NATIONAL IMMIGRATION PROJECT
Lawyers for the Movement

BOSTON COLLEGE
CENTER FOR HUMAN RIGHTS AND INTERNATIONAL JUSTICE
Post-Deportation Human Rights Project

Returning to the United States After Deportation: A Guide to Assess Your Eligibility

Table of Contents

I. Introduction[1]

This guide is for people who have been removed (deported) and who want to return legally to the United States. While it is very difficult to return to the United States after deportation and it is not a realistic option for most people, at least not for many years, some people can successfully return to the United States.

This guide identifies the most common ways someone who has been deported can return and provides basic information to allow you to assess your situation. If, after reading the information in this guide, you think that you might have a way to legally return to the United States, please contact competent legal counsel to assist you.

This guide discusses[2]:

- Returning to the United States permanently with an immigrant visa;
- Returning to the United States temporarily with a non-immigrant visa;
- Filing motions to reopen or reconsider your immigration case;
- Other limited protection and humanitarian alternatives.

WARNING: This guide provides general information about immigration law and **is not legal advice**. It is not a replacement for legal advice from competent legal counsel—either an experienced licensed attorney or in some cases, a Board of Immigration Appeals (BIA) accredited representative. Many of the questions discussed here involve complicated areas of the law, and answers will depend on the particular details of your case. In addition, immigration laws and regulations change frequently. By the time you read this, some of the information may no longer be accurate. **We strongly recommend that you consult with competent legal counsel before filing any application to return to the**

[1] This guide was originally prepared by the Post-Deportation Human Rights Project (PDHRP) in 2011. The original guide has been updated by Boston College's Center for Human Rights & International Justice (BC CHRIJ) and the National Immigration Project (NIPNLG) in 2023 to reflect new developments in law and practice. Megan Hauptman (Bernstein Fellow, NIPNLG) completed the most recent updates and revisions to this guide, with assistance from Daniel Kanstroom (Co-Director, BC CHRIJ), Ann Garcia (Staff Attorney, NIPNLG) and Michelle Méndez (Director of Legal Resources and Training, NIPNLG). The contributors to the original version of this guide were Rachel Rosenbloom (Former PDHRP Supervising Attorney), Jennifer Barrow (Former PHRP Fellow, 2010-2011), Jessica Chicco (Former PDHRP Supervising Attorney); Daniel Kanstroom (Former PDHRP Director), and Christy Rodriguez (PDHRP Fellow, 2010-2011).

[2] If you are currently in removal proceedings or if you are still living in the U.S., this guide is not intended for you. You can obtain guides on defense to removal from other organizations (Appendix D) and you should contact a qualified immigration attorney or non-profit organization to assist you throughout your removal proceedings.

United States. Appendix F discusses how to find competent legal counsel for post-deportation cases.

Important! **It is illegal to re-enter the United States without permission** and entering the United States without authorization can also carry **criminal consequences,** including fines and a prison sentence**.** If you have previously been ordered removed and you enter without permission, the government can quickly deport you again without giving you the opportunity to see an immigration judge. This process is called **reinstatement of removal.** Generally, you will be able to see an immigration judge only if a Department of Homeland Security (DHS) immigration officer finds that you are afraid of being persecuted or tortured in your country. This process is discussed further in Section IX.

II. Was I ordered removed (deported)?

It is important to learn whether you had an order of removal when you left the United States. The type of order you had when you left can affect which options are available to you now. You may have received a "removal order" or granted "voluntary departure."

I think an immigration judge ordered me deported:

- You should be able to learn if you had an order of removal by inputting your "A number"[3] into the immigration court automated case information system at https://acis.eoir.justice.gov/en/. If you do not have access to the internet, you (or a loved one in the United States) can call the EOIR hotline at 1-800-898-7180 to ascertain whether you have a removal order.

I was given the opportunity to leave voluntarily:

- If you were granted **voluntary departure** by the immigration authorities or an immigration judge (meaning you were given a date by which to leave the United States and you paid for your own ticket back to your country), you do not have a removal order *if* you left by the deadline set by the immigration judge or DHS immigration official. However, if you did not

[3] Your A number is the 9 digit "alien registration" or file number that should be on any document you received from immigration. If your number only has 8 digits, enter 0 first, followed by your number.

leave by the deadline, your voluntary departure most likely turned into an order of removal automatically.

I was arrested by Customs and Border Protection (CBP) and deported or expelled at or near a land border, airport, or seaport:

- If you were **expelled** under Title 42, the public health authority that allowed for rapid expulsions in border regions from March 2020 to May 2023, you do not have a removal order.
- If you were placed in **expedited removal proceedings** and quickly deported without going through a removal hearing in front of an immigration judge, you do have a removal order, but the removal order carries a shorter period of ineligibility for return. See Table 1 on p. 9.

If you were arrested and deported or expelled near the border, you will likely need to submit a Freedom of Information Act (FOIA) request to CBP and United States Citizenship and Immigration Services (USCIS) to determine if you have a removal order and what kind of removal order.

Note: If you left the United States voluntarily before any immigration proceedings were initiated against you, you most likely do not have a removal order. However, you should still check the case information system to be sure and you may still face barriers to returning and/or applying for a new immigration visa based on prior unlawful presence in the United States or any criminal history. See p. 11-15.

III. How can I get a copy of my immigration and criminal records?

You should get copies of your immigration records and documents related to your criminal history (if you have one) to be able to assess your options for returning to the United States. For detailed information on how to request these records, please see Appendices B-C.

If you plan to consult with an immigration attorney about your case, it is very helpful for you to already have requested copies of your own immigration and criminal records prior to consultation, as an attorney will need to review these records before giving you a full assessment of your possible options.

IV. Can I come back to live in the United States permanently?

If you have been ordered removed and have left the United States, it will probably be difficult to obtain permission to permanently return. To do so, you will need two things: an **approved visa petition** and a **waiver of inadmissibility**. If you are applying to return to the United States permanently, you will be applying for an immigrant visa (this is the type of visa that allows you to enter as an immigrant and to then get a "green card.") People who have previously been removed from the United States face unique challenges before they can get an immigrant visa.

A. Approved Visa Petition

There are two main ways to get an immigrant visa when you are outside the United States: family-based immigration and employment-based immigration.

This guide does not focus on **employment-based immigration,** but there are five categories of employment visas that can lead to permanent resident (green card) status: [1] priority workers (which includes people with extraordinary ability in the sciences, arts, education, business or athletics, professors or researchers, and multinational managers and executives); [2] professionals with advanced degrees or exceptional ability in the sciences, arts, or business; [3] skilled and unskilled workers and [4[certain special immigrants (including religious workers and foreign medical workers) and [5] foreign investors. For most of these categories, your employer must first submit a petition to USCIS on your behalf and, in some categories, approval by the Department of Labor is also needed.

Individuals who are nationals of countries with lower rates of immigration to the United States may be eligible to enter the **diversity visa lottery**. If selected through the lottery, you may apply for an immigrant visa. The odds of being selected for this opportunity are very small, and being selected does not guarantee admission to the United States. Anyone selected to apply for a visa through the diversity visa program will still need to demonstrate that they are not otherwise inadmissible, which will be discussed in the following section.

