

possible release. In Boston, the government rarely releases people at 90 days unless it is not possible to deport them.

If you want to be considered for release, you should write the government about where you will be living, if you have a job offer, whether your family and friends will support you, why you are not a danger to the community, and why you are not going to miss any appointments. See the sample letter in Appendix D requesting release under supervision. Send this information to:

DHS/ICE Enforcement and Removal Operations
10 New England Executive Park
Burlington, MA 01803

If the government does not deport you after six months, then in most cases the government must release you. The law says that if your deportation is not reasonably foreseeable, the government must release most people after six months. You can write to the address listed above, and request your release. You can also write to Immigration headquarters in Washington, D.C. asking for release after waiting six months from your final deportation order. You write to:

ICE, Office of Enforcement and Removal
801 I Street N.W., Suite 900
Washington, D.C. 20536

You can contact them by phone or fax:

Phone: 202-514-8663
FAX: 202-353-9435

You must cooperate with Immigration in getting travel documents for Immigration to return you to your home country. You must give Immigration a copy of your birth certificate or your passport, or you must contact your consulate for travel documents so that Immigration can start your deportation. If you do not cooperate with Immigration, this six month time period does not start, and Immigration can detain you even longer. If you appeal your immigration case and have a stay of removal, the six month time period does not run.

If you are not released, you can file a habeas corpus petition in federal court. For sample habeas forms, call or write PAIR.

GROUND OF DEPORTATION FOR CRIMINAL CONVICTIONS

Can Immigration deport me for any criminal conviction?

No. Only certain criminal convictions lead to your deportation. Some of the main ones are:

(1) Aggravated Felonies. The immigration law calls certain crimes aggravated felonies.

8 U.S.C. §1101(a)(43). These are the most serious crimes in immigration law even though they may not be very serious in criminal law. An "aggravated felony" is not the same as aggravated assault. Immigration law has its own definition. For example, possession with intent to distribute cocaine is an aggravated felony even if you did not serve jail time for it. Aggravated felonies include the following crimes:

- Murder
- Drug trafficking
- Money laundering involving over \$10,000
- Trafficking in firearms or explosives
- Crime of violence with a sentence of at least 1 year
- Theft, receipt of stolen property or burglary with a sentence of at least 1 year
- Crimes involving ransom
- Rape or sexual abuse of a minor
- Child pornography
- Gambling where a sentence of at least 1 year may be imposed
- Racketeering where a sentence of at least 1 year may be imposed
- Engaging in the business of prostitution or slavery
- Spying
- Fraud or deceit worth over \$10,000 or tax evasion worth over \$10,000
- Smuggling of undocumented people, except a first offense to assist your spouse, child or parent
- Illegal entry or reentry after a deportation based on an aggravated felony
- Document fraud with a sentence of at least 1 year
- Failure to appear to serve a sentence for a crime if the underlying offense is punishable by imprisonment for a term of 5 years or more
- Commercial bribery, counterfeiting, forgery or trafficking in vehicles with a sentence of at least 1 year
- Obstruction of justice, perjury or bribery of a witness with a sentence of at least 1 year
- Failure to appear in court under a court order for a felony charge for which a sentence of at least 2 years' imprisonment may be imposed
- An attempt or conspiracy to commit any of the offenses described above.

You can be deported for an aggravated felony (see 8 U.S.C. §1227(a)(2)(A)(iii)), and have only a few defenses. See pages 15-21.

(2) Drug Conviction. Immigration can start a removal case against you under INA §237 for nearly any drug conviction unless you are charged with being removable for simple possession for one's own use of 30 grams or less of marijuana. 8 U.S.C. §1227(a)(2)(B)(i). You can also be removed for being a drug abuser or addict even if you do not have a conviction. 8 U.S.C. §1227(a)(2)(B)(ii). For certain drug crimes, you may still have a defense to deportation. See pages 15-21.

(3) Crime of Moral Turpitude. You can be deported for one crime of moral turpitude committed within 5 years of admission into the U.S. if you could have received a sentence of one

year or longer. 8 U.S.C. §1227(a)(2)(A)(i). Your actual sentence or your time served does not matter. You can also be removed for 2 crimes of moral turpitude committed at any time unless they were in a "single scheme of criminal misconduct." 8 U.S.C. §1227(a)(2)(A)(ii).

