

GETTING STARTED ON YOUR IMMIGRATION CASE

How soon will I go to Immigration Court?

You will not go to Immigration Court for at least 10 days after you receive a **Notice to Appear** from the government. 8 U.S.C. §1229(b).

The library in each prison should have volume 8 of the United States Code, known as 8 U.S.C. This is where you will find the law on immigration.
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Who will decide my case?

An **Immigration Judge** will decide your case. The judge is supposed to be fair. The Immigration Judge will probably learn about your criminal record; telling the Immigration Judge that you are innocent will not help.

Do I have the right to a lawyer?

Yes. You have the right to a lawyer, but the government will not pay for that lawyer. 8 U.S.C. §1362. This means that you cannot get a public defender for Immigration Court. You can call the Political Asylum Immigration Representation Project (PAIR) about the possibility of finding a lawyer for you for free if your case is in Massachusetts .

Can Immigration deport me if I am still serving time in prison?

No, but some people can request an international transfer. See page 33. Otherwise, if you are still in prison, several things may happen to you:

(1) **Detainer.** Immigration may put a detainer on you so that when you finish your sentence you will likely be moved to ICE custody, perhaps in another jail, for your immigration case.

(2) **Immigration Hearing in Prison.** Immigration may start a deportation case against you while you are still in prison. You have the same rights at that hearing as you have in Immigration Court. The hearing may happen in prison or through a video screen where the judge is in the court and you are still in prison. You and the judge will be able to see and hear each other through the screen. It is also possible that Immigration will try to have the hearing over the telephone without the screen. You would only be able to hear, but not see, the judge. You can ask for a hearing in Immigration Court that is not over the telephone. You can also ask for a hearing in court that is not over the video screen, but you have to explain how that causes problems for you in presenting your case.

(3) **No Immigration Hearing At All.** The government may try to deport you from the U.S. without any hearing at all. This can happen to people who are not lawful permanent residents (who never had a green card) with an aggravated felony conviction. 8 U.S.C. §1228(b). An aggravated felony includes many crimes, such as drug trafficking, some



crimes of violence, some theft crimes, and murder. See page 12.

To do this, the government must give you a special notice showing that your criminal conviction is an aggravated felony and that you are not a lawful permanent resident. Answer a notice in writing from Immigration and let Immigration know if:

- You have your green card (send proof, such as a copy); or
- Your conviction is **not** an aggravated felony; or
- Your conviction is on appeal; or
- You fear harm if forced to go back to your country. If you fear harm, check the box to apply for withholding of removal or protection under the Torture Convention.

Can I be deported from the U.S. if I have a "green card" ?

Yes. For certain crimes and other reasons the government can deport anyone except a U.S. citizen. This manual explains defenses to deportation. See pages 15-21.

Can I be deported if I am afraid to go back to my country?

If you are afraid to go back, you may ask the Immigration Judge for asylum and withholding of removal. The harm must be because of your political opinion, race, religion, nationality or membership in a particular group. If you fear torture by the government for any reason, you can ask for protection under the Torture Convention, and you do not need to show that the harm is because of one of these five reasons. If you win your case, the Immigration Judge will not deport you to the country where you fear harm. See pages 17-18.

Can I be deported if I have lived in the U.S. a long time and have a child here?

Yes. The government can deport you for certain reasons even if you are married to a U.S. citizen or have children born here. However, you may have some defenses to deportation, and your relationship to these citizens will help in your case. See pages 15-21 for possible defenses to deportation.

Is it possible that I am a U.S. citizen but don't know it?

Yes. You may be a citizen if your parent or grandparent was a U.S. citizen. You also may be a citizen if you were born in another country but one parent naturalized when you were under 18, and were living in the U.S. as a lawful permanent resident. A citizen is also a person whose parents are unknown and who was found in the U.S. while under age 5. If you think you might be a citizen, tell the Immigration Judge. See page 15.