In **family-based immigration,** a sponsoring relative files a petition for you. Your relative must fit one of the following descriptions:

- If your sponsoring relative is a U.S. citizen, that person can be your: spouse; son or daughter [if they are over the age of 21]; parent; or sibling.

- If your sponsoring relative is a lawful permanent resident (LPR or green card holder), then that person can be your: spouse; parent if you are under 21; or parent if you are 21 and older and not married.

If you are the spouse or child (under 21 and unmarried) of a U.S. Citizen, or the parent of a U.S. citizen who is 21 or older, a visa will be available quickly. For all other categories, the wait time after the petition is filed can be many years.[4]

If you have a U.S. citizen fiancé, they can also file a petition for you to get a fiancé visa (also called a K visa). This is not an immigrant visa, but many of the requirements are similar.

> *Example: Maria was deported to the Philippines. She has a husband in* the United States who *is undocumented. She also has a 7-year-old daughter who is a U.S. citizen. Maria really wants to return to the United States to watch her daughter grow-up. She has no other family in the United States. Can she get a family sponsored immigrant visa to live permanently in the United States?*
>
> *Answer: No. Maria does not have a U.S. citizen or LPR relative that can sponsor her for a visa. Her daughter may be able to file a petition for her when her daughter reaches the age of 21.*
>
> *Example: Denise was deported to Ireland ten years ago. She is not married, nor does she have any children. She does have a mother and a sister who is a U.S. citizen. She hopes to return to the United States. Can she get a family sponsored immigrant visa to live permanently in the United States?*
>
> *Answer: Yes, Denise's mother or sister can file a petition to sponsor her for a visa. However, she may need to wait several years—even a decade—for a visa to become available.*

[4] To estimate the current wait times for family- and employment-based immigrant visas, consult the State Department's visa bulletin.

B. Waivers of Inadmissibility

Having a family-member sponsor you is only part of the puzzle. Another important step in the immigration visa process is your interview at the U.S. embassy or consulate in your country. You will meet with a Consular Officer who will decide if you are eligible for a visa by determining if there is anything in your past that makes you "inadmissible." A finding of inadmissibility means that you are ineligible for a visa. If an officer finds that you are inadmissible, the officer may not issue you a visa to enter the United States unless you are eligible for and granted a waiver. Requesting a waiver is like asking for special permission, but waivers are not available for all grounds of inadmissibility.

There are many different things—immigration violations, medical conditions, criminal activity, political activity, and more—that can make you inadmissible. **You will need to get a waiver approved for each ground of inadmissibility that applies to you.** The four most common types of inadmissibility you should be aware of are:

- Having been removed (deported)
- Having criminal convictions
- Having been in the United States unlawfully
- Having committed immigration fraud

Unfortunately, some types of inadmissibility can never be waived.

1. ***Inadmissibility based on a past deportation***

The Problem

The fact that you were ordered removed and that you left the United States—whether through deportation or on your own—makes you ineligible for a visa for a certain period. The general rule is that if you are deported after removal proceedings before an immigration judge,[5] you are not eligible to return to the United States for 10 years. However, different periods of time may apply depending on your situation.

[5] Under the current presidential administration (Biden), individuals deported from inside the United States—rather than from arrival at or near the border—should be placed in full removal proceedings before an immigration judge, rather than being subject to expedited removal, the accelerated process used to deport individuals arriving at or encountered near the border soon after entering the country. Expedited removal does not entitle you to a full hearing before an immigration judge and carries a shorter bar on reentry, as is discussed in the table on the following page. However, under other presidential administrations, the use of expedited removal has been expanded outside the border region.

How Long Will I Be Ineligible for a Visa?

The table on the next page shows the most common scenarios. You will be ineligible for a visa for the longest period that describes your situation, but you can request a waiver to try to come back before your ineligibility period is finished (see the next section). This table only addresses ineligibility based on a past deportation—you may also have a separate ground of inadmissibility based on any criminal history or unlawful presence in the United States—which is discussed in a following section.

Table 1: Inadmissibility Periods Based on Past Deportation

5 years (but you can request a waiver)	**10 years** (but you can request a waiver)	**20 years** (but you can request a waiver)	**Permanently ineligible** (but you can request a waiver)	**Permanently ineligible** (but you can request a waiver after 10 years outside the U.S.)
You were put into expedited removal proceedings at the border, near the border, or at a seaport or airport; OR You were a lawful permanent resident with a criminal conviction, and you were put in removal proceedings when you returned from a trip abroad.	You were ordered removed by an Immigration Judge and were deported OR left the country after removal order was issued.	You have been removed from the U.S. more than once.	You were ordered removed from the U.S. because you were convicted of an aggravated felony (but you can request a waiver).	You were deported and then you reentered or tried to reenter the U.S. without permission; OR You reentered or tried to reenter the U. S. after previously having been in the U.S. unlawfully for a total of more than one year.

Can I Do Anything to Come Back Earlier?

If you are trying to get an immigrant visa during the period that you are ineligible, you may request an "I-212 waiver" (also known as a "consent to reapply".)

You can generally submit an I-212 application at any time. However, your application will probably be stronger if a few years have gone by since your removal. If you are subject to a permanent bar (column 5 in Table 1 above) because you were deported and then you reentered or tried to reenter the United States without permission, or you reentered or tried to reenter the U. S. after previously having been in the United States unlawfully for a total of more than one year, you can only apply for an I-212 waiver **after** you've been outside of the country for 10 years.

If your I-212 is denied, you have the option of waiting outside the United States for the 5, 10 or 20 years that apply to you before applying for a visa to return. After the applicable period, you will no longer be inadmissible on this ground, and you will not need to submit an I-212 application. You cannot, however, "wait out" the permanent bars (columns 4 and 5 above)—if a permanent bar applies in your case, you must apply for an I-212 waiver.

USCIS will look at all your circumstances in deciding whether you should be given an I-212 waiver to return to the United States. The factors they will consider include:

- How much time has gone by since your removal (more time is better)
- The need for your employment or other services in the U. S.
- The length of time you previously lived in the U. S.
- Your respect for law and order
- Evidence that you have been rehabilitated if you have a criminal record
- Good moral character
- Your family responsibilities
- Your inadmissibility under other sections of law
- The hardship to you and to others that would result from not letting you return

Legal counsel can help you decide what specific evidence is necessary to support an I-212 application. There are many important requirements and filing procedures that are not discussed here.

2. ***Inadmissibility Based on Unlawful Presence in the United States***

The Problem

You may be inadmissible if you spent certain periods of time "unlawfully present" (present without permission) in the United States. One common example of "unlawful presence" is if you crossed the U.S. border without permission and then stayed in the United States. Another common example is if you entered with a visitor's visa and stayed beyond the time you were authorized.

"Unlawful presence" is also a problem if you reentered or tried to reenter the United States illegally after previously having been "unlawfully present" for a total of more than one year. If that is the case you have a "permanent bar." *See* Column 5 of Table 1 on p. 9. To figure out whether you have a permanent bar, you add up ALL the periods of unlawful presence you had before you reentered or tried to reenter illegally.

