

Deportation Defense: Your Rights and Options

A comprehensive guide from EB5 Attorneys

Deportation, formally called removal, begins when the government serves a Notice to Appear (NTA) initiating proceedings in immigration court. Anyone in removal proceedings has the right to present a defense, challenge removability, and apply for relief from removal. Available defenses include cancellation of removal, asylum, adjustment of status, voluntary departure, and prosecutorial discretion. Legal representation is not appointed; you must find your own attorney. The outcome of removal proceedings determines whether you remain in the United States or are ordered deported.

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The Notice to Appear: How Removal Proceedings Begin

Removal proceedings are initiated by the Department of Homeland Security (DHS), typically through U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP), when the government determines that a foreign national is removable from the United States. The government serves a Notice to Appear (NTA) under INA 239, which is a formal charging document that specifies the factual allegations and legal charges of removability.

The NTA identifies: the respondent (the person in proceedings); the basis for removability (either that the person is inadmissible under INA 212 or deportable under INA 237); the specific grounds of removability charged; and the date, time, and location of the initial court hearing. The respondent is required to appear at all scheduled court dates.

Common bases for removal include: overstaying a visa; entering without authorization; criminal convictions for crimes that trigger deportability grounds under INA 237(a)(2); public charge grounds; failure to register or notify of address changes; security grounds; and fraud in obtaining immigration benefits.

After receiving an NTA, the respondent must appear at the immigration court listed on the NTA. The first appearance is the master calendar hearing, a preliminary administrative proceeding where the respondent acknowledges receipt of the NTA, enters an initial plea (admitting or denying the factual allegations and charges), and receives information about future hearing dates. The immigration judge does not decide the merits of the case at the master calendar hearing; that occurs at the individual merits hearing scheduled at a later date.

If you receive an NTA, you must take it seriously. Failure to appear at any scheduled immigration court hearing results in an in absentia order of removal under INA 240(b)(5). An in absentia order is extremely difficult and expensive to reopen; it requires demonstrating that you did not receive proper notice of the hearing or that failure to appear was due to exceptional circumstances beyond your control.

Removability Grounds: Inadmissibility and Deportability

The legal grounds for removal fall into two categories: inadmissibility (applicable to persons seeking admission or who entered without authorization) under INA 212(a), and deportability (applicable to persons already in the United States as immigrants or nonimmigrants) under INA 237(a).

Understanding which category applies determines the applicable grounds and the available defenses.

Inadmissibility grounds include: health related grounds (communicable diseases, failure to be vaccinated, drug abuse, or physical or mental disorders associated with harmful behavior); criminal grounds (crimes involving moral turpitude, controlled substance violations, multiple criminal convictions, trafficking, prostitution, money laundering, and others); security grounds (terrorism, espionage, genocide, or persecution of others); public charge; prior removal or unlawful presence bars; and fraud or misrepresentation.

Deportability grounds include: criminal convictions for crimes involving moral turpitude committed within five years of admission with a sentence of one year or more, or two or more CIMTs at any time; aggravated felonies as defined at INA 101(a)(43); drug offenses; domestic violence, stalking, and child abuse; failure to register as a sex offender; firearms offenses; failure to register as required; falsely claiming U.S. citizenship; and voting in violation of federal, state, or local law.

The distinction between inadmissibility and deportability matters for several reasons. Some forms of relief from removal, such as cancellation of removal for lawful permanent residents under INA 240A(a), are only available to persons who are deportable. Others, like adjustment of status under INA 245, apply only when the person was lawfully admitted. Certain waivers also address only inadmissibility grounds, not deportability grounds, and vice versa.

Challenging removability at the pleading stage, by contesting whether the factual allegations in the NTA are accurate or whether they legally constitute the charged ground, is the first line of defense. An attorney reviews the NTA and evaluates whether the government's charging theory is legally and factually sound.

Forms of Relief from Removal

Even if a person is removable, they may be eligible for relief from removal that allows them to remain in the United States or depart voluntarily. The available forms of relief depend on immigration status, length of presence, family ties, criminal history, and the specific removal charges.

Cancellation of removal for lawful permanent residents (LPRs) under INA 240A(a) requires: five or more years as an LPR; at least seven years of continuous residence in the United States after any admission; and no conviction for an aggravated felony. If granted, the LPR retains their green card.

