A-Number (if any) on the top right corner of each page. Your A-Number is located on your Permanent Resident Card (formerly known as the Alien Registration or “Green” Card). The A-Number on your card consists of seven to nine numbers, depending on when your record was created. If the A-Number on your card has fewer than nine numbers, place enough zeros before the first number to make a total of nine numbers on Form N-600. For example, type or print number A1234567 as A001234567 or type or print number A12345678 as A012345678.

Specific Instructions

This application is divided into **Parts 1. - 13.**

Part 1. Information About Your Eligibility

Item Number 1. Select **only one** box that indicates why you are eligible for a Certificate of Citizenship. Select “Other” if the basis for your eligibility is not described in any of the previous categories and type or print the basis for your application on the lines provided. USICS will reject your Form N-600 if you select more than one box.

Part 2. Information About You

You must provide complete information about yourself if you are the person seeking a Certificate of Citizenship. **If you are the U.S. citizen parent** applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, submit information relating to **your minor child**.

Item Number 1. Current Legal Name. Provide your legal name. This should be the name on your birth certificate unless it has been changed after birth by legal action such as marriage, adoption, or court order. **Do not provide a nickname.**

Item Number 2. Your Name Exactly As It Appears On Your Permanent Resident Card (if different from above). Type or print your name exactly as it appears on the card, even if it is misspelled. Type or print “N/A” if you do not have a permanent resident card.

Item Number 3. Other Names You Have Used Since Birth. Type or print any other names you have ever used, including aliases, maiden name, and nicknames. If you need extra space to complete this item number, use the space provided in **Part 11. Additional Information**.

Item Number 4. U.S. Social Security Number. Type or print your U.S. Social Security Number. Type or print “N/A” if you do not have one.

Item Number 5. USCIS Online Account Number (if any). If you have previously filed an application, petition, or request using the USCIS online filing system (previously called USCIS Electronic Immigration System (USCIS ELIS)), provide the USCIS Online Account Number you were issued by the system. You can find your USCIS Online Account Number by logging in to your account and going to the profile page. If you previously filed certain applications, petitions, or requests on a paper form via a USCIS Lockbox facility, you may have received a USCIS Online Account Access Notice issuing you a USCIS Online Account Number. If you received such a notice, your USCIS Online Account Number can be found at the top of the notice. If you were issued a USCIS Online Account Number, enter it in the space provided. The USCIS Online Account Number is not the same as an A-Number.

Item Number 6. Date of Birth. Provide your date of birth in mm/dd/yyyy format.

Item Number 7. Country of Birth. Provide the name of the country where you were born. Type or print the name of the country where you were born even if the country’s name has since changed or the country no longer exists.

Item Number 8. Country of Prior Citizenship or Nationality. Provide the name of the country of your citizenship or nationality before you became a U.S. citizen. If the country no longer exists or you are stateless, provide the name of the foreign country where you were last a citizen or national. If you are a citizen or national of more than one country, provide the name of the foreign country that issued your latest passport.

Item Number 9. Gender. Indicate whether you are male or female.

Item Number 10. Mailing Address. Provide your mailing address even if it is the same as your physical address. Provide “In Care Of Name” information, if any. You must type or print something in every box, except an apartment, suite, or floor number or “In Care Of Name” if you do not have one, within “Mailing Address.”

NOTE: USCIS may not be able to contact you if you do not provide a complete and valid address. If USCIS rejects your application, USCIS may not be able to return the filing fee for Form N-600 to you if you do not provide a complete and valid address. If USCIS cannot return the filing fee, USCIS will cash your check.

Item Number 11. Physical Address (Do not provide a PO Box in this space unless it is your **ONLY** address). Provide the address where you now reside.

Item Number 12. Current Marital Status. Select the marital status you have on the date you file this application. Select “Other” if your marriage was legally terminated and explain the circumstances.

Item Number 13. U.S. Armed Forces. Indicate if you are a member or veteran of any branch of the U.S. Armed Forces.

Item Number 14. Information About Your Admission Into the United States and Current Immigration Status.

Item A. Provide information about where you entered the United States and what name you used when you entered.

Item B. Provide information about what documents you presented to enter the United States. Provide your passport or travel document number and date of issuance, if known.

Item C. Provide information about your current immigration status in the United States. Select the box to indicate if you are a lawful permanent resident, a nonimmigrant, a refugee asylee, or other.

Item D. Provide information if you adjusted to lawful permanent resident status while in the United States including the date, USCIS office, and location where USCIS granted your status or location where you were admitted as a lawful permanent resident.

Item Number 15. Previous Application for Certificate of Citizenship or U.S. Passport. If you previously applied for a Certificate of Citizenship or a U.S. Passport (or you are a U.S. citizen parent who previously applied for a Certificate of Citizenship or U.S. Passport for your minor child), explain in the space provided what happened with that application and whether the Certificate of Citizenship or U.S. Passport was or was not issued. If you need extra space to complete this item number, use the space provided in **Part 11. Additional Information.**

Item Number 16. Permanent Resident Status Abandonment. Indicate if you have ever abandoned or lost your lawful permanent resident status.

Item Number 17. Information on Adoption. If you were adopted, select the appropriate box and if you answer “Yes,” provide information as to the date and place of the adoption and the dates that legal and physical custody began in **Items A. - D.**

Item Number 18. Re-Adoption in the United States. Indicate if you have been re-adopted in the United States. (See the **What Evidence Must You Submit** section of these Instructions for more information.)

Item Number 19. Marital Status of Your Parents At Time of Birth (or Adoption). Indicate whether your parents were married to each other at the time of your birth. If you were born out-of-wedlock, indicate “No” even if your parents subsequently married. If you were adopted, indicate whether your adoptive parents were married to each other at the time of your adoption.

NOTE: If you are a U.S. citizen parent applying on behalf of a minor biological or adopted child, indicate whether you were married to his or her parent at the time of your minor child’s birth (or adoption). If your minor child was born out-of-wedlock, indicate “No” even if you subsequently married your child’s biological parent.

Item Number 20. Marital Status of Your Parents After Birth. Indicate whether your parents married after your birth.

Item Number 21. Legal and Physical Custody. Indicate whether you are in the physical and legal custody of your U.S. citizen parent.

Item Number 22. Absences from the United States. Provide the requested information for every trip abroad that you have taken since you first arrived in the United States. Begin with the most recent trip. This information is needed only for persons born before October 10, 1952, who are claiming U.S. citizenship at the time of birth.

Part 3. Biographic Information

Provide the biographic information requested in **Part 3., Item Numbers 1. - 6.** Providing this information as part of your application may reduce the time you spend at your USCIS ASC appointment as described in the **Biometric Services Appointment** section of these Instructions.

Item Numbers 1. - 2. Ethnicity and Race. Select the boxes that best describe your ethnicity and race.

Categories and Definitions for Ethnicity and Race

1. **Hispanic or Latino.** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. (**NOTE:** This category is only included under Ethnicity in **Part 3., Item Number 1.**)
2. **White.** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
3. **Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
4. **Black or African American.** A person having origins in any of the black racial groups of Africa.
5. **American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
6. **Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Item Number 3. Height. Select the values that best match your height in feet and inches. For example, if you are five feet and nine inches, select “5” for feet and “09” for inches. Do not enter your height in meters or centimeters.

Item Number 4. Weight. Enter your weight in pounds. If you do not know your weight, or need to enter a weight under 30 pounds or over 699 pounds, enter “000.” Do not enter your weight in kilograms.

Item Number 5. Eye Color. Select the box that best describes the color of your eyes.

Item Number 6. Hair Color. Select the box that best describes the color of your hair.

Part 4. Information About Your U.S. Citizen Biological Father (or Adoptive Father)

Item Numbers 1. - 9. If you are claiming citizenship through a U.S. citizen biological father (or adoptive father), provide the full legal name, date of birth, country of birth, country of citizenship or nationality, information on U.S. citizenship, marital history, and physical address of your U.S. citizen father in the spaces provided. Complete **Part 5.** if you are claiming citizenship solely through a U.S. citizen biological mother (or adoptive mother).

Provide information about yourself if you are a U.S. citizen biological father (or adoptive father) applying for a Certificate of Citizenship on behalf of your minor child where information is requested about the U.S. citizen father.

Part 5. Information About Your U.S. Citizen Biological Mother (or Adoptive Mother)

Item Numbers 1. - 9. If you are claiming citizenship through a U.S. citizen biological mother (or adoptive mother), provide the full legal name, date of birth, country of birth, country of citizenship or nationality, information on U.S. citizenship, marital history, and physical address of your U.S. citizen mother in the spaces provided. Complete **Part 4.** if you are claiming citizenship solely through a U.S. citizen biological father (or adoptive father).

Provide information about yourself if you are a U.S. citizen biological mother (or adoptive mother) applying for a Certificate of Citizenship on behalf of your minor child where information is requested about the U.S. citizen mother.

Part 6. Physical Presence in the United States From Birth Until Filing of Form N-600

Item Numbers 1. - 2. Physical Presence. If you were born outside the United States and claim to have been born a U.S. citizen, you are required to provide all the dates when your U.S. citizen biological father or U.S. citizen biological mother resided in the United States. **Include all dates from your birth until the date you file your Form N-600.**

Children of Members of the U.S. Armed Forces or U.S. Government Employees temporarily stationed abroad are generally considered to be “residing in the United States” for purposes of acquisition of citizenship at birth.

Part 7. Information About Military Service of U.S. Citizen Parents (Applicable only for applications filed under the Immigration and Naturalization Act (INA) section 301(g).)

Item Numbers 1. - 4. Provide the requested information if either U.S. citizen parent served in the U.S. Armed Forces. Also indicate whether he or she was honorably discharged from service.

Part 8. Applicant’s Statement, Contact Information, Certification, and Signature

Item Numbers 1. - 6. Select the appropriate box to indicate whether you read this application yourself or whether you had an interpreter assist you. If someone assisted you in completing the application, select the box indicating that you used a preparer. Further, you must sign and date your application and provide your daytime telephone number, mobile telephone number (if any), and email address (if any). Every application **MUST** contain the signature of the applicant (or parent or legal guardian, if applicable). A stamped or typewritten name in place of a signature is not acceptable.

Part 9. Interpreter’s Contact Information, Certification, and Signature

Item Numbers 1. - 7. If you used anyone as an interpreter to read the Instructions and questions on this application to you in a language in which you are fluent, the interpreter must fill out this section, provide his or her name, the name and address of his or her business or organization (if any), his or her daytime telephone number, his or her mobile telephone number (if any), and his or her email address (if any). The interpreter must sign and date the application.

Part 10. Contact Information, Declaration, and Signature of the Person Preparing this Application, if Other Than the Applicant

Item Numbers 1. - 8. This section must contain the signature of the person who completed your application, if other than you, the applicant. If the same individual acted as your interpreter **and** your preparer, that person should complete both **Part 9.** and **Part 10.** If the person who completed this application is associated with a business or organization, that person should complete the business or organization name and address information. Anyone who helped you complete this application **MUST** sign and date the application. A stamped or typewritten name in place of a signature is not acceptable. If the person who helped you prepare your application is an attorney or accredited representative whose representation extends beyond preparation of this application, he or she may be obliged to also submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with your application.

