

NYC PUBLIC ADVOCATE LETITIA JAMES MANHATTAN BOROUGH PRESIDENT GALE BREWER

TRAINING ON IMMIGRATION ISSUES Special Session for Governmental Staff



The City University of New York

CUNY SCHOOL OF LAW



EXECUTIVE ORDERS, **ADMINISTRATIVE GUIDANCE/DIRECTIVES** **RE: NON CITIZENS AND IMMIGRATION**

Professor Janet Calvo, CUNY School of Law

<https://calvo.commonsgc.cuny.edu/files/2017/03/EXECUTIVE-ORDERS-Immigration-outline.pdf>

<http://www.law.cuny.edu/index.html>

Law in the Service of Human Needs

What is an **Executive Order** ?

Administrative Guidance/Directives?

- Executive Order from President but only within President's authority
- Secretary or sub secretary of agency issues guidance and directives
- *Regulations only with APA notice and comment*
- **ALL MUST COMPLY WITH**
- *Constitution*
- *Immigration and Nationality Act; Administrative Procedure Act*
- *State and Local Authority under the 10th Amendment*
 - New York cases re State and Federal Constitutions and recent Florida case re immigration detainers

“Travel” / “Muslim Ban” E.O. 1/27/17

- *NATIONWIDE temporary order STAYING Part E.O*
- Revoked and replaced by order of 3/6/17
 - *Suspension for 90 days of the entry of aliens from 7 countries (Iraq, Iran Libya. Somalia, Sudan, Syria, Yemen)*
 - *Suspension for 120 days U.S. Refugee Admissions Program and then prioritization of claims based on religious persecution if minority religion*
 - *Suspension of entry of all Syrian refugees*
 - *Prioritization of refugee claims of certain religious minorities*

Travel Ban/refugee E.O. 3/6/17

- *EFFECTIVE 3 16 17*

- *90 day travel ban from 6 countries (not Iraq)*
 - *Exceptions-not apply to*
 - *LPRs, already admitted or paroled, current valid visa, entry document, granted asylum/refuge, dual national*
 - *Waivers-case by case (9 circumstances)*
- *Possibility of other countries added to list*
- *Reverses visa revocation of prior order*
- *Still a “Muslim ban”*
- *Suspends visa interview waiver program*

Travel Ban/refugee E.O. 3/6/17 cont.

- *120 day ban on refugee admissions (also Syrians)*
 - *But not those now scheduled by State dept.*
 - *Limited waivers*
 - *No mention of priorities based in religion*
- *50,000 refugees for 2017*
- *States and localities –greater say in refugee resettlement*
- *More “rigorous” vetting for all migration*

Draft proposed “Public Charge” E.O.

- 1999 INS guidance still in effect
 - “Public Charge”
 - Dependence on government for subsistence (public case assistance or institutionalization at public expense)
 - **does not** include non-cash benefits for supplementary support - direct services: **emergency medical assistance, health insurance, health services** for the testing and treatment of symptoms of communicable diseases, **nutrition** programs, **Medicaid, Child Health Insurance Program**.
 - Non citizens can be **deported** if “public charge” within 5 years of entry
 - Non citizens can be **denied admission and status** if likely to become “public charge”
 - Most harmful for legal permanent residents (**green cards**)
- **Trump Proposal**
 - “Public Charge”
 - the use of **any** public benefit based in **any way** on income or resources

What about DACA?

- Homeland Security **2012 Directive still in effect**
- But **Concerns**
 - What is its future?
 - Should eligibles apply?
 - What about those who need to re-new?
 - Why are some DACAs arrested and in removal proceedings?
 - Are state and local policies sufficiently inclusive? Protective?

Border Enforcement E.O.

- ***EXPEDITED REMOVAL –REMOVAL WITHOUT HEARING** UNLESS CHILD OR ASYLUM OR TORTURE CLAIM
 - NOW APPLIES TO **ANYONE IN COUNTRY** WHO CANNOT SHOW HAVE BEEN IN U.S. FOR **2 YEARS** (PREVIOUSLY W/IN 100 MILES OF BORDER , 14 DAYS OF ENTRY)
- Increased **detention** of non citizens seeking admission
- **Limited parole** –individual determination only urgent “humanitarian” or public benefit
- **CREDIBLE FEAR** RE ASYLUM/TORTURE –**MORE DIFFICULT**
- **Prosecute Parents** if Assist Child in Attempted Entry
- Removal to contiguous country pending hearing
- Agreements for State and local officials to act as ICE agents
- Border Wall

Interior Enforcement E.O.

- **ENFORCEMENT PRIORITIES**
- **convicted** of any criminal offense; **charged** with any criminal offense; **committed acts** that constitute criminal offense
 - engaged in fraud or willful misrepresentation
 - abused any program related to receipt of **public benefits**
 - subject to a final order of removal
 - In judgment of an immigration officer, otherwise pose a risk to public safety or national security.
 - “COLLATERAL ENFORCEMENT” –DESPITE PRIORITIES
- “**Sanctuary jurisdictions**” -- not eligible to receive Federal grants
- **CRIMINAL PROSECUTIONS OF IMMIGRATION LAW VIOLATORS**

Limitations for **Sensitive** Locations?

- **AVOID ENFORCEMENT ACTIONS AT**
- **Schools**--licensed daycares, pre-schools, primary schools; secondary schools; colleges and universities; education-related events, school bus stops;
- **Medical treatment and health care facilities**-- hospitals, doctors' offices, accredited health clinics, emergent or urgent care
- **Places of worship**-- churches, synagogues, mosques, temples
- **Religious or civil ceremonies** --funerals and weddings; and
- **During public demonstration**--- march, rally, or parade.
- CONCERNS ABOUT INTERPRETATION AND COMPLIANCE

What to do?