Cancellation of removal for non LPRs under INA 240A(b) applies to persons without LPR status who have: been physically present in the United States for at least 10 years; demonstrated good moral character during that period; not been convicted of certain offenses; and whose removal would result in exceptional and extremely unusual hardship to a U.S. citizen or LPR spouse, parent, or child. This is a high standard: courts have held that ordinary hardship, including financial strain and family separation, does not meet the exceptional and extremely unusual threshold. The BIA in *Matter of Andazola Rivas*, 23 I&N Dec. 319 (BIA 2002) emphasized that the standard is substantially more demanding than merely unusually hard.

Asylum as a defense to removal is available in immigration court for persons who have not been barred by criminal convictions, the one year filing deadline (with applicable exceptions), or other statutory bars. The defensive asylum standard is the same as the affirmative standard: well founded fear of persecution on a protected ground.

Adjustment of status in immigration court allows a removable person with an approvable immigrant visa petition (such as an approved I 130 or I 140) and an immediately available visa number to apply for a green card despite being in removal proceedings, provided they are eligible for adjustment under INA 245.

Voluntary departure under INA 240B allows a removable person to leave the United States voluntarily at their own expense within a specified period (up to 120 days before the end of proceedings, or up to 60 days at the conclusion of proceedings). Voluntary departure avoids the formal removal order, which carries bars to reentry of five years or more. However, if the person fails to depart by the voluntary departure deadline, a removal order takes effect automatically and they become ineligible for voluntary departure in future proceedings.

Detained vs. Non Detained Proceedings: Bond Hearings

Immigration court proceedings are classified as either detained or non detained based on whether the respondent is being held in ICE custody during the pendency of the case. Detained proceedings move significantly faster because ICE bears the cost of detention, and immigration courts prioritize detained dockets. Non detained proceedings may be scheduled years out due to court backlogs.

When a person is detained by ICE, they may be entitled to a bond hearing before an immigration judge under INA 236(a). At a bond hearing, the immigration judge decides whether to set bond (allowing the person to be released upon payment) or deny bond. The government argues for detention by asserting the person is a danger to the community or a flight risk. The respondent presents evidence of community ties, employment history, family relationships, length of residence, and absence of criminal history to argue for release at a reasonable bond amount.

Mandatory detention under INA 236(c) applies to certain categories of non citizens including those convicted of specific crimes (aggravated felonies, crimes involving moral turpitude under specified conditions, drug offenses, firearms offenses, and others) and those who are inadmissible or deportable on terrorism grounds. Persons subject to mandatory detention generally cannot receive a bond hearing before an immigration judge regardless of individual circumstances, though constitutional challenges to prolonged mandatory detention have succeeded in some circuits.

Bond amounts vary widely, typically ranging from \$1,500 to over \$25,000 depending on the immigration judge's assessment of flight risk, danger, and individual circumstances. Payment of the full bond amount or a surety bond through a licensed bail bondsman secures release. After release, the respondent continues their removal case as a non detained respondent.

Bond redetermination, the process of requesting a new bond hearing after a prior bond decision, may be available if there has been a material change in circumstances. An attorney can evaluate whether changed circumstances justify a renewed bond motion.

The Immigration Court Process: Master Calendar to Individual Hearings

Immigration court proceedings are governed by regulations at 8 CFR Part 1240 and the immigration court Practice Manual published by the Executive Office for Immigration Review (EOIR). EOIR operates immigration courts in over 60 locations across the United States.

The master calendar hearing is the initial court appearance where the immigration judge: confirms the respondent's identity and receipt of the NTA; asks whether the respondent is represented by counsel or needs time to find counsel; takes pleadings on the factual allegations and charges of removability; identifies potential forms of relief the respondent may pursue; and schedules future proceedings.

After the master calendar hearing, one or more individual merits hearings are scheduled where the substantive case is decided. At the individual hearing: the government presents evidence of removability; the respondent presents evidence and testimony in support of any relief applications; the immigration judge hears testimony, accepts exhibits, and may hear closing arguments; and the judge issues a decision either from the bench or in a written order.

Immigration judges have broad fact finding authority but must apply legal standards established by BIA precedent decisions, circuit court precedent, and EOIR policy. The respondent has the right to review all government evidence, cross examine government witnesses, present their own witnesses and exhibits, and testify on their own behalf. Hearings are recorded. Everything said in court becomes part of the administrative record.

EOIR's online portal at acis.eoir.justice.gov allows respondents and attorneys to check hearing dates, case status, and court locations using the A number from the respondent's immigration documents. EOIR also maintains a list of pro bono legal services organizations for those who cannot afford private representation.