Part 11. Additional Information

Item Numbers 1. - 6. If you need extra space to provide any additional information within this application, use the space provided in **Part 11. Additional Information.** If you need more space than what is provided in **Part 11.**, you may make copies of **Part 11.** to complete and file with your application, or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers, and sign and date each sheet.

We recommend that you print or save a copy of your completed application to review in the future and for your records. We recommend that you review your copy of your completed application before you come to your biometric services appointment at a USCIS ASC. At your appointment, USCIS will permit you to complete the application process only if you are able to confirm, under penalty of perjury, that all of the information in your application is complete, true, and correct. If you are not able to make that attestation in good faith at that time, USCIS will require you to return for another appointment.

Part 12. Affidavit (At the time of Interview)

Do **NOT** complete this part unless instructed to do so **AT THE INTERVIEW**.

Part 13. Officer's Report and Recommendation On Application for Certificate of Citizenship

For USCIS use **ONLY**.

What Evidence Must You Submit?

You must submit all evidence requested in these Instructions with your application. If you fail to submit required evidence, USCIS may reject or deny your application for failure to submit requested evidence or supporting documents in accordance with 8 CFR 103.2(b)(1) and these Instructions.

Unless specifically noted otherwise, you must submit each of the documents listed below for you and your U.S. citizen parent through whom you are claiming U.S. citizenship at the time of filing to avoid delays in processing your Form N-600. USCIS may require verification for any or all information provided with Form N-600.

Additionally, if you are scheduled for an interview with USCIS, you must bring in documentation if information has been updated or has changed after filing.

NOTE: "You" and "your" in this section refers to the individual for whom a Certificate of Citizenship is sought. It is NOT the applicant's parent or legal guardian who may apply on the minor child's behalf.

- 1. Photographs.** You **must** submit two identical color passport-style photographs of yourself taken within 30 days of filing this application. The photos must have a white to off-white background, be printed on thin paper with a glossy finish, and be unmounted and unretouched.

The two identical color passport-style photos must be 2 by 2 inches. The photos must be in color with full face, frontal view on a white to off-white background. Head height should measure 1 to 1 3/8 inches from top of hair to bottom of chin, and eye height is between 1 1/8 to 1 3/8 inches from bottom of photo. Your head must be bare unless you are wearing headwear as required by a religious denomination of which you are a member. Using a pencil or felt pen, lightly print your name and A-Number (if any) on the back of the photo.

- 2. Your Birth Certificate.** You must submit a birth certificate or record issued and certified by a civil authority in the country of birth.
- 3. Birth Certificate or Record of Your U.S. Citizen Parent.** You must submit a birth certificate or record of your U.S. citizen parent issued and certified by a civil authority in the country of birth.

If your U.S. citizen parent applies, your U.S. citizen parent must submit his or her birth certificate or record issued and certified by a civil authority in the country of birth.

- 4. Marriage Certificates of Your U.S. Citizen Parent.** You must submit a marriage certificate issued and certified by a civil authority in the state or country of marriage.

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5. **Documents Showing the Marriage Termination** (if applicable). You must submit a certified divorce decree, death certificate, or annulment document.
 6. **Proof of U.S. Citizenship.** Examples of this are birth certificates showing birth in the United States; a Form N-550, Certificate of Naturalization; a Form N-560, Certificate of Citizenship; a Form FS-240, Report of Birth Abroad of United States Citizen; or a valid unexpired U.S. passport.
 7. **Proof of Status as U.S. National** (only required if you are claiming U.S. citizenship through a U.S. national, such as a person born in American Samoa or Swains Island).

If you were born outside the United States or its outlying possessions, you are born a U.S. citizen if your parents met the following conditions:

- A. Your U.S. citizen parent was physically present in the United States or one of its outlying possessions for a continuous period of one year prior to your birth; and
- B. Your other parent was a national, but not a U.S. citizen.

NOTE: If you have a U.S. citizen parent and a noncitizen parent who is an alien but not a national, your U.S. citizen parent must have met the physical presence requirements prior to your birth.

8. **Proof of Legitimation** (only required if you who were born out-of-wedlock and your father is your U.S. Citizen parent).

For information regarding legitimation see the USCIS Policy Manual at www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH.html.

Provide legitimation documentation from the country or state in which you legitimated. Legitimation can also be established according to the laws of your father's residence or your residence.

9. **Proof of Legal and Physical Custody** (only required for applicants whose U.S. citizen parents divorced and/or separated and for applicants who are adopted or legitimated).
10. **Copy of Permanent Resident Card or Other Evidence of Permanent Resident Status** (only required if you are claiming U.S. citizenship after birth through a U.S. citizen parent).
11. **Proof of Required Residence or Physical Presence In the United States.** Any document that proves the U.S. citizen parent's residence or physical presence in the United States. This proof may include, but is not limited to the following:
 - A. School, employment, or military records;
 - B. Deeds, mortgages, or leases showing residence;
 - C. Attestations by churches, unions, or other organizations;
 - D. U.S. Social Security quarterly reports; and
 - E. Affidavits of third parties having knowledge of the residence and physical presence.
12. **Copy of Full, Final Adoption Decree** (only required for adopted applicants).
13. **Re-adoption in the United States.** If you had to be re-adopted in the United States, submit evidence of a full and final foreign adoption if the appropriate authority in the applicant's current location of residence recognizes its validity.
14. **Evidence of All Legal Name Changes.** If you legally changed your name, submit evidence of an issued and certified document by the court that authorized the legal name changes.

What If a Document Is Unavailable?

You must provide a typed or printed explanation of the reasons a required document is unavailable and submit secondary evidence to establish eligibility. Secondary evidence must overcome the unavailability of the required documents. USCIS may request an original typed or printed statement from the appropriate government or other legal authority to support your claim that the documents are unavailable.

The following types of **secondary evidence** may be submitted to establish eligibility.

1. **Baptismal Certificate.** Certificate under the church seal where your baptism occurred showing your:
 - A. Place of birth;
 - B. Date of birth;
 - C. Baptism date;
 - D. Parents' names; and
 - E. Godparents' names, if known.
2. **School Record.** An official letter from school authorities for the school attended (preferably the first school) showing your:
 - A. Date of admission to the school;
 - B. Place of birth;
 - C. Date of birth or age at that time; and
 - D. The names and residences of your birth parents, if shown in the school records.
3. **Census Records.** State or Federal census records showing your:
 - A. Name;
 - B. Place of birth; and
 - C. Date of birth or age.
4. **Affidavits** (if other types of secondary evidence are not available).

Typed or printed statements sworn to (or affirmed) by two people who have personal knowledge of the claimed event. Affidavits must overcome the unavailability of both required documents and secondary evidence. Examples of events you may submit an affidavit for include the following:

 - A. Your place and date of birth;
 - B. Marriage; or
 - C. Death.

The people making these statements are not required to be U.S. citizens and may be relatives. Each affidavit must contain the following information about the person making the affidavit:

- A. Full legal name;
- B. Address;
- C. Place of birth;
- D. Date of birth;
- E. Relationship to you; and
- F. Detailed information about the event to include how they came to know about its occurrence.

What Is the Filing Fee?

The fee for filing Form N-600 is **\$1,170**.

NOTE: There is no filing fee for Form N-600 if you are a member or veteran of any branch of the U.S. Armed Forces filing on your own behalf. You must attach proof of U.S. military service; otherwise USCIS will charge a fee to file the Form N-600. Children of members or veterans of the Armed Forces are required to pay the filing fee for Form N-600.

NOTE: The filing fee is not refundable, regardless of any action USCIS takes on this application. **DO NOT MAIL CASH.** You must submit all fees in the exact amounts.

Use the following guidelines when you prepare your check or money order for the Form N-600 filing fee:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; **and**
2. Make the check or money order payable to **U.S. Department of Homeland Security**.

NOTE: Spell out U.S. Department of Homeland Security; do not use the initials “USDHS” or “DHS.”

3. If you live outside the United States, contact the nearest U.S. Embassy or U.S. Consulate for instructions on the method of payment.

If USCIS rejects your Form N-600 for any of the reasons above, the application and any filing fees will be returned to you if you provided a complete and valid mailing address.

Notice To Those Making Payment by Check.

If you send us a check, USCIS will convert it into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and your bank will show it on your regular account statement.

You will not receive your original check back. We will destroy your original check, but will keep a copy of it. If USCIS cannot process the EFT for technical reasons, you authorize us to process the copy in place of your original check. If your check is returned as unpayable, USCIS will re-submit the payment to the financial institution one time. If the check is returned as unpayable a second time, we will reject your application and charge you a returned check fee.

How to Check If the Fees Are Correct

Form N-600's filing fee is current as of the edition date in the lower left corner of this page. However, because USCIS fees change periodically, you can verify that the fees are correct by following one of the steps below.

1. Visit the USCIS website at www.uscis.gov, select “FORMS,” and check the appropriate fee; or
2. Call the USCIS National Customer Service Center at **1-800-375-5283** and ask for fee information. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Fee Waiver Request

You may be eligible for a fee waiver under 8 CFR 103.7(c). If you believe you are eligible for a fee waiver, complete Form I-912, Request for Fee Waiver (or a written request) and submit it and any required evidence of your inability to pay the filing fee with this application. You can review the fee waiver guidance at www.uscis.gov/feewaiver.

Where To File?

Please see our website at www.uscis.gov/n-600 or call our National Customer Service Center at **1-800-375-5283** for the most current information about where to file this application. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Address Change

An applicant who is not a U.S. citizen must notify USCIS of his or her new address within 10 days of moving from his or her previous residence. For information on filing a change of address, go to the USCIS website at www.uscis.gov/addresschange or contact the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

NOTE: Do not submit a change of address request to the USCIS Lockbox facilities because the Lockbox does not process change of address requests.

Processing Information

Initial Processing. Once USCIS accepts your application we will check it for completeness. If you do not completely fill out this application, you will not establish a basis for your eligibility and USCIS may reject or deny your application.

Requests for More Information. We may request that you provide more information or evidence to support your application. We may also request that you provide the originals of any copies you submit. If USCIS requests an original document from you, it will be returned to you after USCIS determines it no longer needs your original.

Requests for Interview. We may request that you appear at a USCIS office for an interview based on your application. At the time of any interview or other appearance at a USCIS office, we may require that you provide your fingerprints, photograph, and/or signature to verify your identity and/or update background and security checks.

Decision. The decision on Form N-600 involves a determination of whether you have established eligibility for the immigration benefit you are seeking. USCIS will notify you of the decision in writing.

NOTE: Any Form N-600 that is not signed or accompanied by the correct fee, except those accompanied by a fee waiver request (Form I-912, Request for Fee Waiver), will be rejected. A Form N-600 that is not completed according to these Instructions, is missing pages, or otherwise not executed in its entirety, or is not accompanied by the required initial evidence may be rejected or delayed. You will be notified why the application is considered deficient. You may correct the deficiency and refile Form N-600. An application is not considered properly filed until accepted by USCIS.