- Pursue State and local policies-expand inclusion/protection
- Vigilance re Regulations and Commenting
- Keep up with constant changes
- Support litigation challenges
- Prepare, Attend and Support Know your rights Sessions and Materials
- Support Planning esp. re children
- Support, Encourage, Fund Individual Consultations with knowledgeable attorneys

CUNY Law

- **Library Resource Guides**

- [NO BAN NO WALL; http://libguides.law.cuny.edu/nobannowall](http://libguides.law.cuny.edu/nobannowall)
- [IMMIGRATION;
http://libguides.law.cuny.edu/content.php?pid=558624&sid=4708252](http://libguides.law.cuny.edu/content.php?pid=558624&sid=4708252)
- [DACA; http://libguides.law.cuny.edu/content.php?pid=661600](http://libguides.law.cuny.edu/content.php?pid=661600)

- **CLORE: CENTER FOR LATINO AND LATINA RIGHTS AND EQUALITY**
<http://www.law.cuny.edu/academics/social-justice/clore.html>

- **CLEAR: Creating Law Enforcement Accountability & Responsibility**
<http://www.law.cuny.edu/academics/clinics/immigration/clear.html>

- **CLRN: COMMUNITY LEGAL RESOURCE NETWORK**
<https://publicsquare.law.cuny.edu/alumni-community/clrn>

- **CSLP Court Square Law Project** <http://www.courtsquarelaw.org>

- **Main Street Legal Services** <http://www.law.cuny.edu/academics/clinics.html>

IMMIGRATION Related Executive Orders / Directives Sites

- **“Travel”/“Muslim” Ban** <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>
 - **3 6 17 replaced** **
 - <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>
- **Draft proposed “Public Charge” E.O** <http://apps.washingtonpost.com/g/documents/national/draft-executive-orders-on-immigration/2315/>
 - 1999 Guidance still current
 - <https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm>
- **What about DACA? (no E.O.)** <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>
- **Border Enforcement** <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>;
- https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf
- **Interior Enforcement** <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>
- **Limitations for Sensitive Locations?** <https://www.ice.gov/ero/enforcement/sensitive-loc>

QUESTIONS?

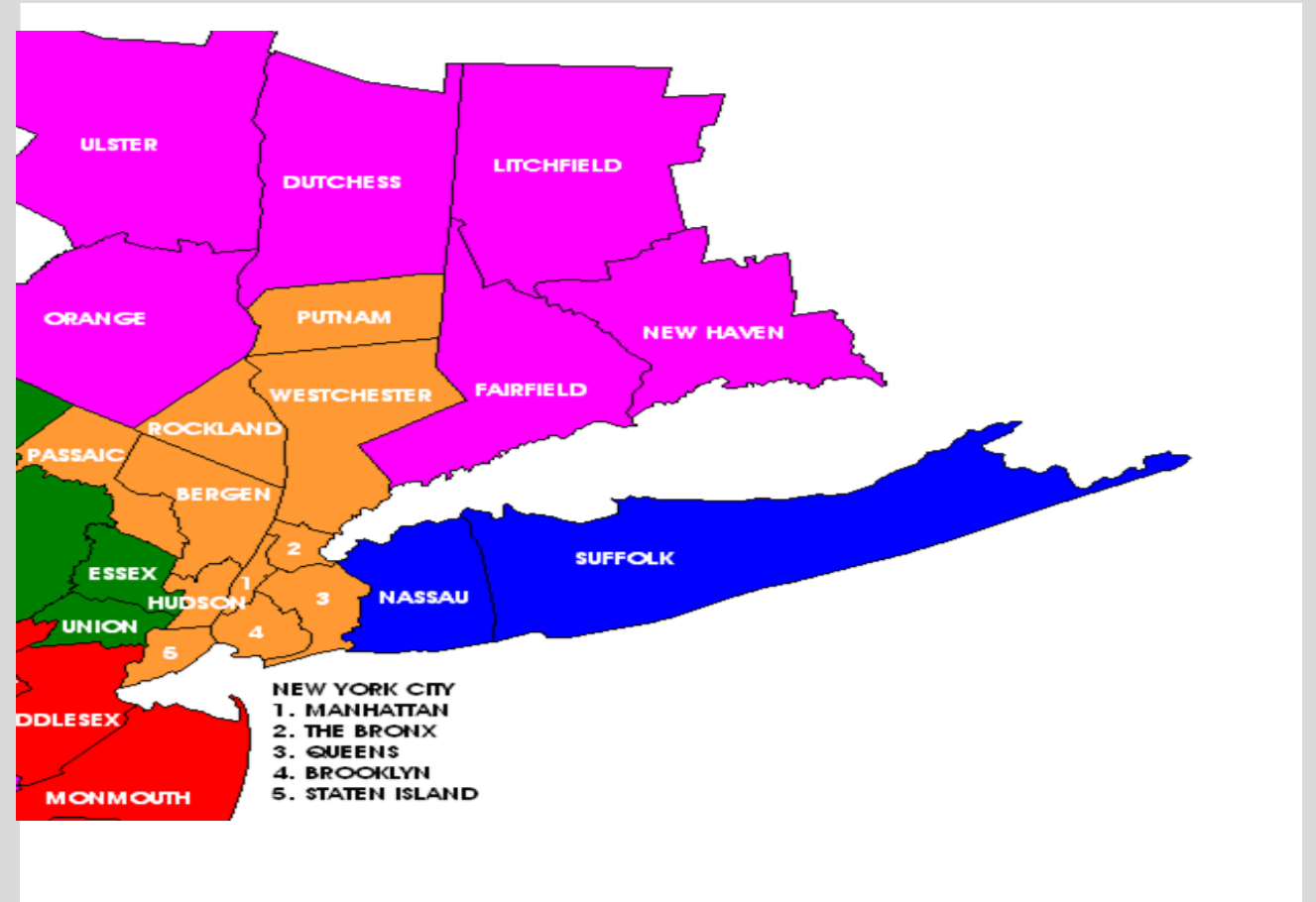
Know Your Rights – ICE RAIDS March 7, 2017

Presenter:
Victoria Neilson, Esq.
Supervising Attorney



What is the Immigrant Justice Corps?