The immigration law does not define crimes of moral turpitude, but the courts have. Crimes of moral turpitude usually include theft, murder, voluntary manslaughter, and crimes involving vileness, such as rape or certain other sexual crimes. Driving Under the Influence and Simple Assault are usually not crimes of moral turpitude. If Immigration is trying to remove you for a crime of moral turpitude, tell the Immigration Judge that you do not know whether it is a crime of moral turpitude, and ask for time to find a lawyer to help you. You may also have a defense to deportation. See pages 15-21.

(4) Firearms Conviction. You can be deported for a firearms conviction, such as unlawful possession of a gun. 8 U.S.C. §1227(a)(2)(C). You may have a defense to deportation. See pages 15-21.

(5) Crime of Domestic Violence. You can be deported for conviction of domestic violence, stalking, child abuse, child neglect or abandonment, or for violation of a protection order. 8 U.S.C. §1227(a)(2)(E). You may have a defense. See pages 15-21.

(6) Other Criminal Activity. Other criminal convictions may also lead to your deportation, such as espionage, sabotage, or treason, (8 U.S.C. §1227(a)(2)(D)), as well as activities relating to national security and terrorism. 8 U.S.C. §1227(a)(4).

Can I be deported even though I do not have a criminal conviction?

Yes. Immigration law has other grounds of deportation. For example, you can be deported if you overstayed your visa, or committed marriage fraud, or are a threat to the security of the U.S., or voted unlawfully, or falsely claimed to be a U.S. citizen after September 30, 1996. 8 U.S.C. §1227(a).

Can I be deported if my criminal conviction is on appeal?

No. You cannot be deported if you have a criminal conviction on direct appeal since it is not final. **However,** if you filed a habeas corpus petition, or a motion to vacate your criminal conviction, the conviction is final and the government can deport you while you are waiting for the decision on that case.

How do I know if I have a conviction?

Ask for a copy of your criminal record from the state where you have a conviction. In Massachusetts, send a request along with a check or money order made payable to the Commonwealth of Massachusetts in the amount of \$25.00 to Department of Criminal Justice Information Services, 200 Arlington Street, Suite 2200, Chelsea, MA 02150, ATTN: CORI Unit. Give your full name, date of birth, address, social security number and include a stamped, self-addressed envelope. You can also request a certified copy of the docket sheet if you contact each

court where you have a criminal conviction.

Can I do anything to change my criminal conviction?

Yes. You can ask the criminal court (not the Immigration Court) to vacate or erase your criminal conviction for certain reasons. One reason is if you pled guilty but the judge did not warn you that pleading guilty could lead to deportation from the U.S. There may be other ways to vacate a conviction if you pled guilty and did not understand your rights. If the criminal court vacates your conviction, the prosecution can still bring the charges against you again, but sometimes the prosecution does not do so. Perhaps the lawyer who represented you in your criminal case can help you, or you can contact the Committee for Public Counsel Services, Immigration Impact Unit, 21 McGrath Highway, Somerville, MA, 02143 (telephone: 617-923-0591).

You may also be able to lower your sentence by filing a motion to revise and revoke your sentence. Some crimes are aggravated felonies, such as theft or assault, only if you received a sentence of one year or more. If you lower the sentence to less than one year, the crime may not be an aggravated felony. An Immigration Judge, however, will usually not stop a deportation case just because you have asked the criminal court to vacate or dismiss the conviction or lower the sentence. So, it is important to get the conviction vacated or dismissed, or lower the sentence as soon as possible.

If I am deported for a criminal conviction, when can I come back?

After deportation, a person must wait either 5 or 10 years (depending on the case) before returning to the U.S. legally. 8 U.S.C. §1182(a)(9)(A). After a second deportation the wait is 20 years. 8 U.S.C. §1182(a)(9)(A). You can ask Immigration for permission to re-enter sooner but Immigration may not allow it. If you are deported for an aggravated felony, you can probably never return to the U.S. 8 U.S.C. §1182(a)(6)(B).

PREVENTING IMMIGRATION FROM DEPORTING YOU FROM THE U.S.

There are only a few defenses against deportation from the U.S:

(1) Citizenship

Immigration cannot remove a U.S. citizen. You may be a citizen if:

- you were born in the U.S., including Puerto Rico (8 U.S.C. §1401); or
- you were born in another country but one parent was a U.S. citizen and lived in the U.S. for certain periods of time prior to your birth (8 U.S.C. §1401(g)); or
- you were born in another country but one or both of your parents naturalized and became citizens when you were under 18 and living in the U.S. as a lawful permanent resident (8