USCIS Forms and Information

To ensure use of the latest version of this application, visit the USCIS website at www.uscis.gov where the latest USCIS forms and immigration-related information are available. If no Internet access, order USCIS forms by calling the Forms Request Line at **1-800-870-3676**. Forms and information can be obtained by calling the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Instead of waiting in line for assistance at your local USCIS office, you can schedule an appointment online at www.uscis.gov. Select "Schedule an appointment online" and follow the screen prompts to set up your appointment. Once you finish scheduling an appointment, the system will generate an appointment notice for you.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form N-600, we will deny your Form N-600 and may deny any other immigration benefit. In addition, the applicant will face severe penalties provided by law and may be subject to criminal prosecution.

USCIS Privacy Act Statement

AUTHORITIES: The information requested on this application, and the associated evidence, is collected under the Immigration and Nationality Act, section 101.

PURPOSE: The primary purpose for providing the requested information on this application is to determine if you have established eligibility for the immigration benefit for which you are filing. Department of Homeland Security (DHS) will use the information you provide to grant or deny the immigration benefit you are seeking.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision in your case or result in denial of your application.

ROUTINE USES: DHS may share the information you provide on this application with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records notices [DHS/USCIS-007 - Benefits Information System and DHS/USCIS-001 - Alien File, Index, and National File Tracking System of Records] which you can find at www.dhs.gov/privacy. DHS may also share the information, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. The public reporting burden for this collection of information is estimated at 1 hour and 35 minutes per response, including the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application. The collection of biometrics is estimated to require 1 hour and 10 minutes. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0057. **Do not mail your completed Form N-600 to this address.**



Application for Certificate of Citizenship

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form N-600
OMB No. 1615-0057
Expires 12/31/2018

| | | | |
|--|------------|---|--|
| For USCIS Use Only | Date Stamp | Receipt | Action Block |
| | Remarks | | |
| To be completed by an Attorney or Accredited Representative (if any). | | <input type="checkbox"/> Select this box if Form G-28 is attached. | Attorney State Bar Number (if applicable) <input type="text"/> |
| | | Attorney or Accredited Representative USCIS Online Account Number (if any) <input type="text"/> | |

► **START HERE** - Type or print in black ink.

Part 1. Information About Your Eligibility

Enter Your 9 Digit A-Number:

► A-

1. This application is being filed based on the fact that: (Select **only one** box)

☐ I am a BIOLOGICAL child of a U.S. citizen parent. ☐ I am an ADOPTED child of a U.S. citizen parent.

☐ Other (Explain fully):

NOTE: If you need extra space to complete this section, use the space provided in **Part 11. Additional Information**.

Part 2. Information About You

NOTE: Provide information about yourself if you are a person applying for the Certificate of Citizenship. **Provide information about your child** if you are a U.S. citizen parent applying for a Certificate of Citizenship for your minor child.

1. Current Legal Name (do **not** provide a nickname)

| | | |
|-------------------------|-------------------------|----------------------|
| Family Name (Last Name) | Given Name (First Name) | Middle Name |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

2. Your Name Exactly As It Appears on Your Permanent Resident Card (if different from above)

| | | |
|-------------------------|-------------------------|----------------------|
| Family Name (Last Name) | Given Name (First Name) | Middle Name |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

3. Other Names You Have Used Since Birth

Provide all other names you have ever used, include nicknames, maiden name, and aliases.

| | | |
|-------------------------|-------------------------|----------------------|
| Family Name (Last Name) | Given Name (First Name) | Middle Name |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

4. U.S. Social Security Number (if any)

►

5. USCIS Online Account Number (if any)

►

6. Date of Birth (mm/dd/yyyy)

7. Country of Birth

8. Country of Prior Citizenship or Nationality

9. Gender

☐ Male ☐ Female

Part 2. Information About You (continued)

A-

10. Mailing Address

In Care Of Name (if any)

Street Number and Name

Apt. Ste. Flr. Number

☐ ☐ ☐

City or Town

State

ZIP Code + 4

 -

Province (foreign address only)

Postal Code (foreign address only)

Country (foreign address only)

11. Physical AddressStreet Number and Name (Do **not** provide a PO Box in this space unless it is your **ONLY** address.) Apt. Ste. Flr. Number☐ ☐ ☐

City or Town

State

ZIP Code + 4

 -

Province (foreign address only)

Postal Code (foreign address only)

Country (foreign address only)

12. Current Marital Status☐ Single, Never Married ☐ Married ☐ Divorced ☐ Widowed ☐ Separated ☐ Marriage Annulled☐ Other (Explain):**13. U.S. Armed Forces**

Are you a member or veteran of any branch of the U.S. Armed Forces?

☐ Yes ☐ No**14. Information About Your Admission into the United States and Current Immigration Status****A. I arrived in the following manner**

Port-of-Entry

City or Town

State

Date of Entry (mm/dd/yyyy)

Exact Name Used at Time of Entry

Family Name (Last Name)

Given Name (First Name)

Middle Name

B. I used the following travel document to be admitted to the United States☐ Passport☐ Travel Document

Passport Number

Travel Document Number

Country of Issuance for Passport or
Travel DocumentDate Passport or Travel Document
Issued (mm/dd/yyyy)

Part 2. Information About You (continued)

A-

C. I am

☐ A Lawful Permanent Resident (LPR) ☐ A Nonimmigrant ☐ A Refugee/Asylee☐ Other (Explain):

NOTE: If you select "Other" and you need extra space to complete this section, use the space provided in **Part 11. Additional Information.**

D. I obtained LPR status through adjustment of status in the United States or admission as a LPR (if applicable)

Date I became a LPR
(mm/dd/yyyy)U.S. Citizenship and Immigration Services (USCIS) Office That Granted My LPR
Status or Location Where I Was Admitted

15. Have you previously applied for a Certificate of Citizenship or U.S. Passport? ☐ Yes ☐ No
If you answered "Yes" to **Item Number 15.**, provide an explanation below. If you need extra space to complete this section, use the space provided in **Part 11. Additional Information.**

16. Have you ever abandoned or lost your LPR status? ☐ Yes ☐ No
If you answered "Yes" to **Item Number 16.**, provide an explanation below. If you need extra space to complete this section, use the space provided in **Part 11. Additional Information.**

17. Were you adopted? ☐ Yes ☐ No
If you answered "Yes" to **Item Number 17.**, complete **Items A. - D.**

A. Place of Final Adoption

City or Town

State

Country

B. Date of Adoption
(mm/dd/yyyy)C. Date Legal Custody Began
(mm/dd/yyyy)D. Date Physical Custody Began
(mm/dd/yyyy)

18. Did you have to be re-adopted in the United States? ☐ Yes ☐ No
If you answered "Yes" to **Item Number 18.**, complete **Items A. - D.**

A. Place of Final Adoption

City or Town

State

Country

B. Date of Final Adoption
(mm/dd/yyyy)C. Date Legal Custody Began
(mm/dd/yyyy)D. Date Physical Custody Began
(mm/dd/yyyy)

19. Were your parents married to each other when you were born (or adopted)? ☐ Yes ☐ No
20. Did your parents marry after you were born? ☐ Yes ☐ No
21. Do you regularly reside in the United States in the legal and physical custody of your U.S. citizen parents? ☐ Yes ☐ No

Part 2. Information About You (continued)A-

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22. Have you been absent from the United States since you first arrived? ☐ Yes ☐ No

Complete the following information **only if you are claiming U.S. citizenship at the time of birth if you were born before October 10, 1952**. If you need extra space to complete this section, use the space provided in **Part 11. Additional Information**.

A. Date You Left the United States
(mm/dd/yyyy)

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B. Date You Returned to the
United States (mm/dd/yyyy)

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C. Place of Entry Upon Return to the United States

City or Town

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State

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D. Date You Left the United States
(mm/dd/yyyy)

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E. Date You Returned to the
United States (mm/dd/yyyy)

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F. Place of Entry Upon Return to the United States

City or Town

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State

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Part 3. Biographic Information

1. Ethnicity (Select **only one** box)

☐ Hispanic or Latino ☐ Not Hispanic or Latino

2. Race (Select **all applicable** boxes)

☐ White ☐ Asian ☐ Black or African American ☐ American Indian or Alaska Native ☐ Native Hawaiian or Other Pacific Islander

3. Height Feet

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 Inches

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 4. Weight Pounds

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5. Eye color (Select **only one** box)

☐ Black ☐ Blue ☐ Brown ☐ Gray ☐ Green ☐ Hazel ☐ Maroon ☐ Pink ☐ Unknown/Other

6. Hair color (Select **only one** box)

☐ Bald (No hair) ☐ Black ☐ Blond ☐ Brown ☐ Gray ☐ Red ☐ Sandy ☐ White ☐ Unknown/Other

Part 4. Information About Your U.S. Citizen Biological Father (or Adoptive Father)

NOTE: Complete this section if you are claiming citizenship through a U.S. biological father (of adoptive father). **Provide information about yourself** if you are a U.S. citizen father applying for a Certificate of Citizenship on behalf of your minor biological or adopted child.

1. Current Legal Name of U.S. Citizen Father

Family Name (Last Name)

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Given Name (First Name)

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Middle Name

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**Part 4. Information About Your U.S. Citizen Biological Father
(or Adoptive Father) (continued)**

A-

2. Date of Birth (mm/dd/yyyy) 3. Country of Birth 4. Country of Citizenship or Nationality
5. Physical Address
Street Number and Name (Type or print "Deceased" and the date of death if your father has passed away.) Apt. Ste. Flr. Number

City or Town State ZIP Code + 4 -
Province (foreign address only) Postal Code (foreign address only) Country (foreign address only)
6. My father is a U.S. citizen by
☐ Birth in the United States ☐ Acquisition after birth through naturalization of alien parents
☐ Birth abroad to U.S. citizen parents
Certificate of Citizenship Number Alien Registration Number (A-Number) (if any) **A-**
☐ Naturalization
Place of Naturalization (Name of Court or USCIS Office Location)
City or Town State
Certificate of Naturalization Number A-Number (if any) **A-** Date of Naturalization (mm/dd/yyyy)
7. Has your father ever lost U.S. citizenship or taken any action that would cause loss of U.S. citizenship? ☐ Yes ☐ No
If you answered "Yes" to **Item Number 7**., provide an explanation in **Part 11. Additional Information**.
8. **Marital History**
A. How many times has your U.S. citizen father been married (including annulled marriages and marriages to the same person)?
B. What is your U.S. citizen father's current marital status?
☐ Single, Never Married ☐ Married ☐ Divorced ☐ Widowed ☐ Separated ☐ Marriage Annulled
☐ Other (Explain):
If you selected "Other," provide an explanation. If you need extra space to complete this section, use the space provided in **Part 11. Additional Information**.