How Long Will I Be Ineligible for a Visa?

It is important to count the weeks and even the days that you were in the United States unlawfully to know what the inadmissibility consequences will be.

Three-year bar: If you were unlawfully present in the United States for more than 180 days but less than one year AND you left voluntarily before you were put in removal proceedings, you have a 3-year bar to readmission.

Ten-year bar: If you were unlawfully present in the United States for one year or more, you have a 10-year bar to readmission. In this case, it does not matter if you left voluntarily, had voluntary departure, or were deported.

What Time Counts as Unlawful Presence?

In some situations, the time you spent inside the United States without permission will not count against you when adding up your days of unlawful presence. The rules are complicated and are not explained in detail here. For example: time during which you were under 18 years old, time during which you had a good-faith asylum application pending, time during which you had deferred action, and time during which you were lawfully admitted as a nonimmigrant will generally not count against you. There is also a special exception for battered spouses and children. However, if you are unlawfully present when you are put in immigration proceedings, your time in immigration proceedings continues to count against you. There are many more rules, and competent legal counsel can help you accurately calculate your time of unlawful presence.

Can I Do Anything to Come Back Earlier?

A 3 or 10 year bar is a penalty. You either need to wait the 3 or 10 years outside the United States, or you can request special permission to come back earlier. This is called an "unlawful presence waiver." Remember that if you were deported from the United States or left while you were under an order of deportation, you will also have a separate bar because of this (see p. 8-10).

To be eligible for the unlawful presence waiver, you need to show that not allowing you to return to the United States would cause "extreme hardship" to your spouse or parent who is a U.S. citizen or LPR (see information about extreme hardship in the box on p. 13). Extreme hardship to a U.S. citizen or LPR son or daughter does not count, though you can argue that hardship to your children creates hardship for your spouse or your parents. If you qualify as a "battered spouse" you can show extreme hardship to a parent or child, as well as to yourself.

> *Example: Julia crossed the border without papers in 2007 and stayed in the United States for a year and a half. She returned to Mexico on her own in 2009, and then crossed the border again in 2010. In 2011, she married a U.S. citizen and had a child. In 2017, Julia was removed to Mexico. Julia's husband has sponsored her for an immigrant visa and the visa petition has been approved. Can Julia come back to be with her family?*
>
> *Answer: Julia is inadmissible because she reentered the United States after being unlawfully present in the U.S. for more than a year without permission. She is required to wait 10 years outside the U.S. after her removal before applying for an I-212 waiver. Julia is also inadmissible for 10 years because she has more than one year of unlawful presence. By the time she is allowed to apply for an I-212 waiver for an immigrant visa, however, she won't need an unlawful presence waiver because she will have already "waited out" her unlawful presence penalty.*

WHAT IS "EXTREME HARDSHIP"?

To prove "extreme hardship," you must show that your family member is going to suffer more than the normal or expected difficulties that come from being separated from a loved one. Showing hardship to yourself does not count. The normal experiences of financial difficulties or the challenge of moving to another country are usually not enough by themselves to establish "extreme hardship." You need to show hardship to your relative if you remain separated and hardship to your relative if they join you in your country. Remember that different relatives will matter for different types of waivers.

Here are examples of some circumstances that, by themselves or when combined with others, can help you show extreme hardship, but every situation is different and there may be other circumstances in your case that can help you show extreme hardship.

- Your relative has a serious medical or psychological condition, or disability that cannot be properly treated in your home country, and this relative cannot live in the U.S. without you.
- Your relative cares for someone in the U.S. who is elderly or has a serious medical condition and that person cannot function without your relative's care in the U.S.
- Your relative has many close family members in the U.S., and they only have a few or no family relationships in your home country.
- Your country is experiencing active war or political turmoil that makes it very dangerous for your relative to move there.
- Your relative is the primary caregiver to children in the U.S. from a different partner, and the children's other parent will not allow them to move to your country.
- Your relative would have no job opportunities in your country because they have a profession or license that is very specific to the U.S. (such as a lawyer or doctor).
- Your relative's children would be harmed by the poor public health and public education systems in your country.

NOTE → Competent legal counsel can help you decide what specific evidence is necessary to support a waiver application. There are many important requirements and filing procedures that are not discussed here.

For all waiver applications, it is important to provide as much proof of hardship as possible. After you show extreme hardship, an immigration officer will weigh all the favorable and unfavorable facts in

your case in deciding whether to grant you a waiver. The officer will consider many factors, including your family and community ties, criminal history and rehabilitation, history of employment, and history of immigration violations.

3. ***Inadmissibility based on crimes***

The Problem

Your criminal history can make you inadmissible. Even if you were not convicted of a crime, formally admitting to acts that make up certain crimes can still make you inadmissible. It may not matter if the crimes took place in the United States or in another country. And, it may not matter if the crime took place many years ago. If your conviction was vacated, it is possible that the government can no longer use it to find you inadmissible.

Which Crimes Make Me Ineligible for a Visa?

Crimes Involving Moral Turpitude (CIMT): In general, committing or admitting to committing (see the definition of "**admission**" in the glossary) one CIMT will make you inadmissible. However, there are two exceptions.

- Petty Offense Exception: If you only have one CIMT, it will not make you inadmissible if: the maximum possible sentence for that crime was not more than one year, AND the sentence you actually received was 6 months or less (this includes a suspended sentence). To figure out the maximum possible sentence for your crime, check your state's criminal laws or consult with an attorney.
- Juvenile Exception: A CIMT will not make you inadmissible if: you were under 18 years old when you committed the crime, AND the crime occurred more than 5 years before you applied for a visa to the United States.

NOTE → Many "aggravated felonies" are also CIMTs or drug offenses, so even if you were not deported for a CIMT, your conviction may still make you inadmissible.

Controlled Substance Offenses: You are inadmissible if you committed or admitted to committing a violation of any controlled substance law or regulation of the United States or another country.

Not all state convictions for drug-related conduct will constitute controlled substance offenses for purposes of federal immigration law. For instance, if the state statute under which you were

convicted criminalizes the possession of substances not treated as controlled substances under federal law, you may have an argument that your drug conviction does not make you inadmissible. If you believe you fall into this category, you should consult with competent legal counsel with experience in both immigration and criminal law.

Even if you have never been convicted of a crime, there are other grounds for inadmissibility based on prior drug-related activities:

- A consular official may find you inadmissible if they have a **"reason to believe"** you have ever been involved in drug trafficking (for instance, based on an arrest report), even if you were never convicted for a drug crime or your conviction has later been vacated. If you are found to be inadmissible on this ground, no waiver is available.
- A consular official may also find you inadmissible if they find that you financially benefited in the past from your spouse's or parent's acts of drug trafficking in the five years preceding your visa application.

Multiple Criminal Convictions: You are inadmissible if you have been convicted of two or more offenses and the combined sentences for the offenses added up to five years or more. These crimes can be anything, and do not have to be CIMTs.