Prosecutorial Discretion and ICE Enforcement Priorities

Prosecutorial discretion in immigration refers to DHS's authority to decide whether and how to enforce immigration law in a particular case. Because DHS cannot remove everyone who is removable, it exercises discretion in decisions including whether to file charges, seek detention, pursue removal, and whether to join in motions to terminate or administratively close cases.

ICE has issued enforcement priority memoranda in various administrations setting out which categories of removable individuals should receive priority for enforcement resources. Cases involving recent arrivals, criminal convictions, national security or public safety concerns, and individuals with prior removal orders have generally received higher enforcement priority across administrations.

Administrative closure is an immigration court mechanism that removes a case from the active docket without deciding it on the merits. It may be available when both parties agree that no action needs to be taken, when there is a pending collateral matter such as a USCIS petition, or when ICE agrees not to pursue the case under prosecutorial discretion principles. Administratively closed cases can be recalendared if either party files a motion to do so.

Motions to terminate removal proceedings may be appropriate when: the NTA was defectively served or fails to state required information; the immigration court lacks jurisdiction because the NTA does not specify the date and time of the hearing (following *Pereira v. Sessions*, 138 S. Ct. 2105 (2018)); the government cannot prove removability by clear and convincing evidence; or the respondent has obtained immigration benefits that eliminate the basis for removal.

Deferred action is a form of prosecutorial discretion in which ICE agrees not to pursue removal of an individual for a defined period. It does not create any immigration status but provides a temporary reprieve and, in some cases, eligibility for work authorization. Various programs have used deferred action as a mechanism, including Deferred Action for Childhood Arrivals (DACA) established in 2012.

Appeals: BIA and Federal Court Review

When an immigration judge issues a removal order or denies relief, the respondent may appeal to the Board of Immigration Appeals (BIA). The BIA is the highest administrative immigration tribunal in the United States, established at 8 CFR Part 1003. Appeals must be filed within 30 calendar days of the immigration judge's decision, a deadline that is strictly enforced.

BIA appeals are primarily conducted on the written record; oral argument is granted only in limited circumstances. The appealing party submits an appellate brief arguing that the immigration judge made legal errors, applied the wrong legal standard, or made factual findings that were not supported by the record. The BIA may affirm, reverse, remand, or dismiss the appeal. BIA decisions that affirm the immigration judge's order typically also constitute a final order of removal.

After the BIA, a respondent may petition for review in the federal circuit court of appeals having jurisdiction over the immigration court that decided the case. Under INA 242, federal courts review final orders of removal for legal errors, constitutional violations, and due process claims. Federal courts generally do not disturb factual credibility determinations made by the immigration judge, so petitions for review are most successful when they identify a legal error in the application of the law.

Courts of appeals may issue a stay of removal, which halts the government from removing the respondent while the petition for review is pending. A stay of removal requires demonstrating a likelihood of success on the merits and irreparable harm if removal proceeds before the court can consider the petition. Stays are not automatic and must be specifically requested.

Motions to reopen and motions to reconsider may be filed with the immigration court or BIA after a decision. A motion to reopen presents new evidence not available at the original hearing that could change the outcome. A motion to reconsider argues that the prior decision was based on legal or factual error. Strict deadlines and number limits apply to these motions under 8 CFR 1003.23 and 1003.2.

What to Do If You or a Family Member Faces Removal

Facing removal proceedings is among the most urgent immigration situations anyone can encounter. The steps you take in the immediate period after receiving an NTA or after an immigration arrest significantly affect the outcome of your case.

Contact an immigration attorney immediately. The earlier an attorney is involved, the more strategic options are available. An attorney reviews the NTA for defects, identifies potential relief, evaluates whether bond is appropriate, and prepares for the first court appearance with a clear legal strategy.

Do not ignore court notices. Every failure to appear creates serious problems, including in absentia removal orders. Monitor mail at the address you have on file with the immigration court. If you move, notify the immigration court using Form EOIR 33 (Alien's Change of Address Form) within five days of moving under 8 CFR 1003.15(d).

Do not speak with ICE agents or CBP officers without an attorney present. You have a Fifth Amendment right to remain silent and may decline to answer questions about your immigration history, place of birth, or date of entry. Statements made without legal counsel become part of the government's record and can be used as admissions in removal proceedings.

Gather documentation. Begin assembling documents that establish your ties to the United States and support any available relief: length of residence (lease agreements, tax returns, utility bills, employer records); family relationships (birth certificates, marriage certificates); absence of disqualifying criminal history (court records); and country condition evidence if asylum is a potential defense.