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| A. Family Name (Last Name) | Given Name (First Name) | Middle Name |
|----------------------------|-------------------------|-------------|
| | | |

B. Date of Birth (mm/dd/yyyy)

C. Country of Birth

D. Country of Citizenship or Nationality

| Street Number and Name | Apt. | Ste. | Flr. | Number |
|------------------------|--------------------------|--------------------------|--------------------------|--------|
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

City or Town _____ State _____ ZIP Code + 4 _____ - _____

| | | |
|------------------------------------|---------------------------------------|-----------------------------------|
| Province (foreign address only) | Postal Code (foreign address only) | Country (foreign address only) |
| | | |

F. Date of Marriage (mm/dd/yyyy)

City or Town State Country

☐ U.S. Citizen ☐ Lawful Permanent Resident

☐ Other (Explain): _____

If you selected "Other," provide an explanation. If you need extra space to complete this section, use the space provided in **Part 11. Additional Information.**

I. Is your U.S. citizen father's current spouse also your biological (or adopted) mother? ☐ Yes ☐ No

NOTE: Complete this section if you are claiming citizenship through a U.S. citizen biological mother (or adoptive mother). **Provide information about yourself** if you are a U.S. citizen mother applying for a Certificate of Citizenship on behalf of your minor biological or adopted child.

| Family Name (Last Name) | Given Name (First Name) | Middle Name |
|-------------------------|-------------------------|-------------|
| | | |

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| 2. Date of Birth (mm/dd/yyyy) | 3. Country of Birth | 4. Country of Citizenship or Nationality |
| | | |

**Part 5. Information About Your U.S. Citizen Biological Mother
(or Adoptive Mother) (continued)**

A-

5. Physical Address

Street Number and Name (Type or print "Deceased" and the date of death if your mother has passed away.) Apt. Ste. Flr. Number

☐ ☐ ☐

City or Town

State

ZIP Code + 4

-

Province (foreign address only)

Postal Code (foreign address only)

Country (foreign address only)

6. My mother is a U.S. citizen by

☐ Birth in the United States ☐ Acquisition after birth through naturalization of alien parents

☐ Birth abroad to U.S. citizen parents

Certificate of Citizenship Number

A-Number (if any)

▶ A-

☐ Naturalization

Place of Naturalization (Name of Court or USCIS Office Location)

City or Town

State

Certificate of Naturalization Number

A-Number (if any)

Date of Naturalization (mm/dd/yyyy)

▶ A-

7. Has your mother ever lost U.S. citizenship or taken any action that would cause loss of U.S. citizenship? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 7.**, provide an explanation in **Part 11. Additional Information.**

8. Marital History

A. How many times has your U.S. citizen mother been married (including annulled marriages and marriages to the same person)?

B. What is your U.S. citizen mother's current marital status?

☐ Single, Never Married ☐ Married ☐ Divorced ☐ Widowed ☐ Separated ☐ Marriage Annulled

☐ Other (Explain):

If you selected "Other," provide an explanation. If you need extra space to complete this section, use the space provided in **Part 11. Additional Information.**

9. Information About U.S. Citizen Mother's Current Spouse

A. Family Name (Last Name)

Given Name (First Name)

Middle Name

B. Date of Birth (mm/dd/yyyy)

C. Country of Birth

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☐ Yes ☐ No

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Part 7. Information About Military Service of U. S. Citizen Parents

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NOTE: Complete this only if you are an applicant claiming U.S. citizenship at time of birth abroad.

1. Has your U.S. citizen parent served in the U.S. Armed Forces? ☐ Yes ☐ No
2. If you answered "Yes" to **Item Number 1**, which parent served in the U.S. Armed Forces?
- ☐ U.S. Citizen Father ☐ U.S. Citizen Mother
3. Dates of Service (mm/dd/yyyy) (If time of service fulfills any of the required physical presence, submit evidence of the service.)
- A. From (mm/dd/yyyy) To (mm/dd/yyyy)
-
- B. From (mm/dd/yyyy) To (mm/dd/yyyy)
-
4. Type of Discharge
- ☐ Honorable ☐ Other than Honorable ☐ Dishonorable

Part 8. Applicant's Statement, Contact Information, Certification, and Signature

NOTE: Read the **Penalties** section of the Form N-600 Instructions before completing this part.

Applicant's Statement

NOTE: Select the box for either **Item A.** or **B.** in **Item Number 1.** If applicable, select the box for **Item Number 2.**

1. Applicant's Statement Regarding the Interpreter
- A. ☐ I can read and understand English, and I have read and understand every question and instruction on this application and my answer to every question.
- B. ☐ The interpreter named in **Part 9**, read to me every question and instruction on this application and my answer to every question, in , a language in which I am fluent and I understood everything.
2. Applicant's Statement Regarding the Preparer
- ☐ At my request, the preparer named in **Part 10**, , prepared this application for me based only upon information I provided or authorized.

Applicant's Contact Information

- | | |
|---|---|
| 3. Applicant's Daytime Telephone Number | 4. Applicant's Mobile Telephone Number (if any) |
| <input type="text"/> | <input type="text"/> |
| 5. Applicant's Email Address (if any) | |
| <input type="text"/> | |

Applicant's Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any of my records that USCIS may need to determine my eligibility for the immigration benefit I seek.

I further authorize release of information contained in this application, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

Part 8. Applicant's Statement, Contact Information, Certification, and Signature (continued)

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I understand that USCIS may require me to appear for an appointment to take my biometrics (fingerprints, photograph, and/or signature) and, at that time, if I am required to provide biometrics, I will be required to sign an oath reaffirming that:

- 1) I reviewed and provided or authorized all of the information in my application;
- 2) I understood all of the information contained in, and submitted with, my application; and
- 3) All of this information was complete, true, and correct at the time of filing.

I certify, under penalty of perjury, that I provided or authorized all of the information in my application, I understand all of the information contained in, and submitted with, my application, and that all of this information is complete, true, and correct.

Applicant's Signature

6. Applicant's Signature (sign in ink) Date of Signature (mm/dd/yyyy)
- ➔

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NOTE TO ALL APPLICANTS: If you do not completely fill out this application or fail to submit required documents listed in the Instructions, USCIS may deny your application.

Part 9. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter.

Interpreter's Full Name

1. Interpreter's Family Name (Last Name) Interpreter's Given Name (First Name)
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2. Interpreter's Business or Organization Name (if any)
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Interpreter's Mailing Address

3. Street Number and Name Apt. Ste. Flr. Number
- | |
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Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number 5. Interpreter's Mobile Telephone Number (if any)
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6. Interpreter's Email Address (if any)
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Part 9. Interpreter's Contact Information, Certification, and Signature
(continued)

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Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and

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, which is the same language specified in **Part 8, Item B. in Item Number 1.**, and I have read to this applicant in the identified language every question and instruction on this application and his or her answer to every question. The applicant informed me that he or she understands every instruction, question, and answer on the application, including the **Applicant's Certification**, and has verified the accuracy of every answer.

Interpreter's Signature

7. Interpreter's Signature (sign in ink)

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 Date of Signature (mm/dd/yyyy)

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Part 10. Contact Information, Declaration, and Signature of the Person Preparing this Application, if Other Than the Applicant

Provide the following information about the preparer.

Preparer's Full Name

1. Preparer's Family Name (Last Name)

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 Preparer's Given Name (First Name)

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2. Preparer's Business or Organization Name (if any)

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Preparer's Mailing Address

3. Street Number and Name

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Preparer's Contact Information

4. Preparer's Daytime Telephone Number

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 5. Preparer's Mobile Telephone Number (if any)

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6. Preparer's Email Address (if any)

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NOTE: If you are an attorney or accredited representative whose representation extends beyond preparation of this application, you may be obliged to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with this application.

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| 8. Preparer's Signature (sign in ink) <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> | Date of Signature (mm/dd/yyyy) <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> |
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| 1. | Family Name (Last Name) | Given Name (First Name) | Middle Name |
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3. **A.** Page Number **B.** Part Number **C.** Item Number

D. _____

D. _____

D. _____

D. _____

NOTE: Do not complete Parts 12. and 13. unless the USCIS officer instructs you to do so at the interview.

Part 12. Affidavit (do NOT complete this part unless instructed to do so AT THE INTERVIEW)

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I, the (applicant, parent, or legal guardian) _____ do swear or affirm, under penalty of perjury under the laws of the United States, that I know and understand the contents of this application signed by me, and the attached supplementary pages number _____ to _____ inclusive, that the same are true and correct to the best of my knowledge, and that corrections number _____ to _____ were made by me or at my request.

Applicant's, Parent's, or Legal Guardian's Signature (Sign in ink)

Date of Signature (mm/dd/yyyy)

Subscribed and sworn or affirmed before me upon examination of the applicant (parent, legal, guardian) on

at _____.

_____ Date (mm/dd/yyyy)

(Location)

USCIS Officer's Printed Name

USCIS Officer's Title

USCIS Officer's Signature (Sign in ink)

Date of Signature (mm/dd/yyyy)

Part 13. Officer Report and Recommendation on Application for Certificate of Citizenship (for USCIS use ONLY)

On the basis of the documents, records, the testimony of persons examined, and the identification upon personal appearance of the underage beneficiary, I find that all the facts and conclusions set forth under oath in this application are:

1. ☐ True and correct
2. ☐ The applicant derived or acquired U.S. citizenship on _____
Date (mm/dd/yyyy)
3. ☐ The applicant derived or acquired U.S. citizenship through (Select the box next to the appropriate section of law, or if the section of law is not reflected, type or print the applicable section of law in the space next to "Other.")
 - A. ☐ INA Section 301
 - B. ☐ INA Section 309
 - C. ☐ INA Section 320
 - D. ☐ INA Section 321
 - E. ☐ Other _____
4. ☐ The applicant has not been expatriated since that time

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Issue Certificate of Citizenship in the name of

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U.S. PASSPORT APPLICATION

PLEASE DETACH AND RETAIN THIS INSTRUCTION SHEET FOR YOUR RECORDS

FOR INFORMATION AND QUESTIONS

Visit the official Department of State website at travel.state.gov or contact the National Passport Information Center (NPIC) via toll-free at 1-877-487-2778 (TDD: 1-888-874-7793) and NPIC@state.gov. Customer Service Representatives are available Monday-Friday 8:00a.m.-10:00p.m. Eastern Time (excluding federal holidays). Automated information is available 24 hours a day, 7 days a week.

WHAT TO SUBMIT WITH THIS FORM:

1. **PROOF OF U.S. CITIZENSHIP:** Evidence of U.S. citizenship AND a photocopy of the front (and back, if there is printed information) must be submitted with your application. The photocopy must be on 8 1/2 inch by 11 inch paper, black and white ink, legible, and clear. Evidence that is not damaged, altered, or forged will be returned to you. **Note:** Lawful permanent resident cards submitted with this application will be forwarded to U.S. Citizenship and Immigration Services, if we determine that you are a U.S. citizen.
2. **PROOF OF IDENTITY:** You must present your original identification AND submit a photocopy of the front and back with your passport application.
3. **RECENT COLOR PHOTOGRAPH:** Photograph must meet passport requirements – full front view of the face and 2x2 inches in size.
4. **FEES:** Please visit our website at travel.state.gov for current fees.

HOW TO SUBMIT THIS FORM:

Complete and submit this application in person to a designated acceptance agent: a clerk of a federal or state court of record or a judge or clerk of a probate court accepting applications; a designated municipal or county official; a designated postal employee at an authorized post office; an agent at a passport agency (by appointment only); or a U.S. consular official at a U.S. Embassy or Consulate, if abroad. To find your nearest acceptance facility, visit travel.state.gov or contact the National Passport Information Center at 1-877-487-2778.