NOTE→ When calculating the length of a sentence for immigration purposes, you should include any time that was "suspended" (meaning time that was imposed as part of the sentence but that you did not actually have to serve in jail).

Other types of crime that can make you inadmissible include prostitution-related offenses, human trafficking, and money laundering.

Despite My Crime, Can I Become Eligible for a Visa?

If you were convicted of or admitted to committing (see the definition of "**admission**" in the glossary) a crime that makes you inadmissible, you need to be granted a 212(h) criminal waiver to become eligible for a visa. It is difficult to qualify for a 212(h) waiver, and you should consult with competent legal counsel. For a quick self-assessment, follow this three-step test:

Step 1: Determine Waiver Eligibility Based on Type of Criminal Offense

You cannot get a 212(h) waiver, and therefore will not be able to return to live in the United States permanently, if:

- You were convicted of or admitted to committing any drug crime other than a single offense for possession of 30 grams or less of marijuana; or
- You have been convicted of or admitted to committing murder or acts of torture.

Step 2: Rules for Former LPRs (green card holders)

Even if you are eligible under Step 1, there are additional rules that apply to people who were LPRs prior to deportation from the United States. If you have ever been admitted to the United States as an LPR,[6] you generally cannot apply for a 212(h) waiver if:

- You have been convicted of a crime classified as an aggravated felony under immigration law after being admitted as an LPR; or
- You did not lawfully continuously reside in the United States for 7 years before your removal proceedings began.

Step 3: Determine if you Satisfy Waiver Requirements

Even if you meet the requirements of Step 1 and Step 2, you will still need to establish one of the following to be granted a waiver:

- If the criminal activities happened more than 15 years ago or if you are inadmissible only due to prostitution offenses, that it would not be harmful to the United States to allow your return, AND you have been "rehabilitated;"
- That not allowing you to return to the United States would result in "extreme hardship" to your spouse, parent, son, or daughter who is an LPR or U.S. citizen (see information about extreme hardship in the box on p. 13); or
- That you qualify as a "battered spouse" under certain provisions of the immigration laws.

If you were convicted of a "violent or dangerous" crime, you need to meet Steps 1, 2, and 3, and you also need to show additional "extraordinary circumstances" to be granted a waiver.

NOTE→ Even if you meet all the requirements in Steps 1, 2, and 3, the government can still decide not to grant you a waiver. USCIS has discretion in deciding to grant or deny waivers and will weigh all the positive facts against the negative facts in each case.

[6] Admitted to the United States in this context requires that you applied for and received your status through consular processing abroad. Individuals who entered the United States in a different status and later adjusted to LPR status within the United States are generally not subject to this bar.

Example: Ali lived in the United States as a lawful permanent resident for several years. He is married to a U.S. citizen and both of his children are U.S. citizens. Ali was removed to Turkey two years ago because of a shoplifting conviction that was categorized as an "aggravated felony" because he received a one-year sentence. Ali's wife has sponsored him for an immigrant visa and the visa petition has been approved. Will Ali be able to return through his wife's petition?

Answer: Ali is inadmissible because his criminal conviction qualifies as a crime involving moral turpitude, or CIMT. He is not eligible to apply for a 212(h) criminal waiver because he is a former lawful permanent resident convicted of an aggravated felony. Unfortunately, he can never come back to live permanently in the United States through a new immigrant visa.

Example: Michel, who was never a lawful permanent resident, was deported to Haiti two years ago. He would like to come back to the United States to be with his parents, who are U.S. citizens. Michel was twice convicted of simple possession of a very small amount of marijuana. He has never been brought to court for anything else in his life. Michel's mother has sponsored him for an immigrant visa and the visa petition has been approved. Will Michel be able to return through his mother's petition?

Answer: No. Michel is not eligible for a 212(h) waiver because of his drug crimes. Though a single conviction for simple possession of 30 grams or less of marijuana can be waived, Michel has two drug convictions. He cannot come back to live permanently in the United States.

4. ***Inadmissibility based on misrepresentation or fraud***

The Problem

You may be inadmissible if you made a misrepresentation to a U.S. government official to get a visa or other document to enter the United States or to get any other immigration benefit. The misrepresentation must have been "material," meaning that you would not have been eligible for the

visa or other benefit under the real facts, or that your misrepresentation made it so that the official was not able to discover facts that may have made you ineligible.

The misrepresentation also must have been intentional, meaning you must have known the information you were providing was false and provided the information with intent to deceive. You may have an argument that this ground of inadmissibility does not apply to you if you can demonstrate that you did not know the information you were providing was inaccurate or false.

You also may have a defense to this ground of inadmissibility if you can show that you did not have the capacity to form an intent to deceive, because of your age, mental capacity, level of education, or any other relevant circumstance.

Despite My Fraud, Can I Become Eligible for a Visa?

You can apply for an immigration fraud waiver. You must show that not allowing you to return to the U.S. would create "extreme hardship" to your spouse or parent who is a U.S. citizen or LPR (see information on proving extreme hardship in the box on p. 13). Extreme hardship to a U.S. citizen or LPR child does not count, though you can argue that hardship to your children creates hardship for your spouse or your parents. If you qualify as a "battered spouse" you can show extreme hardship to a parent or child, as well as to yourself.

5. ***Inadmissibility that cannot be waived***

Some inadmissibility problems cannot be waived. For example, if you are found inadmissible for a criminal conviction that cannot be overcome with a 212(h) waiver, then you will not ever be able to get a new immigrant visa. Or, if a consular official deems you inadmissible because there is "reason to believe" you have previously been involved in drug trafficking, see p. 15, you are not eligible for any waiver for an immigrant visa.

Here are two more examples of activities that make you inadmissible and for which there is no waiver:

False Claim to United States Citizenship

You are inadmissible to the United States forever if you have falsely claimed that you were a U.S. citizen to obtain a benefit under any state or federal law. This is true even if you made this representation to someone who is not a U.S. government official (for example, your employer or your school).

This is a very serious violation and there is no waiver available that would make you eligible for an immigrant visa. There is no period of time after which this ground of inadmissibility does not apply. Therefore, if the government determines that you made a false claim to U.S. citizenship, you will never be granted an immigrant visa.

There are a few situations in which you may have a defense:

- If you made a false claim to citizenship accidentally, and your false claim did not affect your eligibility for any benefit under any state or federal law; or
- If you made a false claim to citizenship, but then quickly took it back or corrected it before it was discovered and brought to your attention; or
- If you made the claim before September 30, 1996 you may be eligible for a waiver; or
- If you permanently resided in the United States before you turned 16, each of your parents are or were U.S. citizens, and you believed that you were a U.S. citizen too when you made the claim.

You should contact competent legal counsel to help you make these arguments if you believe they apply to you.

You Did Not Attend an Immigration Hearing

If you did not attend an immigration court hearing and the immigration judge ordered you removed in absentia (meaning in your absence), you are inadmissible for 5 years. You might not have this penalty if you had "reasonable cause" for not showing up. Reasonable cause can include serious illness or hospitalization, but traffic delays and getting lost are usually not enough. The five years begin counting from the time you are deported from or leave the United States. During those five years, you are not eligible for a visa and there is no waiver available. After the five years, you will no longer be inadmissible on this ground.