- Katzmann Study Group on Immigrant Representation
- Expand Quality and Quantity of Counsel
 - 50+ Justice Fellows
 - 20+ Community Fellows
 - 30+ Host Organizations
 - NYC
New Jersey
 - Long Island
 - Westchester



Overview

Immigration System

Executive Orders

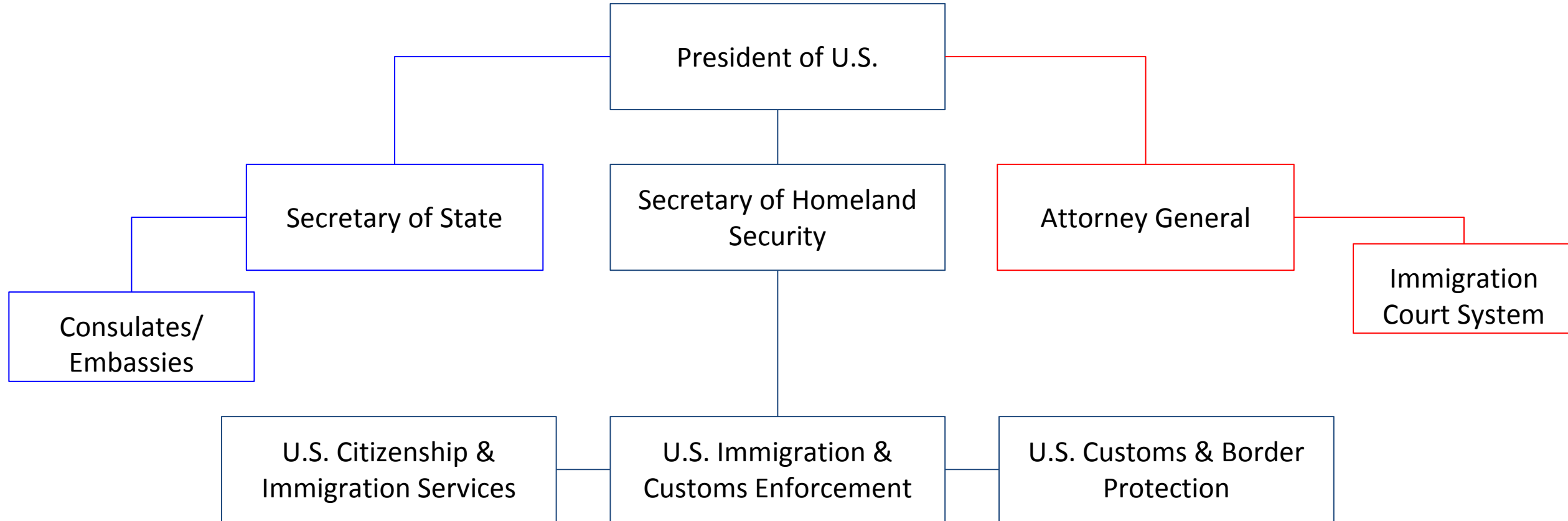
Knowing Your Legal Rights

Access to Counsel

Resources



Our Immigration System



THE EXECUTIVE ORDERS: What they say

- Building of a Border Wall
- New Enforcement Priorities
- Hire 10,000 ICE Officers
- More Local Agreements To Help Enforce Immigration Laws
- Denial of Federal Funds to “Sanctuary” Jurisdictions
- Reinstatement of Secure Communities
- Expansion of Expedited Removal
- Ban on Travel for Nationals of 7 Predominantly Muslim Countries**



THE EXECUTIVE ORDERS – What they don't say

- DACA Is Untouched
- No Timeline for Implementation
- Immigration Laws Remain in Place and Can Not be Changed by the President Alone
- No Clear Way for These Measures to Be Funded



BUT. . .

- ICE Officers feel newly empowered ““Morale amongst our agents and officers has increased exponentially since the signing of the orders,” the unions representing ICE and Border Patrol agents said in a joint statement after President Trump issued the executive orders on immigration late last month.” https://www.nytimes.com/2017/02/25/us/ice-immigrant-deportations-trump.html?_r=0

Risk of Arrest/Deportation



**Anyone who is not a U.S. Citizen can be
Deported.**



Risk of Arrest/Deportation

Common Targets Include:

Non-citizens with prior removal orders

Non-citizens with prior convictions, even if:

- Conviction is from years ago or a misdemeanor;

People Without Status With Prior Criminal Convictions.

“Collateral arrests” – anyone undocumented who is in the vicinity of an ICE enforcement action

What Has Happened So Far

- FEAR! –
- "First of all, they're not rounding anyone up," John Kelly said. "The people that ICE apprehend are people who are illegal and then some."
- Person with DACA taken into custody in WA (alleged by government to be gang member)
- Young woman with lapsed DACA taken into custody after giving speech
- Man taken into custody after dropping kids at school

ICE Sensitive Locations Memo

- No communication that Memo has been rescinded
- Generally “avoid” actions, unless exigent circumstances (or supervisor’s approval):
 - At – Schools
 - -- Places of Worship
 - -- Hospitals/medical treatment facilities
 - -- Public demonstrations

Expanding Expedited Removal?

- Expedited Removal means a person who entered the U.S. unlawfully who has been here for under 2 years can be removed without seeing a judge – unless she expresses fear of return to her home country and passes a Credible Fear Interview with an asylum officer.
- In the past, this has only been applied within 100 miles of border and 14 days of entry.
- NEW ADVICE – Carry proof of residence of > 2 years; be sure trusted person (family; friend; lawyer; clergy) has proof of > 2 years residence

Securing Rights





WHERE: Home Raids

- Two ways to enter one's home:
 - valid warrant
 - permission
- DO NOT OPEN THE DOOR
- ALWAYS ASK FOR IDENTIFICATION
- ASK TO SEE A WARRANT
- Everyone has the right to remain silent

A Valid Search Warrant

- Must be signed by a judge, justice of the peace or magistrate
- Must contain the address of the home to be searched
- Must describe the area to be searched
- If officers enter your home, say “I DO NOT CONSENT TO YOU SEARCHING MY HOME.”