Follow the instructions on Page 2 for detailed information to completion and submission of this form.

REQUIREMENTS FOR CHILDREN

● AS DIRECTED BY PUBLIC LAW 106-113 AND 22 CFR 51.28:

To submit an application for a child under age 16 both parents or the child's legal guardian(s) must appear and present the following:

- Evidence of the child's U.S. citizenship;
- Evidence of the child's relationship to parents/guardian(s); **AND**
- Original parental/guardian government-issued identification AND a photocopy of the front and back side of presented identification.

IF ONLY ONE PARENT APPEARS, YOU MUST ALSO SUBMIT ONE OF THE FOLLOWING:

- Second parent's notarized written statement or DS-3053 (including the child's full name and date of birth) consenting to the passport issuance for the child. The notarized statement cannot be more than **three** months old and must be signed and notarized on the same day, and must come with a photocopy of the front and back side of the second parent's government-issued photo identification; **OR**
- Second parent's death certificate if second parent is deceased; **OR**
- Primary evidence of sole authority to apply, such as a court order; **OR**
- A written statement or DS-5525 (made under penalty of perjury) explaining in detail the second parent's unavailability.

● AS DIRECTED BY REGULATION 22 C.F.R. 51.21 AND 51.28:

- Each minor child applying for a U.S. passport book and/or passport card must appear in person.

PASSPORT VALIDITY LENGTH

If you are 16 years of age or older: Your U.S. passport will be valid for 10 years from the date of issue except where limited by the Secretary of State to a shorter period.

If you are under 16 years of age: Your U.S. passport will be valid for five years from the date of issue except where limited by the Secretary of State to a shorter period.

APPLICANTS WHO HAVE HAD A PREVIOUS U.S. PASSPORT BOOK AND/OR PASSPORT CARD

LOST OR STOLEN - If you cannot submit your valid or potentially valid U.S. passport book and/or passport card with this application and you have not previously submitted Form DS-64, Statement Regarding a Lost or Stolen U.S. Passport, you are required to fill out and submit a DS-64 with this application.

IN MY POSSESSION - If your most recent U.S. passport book and/or passport card was issued less than 15 years ago, and you were over the age of 16 at the time of issuance, you may be eligible to use Form DS-82 to renew your passport by mail.

FAILURE TO PROVIDE INFORMATION REQUESTED ON THIS FORM, INCLUDING YOUR SOCIAL SECURITY NUMBER, MAY RESULT IN SIGNIFICANT PROCESSING DELAYS AND/OR THE DENIAL OF YOUR APPLICATION.

WARNING: False statements made knowingly and willfully in passport applications, including affidavits or other documents submitted to support this application, are punishable by fine and/or imprisonment under U.S. law including the provisions of 18 U.S.C. 1001, 18 U.S.C. 1542, and/or 18 U.S.C. 1621. Alteration or mutilation of a passport issued pursuant to this application is punishable by fine and/or imprisonment under the provisions of 18 U.S.C. 1543. The use of a passport in violation of the restrictions contained herein or of the passport regulations is punishable by fine and/or imprisonment under 18 U.S.C. 1544. All statements and documents are subject to verification.

PROOF OF U.S. CITIZENSHIP

APPLICANTS BORN IN THE UNITED STATES: Submit a previous U.S. passport or certified birth certificate. Passports that are limited in validity will need to be supplemented by other evidence. A birth certificate must include your full name, date and place of birth, sex, date the birth record was filed, the seal or other certification of the official custodian of such records (state, county, or city/town office), and the full names of your parent(s).

- If the birth certificate was filed more than 1 year after the birth: It must be supported by evidence described in the next paragraph.
- If no birth record exists: Submit a registrar's notice to that effect. Also, submit a combination of the evidence listed below, which should include your given name and surname, date and/or place of birth, and the seal or other certification of the office (if customary), and the signature of the issuing official.
 - A hospital birth record;
 - An early baptismal or circumcision certificate;
 - Early census, school, medical, or family Bible records;
 - Insurance files or published birth announcements (such as a newspaper article); and
 - Notarized affidavits (or DS-10, Birth Affidavit) of older blood relatives having knowledge of your birth may be submitted in addition to some of the records listed above.

APPLICANTS BORN OUTSIDE THE UNITED STATES: Submit a previous U.S. passport, Certificate of Naturalization, Certificate of Citizenship, Consular Report of Birth Abroad, or evidence described below:

- If you claim citizenship through naturalization of parent(s): Submit the Certificate(s) of Naturalization of your parent(s), your foreign birth certificate (and official translation if the document is not in English), proof of your admission to the United States for permanent residence, and your parents' marriage/certificate and/or evidence that you were in the legal and physical custody of your U.S. citizen parent, if applicable.
- If you claim citizenship through birth abroad to at least one U.S. citizen parent: Submit a Consular Report of Birth (Form FS-240), Certification of Birth (Form DS-1350 or FS-545), or your foreign birth certificate (and official translation if the document is not in English), proof of U.S. citizenship of your parent, your parents' marriage certificate, and an affidavit showing all of your U.S. citizen parents' periods and places of residence/physical presence in the United States and abroad before your birth.
- If you claim citizenship through adoption by a U.S. citizen parent(s): Submit evidence of your permanent residence status, full and final adoption, and your U.S. citizen parent(s) evidence of legal and physical custody. (NOTE: Acquisition of U.S. citizenship for persons born abroad and adopted only applies if the applicant was born on or after 02/28/1983.)

ADDITIONAL EVIDENCE: You must establish your citizenship to the satisfaction of the acceptance agent and Passport Services. We may ask you to provide additional evidence to establish your claim to U.S. citizenship. Visit travel.state.gov for details.

PROOF OF IDENTITY

You may submit items such as the following containing your signature AND a photograph that is a good likeness of you: previous or current U.S. passport book; previous or current U.S. passport card; driver's license (not temporary or learner's license); Certificate of Naturalization; Certificate of Citizenship; military identification; or federal, state, or municipal government employee identification card. Temporary or altered documents are not acceptable.

You must establish your identity to the satisfaction of the acceptance agent and Passport Services. We may ask you to provide additional evidence to establish your identity. If you have changed your name, please see travel.state.gov for instructions.

IF YOU CANNOT PROVIDE DOCUMENTARY EVIDENCE OF IDENTITY as stated above, you must appear with an IDENTIFYING WITNESS, who is a U.S. citizen, non-citizen U.S. national, or permanent resident alien that has known you for at least two years. Your witness must prove his or her identity and complete and sign an Affidavit of Identifying Witness (Form DS-71) before the acceptance agent. You must also submit some identification of your own.

COLOR PHOTOGRAPH

Submit a color photograph of you alone, sufficiently recent to be a good likeness of you (taken within the last six months), and 2x2 inches in size. The image size measured from the bottom of your chin to the top of your head (including hair) should not be less than 1 inch, and not more than 1 3/8 inches. The photograph must be in color, clear, with a full front view of your face. The photograph must be taken with a neutral facial expression (preferred) or a natural smile, and with both eyes open and be printed on photo quality paper with a plain light (white or off-white) background. The photograph must be taken in normal street attire, without a hat, or head covering unless a signed statement is submitted by the applicant verifying that the hat or head covering is part of recognized, traditional religious attire that is customarily or required to be worn continuously when in public or a signed doctor's statement is submitted verifying the item is used daily for medical purposes. Headphones, "bluetooth", or similar devices must not be worn in the passport photograph. Glasses or other eyewear are not acceptable unless you provide a signed statement from a doctor explaining why you cannot remove them due to medical reasons (e.g., during the recovery period from eye surgery). Any photograph retouched so that your appearance is changed is unacceptable. A snapshot, most vending machine prints, hand-held self portraits, and magazine or full-length photographs are unacceptable. A digital photo must meet the previously stated qualifications, and will be accepted for use at the discretion of Passport Services. Visit our website at travel.state.gov for details and information.

FEES

FEES ARE LISTED ON OUR WEBSITE AT [TRAVEL.STATE.GOV](https://travel.state.gov). BY LAW, THE PASSPORT FEES ARE NON-REFUNDABLE.

- The passport application fee, security surcharge, and expedite fee may be paid in any of the following forms: Checks (personal, certified, or traveler's) with the applicant's full name and date of birth printed on the front; major credit card (Visa, Master Card, American Express, and Discover); bank draft or cashier's check; money order (U.S. Postal, international, currency exchange), or if abroad, the foreign currency equivalent, or a check drawn on a U.S. bank. All fees should be payable to the "U.S. Department of State" or if abroad, the appropriate U.S. Embassy or U.S. Consulate. When applying at a designated acceptance facility, the execution fee will be paid separately and should be made payable to the acceptance facility. NOTE: Some designated acceptance facilities do not accept credit cards as a form of payment.
- For faster processing, you may request expedited service. Please include the expedite fee in your payment. Our website contains updated information regarding fees and processing times for expedited service. Expedited service is only available for passports mailed in the United States and Canada.
- OVERNIGHT DELIVERY SERVICE is only available for passport book mailings in the United States. Please include the appropriate fee with your payment.
- An additional fee will be charged when, upon your request, the U.S. Department of State verifies issuance of a previous U.S. passport or Consular Report of Birth Abroad because you are unable to submit evidence of U.S. citizenship.
- For applicants with U.S. government or military authorization for no-fee passports, no fees are charged except the execution fee when applying at a designated acceptance facility.

NOTE REGARDING MAILING OF YOUR PASSPORT(S)

Passport Services will not mail a U.S. passport to a private address outside the United States or Canada. If you do not live at the address listed in the "mailing address", then you must put the name of the person and mark it as "In Care Of" in item # 8. If your mailing address changes prior to receipt of your new passport, please contact the National Passport Information Center.

If you choose to provide your email address in Item #6 on this application, Passport Services may use that information to contact you in the event there is a problem with your application or if you need to provide information to us.

You may receive your newly issued passport book and/or card and your returned citizenship evidence in **two separate mailings**. If you are applying for both a U.S. passport book and passport card, **you may receive three separate mailings**: one with your returned citizenship evidence, one with your newly issued passport book, and one with your newly issued passport card.

FEDERAL TAX LAW

Section 6039E of the Internal Revenue Code (26 U.S.C. 6039E) and 22 U.S.C 2714a(f) require you to provide your Social Security number (SSN), if you have one, when you apply for or renew a U.S. passport. If you have never been issued a SSN, you must enter zeros in box #5 of this form. If you are residing abroad, you must also provide the name of the foreign country in which you are residing. The U.S. Department of State must provide your SSN and foreign residence information to the U.S. Department of the Treasury. If you fail to provide the information, your application may be denied and you are subject to a \$500 penalty enforced by the IRS. All questions on this matter should be referred to the nearest IRS office.

NOTICE TO CUSTOMERS APPLYING OUTSIDE A DEPARTMENT OF STATE FACILITY

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times, and we will charge you a one-time fee of \$25, which we will also collect by EFT.