This ground of inadmissibility only applies to individuals who were in removal proceedings (meaning you received a Notice to Appear after April 1, 1997). It does not apply to people who were in deportation or exclusion proceedings (meaning you were placed into immigration proceedings before April 1, 1997). This ground of inadmissibility also does not apply if you can prove that you did not receive notice of the hearing date.

V. Can I visit, work, or study temporarily in the United States?

You may want to visit, work, or study in the United States on a temporary basis with a non-immigrant visa. Examples of non-immigrant visas include tourist visas, student visas, and certain types of work visas. The same inadmissibility grounds apply when you are requesting a non-immigrant visa, but most inadmissibility grounds can be waived for a non-immigrant visa even if they cannot be waived for an immigrant visa.

To get a non-immigrant visa, you will need to do two things: 1) prove that you **intend to return to your country of residence**[7] and 2) obtain a waiver of inadmissibility.

If you have been deported in the past, you need to follow these steps even if you live in a country where people are usually allowed to visit the United States without a visa.

A. Proving that you intend to return to your country of residence

When you apply for a non-immigrant visa, you will be asked to attend an interview at a U.S. embassy or consulate in your country. At the interview, you must convince the officer that you are going to return to your country within the time limit you are given. This is called having **non-immigrant intent.** Demonstrating non-immigrant intent can be very difficult if you lived in the United States for many years, if you previously violated immigration laws, or if you have close family members (such as a spouse or young children) who are still in the United States.

If you cannot convince the officer that you intend to return to your country before your non-immigrant visa expires, your visa application will be denied, and the decision cannot be appealed. You can, however, apply for a non-immigrant visa again in the future.

You can show non-immigrant intent by showing that you have strong ties to your current country of residence and have economic, familial, or other reasons to return before your visa expires. In most

[7] Certain types of visas that are technically "non-immigrant visas" can be granted to individuals who may also have immigrant intent (meaning the desire to immigrate permanently to the United States). These include the H-1B and L-1 visa categories. Each of these visas has different eligibility requirements and are challenging to obtain. If you qualify for one of these types of visas, you will not need to prove that you intend to return to your country of residence, but you will still need a waiver of inadmissibility if you are inadmissible.

cases, it is easier to prove this if you have lived outside of the United States for a long time after your deportation.

Examples of ties to current place of residence include:

- Employment
    - Particularly employment that is well-paying, formal, and long-term;
- Owning a house, business, or other property;
- Bank account;
- Community ties;
    - An extensive family network and/or involvement in local organizations;
- Family members who live with you and/or depend on you in your country of residence.

B. Waiver of Inadmissibility

Only if you convince the consular officer that you will return to your country will the officer look to see whether you are otherwise eligible for a visa. If the consular officer determines you are inadmissible, he will then consider you for a waiver of inadmissibility for non-immigrants, also called a 212(d)(3) waiver.

Almost every ground of inadmissibility (except for grounds related to terrorism and national security) can be waived when applying for a non-immigrant visa. This includes inadmissibility based on a removal order, criminal convictions, unlawful presence, and grounds of inadmissibility that cannot be waived when applying for immigrant visas (such as false claims to U.S. citizenship and certain criminal grounds that cannot be waived for immigrant visas, such as drug convictions).

The office reviewing your request for a waiver will look at the following factors:

- The seriousness of your prior violations of criminal or immigration law;
- The risk of harm to the United States if you are allowed to visit; and
- Your reasons for wanting to visit the United States.

For this type of waiver, you do not need to show extreme hardship. In fact, such hardship might actually work against you. For example, if the consular officer thinks that there are family members in the United States who cannot survive without you, your application may be rejected because the officer believes you intend to remain in the United States.

VI. Motions to Reopen and Reconsider

If you lost your immigration case and it is not on appeal, it may be possible, in very limited circumstances, to reopen your case even after you have been deported or otherwise left the United States. Reopening your case means that an immigration judge or the Board of Immigration Appeals (BIA)—whoever reviewed your case last—agrees to take another look at your case and make a new decision. Reopening your case is different from appealing your case.

Motions to Reconsider and Motions to Reopen are different in their main purpose, though both ask the immigration judge or BIA to take another look at your case. A Motion to Reconsider can be filed when there has been a change in law or when the judge made a mistake in applying the law to your case. A Motion to Reopen can be filed when new facts or evidence that were not available at the time of the original decision are discovered.

The law gives you the right to file one motion to reconsider and one motion to reopen. A Motion to Reconsider must be filed within 30 days of the final decision ordering removal. A Motion to Reopen must be filed within 90 days of the final decision ordering removal. There are some exceptions to these limits that are discussed at the end of this section.

The immigration judge and the BIA can also, in response to a motion to reopen, decide to reopen a case at any time even if the motion was filed outside of these time and number limits. This is called *sua sponte* (voluntary) reopening. Several federal courts have ruled that individuals who have departed from the United States are not eligible for *sua sponte* reopening. Other federal courts have recently concluded that people outside the United States *are* eligible for *sua sponte* reopening. The rule that will apply to you case will depend on where (in what immigration court) you were ordered deported.

If you are able to successfully reopen your case based on one of the circumstances outlined below, you may be able to regain prior lawful status or apply for certain forms of immigration relief in your reopened removal proceedings.

Immigration judges and the BIA rarely grant motions to reopen or reconsider filed outside the one motion limitation or time deadlines and therefore most people who pursue this option will not succeed in obtaining or regaining any immigration status in the United States. In addition, even if an immigration judge or BIA grants your motion to reopen or reconsider, you may face difficulties in physically returning to the United States, as discussed below, in section VII.

The law in this area is very complex and subject to change. If you read the below material and think you might have a good reason for filing a motion to reconsider or reopen, please contact competent legal counsel with experience with motions to reopen. It is strongly advisable that you pursue a motion to reopen or reconsider only with the assistance of legal counsel.

A. Situations in Which a Motion Could be Appropriate

1) Vacated Conviction

Many people are deported because of criminal convictions. If the conviction that led to your deportation has been vacated by the criminal court, then you may be able to reopen your immigration case. (If your conviction has been vacated, this will also usually mean that your conviction will no longer make you ineligible for a visa. So, if you have a relative who can petition for you, you could be eligible for an immigrant visa.) However, the conviction must have been vacated because something went wrong in your original criminal court proceedings. For example, if your criminal attorney did not tell you about the immigration consequences of pleading guilty and your conviction was vacated because of that, a motion to reopen may be appropriate. Getting a conviction expunged or vacated for immigration reasons or because you have rehabilitated is unfortunately not enough. If you have not yet had a conviction vacated, but think you might have a reason to do so, a criminal attorney licensed to practice law in the state of your conviction with knowledge of or mentorship on immigration law can help you determine if you have a valid reason to vacate your conviction.