A Valid Arrest Warrant

- Must be signed by a judge, justice of the peace or magistrate
- Must state the name of the person to be arrested
- Must describe the person to be arrested

A warrant of
removal/deportation
(immigration warrant)

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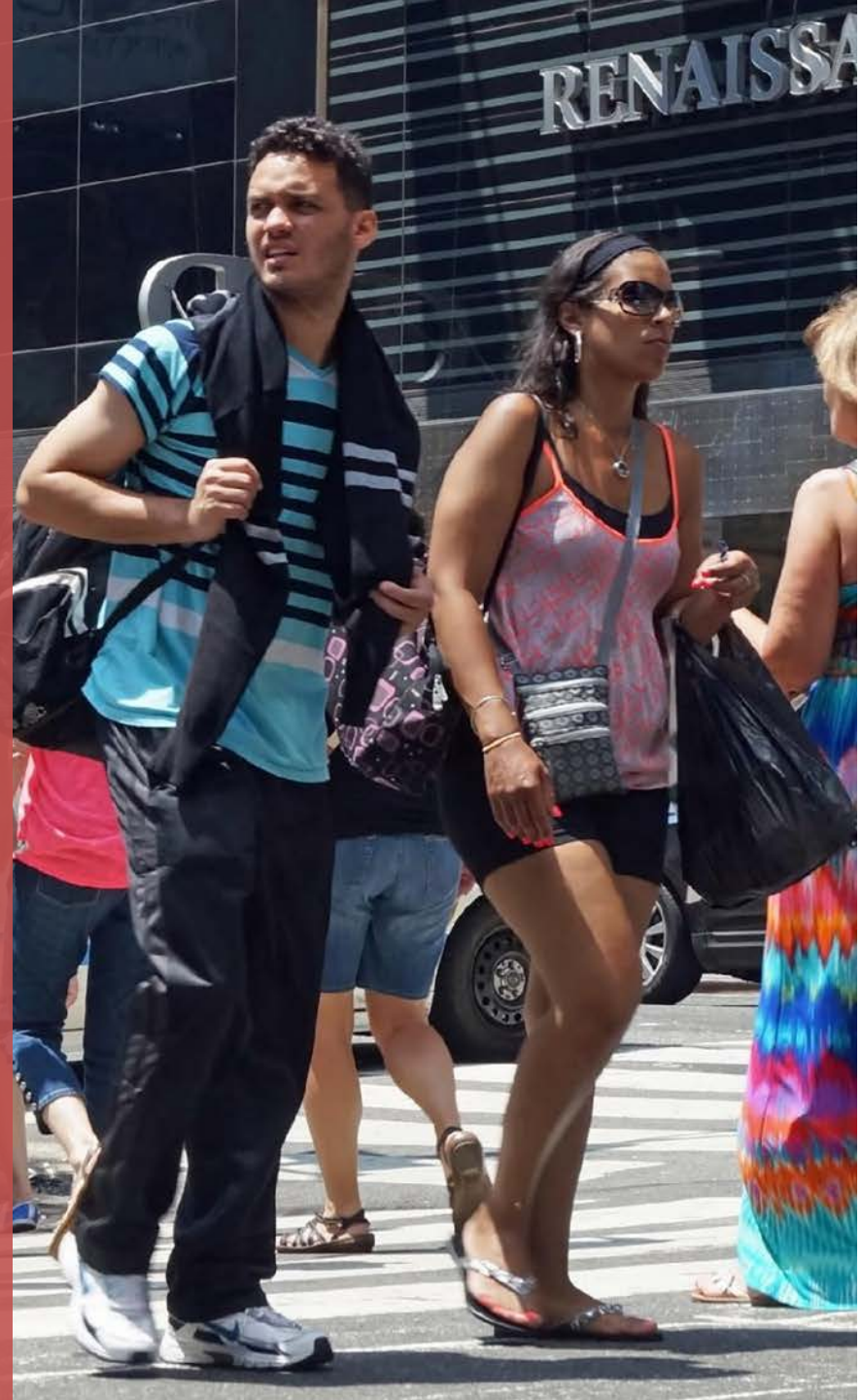
The right to enter
your home.

If officers enter someone's home

- Individual can inform them if there are children, elderly, or sick people in the house
- Say that they do not consent!
- Pay attention to where officers search
- Write down what happens as soon as they have left
- If it is safe to do so video the interaction

WHERE: The Street or Public Area

- DO NOT RUN
- Before saying anything, ask “AM I FREE TO GO?”
- Individuals have the right to remain silent
- Individuals should not show identification that demonstrates they are non-citizens (e.g. don't show expired passport) NYC Muni ID is okay
- If searched, say “I DO NOT CONSENT TO THIS SEARCH.”





WHERE: The Workplace

- Two ways to enter
 - a valid warrant
 - permission from your employer
- DO NOT RUN
- Individuals have the right to remain silent

WHERE: A Car

- Different laws apply when a person is in her car
- An individual must provide her license, registration, proof of insurance
- She should not lie, provide false documents, or provide documents showing her lack of immigration status
- If officers search the car, say "I DO NOT CONSENT TO A SEARCH."
- Individuals have the right to remain silent



Legal Services





Legal Services

Detained New Yorkers: NYIFUP

Non-detained New Yorkers

Resources



Immigration Court Information

EOIR HOTLINE: Dial 1-800-898-7180 (toll free automated system) to obtain the following case status information:

- Next hearing date, time, and location;
- Immigration judge decision outcomes and date; and
- Case processing information and appeal due dates.