FEE REMITTANCE

Passport service fees are established by law and regulation (see 22 U.S.C. 214, 22 C.F.R. 22.1, and 22 C.F.R. 51.50-56), and are collected at the time you apply for the passport service. If the Department fails to receive full payment of the applicable fees because, for example, your check is returned for any reason or you dispute a passport fee charge to your credit card, the U.S. Department of State will take action to collect the delinquent fees from you under 22 C.F.R. Part 34, and the Federal Claims Collection Standards (see 31 C.F.R. Parts 900-904). In accordance with the Debt Collection Improvement Act (Pub.L. 104-134), if the fees remain unpaid after 180 days and no repayment arrangements have been made, the Department will refer the debt to the U.S. Department of Treasury for collection. Debt collection procedures used by U.S. Department of Treasury may include referral of the debt to private collection agencies, reporting of the debt to credit bureaus, garnishment of private wages and administrative offset of the debt by reducing, or withholding eligible federal payments (e.g., tax refunds, social security payments, federal retirement, etc.) by the amount of your debt, including any interest penalties or other costs incurred. In addition, non-payment of passport fees may result in the invalidation of your passport. An invalidated passport cannot be used for travel.

USE OF SOCIAL SECURITY NUMBER

Your Social Security number will be provided to U.S. Department of Treasury, used in connection with debt collection and checked against lists of persons ineligible or potentially ineligible to receive a U.S. passport, among other authorized uses.

NOTICE TO APPLICANTS FOR OFFICIAL, DIPLOMATIC, OR NO-FEE PASSPORTS

You may use this application if you meet all of the provisions listed on Instruction Page 2; however, you must CONSULT YOUR SPONSORING AGENCY FOR INSTRUCTIONS ON PROPER ROUTING PROCEDURES BEFORE FORWARDING THIS APPLICATION. Your completed passport will be released to your sponsoring agency for forwarding to you.

PROTECT YOURSELF AGAINST IDENTITY THEFT! REPORT YOUR LOST OR STOLEN PASSPORT BOOK OR PASSPORT CARD!

For more information regarding reporting a lost or stolen U.S. passport book or passport card (Form DS-64), or to determine your eligibility for a passport renewal (Form DS-82), call NPIC at 1-877-487-2778 or visit travel.state.gov.

NOTICE TO U.S. PASSPORT CARD APPLICANTS

The maximum number of letters provided for your given name (first and middle) on the U.S. passport card is 24 characters. The 24 characters may be shortened due to printing restrictions. If both your given names are more than 24 characters, you must shorten one of your given names you list on item 1 of this form.


U.S. passports, either in book or card format, are only issued to U.S. citizens or non-citizen U.S. nationals. Each person must obtain his or her own U.S. passport book or U.S. passport card. The passport card is a U.S. passport issued in card format. Like the traditional U.S. passport book, it reflects the bearer's origin, identity, and nationality, and is subject to existing passport laws and regulations. **Unlike the U.S. passport book, the U.S. passport card is valid only for entry at land border crossings and sea ports of entry when traveling from Canada, Mexico, the Caribbean, and Bermuda.** The U.S. passport card is **not** valid for international air travel.

ELECTRONIC PASSPORT STATEMENT

The U.S. Department of State now issues an "Electronic Passport" book, which contains an embedded electronic chip. The electronic passport book continues to be proof of the bearer's U.S. citizenship/nationality and identity, and looks and functions in the same way as a passport without a chip. The addition of an electronic chip in the back cover enables the passport book to carry a duplicate electronic copy of all information from the data page. The electronic passport book is usable at all ports-of-entry, including those that do not yet have electronic chip readers.

Use of the electronic format provides the traveler the additional security protections inherent in chip technology. Moreover, when used at ports-of-entry equipped with electronic chip readers, the electronic passport book provides for faster clearance through some of the port-of-entry processes.

The electronic passport book does not require special handling or treatment, but like previous versions should be protected from extreme heat, bending, and from immersion in water. The electronic chip must be read using specially formatted readers, which protects the data on the chip from unauthorized reading.

The cover of the electronic passport book is printed with a special symbol representing the embedded chip. The symbol  will appear in port-of-entry areas where the electronic passport book can be read.

ACTS OR CONDITIONS

If any of the below-mentioned acts or conditions have been performed by or apply to the applicant, the portion which applies should be lined out, and a supplementary explanatory statement under oath (or affirmation) by the applicant should be attached and made a part of this application.

I have not, since acquiring United States citizenship/nationality, been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; made a formal renunciation of nationality either in the United States, or before a diplomatic or consular officer of the United States in a foreign state; or been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, or conspiring to overthrow, put down, or to destroy by force, the government of the United States.

Furthermore, I have not been convicted of a federal or state drug offense or convicted of a "sex tourism" crimes statute, and I am not the subject of an outstanding federal, state, or local warrant of arrest for a felony; a criminal court order forbidding my departure from the United States; a subpoena received from the United States in a matter involving federal prosecution for, or grand jury investigation of, a felony.

PRIVACY ACT STATEMENT

AUTHORITIES: Collection of this information is authorized by 22 U.S.C. 211a et seq.; 8 U.S.C. 1104; 26 U.S.C. 6039E, 22 U.S.C. 2714a(f), Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; Executive Order 11295 (August 5, 1966); and 22 C.F.R. parts 50 and 51.

PURPOSE: We are requesting this information in order to determine your eligibility to be issued a U.S. passport. Your Social Security number is used to verify your identity.

ROUTINE USES: This information may be disclosed to another domestic government agency, a private contractor, a foreign government agency, or to a private person or private employer in accordance with certain approved routine uses. These routine uses include, but are not limited to, law enforcement activities, employment verification, fraud prevention, border security, counterterrorism, litigation activities, and activities that meet the Secretary of State's responsibility to protect U.S. citizens and non-citizen nationals abroad. More information on the Routine Uses for the system can be found in System of Records Notices State-05, Overseas Citizen Services Records and State-26, Passport Records.

DISCLOSURE: Providing information on this form is voluntary. Be advised, however, that failure to provide the information requested on this form may cause delays in processing your U.S. passport application and/or could result in the refusal or denial of your application.

Failure to provide your Social Security number may result in the denial of your application (consistent with 22 U.S.C. 2714a(f)) and may subject you to a penalty enforced by the Internal Revenue Service, as described in the Federal Tax Law section of the instructions to this form. Your Social Security number will be provided to the Department of the Treasury and may be used in connection with debt collection, among other purposes authorized and generally described in this section.

PAPERWORK REDUCTION ACT STATEMENT

Public reporting burden for this collection of information is estimated to average 85 minutes per response, including the time required for searching existing data sources, gathering the necessary data, providing the information and/or documents required, and reviewing the final collection. You do not have to supply this information unless this collection displays a currently valid OMB control number. If you have comments on the accuracy of this burden estimate and/or recommendations for reducing it, please send them to: U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison, 44132 Mercure Cir, P.O. Box 1227, Sterling, Virginia 20166-1227



APPLICATION FOR A U.S. PASSPORT

Please Print Legibly Using Black Ink Only

OMB CONTROL NO. 1405-0004
OMB EXPIRATION DATE: 08-31-2019
ESTIMATED BURDEN: 85 MIN

Attention: Read WARNING on page 1 of instructions

Please select the document(s) for which you are applying:

- ☐ U.S. Passport Book ☐ U.S. Passport Card ☐ Both
The U.S. passport card is not valid for international air travel. For more information see page 1 of instructions.
☐ Regular Book (Standard) ☐ Large Book (Non-Standard)

Note: The large book option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously required the addition of visa pages.

1. Name Last

First

Middle

☐ D ☐ O ☐ Dep DOTS

End. # Exp.

2. Date of Birth (mm/dd/yyyy)

3. Sex

M F

4. Place of Birth (City & State if in the U.S., or City & Country as it is presently known.)

5. Social Security Number

6. Email (Info alerts offered at travel.state.gov)

7. Primary Contact Phone Number

8. Mailing Address: Line 1: Street/RFD#, P.O. Box, or URB.

Address Line 2: Clearly label Apartment, Company, Suite, Unit, Building, Floor, In Care Of or Attention if applicable. (e.g., In Care Of - Jane Doe, Apt # 100)

City

State

Zip Code

Country, if outside the United States

9. List all other names you have used. (Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed)

A.

B.

STOP! CONTINUE TO PAGE 2

DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT

Identifying Documents - Applicant or Mother/Father/Parent on Second Signature Line (if identifying minor)

☐ Driver's License ☐ State Issued ID Card ☐ Passport ☐ Military ☐ Other

Name

Issue Date
(mm/dd/yyyy)

Exp. Date
(mm/dd/yyyy)

State of
Issuance

ID No

Country of
Issuance

Identifying Documents - Applicant or Mother/Father/Parent on Third Signature Line (if identifying minor)

☐ Driver's License ☐ State Issued ID Card ☐ Passport ☐ Military ☐ Other

Name

Issue Date
(mm/dd/yyyy)

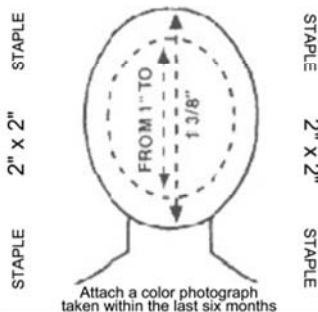
Exp. Date
(mm/dd/yyyy)

State of
Issuance

ID No

Country of
Issuance

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since acquiring U.S. citizenship or nationality, performed any of the acts listed under "Acts or Conditions" on page four of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page one of the instructions to the application form.



☐ Acceptance Agent ☐ (Vice) Consul USA
☐ Passport Staff Agent

(Seal)

Name of courier company (if applicable)

Facility ID Number

Facility Name/Location

Agent ID Number

Signature of person authorized to accept applications

Date

X

Applicant's Legal Signature - age 16 and older

X

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)