If ICE is conducting enforcement operations in your area and you are not detained, a revocable order of supervision does not mean immediate removal. You may remain in the United States while pursuing legal remedies unless a final order of removal has been entered. An attorney can advise you on your specific legal status and the enforcement posture relevant to your case.

Frequently Asked Questions

1. What is a Notice to Appear (NTA) and what should I do when I receive one?

An NTA is a formal legal document issued by DHS initiating removal proceedings against you in immigration court. It lists the factual allegations and legal charges against you and your scheduled court date. You must appear at every immigration court hearing listed on the NTA and any rescheduled hearings. Failure to appear results in an in absentia removal order, which is difficult to reopen. Upon receiving an NTA, contact an immigration attorney immediately. The attorney will review the document for legal defects, identify potential relief, and prepare for the initial master calendar hearing.

2. What forms of relief from removal might I qualify for?

The available forms of relief depend on your immigration status, criminal history, length of U.S. residence, and family ties. Lawful permanent residents may qualify for cancellation of removal under INA 240A(a) if they have at least five years as an LPR, seven years of continuous residence, and no aggravated felony conviction. Non LPRs may qualify for cancellation under INA 240A(b) with 10 years of physical presence and a showing of exceptional and extremely unusual hardship to a qualifying U.S. citizen or LPR family member. Persons fearing persecution may apply for asylum or withholding of removal. Those with approvable immigrant visa petitions may adjust status in court. Voluntary departure avoids a formal removal order for those who qualify.

3. Can I be released from ICE detention while my case is pending?

It depends on whether you are subject to mandatory detention under INA 236(c) or discretionary detention under INA 236(a). Persons convicted of certain crimes, including aggravated felonies and specified drug and firearms offenses, may be subject to mandatory detention without bond. Persons not subject to mandatory detention are entitled to a bond hearing before an immigration judge. At the bond hearing, you can present evidence of community ties, employment, family relationships, and length of U.S. residence to argue for release at a reasonable bond. Bond amounts typically range from \$1,500 to \$25,000 or more. An attorney can advocate for the lowest possible bond and may seek bond redetermination if your circumstances change.

4. How long does the removal process take?

Timelines vary enormously depending on whether you are detained, the immigration court's docket, and the complexity of the case. Detained cases are typically resolved in months because courts prioritize detained dockets. Non detained cases may take years due to the massive EOIR backlog, which exceeded 3.5 million pending cases as of 2025. Master calendar hearings may be scheduled within weeks of the NTA being filed; individual merits hearings may not occur for one to three years or more in heavily backlogged courts. If the immigration judge issues a removal order and you appeal to the BIA, add another six months to over a year. If you petition the federal circuit court, add additional months to years.

5. Can a criminal conviction lead to deportation?

Yes, depending on the conviction type. The INA defines specific categories of criminal convictions that make a lawful permanent resident or other non citizen deportable or inadmissible. Aggravated felonies under INA 101(a)(43) carry the most severe immigration consequences, including mandatory detention and bars to most forms of relief. Crimes involving moral turpitude (CIMTs), drug offenses, domestic violence convictions, firearms offenses, and others also trigger deportability grounds. State law convictions are analyzed under federal immigration law definitions, which sometimes differ from how states classify the offense. A criminal defense attorney representing a non citizen should always consult with an immigration attorney before entering a guilty plea, because immigration consequences of different pleas or charges can be dramatically different.

6. What is the Board of Immigration Appeals (BIA) and how does an appeal work?

The BIA is the highest administrative immigration court in the United States, part of EOIR within the Department of Justice. If an immigration judge issues a removal order or denies relief, you may appeal to the BIA by filing a Notice of Appeal within 30 calendar days of the judge's decision. You then file an appellate brief arguing that the immigration judge made legal errors. The BIA reviews the record, considers the arguments, and issues a written decision. If the BIA dismisses your appeal, the removal order becomes final. You can then petition the federal circuit court of appeals for review of legal and constitutional errors.

7. What is prosecutorial discretion and can it help my case?

Prosecutorial discretion is ICE's authority to decide whether to pursue removal in a particular case based on enforcement priorities, humanitarian factors, and resource allocation. ICE can agree to administratively close a case, not file charges, terminate proceedings, or agree not to execute a removal order. Prosecutorial discretion is not guaranteed, is subject to policy changes across administrations, and cannot typically be compelled by a court order. Cases most likely to receive favorable discretion include those involving long term U.S. residents with strong community ties, persons with serious medical conditions, caregivers of U.S. citizen family members, and those without criminal history. An attorney can present a request for prosecutorial discretion to the ICE chief counsel responsible for the case.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

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