Locating a Detained Family Member

ICE Online Detainee Locator:

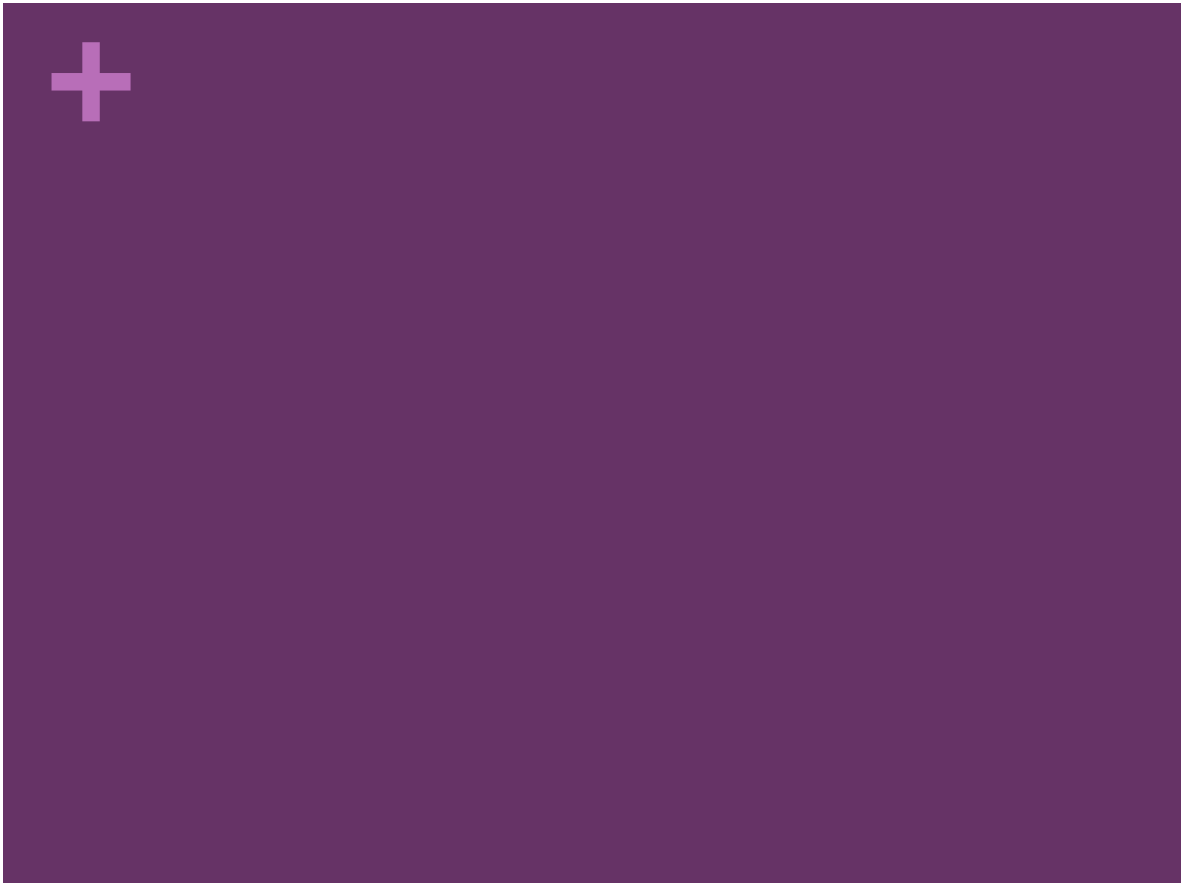
<https://locator.ice.gov/odls/homePage.do>

- Use A# or biographical information
- Obtain
 - location
 - Facility visitation information

How to Find Legal Help

- **New York State Immigration Hotline**
- 1-800-566-7636
- Report Fraud and Find Attorneys
- **National Immigration Legal Services Directory**
- <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>
- Find Attorneys

QUESTIONS?