X

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

For Issuing Office Only → Bk Card EF Postage Execution Other



* DS 11 C 09 2013 1 *

| | | | | | | | |
|--|--|-------------------------|--|---|--|--|--|
| Name of Applicant (Last, First, & Middle) | | | | Date of Birth (mm/dd/yyyy) | | | |
| | | | | | | | |
| 10. Parental Information | | | | | | | |
| Mother/Father/Parent - First & Middle Name | | | | Last Name (at Parent's Birth) | | | |
| | | | | | | | |
| Date of Birth (mm/dd/yyyy) | | Place of Birth | | Sex | | U.S. Citizen? | |
| | | | | <input type="checkbox"/> Male <input type="checkbox"/> Yes <input type="checkbox"/> Female <input type="checkbox"/> No | | | |
| Mother/Father/Parent - First & Middle Name | | | | Last Name (at Parent's Birth) | | | |
| | | | | | | | |
| Date of Birth (mm/dd/yyyy) | | Place of Birth | | Sex | | U.S. Citizen? | |
| | | | | <input type="checkbox"/> Male <input type="checkbox"/> Yes <input type="checkbox"/> Female <input type="checkbox"/> No | | | |
| 11. Have you ever been married? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, complete the remaining items in #11.</i> | | | | | | | |
| Full Name of Current Spouse or Most Recent Spouse | | | | Date of Birth (mm/dd/yyyy) | | Place of Birth | |
| | | | | | | | |
| U.S. Citizen? | | Date of Marriage | | Have you ever been widowed or divorced? | | Widow/Divorce Date | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | (mm/dd/yyyy) | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | (mm/dd/yyyy) | |
| 12. Additional Contact Phone Number | | | | 13. Occupation (if age 16 or older) | | 14. Employer or School (if applicable) | |
| | | | | | | | |
| <input type="checkbox"/> Home <input type="checkbox"/> Cell <input type="checkbox"/> Work | | | | | | | |
| 15. Height | | 16. Hair Color | | 17. Eye Color | | 18. Travel Plans | |
| | | | | | | Departure Date (mm/dd/yyyy) | |
| | | | | | | Return Date (mm/dd/yyyy) | |
| | | | | | | Countries to be Visited | |
| | | | | | | | |
| 19. Permanent Address - If P.O. Box is listed under Mailing Address <u>or</u> if residence is different from Mailing Address. | | | | | | | |
| Street/RFD # or URB (No P.O. Box) | | | | | | Apartment/Unit | |
| | | | | | | | |
| City | | | | | | State | |
| | | | | | | | |
| 20. Emergency Contact - Provide the information of a person not traveling with you to be contacted in the event of an emergency. | | | | | | Apartment/Unit | |
| Name | | | | Address: Street/RFD # or P.O. Box | | | |
| | | | | | | | |
| City | | State | | Zip Code | | Phone Number | |
| | | | | | | | |
| | | | | | | | |
| 21. Have you ever applied for or been issued a U.S. Passport Book or Passport Card? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, complete the remaining items in #21.</i> | | | | | | | |
| Name as printed on your most recent passport book | | | | Most recent passport book number | | Most recent passport book issue date (mm/dd/yyyy) | |
| | | | | | | | |
| Status of your most recent passport book: <input type="checkbox"/> Submitting with application <input type="checkbox"/> Stolen <input type="checkbox"/> Lost <input type="checkbox"/> In my possession (if expired) | | | | | | | |
| Name as printed on your most recent passport card | | | | Most recent passport card number | | Most recent passport card issue date (mm/dd/yyyy) | |
| | | | | | | | |
| Status of your most recent passport card: <input type="checkbox"/> Submitting with application <input type="checkbox"/> Stolen <input type="checkbox"/> Lost <input type="checkbox"/> In my possession (if expired) | | | | | | | |
| PLEASE DO NOT WRITE BELOW THIS LINE - FOR ISSUING OFFICE ONLY | | | | | | | |
| Name as it appears on citizenship evidence _____ | | | | | | | |
| <input type="checkbox"/> Birth Certificate SR CR City Filed: | | | | Issued: | | | |
| <input type="checkbox"/> Nat. / Citiz. Cert. USCIS USDC Date/Place Acquired: | | | | A# | | | |
| <input type="checkbox"/> Report of Birth Filed/Place: | | | | | | | |
| <input type="checkbox"/> Passport C/R S/R Per PIERS #/DOI: | | | | | | | |
| <input type="checkbox"/> Other: | | | | | | | |
| <input type="checkbox"/> Attached: | | | | | | | |
| <input type="checkbox"/> P/C of Citiz <input type="checkbox"/> P/C of ID <input type="checkbox"/> DS-71 <input type="checkbox"/> DS-3053 <input type="checkbox"/> DS-64 <input type="checkbox"/> DS-5520 <input type="checkbox"/> DS-5525 <input type="checkbox"/> PAW <input type="checkbox"/> NPIC <input type="checkbox"/> IRL <input type="checkbox"/> Citiz W/S | | | |  * DS 11 C 09 2013 2 * | | | |



Freedom of Information/Privacy Act Request

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form G-639
OMB No. 1615-0102
Expires 04/30/2020

NOTE: Use of this form is optional. USCIS accepts any written request, regardless of format, provided that the request complies with the applicable requirements under the FOIA and the Privacy Act.

► **START HERE** - Type or print in black ink.

Part 1. Type of Request

Select **only one** box.

NOTE: If you are filing this request on behalf of another individual, respond as it would apply to that individual.

- 1.a. ☐ Freedom of Information Act (FOIA)/Privacy Act (PA)
1.b. ☐ Amendment of Record (PA only)

Part 2. Requestor Information

1. Are you the Subject of Record for this request?
☐ Yes ☐ No

If you answered "No" to **Item Number 1.**, provide the information requested in **Part 2.** If you answered "Yes" to **Item Number 1.**, skip to **Part 3.**

Requestor's Full Name

- 2.a. Family Name (Last Name)
2.b. Given Name (First Name)
2.c. Middle Name

Requestor's Mailing Address

- 3.a. In Care Of Name (if any)
3.b. Street Number and Name
3.c. ☐ Apt. ☐ Ste. ☐ Flr.
3.d. City or Town
3.e. State 3.f. ZIP Code
3.g. Province
3.h. Postal Code
3.i. Country

Requestor's Contact Information

4. Requestor's Daytime Telephone Number
5. Requestor's Mobile Telephone Number (if any)
6. Requestor's Email Address (if any)

Requestor's Certification

By my signature, I consent to pay all costs incurred for search, duplication, and review of documents up to **\$25.** (See Form G-639 Instructions for more information.)

- 7.a. Requestor's Signature
➡
7.b. Date of Signature (mm/dd/yyyy)

Part 3. Description of Records Requested

NOTE: While you are not required to respond to every item in **Part 3.**, failure to provide complete and specific information may delay processing of your request or create an inability for U.S. Citizenship and Immigration Services (USCIS) to locate the records or information requested.

1. **Purpose (Optional:** You are not required to state the purpose of your request. However, providing this information may assist USCIS in locating the records needed to respond to your request.)

Full Name of the Subject of Record

- 2.a. Family Name (Last Name)
2.b. Given Name (First Name)
2.c. Middle Name

Part 3. Description of Records Requested
(continued)

Other Names Used by the Subject of Record (if any)

Provide all other names you have ever used, including aliases, maiden name, and nicknames. If you need extra space to complete this section, use the space provided in **Part 5. Additional Information**.

- 3.a. Family Name (Last Name)
- 3.b. Given Name (First Name)
- 3.c. Middle Name

Full Name of the Subject of Record at Time of Entry into the United States

- 4.a. Family Name (Last Name)
- 4.b. Given Name (First Name)
- 4.c. Middle Name

Other Information About the Subject of Record

5. Form I-94 Number Arrival-Departure Record
▶
6. Alien Registration Number (A-Number) (if any)
▶ A-
7. USCIS Online Account Number (if any)
▶
8. Application, Petition, or Request Receipt Number
▶

Information About Family Members that May Appear on Requested Records

For example, provide the requested information about a spouse or children. If you need extra space to complete this section, use the space provided in **Part 5. Additional Information**.

Family Member 1

- 9.a. Family Name (Last Name)
- 9.b. Given Name (First Name)
- 9.c. Middle Name
10. Relationship

Family Member 2

- 11.a. Family Name (Last Name)
- 11.b. Given Name (First Name)
- 11.c. Middle Name
12. Relationship

Parents' Names for the Subject of Record

Father

- 13.a. Family Name (Last Name)
- 13.b. Given Name (First Name)
- 13.c. Middle Name

Mother

- 14.a. Family Name (Last Name)
- 14.b. Given Name (First Name)
- 14.c. Middle Name
- 14.d. Maiden Name (if applicable)

15. Description of Records Sought.

Provide a description of the records you are seeking. If you need additional space, use the space provided in **Part 5. Additional Information**.

Part 4. Verification of Identity and Subject of Record Consent

NOTE: Complete all applicable **Item Numbers**. In addition, the Subject of Record **MUST** sign **Part 4.** of this request.

Full Name of the Subject of Record

- 1.a. Family Name (Last Name)
- 1.b. Given Name (First Name)
- 1.c. Middle Name

Part 4. Verification of Identity and Subject of Record Consent (continued)

Mailing Address for the Subject of Record

- 2.a. In Care Of Name (if any)
- 2.b. Street Number and Name
- 2.c. ☐ Apt. ☐ Ste. ☐ Flr.
- 2.d. City or Town
- 2.e. State 2.f. ZIP Code
- 2.g. Province
- 2.h. Postal Code
- 2.i. Country

Other Information for the Subject of Record

3. Date of Birth (mm/dd/yyyy)
4. Country of Birth

Contact Information for the Subject of Record

Providing this information is **optional**.

5. Daytime Telephone Number
6. Mobile Telephone Number (if any)
7. Email Address (if any)

Signature and Notarized Affidavit or Declaration of the Subject of Record

Select **only one** box.

NOTE: The Subject of Record **MUST** provide a signature in **Item Number 8.a. Notarized Affidavit of Identity OR Item Number 8.b. Declaration Under Penalty of Perjury**. If the Subject of Record is deceased, read **Item Number 8.c. Deceased Subject of Record** and attach proof of death.

8.a. ☐ Notarized Affidavit of Identity

(Do **NOT** sign and date below until the notary public provides instructions to you.)

By my signature, I consent to USCIS releasing the requested records to the requestor (if applicable) named in **Part 2**. I also consent to pay all costs incurred for search, duplication, and review of documents up to **\$25** (if filing this request for myself).

Signature of Subject of Record

Date of Signature (mm/dd/yyyy)

Subscribed and sworn to before me on this _____
day of _____ in the year _____.
Daytime Telephone Number _____

Signature of Notary

My Commission Expires on (mm/dd/yyyy)

8.b. ☐ Declaration Under Penalty of Perjury

By my signature, I consent to USCIS releasing the requested records to the requestor (if applicable) named in **Part 2**. I also consent to pay all costs incurred for search, duplication, and review of documents up to **\$25** (if filing this request for myself).

I certify, swear, or affirm, under penalty of perjury under the laws of the United States of America, that the information in this request is complete, true, and correct.

Signature of Subject of Record

Date of Signature (mm/dd/yyyy)

8.c. Deceased Subject of Record

(**NOTE:** You **MUST** attach an obituary, death certificate, or other proof of death.)

Part 5. Additional Information

If you need extra space to provide any additional information within this request, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with your request or attach a separate sheet of paper. Type or print the name of the Subject of Record and his or her A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which the information refers; and sign and date each sheet.

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. Alien Registration Number (A-Number) (if any)

▶ A-

3.a. Page Number 3.b. Part Number 3.c. Item Number

3.d.

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d.

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d.

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d.

GENERAL INSTRUCTIONS
(Please read carefully before completing and filing Form EOIR-26)

A. When to Appeal:

- Use this form (Form EOIR-26) only to appeal a decision by an **Immigration Judge**. If you wish to appeal a decision of the U.S. Citizenship and Immigration Services (USCIS), you must use a different form (Form EOIR-29).
- You must send the Notice of Appeal so that it is **received** by the Board within thirty (30) calendar days after the Immigration Judge's oral decision, or within thirty (30) calendar days after the date the Immigration Judge's written decision was mailed (if no oral decision was rendered).
- Simply mailing your Notice of Appeal in thirty (30) days or less is not enough. Your Notice of Appeal must **arrive** at the Board in thirty (30) days or less. If your Notice of Appeal arrives late, your appeal will be dismissed.