2) Pardon

Only some pardons are effective for immigration purposes. If you previously had legal status in the United States but were deported based on an "aggravated felony," "crime involving moral turpitude," or "high speed flight from an immigration checkpoint" and you receive a pardon by a U.S. President or a state governor for the underlying criminal conviction, a motion to reopen may be appropriate. However, a pardon **does not** help if you were deported based on a conviction for a controlled substances offense.

Note: A pardon **does not** help erase convictions for inadmissibility purposes if you plan to apply for a new immigrant visa. If you have a conviction that makes you

inadmissible to receive a new visa (for instance, a crime involving moral turpitude), receiving a pardon of the conviction will not make you eligible for a new visa.

3) Ordered Removed In Absentia (in your absence)

If an immigration judge ordered you removed because you did not go to an immigration hearing, you may be able to reopen your case if you can show that you did not attend your hearing because you did not receive notice of the hearing or there were "exceptional circumstances" for missing the hearing. "Exceptional circumstances" usually mean that you or an immediate family member were seriously ill, or there were similar serious circumstances that prevented you from going to your hearing.

4) Change in law after your case was decided

There are many situations in which the immigration law or the interpretation of the law changes after your case has been decided and the change would have led to a different result in your case. For example, some people are removed as "aggravated felons." Certain convictions that used to be categorized as aggravated felonies, like simple drug possession, are no longer considered aggravated felonies by the courts. If you were removed based on an aggravated felony but the crime you were convicted of is no longer considered to be an aggravated felony due to a change in law, then and you may be able to reopen your case.

5) Ineffective assistance of counsel

In some situations, showing that your immigration attorney provided you with ineffective legal assistance, and showing that the outcome of your case would have been different if you had had better legal assistance, can be a reason for filing a motion to reopen. Generally, you must show that you acted quickly in seeking to reopen your case after discovering your attorney's ineffective assistance.

6) Changed country conditions

Under the immigration law, you can request that your case be reopened if the conditions in your country change and you have a new basis for fearing that you will be persecuted or tortured. This is a challenging argument to make if you have already been deported and are outside of the United States. You should consult with competent legal counsel if there is a change in government, a new outbreak in

violence or some other change in your country that makes you fear that you will be persecuted or tortured.

B. Timing

Generally, you need to file:

- a **motion to reconsider** within **30 days** of a removal order;
- a **motion to reopen** within **90 days** after a removal order.
- a **motion to reopen and rescind an *in absentia* removal order** based on "exceptional circumstances," needs to be filed your motion within **180 days**.
    - If the basis for your motion is an *in absentia* removal order based on receiving no notice of your hearing, there is no deadline, meaning that you can file your motion at any time.

If you are filing a motion outside of the 90 or 180 day time frame (or you have previously filed the same type of motion) you will need to establish an exception for an untimely or successive filing:

- **Joint Motion to Reopen:** If an ICE prosecutor agrees to join the motion to reopen, the motion is not subject to the time and number bars.
- ***Sua sponte*:** Motions to reopen that ask immigration judges or the BIA to exercise its inherent *sua sponte* authority (authority to reopen on their own initiative at any time) are not subject to the time and number bars. However, several courts have ruled that *sua sponte* motions are not available for individuals who have departed from the United States.
- **Changed Country Conditions**: If you can demonstrate that conditions in your country of deportation have significantly worsened such that you have a new basis for fearing that you will be persecuted or tortured, your motion is not subject to the above filing deadlines. Depending on where you were ordered removed, a motion to reopen based on changed country conditions may still be subject to the single motion limitation.
- **Equitable Tolling:** To justify a motion filed outside of the time limits that is not subject to any of the above-discussed exceptions to the filing deadlines, you will need to demonstrate that you have been diligent in investigating and pursuing any legal challenges to your removal order since you were deported and that some extraordinary circumstance kept you from filing a motion earlier. This is a challenging standard to meet if a significant period of time has passed since you were ordered removed.

VII. Returning to the United States After a Successful Motion to Reopen/Reconsider

Unfortunately, the challenge of returning to the United States does not end with winning a motion to reopen or reconsider. If you are successful in your motion to reopen or reconsider and an immigration judge or the BIA reopen your removal proceedings, that does not guarantee that the immigration authorities will help you return to the United States to participate in those removal proceedings. Immigration authorities currently do not have a policy to ensure the return of individuals who win motions to reopen or reconsider after deportation. The process of return after a successful motion to reopen or reconsider can be challenging and take months or years of sustained advocacy.

A. Lawful permanent resident before deportation

If you were previously a lawful permanent resident (LPR or green card holder) before being deported, and your removal order is reopened, you should be returned to your prior status as a lawful permanent resident.

If your case is reopened but you no longer have a valid green card, you should contact immigration authorities at ERO.INFO@ice.dhs.gov to request assistance with facilitating your return. You should include in the email: your A-number, your contact information, a copy of the order reopening your proceedings, and a copy of your expired green card, if possible. You may also want to file an application to replace your green card (known as an I-90) with the assistance of an immigration lawyer or accredited representative.

If you need to fly to the United States, immigration authorities should coordinate with the local consulate to provide you with a travel letter that will allow you to board a plane.

If you are living in Mexico or Canada and can easily travel to the U.S. border, you can try to seek entry to the United States at the physical border based on your recaptured LPR status. Plan to bring a copy of your previous green card and/or a receipt for an I-90 application for a replacement green card, and a copy of the order from an immigration judge or BIA reopening your removal proceedings.

This process can be complicated and assistance from legal counsel who can communicate with immigration authorities and advocate on your behalf is advised.

B. Other status before deportation

If you were not a lawful permanent resident before you were deported, the process of return so that you can participate in your reopened removal proceedings will be more difficult. You can try requesting facilitation of return from the immigration authorities by emailing ERO.INFO@ice.dhs.gov with your request. However, this request may be denied, as ICE often takes the position that its limited return policy does not encompass people who have prevailed on a motion to reopen, and ICE has demonstrated a reluctance to facilitate the return of individuals who did not previously hold LPR status.

If you find yourself in this situation, you may need to apply for humanitarian parole, discussed in the next section.

VIII. Other Options

A. U Visa

If you were the victim of a crime while you were in the United States, you may be able to obtain a U visa. U visas are for victims who suffer severe harm as the result of a serious crime, have information about the crime, and cooperate with law enforcement to investigate or prosecute the crime. If you were the victim of a crime that occurred a long time ago, you may still qualify for U visa if there is a law enforcement agency that is willing to certify that you cooperated in the past investigation or prosecution of the crime.

Only victims of certain serious crimes can apply for U visas. Some recognized crimes include: domestic violence, trafficking, murder, rape, kidnapping, sexual assault, or witness tampering.

Almost all grounds of inadmissibility can be waived when you are applying for a U visa. Even grounds of inadmissibility that cannot be waived when applying for an immigrant visa (for example, drug related convictions) can be waived in a U visa application. USCIS will balance the positive and negative factors in your case and grant a waiver if it determines that it is in the public interest to allow you to return to the United States. USCIS will consider the number and seriousness of the crimes you committed in making its decision. If you committed a violent crime, USCIS will grant a waiver only in extraordinary circumstances.