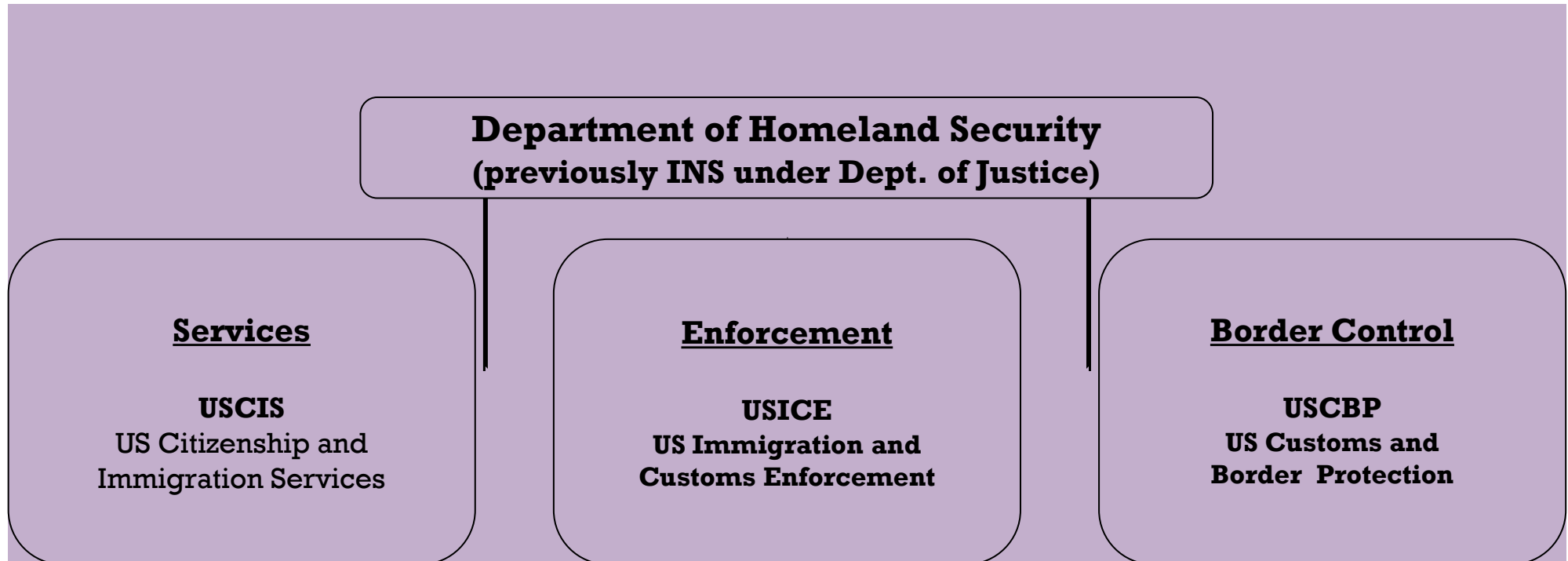


Deportation Defenses

Alizabeth Newman, Clinical Prof & Director,
Community Legal Resource Network (CLRN)
CUNY School of Law

I. Structure of Immigration

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II. Identifying Immigration Status

- United States Citizen (USC)
- Legal Permanent Resident (LPR)
- Non-immigrant (student, tourist)
- Asylee/Refugee
- Temporary Protected Status (TPS)
- Undocumented
 - Entered w/o inspection
 - Overstay visas
 - DACA-Deferred Action (Childhood Arrivals)



III. Affirmative Filings: Becoming an LPR is a Two Part Process

- Establishing the **basis** for residency
(family, employment, asylum)
- Establishing **eligibility** for residency
 - Adjustment of Status (in US)
or
 - Consular Processing (consulate abroad)



Step 1: Basis for Becoming an LPR

- A. Family Based
- B. Employment Based
- C. Protection for Victims (U, T, special immigrant juvenile. Asylum)
- D. Diversity Lottery
- E. Country Specific Programs-NACARA, HAFIFA etc.

+ Vulnerability of the Immigrant in the Petitioning Process

- Generally, the petitioner controls the process.

The petitioner:

- decides if and when to begin,
- can withdraw the application for any reason,
- must participate in the interview,
- must sign the affidavit of support.



Step Two: Adjustment of status vs. Consular Processing

- Adjustment of Status:
- Consular processing:
 - Basis for LPR is reviewed
 - and
 - Grounds of inadmissibility.

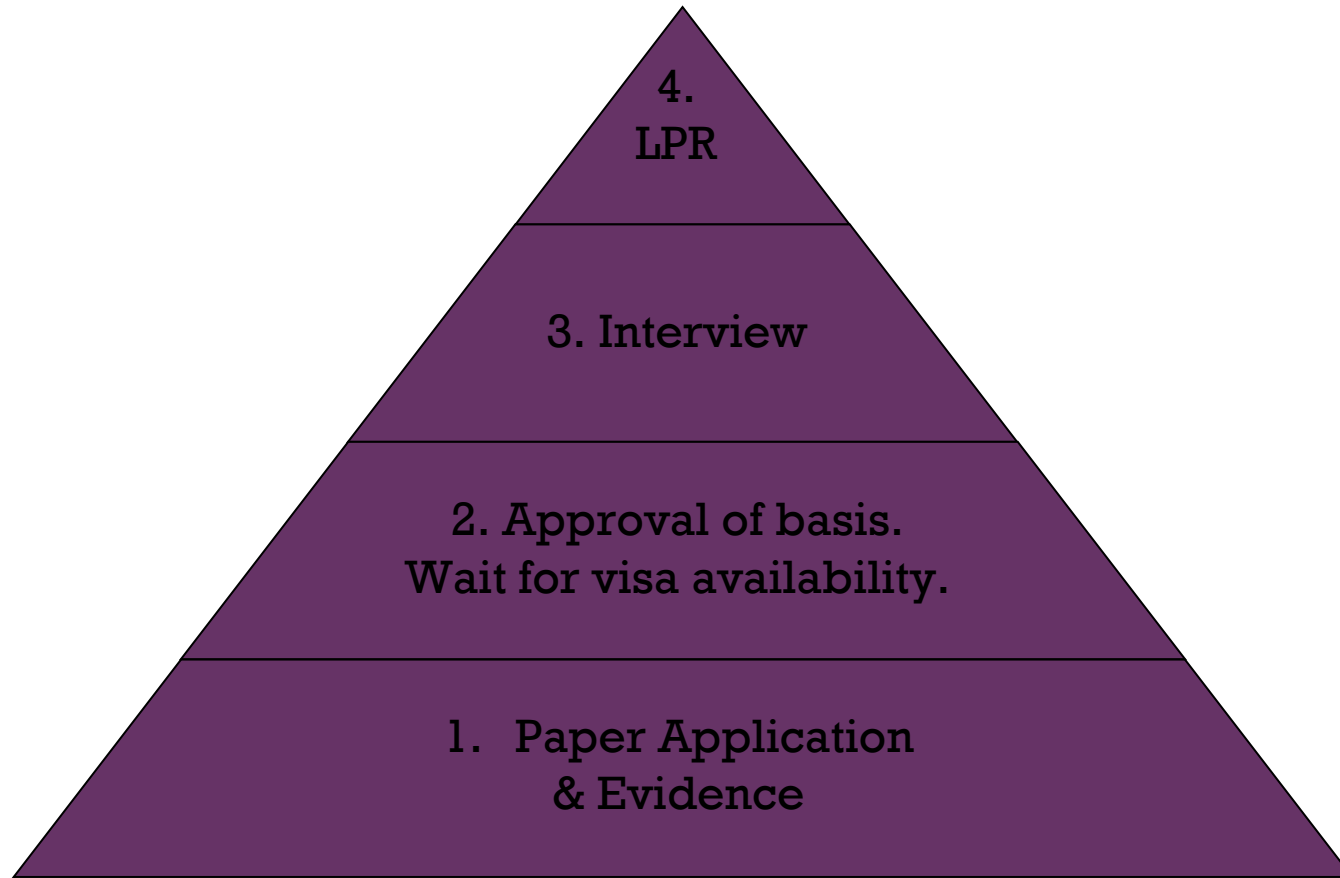


At the Interview: Inadmissibility

- Elements that can make you ineligible for legal permanent residence or entry to US:
 - Health
 - Criminal convictions or admissions
 - Status Violations, prior deportations
 - Public Charge
 - Smuggling
 - Security related, terrorism
 - Misc.-Polygamists, child abductors...
 - False claim to US citizenship
 - Unlawful Presence Bars