B. Where to Appeal:

| | |
|---|--|
| <i>Mail or deliver in person to this address:</i> | Board of Immigration Appeals Clerk's Office 5107 Leesburg Pike, Suite 2000 Falls Church, VA 22041 |
|---|--|

C. How to Appeal:

- Read all of these instructions. **Note:** If you are the person in proceedings, you are the "Respondent" or "Applicant." You are also the "Appellant" if you are filing an appeal of a decision by an Immigration Judge.
- Fill out all three pages of the Notice of Appeal completely, answering items # 1 - 12 **in English only**.
- List in item # 1 the name(s) and Alien Number(s) ("A" numbers) of **all** Respondents/Applicants who are appealing the decision of the Immigration Judge.
- Sign item # 9.
- List the mailing address of the Respondent(s)/Applicant(s) in item # 10.
- Translate all documents that you attach to the Notice of Appeal into English. All translations must include the translator's statement stating that the translator is competent and that the translation is true and accurate.
- Write your name(s) and "A" Number(s) on all documents attached to the Notice of Appeal.
- Mail or give a copy of the completed Notice of Appeal and any attached documents to the opposing party. Complete and sign the "Proof of Service" to show you did this (item # 12). **Note:** If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of the U.S. Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS).
- Your appeal may be rejected or dismissed if you fail to properly complete the "Proof of Service" (item # 12).

D. Paying for the Appeal:

Attach a check or money order to the Notice of Appeal for exactly one hundred and ten dollars (U.S. \$110) made payable to "United States Department of Justice." All checks must be drawn on a bank located in the United States. If there are not sufficient funds in your account, your appeal may be dismissed.

- Write the name(s) and “A” Number(s) of all Respondent(s)/Applicant(s) on the check or money order.
- If you cannot pay for the appeal, complete a Fee Waiver Request (Form EOIR-26A) and attach it to the Notice of Appeal. The Board will review your request and decide whether to allow the appeal without payment of the fee.
- Your appeal may be rejected or dismissed if you fail to submit a fee or a properly completed Fee Waiver Request (Form EOIR-26A).

E. Lawyer or Representative Allowed:

- You may be represented by an attorney or representative who is authorized to appear before the EOIR. If you are represented by an attorney or authorized representative, he or she **must** file, **with** the Notice of Appeal, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

F. Specify Reasons for the Appeal:

- Give specific details why you disagree with the Immigration Judge’s decision.
- Most appeals are reviewed by a single Board Member. If you assert that your appeal warrants review by a three-Board Member panel, you may identify the specific factual or legal basis for your contention.

Cases will be reviewed by a three-member panel only if the case presents one of these circumstances:

- The need to settle inconsistencies among the rulings of different Immigration Judges;
 - The need to establish a precedent construing the meaning of laws, regulations, or procedures;
 - The need to review a decision by an Immigration Judge that is not in conformity with the law or with applicable precedents;
 - The need to resolve a case or controversy of major national import;
 - The need to review a clearly erroneous factual determination by an Immigration Judge; or
 - The need to reverse the decision of an Immigration Judge other than a reversal under 8 C.F.R. § 1003.1(e)(5) (i.e., permitting a single Board Member to reverse a decision that has been affected by changes in statutes, regulations or case law.)
- Specify the finding(s) of fact, the conclusion(s) of law, or both, that you are challenging. If a question of law is presented, cite supporting legal authority. If the dispute is over the findings of fact, identify the specific facts you are challenging.
 - Where the appeal concerns discretionary relief, state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion. Identify the specific factual and legal findings you are challenging.
 - If you do not give specific reasons, with details, in item # 6, or in attachments to your Notice of Appeal, the Board may dismiss your appeal on that basis alone.

G. Briefs:

- Indicate in item # 8 whether you intend to file an additional written brief or statement at a later date. The Board will send you a briefing schedule and, when appropriate, a transcript of the testimony.
- Even if you intend to file an additional brief or statement at a later date, you still must give detailed reasons for your appeal on the Notice of Appeal in item # 6 and attachments.

H. Oral Argument:

- If you ask for oral argument in item # 7, the Board will notify you if your request is granted.
- Even if you ask for oral argument, you still must give detailed reasons for your appeal on the Notice of Appeal in item # 6 and attachments.

- The Board ordinarily will not grant a request for oral argument unless you also file a brief.
- If you request oral argument, you should also state in item # 6 why you believe your case warrants review by a three-member panel.

I. Change of Address:

- If you move after sending your Notice of Appeal to the Board, you must give your new address **to the Board** within five (5) working days after you move. Use an alien's Change of Address Form (Form EOIR-33/BIA).
- Attorneys or representatives must also let the Board know if they change addresses or phone numbers, using Form EOIR-27. An attorney's or representative's change of address notification is only effective for the case in which it is submitted.

J. Further Information:

- For further guidance please see the Board of Immigration Appeals *Practice Manual*, which is available on the EOIR website at www.justice.gov/eoir.

K. Paperwork Reduction Act:

- Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is thirty (30) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

L. Privacy Act Notice:

- The information on this form is authorized by 8 C.F.R. §§ 1003.3, 1003.38 in order to appeal a decision of an Immigration Judge to the Board of Immigration Appeals. The information you provide is required to appeal the decision and failure to provide the requested information may result in denial of your request. EOIR may share this information with others in accordance with approved routine uses described in EOIR systems of records notices.

Departure From the United States:

If you leave the United States after an Immigration Judge's decision in removal or deportation proceedings, but before you appeal the decision to the Board, you may have waived your right to appeal. If you leave the United States after filing an appeal with the Board, but before the Board decides your appeal, your appeal may be withdrawn and the Immigration Judge's decision put into effect as if you had never filed an appeal.

Summary Dismissal of Appeal:

The Board may summarily dismiss any appeal or portion of any appeal in which: (1) The appellant fails to specify the reasons for the appeal (see Part F); (2) The only reason specified by the appellant for his/her appeal involves a finding of fact or conclusion of law that was conceded by him/her at a prior proceeding; (3) The appeal is from an order that granted the appellant the relief that had been requested; (4) The appeal is filed for an improper purpose, such as unnecessary delay, or lacks an arguable basis in fact or law, unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law; (5) The appellant indicates on Form EOIR-26 that he/she will file a separate brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his/her failure to do so, within the time set for filing (see Part G); (6) The appeal does not fall within the Board's jurisdiction or jurisdiction lies with the Immigration Judge rather than the Board; (7) The appeal is untimely or barred by an affirmative waiver of the right to appeal that is clear on the record; or (8) The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

WARNING! You must:

- Sign the Notice of Appeal (item # 9).
- Include the fee or Fee Waiver Request (Form EOIR-26A).
- Complete and sign the Proof of Service.
- Make sure your appeal is **received** at the Board on or before the filing due date.

Staple Check or Money Order Here. Include Name(s) and "A" Number(s) on the face of the check or money order.

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

For Official Use Only

! **WARNING:** Names and "A" Numbers of **everyone** appealing the Immigration Judge's decision must be written in item #1. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am ☐ the Respondent/Applicant ☐ DHS-ICE (Mark only one box.)
3. I am ☐ DETAINED ☐ NOT DETAINED (Mark only one box.)
4. My last hearing was at _____ (Location, City, State)

5. **What decision are you appealing?**

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

- ☐ I am filing an appeal from the Immigration Judge's decision in **merits proceedings** (example: removal, deportation, exclusion, asylum, etc.) dated _____.
- ☐ I am filing an appeal from the Immigration Judge's decision in **bond proceedings** dated _____. (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? ☐ Yes. ☐ No.)
- ☐ I am filing an appeal from the Immigration Judge's decision **denying a motion to reopen or a motion to reconsider** dated _____.

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

6. State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.

(Attach additional sheets if necessary)

! **WARNING:** You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? ☐ Yes ☐ No
8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? ☐ Yes ☐ No

! **WARNING:** If you mark "Yes" in item #7, you should also include in your statement above why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule..

- 9.



X

Signature of Person Appealing
(or attorney or representative)

Date

Form EOIR-26
Revised Oct. 2016

10. **Mailing Address of Respondent(s)/Applicant(s)**

_____ (Name)

_____ (Street Address)

_____ (Apartment or Room Number)

_____ (City, State, Zip Code)

_____ (Telephone Number)

11. **Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)**

_____ (Name)

_____ (Street Address)

_____ (Suite or Room Number)

_____ (City, State, Zip Code)

_____ (Telephone Number)

NOTE: You must notify the Board within five (5) working days if you move to a new address or change your telephone number. You must use the Change of Address Form/Board of Immigration Appeals (Form EOIR-33/BIA).


NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

12. **PROOF OF SERVICE (You Must Complete This)**

I _____ (Name) mailed or delivered a copy of this Notice of Appeal

on _____ (Date) to _____ (Opposing Party)

at _____ (Number and Street, City, State, Zip Code)

 X _____ Signature

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- ☐ Read all of the General Instructions
- ☐ Provided all of the requested information
- ☐ Completed this form in English
- ☐ Provided a certified English translation for all non-English attachments
- ☐ Signed the form

- ☐ Served a copy of this form and all attachments on the opposing party
- ☐ Completed and signed the Proof of Service
- ☐ Attached the required fee or Fee Waiver Request
- ☐ If represented by attorney or representative, attach a completed and signed EOIR-27

Name: _____

Alien Number ("A" Number): _____

If more than one alien is included in your appeal or motion, only the lead alien need file this form. This form is to be signed by the alien, not the alien's attorney or representative of record.

I, _____, declare under penalty of perjury, pursuant to 28 U.S.C. section 1746, that I am the person above and that I am unable to pay the fee. I believe that my appeal/motion is valid, and I declare that the following information is true and correct to the best of my knowledge:

Assets

| | |
|--|-----------------|
| Wages, Salary | \$ _____ /month |
| Other Income (business, professional services, self-employed/independent contracting, rental payments, etc.) | \$ _____ /month |
| Cash | \$ _____ |
| Checking and/or Savings | \$ _____ |
| Property (real estate, automobile(s), stocks, bonds, etc.) | \$ _____ |
| Other Financial Support (public assistance, alimony, child support, gift, parent, spouse, other family members, etc.) | \$ _____ /month |

Expenses (including dependents)

| | |
|--|-----------------|
| Housing (rent, mortgage, etc.) | \$ _____ /month |
| Food | \$ _____ /month |
| Medical/Health | \$ _____ /month |
| Utilities (phone, electric, gas, water, etc.) | \$ _____ /month |
| Transportation | \$ _____ /month |
| Debts, Liabilities | \$ _____ /month |
| Other _____ (specify) | \$ _____ /month |

Signature of Alien

Date

Attorney or Representative (if any):

I hereby attest that I have reviewed the details provided herein and I am satisfied that this fee waiver request is made in good faith.

Signature of Attorney or Representative

Date

Print Name

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is one (1) hour. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

Privacy Act Notice

The information on this form is requested to determine if you have established eligibility for the fee waiver you are seeking. The legal right to ask for this information is located at 8 C.F.R. § 1003.8(a)(3). EOIR may provide this information to other Government agencies. Failure to provide this information may result in denial of your request.