B. Violence Against Women Act (VAWA) Visa

If you were abused by a U.S. citizen or LPR spouse, child, or parent, you may be able to self-petition for a green card before USCIS. For this petition, you will need to show that you resided with the abusive relative and were subjected to "battery or extreme cruelty" by your relative and that you are a person of "good moral character." You will also need to be admissible or apply for waivers for any grounds of inadmissibility, though individuals applying for a VAWA visa are subject to different standards for certain waivers.

If you were subject to abuse prior to your deportation, you may also have a claim to a related form of relief called "VAWA cancellation of removal." This form of relief is only a potential option if you can successfully reopen your case before an immigration judge.[8]

[8] Additional information about VAWA cancellation can be found in this guide published by the Florence Immigrant and Refugee Rights Project (FIRRP).

C. Parole

If you need to visit the United States temporarily for an emergency reason, and you were unable to obtain a nonimmigrant visa and inadmissibility waiver, you can try to apply for humanitarian parole. Parole applications for people who have previously been deported generally need to be submitted by mail to USCIS, which will forward the application to Immigration and Customs Enforcement (ICE) for adjudication. To apply for parole, you will generally need a sponsor inside the United States who can demonstrate that they can support you financially. In rare cases, Customs and Border Protection (CBP) will grant applications for parole for individuals who present themselves at a port of entry at the border.

Generally, parole is granted rarely and for extraordinary reasons, such as:

- an ongoing court case where your testimony or presence is needed;
- needing urgent medical treatment that is not available in your country;
- needing to visit a dying family member in the United States.

Immigration authorities have expanded the use of humanitarian parole in the past few years in ways that may be relevant to some individuals who have been deported.

- **Deported Veterans:** If you are veteran of the U.S. armed forces, there is a special process for veterans applying for humanitarian parole to reenter the United States. As well as following the general instructions, you should submit any application for humanitarian parole—or any application for any other form of immigration relief—to the IMMVETS unit created to handle military veterans' applications.

- **Individuals deported to Venezuela, Cuba, Haiti or Nicaragua:** In addition, the Biden administration's parole program for people from Venezuela, Cuba, Haiti, and Nicaragua contemplates granting humanitarian parole for some people who have been previously deported. You can learn about the requirements for that program here.

- **Return after a successful motion to reopen or reconsider:** In some cases**,** immigration authorities will advise individuals who have won motions to reopen or reconsider after deportation to file an application for humanitarian parole to be able to return for reopened court proceedings.

Parole gives you permission to temporarily stay in the United States for a limited time period and makes you eligible to apply for work authorization. It does not lead to permanent status. You may be able to enter the United States on humanitarian parole and then seek to apply for some form of longer-term status, where you qualify. If you stay in the United States past the authorized time for your parole grant, you risk being deported.

IX. What happens if I return to the United States without permission?

Returning to the United States without permission can lead to serious immigration and criminal consequences. Individuals who have previously been deported and reenter the United States without authorization are subject to an expedited deportation process called **reinstatement of removal.** If you are subject to this process, DHS immigration officers can deport you without you ever seeing an immigration judge. You will be able to see an immigration judge only if an immigration officer finds that you are afraid of being persecuted or tortured in your country.

If you return to the United States after deportation, you may also be subject to criminal prosecution for illegal reentry. Illegal reentry is a federal crime for which you can be fined and/or imprisoned. After completing your illegal reentry criminal sentence, you will be subject to accelerated deportation through the reinstatement of removal process.

A. What if I fear for my life in the country to which I was deported?

There are some situations in which a person who has been deported fears that their life or freedom is in danger in their home country. This person might feel that their only option is to return to the United States to seek protection, despite the possible immigration and criminal risks involved. Generally, an individual who is in the United States may apply for protection in the form of asylum. To get asylum, one must show a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group.

As discussed above, when a person who has previously been deported reenters the United States without permission, they may be subject to reinstatement of removal proceedings. A person in reinstatement proceedings cannot apply for asylum but can apply for other types of protection as described below.

If you are put in reinstatement proceedings and you have a fear of returning to your country, you should express that fear to a DHS immigration officer. They should then provide you with a screening

interview in which you will have an opportunity to explain why you are afraid of returning to your country.

If you are found to have "reasonable fear" of persecution or torture, your case will be referred to an immigration judge and you can then ask the immigration judge for protection in the form of withholding of removal or protection under the Convention Against Torture (CAT). To be eligible for "withholding of removal" you must show that it is more likely than not that you will be persecuted due to your race, religion, nationality, political opinion or your membership in a particular social group. Fear of returning or remaining in one's country due to economic conditions, crime, or natural disaster, for example, are generally not recognized reasons for being granted protection in the form of withholding of removal or CAT. To be eligible for protection under CAT, you must show that it is more likely than not that you will be tortured by the government, for any reason, if you are sent back to your country. If granted withholding or CAT, you are allowed to legally remain in the United States and get work authorization. However, these forms of status do not lead to a green card and do not allow you to petition for your family to join you in the United States.

NOTE → This area of law is very complex, and the information provided here is very basic and there is much more to know about asylum, withholding, and CAT. You should consult with competent legal counsel if you find yourself in this very difficult situation.

X. Appendices

A. Appendix A: Explanation of Terms Used in This Guide

Admission of Crime: When you voluntarily admit to facts that would make you guilty of a crime after an official has explained the nature of the crime to you in plain terms. This is more than a simple admission – there is a formal procedure that must be followed for your statement to be considered an "admission" that makes you inadmissible. A formal admission may have consequences similar to those of a conviction, even if you were not convicted.

Aggravated Felony: This is the most serious immigration law category of crime. Aggravated felonies make you ineligible for almost all forms of immigration relief and make it difficult to return to the United States. The immigration laws consider many state and federal offenses "aggravated felonies," including some state misdemeanors even if no jail time was served. Some examples of crimes that are generally classified as aggravated felonies are: rape, murder, drug and firearm trafficking, theft (if you received a sentence of a year or more), and many crimes involving the use of force against another person or property. There are many other crimes that can be classified as aggravated felonies.

Board of Immigration Appeals (BIA): Agency within the Department of Justice that reviews Immigration Judge decisions that have been appealed by either the government or the person in immigration proceedings. BIA decisions can be appealed to the federal courts.

Crime Involving Moral Turpitude (CIMT): Courts have described CIMTs as including behavior that is vile, depraved, intrinsically wrong, and contrary to society's accepted rules of morality. Whether your criminal activity or conviction will be considered a CIMT will depend largely on the criminal law under which you were convicted and, perhaps, the facts of your case. Courts have found many different types of crimes to be CIMTS, including: fraud offenses, sex offenses, murder, theft, shoplifting, forgery, and some types of assault.

Criminal Conviction: Under immigration law, a criminal conviction is defined differently than it is under criminal law. A conviction exists if (1) there has been a formal judgment of guilt, or (2) there has been a guilty verdict by a judge or jury or a plea of guilty or no contest and the person received some punishment (such as a jail sentence, fine, community service, or probation). A "conviction" may exist for immigration purposes even if it would not be considered a conviction under the state criminal law.