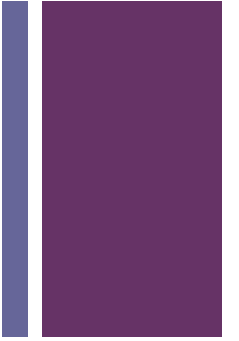
Affirmative Process

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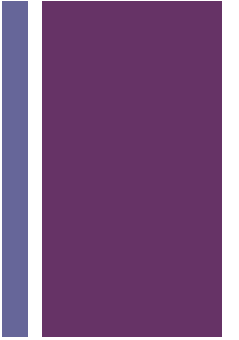
IV. Defensive from Deportation/Removal



- Detention
- Court Proceedings
- Appeal



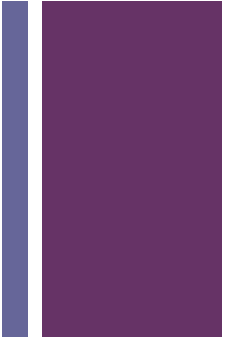
ICE Deportation/Removal and Detention



- **Immigration & Customs Enforcement (ICE) has discretion to**
 - **initiate deportation proceeding and**
 - **to detain an immigrant (in a county jail, federal detention center, or private prison anywhere in the country).**
- **The process starts when ICE issues a Notice to Appear (NTA) that lists the Alien number, the immigration charges.**



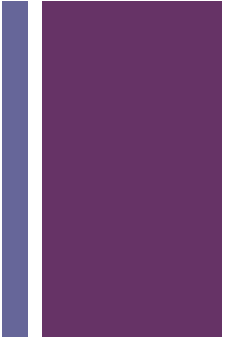
CAUTION!



- In Detention or in custody after an arrest, agents will try to pressure the immigrant to admit to things that make removal easy- that they are not from the US, what country they were born in, that they have been in the US for less than two years, use of a false social security number, etc.
- The immigrant should ask to see an attorney and should not answer questions without the attorney present.
- Nor should the immigrant sign papers that may forfeit their rights to due process.



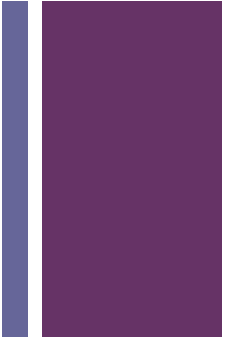
Bond Hearing



- **ICE can hold the immigrant until s/he is granted bond, is ordered released, or deported.**
- **Is someone eligible for a bond hearing?**
 - **(not if prior order, criminal conviction, arrested at a border, or terrorism charges)**
- **What are the equities?**
 - Judge decides if immigrant is a danger to the community, a flight risk or a national security threat.
 - Immigrant should show family and community ties, stable employment, health concerns or other positive factors.



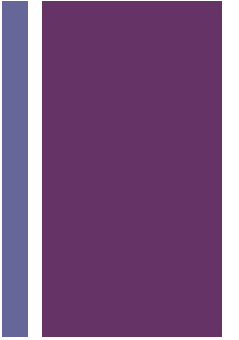
(MASH) Master Calendar Hearing



- The Immigration Judge decides what the issues in the case are including:
 - if the immigrant is removable,
 - (any defects in the NTA, or does imm. concede the charges)
 - hears what relief that may be applied for, and
 - sets the calendar for the evidence
 - Sets the calendar for the individual hearing.
- If an immigrant has no attorney, they are often given time to find one with a call back date.
- MISSING THIS HEARING MEANS AN ORDER OF REMOVAL!



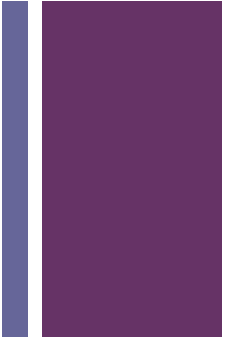
Individual Hearing



- The immigrant (through counsel) presents his/her case for relief.
 - Makes any legal arguments
 - Presents testimony
 - Presents evidence
 - Presents witnesses
- The government attorney presents his/her case against relief.
 - cross-examines
 - Puts evidence into question
 - May call witnesses
 - Makes legal arguments



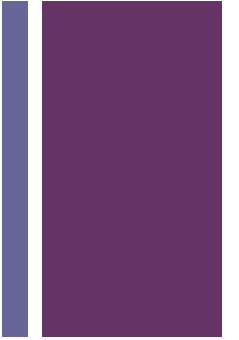
Results?



- The two sides can negotiate a settlement.
- The Judge decides to grant relief, the proceedings are terminated, the immigrant is free to go.
- There is a new legal issue that arises that both the immigrant and the government are given a chance to brief.
- The Judge decides allow time for some affirmative relief to go through, the proceedings are closed (taken off the court docket, but not terminated), and the immigrant is free to go.
- The Judge denies relief and the immigrant is ordered deported. (May be detained or may be given a date to leave.)
- The Judge denies relief, but grants voluntary departure, allowing 60 days for immigrant to leave WITHOUT a deportation order.



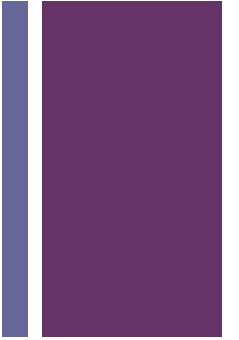
V. Types of Relief



- Adjustment of Status (based on an affirmative application)
- Political asylum/Withholding of Removal
- Cancellation of Removal



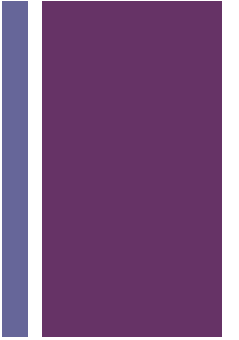
Political Asylum



- An applicant must prove that s/he:
 - Has suffered past **persecution**; or
 - Has a well founded fear of future persecution
 - **on account of** one of 5 grounds: race, religion, nationality, membership in a particular social group or political opinion.
- **Public vs. private:** The persecutor must be the the government or a group that the government is unwilling or unable to control.
- Current **country conditions** may have changed to undermine a favorable grant of asylum.
- Application must be within **one year** of arrival or event that created fear



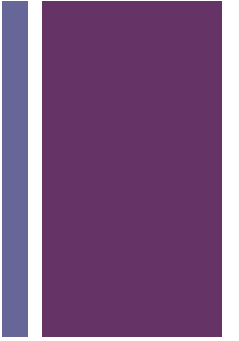
Cancellation of Removal



- **Has been continuously present in the US for 10 years before being served a Notice to Appear,**
- **Has no inadmissible or deportable offenses,**
- **Demonstrates “good moral character” (>10 years) and**
- **Can show that his/her deportation would cause “exceptional and extremely unusual hardship” to a US Citizen or lawful permanent resident spouse, child, or parent.**



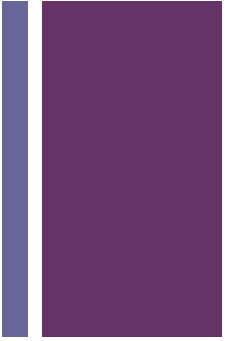
VI. Appeals



- BIA – Board of Immigration Appeals (under Attorney Gen.)
- Federal District Court (limited review)
- Circuit Court of Appeals
- US Supreme Court



Orders of Deportation/Removal



- Someone with an old order of Deportation or Removal is vulnerable to being picked up by ICE at any time.
- They will not be entitled to another hearing.

Locating those arrested

- **Detainee Locator**

- <https://locator.ice.gov/odls/homePage.do>

- **Detention Facility Locator**

- <https://www.ice.gov/detention-facilities>

- **Detainee Health Care Program**

- (202) 732-4600

- **Hearings Information- Immigration Court Hotline:**

- 800-898-7180.

QUESTIONS?

Consulting a Lawyer

- ▶ In immigration matters, you have the right to a lawyer BUT the government will NOT pay for it.
- ▶ Those who are undocumented, and/or have criminal convictions, or think they are at risk for deportation for other reasons, should consult a lawyer. A lawyer can:
 - ▶ Assess priority level.
 - ▶ Educate on rights.
 - ▶ Figure out if eligible for immigration relief.
 - ▶ May be able to represent you if you are detained.
- ▶ If a lawyer agrees to represent you and signs a retainer and a G-28 (Notice of Appearance), keep a copy of it with you and make sure your loved ones have that lawyer's name and number.

What to Look for in Legal Representation

- ▶ A good lawyer will explain all your options, keep you informed, return your calls and emails promptly and keep all your information confidential.
- ▶ Your attorney should sign a contract or retainer, that you are given a copy of in a language you understand, that outlines what they are going to help you with in your immigration case.
- ▶ They will explain all fees owed and provide proof of payments received through receipts.
 - ▶ You can seek a second opinion before retaining a lawyer.
- ▶ Your attorney should sign all prepared papers and give you copies of anything submitted to the government.
 - ▶ You have a right to a copy of your file even if you owe money!

AVOID IMMIGRATION FRAUD!

- ▶ To avoid scams and unscrupulous practitioners, get a trusted referral to a legal service provider.
- ▶ If you believe that you or someone you know has been the victim of fraud, report it! You can report anonymously!
- ▶ To receive information on legal resources and report suspected cases of fraud, call the New Americans Hotline: **800-566-7636**
- ▶ To learn more about common scams targeting immigrants, and to access community materials, visit www.protectingimmigrants.org

Common Fraud Scheme

- ▶ The “Ten Year Green Card”
 - ▶ A common scam targeting immigrant communities where scammers claim that clients are eligible for benefits based on residing in the United States for ten years.
 - ▶ This is not a benefit that anyone in the US for 10 years can apply for- instead, scammers file asylum applications for the individual, without them knowing.
 - ▶ When the individual receives a work-permit based on the pending asylum application, she assumes that the scammer was legitimate.
 - ▶ Unfortunately, once the asylum application is adjudicated the applicant will almost always be placed in deportation proceedings.
 - ▶ Because applicants tend not to realize they have been a victim of fraud until years later, the ten year scheme is hard to detect.

Notario Fraud

- ▶ Unlike other countries, **being a *notario*/notary in the United States does not mean you are a legal representative authorized to practice law.**
- ▶ Usually targets Spanish-speaking communities and involves a scammer who claims to be able to practice law based on certification as a notary public.
- ▶ Fraudulent 'notarios' often charge individuals excessive fees without ever filing applications, or worse, by submitting applications for relief that the client is not eligible for, which can lead to deportation.
- ▶ **Red Flags:** insisting on being paid in cash, not having a written contract, not giving copies of the application that was filed, keeping original documents.

Keep yourself informed!

- ✧ Call the *New Americans Hotline* at **800-566-7636** if you:
 - ✧ need general information about immigration laws and policies,
 - ✧ are looking for a referral to an immigration legal service provider, or
 - ✧ want to report fraudulent practices against immigrants.
- ✧ The Hotline is open Monday-Friday, 9 am - 8 pm;
- ✧ Hotline operators can answer calls in up to 200 languages;
- ✧ All calls are anonymous.

QUESTIONS?

NYC PUBLIC ADVOCATE LETITIA JAMES MANHATTAN BOROUGH PRESIDENT GALE BREWER

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