Criminal Sentence: Amount of time a person is ordered imprisoned. This includes the time period during which a sentence is suspended (meaning that you did not have to spend the time in jail).

Customs and Border Protection (CBP): Federal agency within the Department of Homeland Security that conducts inspections, arrests, and initial detention at borders, airports, and seaports.

Department of Homeland Security (DHS): Federal agency that includes most immigration agencies, including ICE, CBP, and USCIS. It does not include EOIR (described below).

Executive Office for Immigration Review (EOIR): Federal agency within the Department of Justice responsible for adjudicating immigration cases. EOIR includes the immigration courts and the BIA.

Extreme Hardship: Level of hardship that must be shown to qualify for certain waivers. To qualify for a waiver, the hardship must be experienced by certain relatives and the qualifying relatives depend on the waiver requested. This is a high standard that cannot be met solely by showing financial hardship or the general hardship experienced when deported. See box on p. 13.

Immigration and Customs Enforcement (ICE): Federal agency within the Department of Homeland Security that conducts immigration arrests in the interior of the United States and prosecutes removal cases in Immigration Court.

Inadmissibility: You are inadmissible, meaning not eligible for a visa, if you fall into one of many listed categories, including having certain criminal convictions or having spent time in the United States without authorization.

Motion to Reconsider: Document filed with the Immigration Judge or BIA asking that a decision be reexamined because the law was applied incorrectly.

Motion to Reopen: Document filed with the Immigration Judge or BIA asking that the case be reopened to consider new evidence that was not previously available.

Reinstatement of Removal: Summary removal procedure that allows DHS government officials to rapidly deport people who have previously been deported and have unlawfully reentered the United States, in most instances without an opportunity to see an immigration judge. See p. 20.

Unlawful Presence: Being in the United States without legal status or authorization. Prior unlawful presence carries bars on readmission to the United States. See p. 11-12.

United States Citizenship and Immigration Services (USCIS): Federal agency within the Department of Homeland Security that processes applications for immigration benefits and grants or denies waivers of inadmissibility filed together with an application for an immigration benefit.

Vacatur of Criminal Conviction: When a criminal conviction is set aside as if you had never been convicted. For a vacatur to have any effect for immigration purposes, the conviction must have been vacated because something went substantively wrong in your original criminal court proceedings.

Voluntary Departure: A person who is granted voluntary departure is not given a removal order, but must leave the United States by a certain deadline, pay for their own ticket, and make their own travel arrangements. A person who left by the voluntary departure deadline does not need an I-212 waiver before being eligible to return to the United States, though they may need a waiver for other inadmissibility problems. If the person did not leave by the deadline, however, the voluntary departure order turned into an order of removal. A failure to voluntarily depart by the deadline also carries a monetary penalty and bars the individual from applying for many forms of immigration relief for 10 years.

Waiver of Inadmissibility: An application requesting special permission to receive a visa even though you are inadmissible.

B. Appendix B: Getting Copies of Your Immigration Records

Immigration Court Records

To get a copy of your immigration court file, you can send an email to the immigration court that handled your removal case, requesting a copy of your "Record of Proceeding (ROP)." Email addresses for each immigration court are available here. A sample email is included below. With this email, you should attach a scan of a completed and signed copy of two forms: an EOIR-59 and a DOJ-361.

Dear Court Administrator,

I write to request a copy of my entire Record of Proceeding (ROP) and Digital Audio Recording (DAR) from my removal proceedings before this court. Attached please find Form EOIR-59 and a Certificate of Identity (DOJ 361). I provide the following information to help with locating my ROP.

Full Name:
Date of Birth:
A-number:
Date of removal order (if known):

Please email me the copy of my ROP at _____.

Please advise if there is any additional information I need to provide.

Note: EOIR keeps records related only to your proceedings in Immigration Court and the Board of Immigration Appeals. Your EOIR file will not include applications for visas, naturalization, or any appeals to federal court. If you were ordered removed by an immigration (ICE) officer through the process of "expedited removal," "administrative removal," or "reinstatement of removal" and never saw an immigration judge, or if you signed an order of removal and did not go to immigration court, you may not have an EOIR record.

U.S. Citizenship and Immigration Services (USCIS) Records

Your USCIS file will include a copy of your "A-File," which is an individual file USCIS keeps on each non-citizen. This includes any applications or petitions you have submitted to USCIS or to the immigration court during removal proceedings.

USCIS has recently started processing requests for records via an online system. To get a copy of your USCIS file, make an account with USCIS FIRST. Once you have an account:

1. Start an application for records "For Myself."
2. When prompted to select type of record requested, check the following boxes:
    - "Record of Removal from the US"
    - "Other" – type in "Full A-File"
    - Select any other boxes as relevant to your case.
3. Have the following information ready:
    - Full name
    - Date and place of birth
    - A number
    - Any aliases
    - Parents' full name
4. When prompted, provide an email address where you can receive emails updating you about the status of your request.
5. Once the request is completed, you will receive an email notification and be able to download your request from the USCIS FIRST website under the tab "Document Library."

Customs and Border Protection (CBP) Records

If you were arrested, detained, or deported near the border or at an airport or seaport, you should also request your records from CBP. You can submit requests to CBP at https://www.securerelease.us/.

On the SecureRelease site, when prompted, choose "Department of Homeland Security / U.S. Customs and Border Protection." Included below is a sample paragraph you can use to submit your request through CBP's SecureRelease system:

I request all records within the possession of U.S. Customs and Border Enforcement (CBP) pertaining to myself, (Name) (A Number), including, but not limited to, all documentation related to any border encounters, detention by CBP, voluntary return, and/or any expedited removal order.

To assist in the processing of this request, I provide the following information:

- Full Name:
- Aliases Used:
- Mailing Address in U.S.:
- Date of Birth:
- A-number:
- Parents' Names:

C. Appendix C: Getting your Criminal Records

If you have been arrested or have ever been charged with a criminal offense in the United States—even if you were never convicted—you should get a copy of your criminal history record, often called a "rap sheet." The record will show the section of the criminal law under which you were charged and the "disposition" (the final outcome) of each case, including what sentence you received. This information is very important to determine whether and how you can return to the United States.

State Criminal History Records

Every U.S. state has a different procedure for requesting criminal history records. For example, some states require your fingerprints. Some require the request form to be signed by you and notarized. Some will require a fee. Certain states make criminal history records available online. Below are links to the websites of each state explaining how to request your criminal record.

A state criminal record will only show arrests and convictions from that state, so if you were arrested and charged with a crime in more than one state, you must get copies of your criminal history record from each state. State-by-state information on how to request your criminal history records is available through the Cornell Criminal Record Online Toolkit here.

Federal Criminal History Records

If you were arrested or charged with criminal offenses in more than one state, or if you ever had federal charges brought against you, you may get a copy of your complete criminal history record through the Federal Bureau of Investigation (FBI). The FBI obtains its information from the individual state criminal justice agencies. When possible, it is better to get state records directly from the state when possible because the FBI records are sometimes incorrect or incomplete.

To get your FBI criminal background check, you must submit an Applicant Information Form online, complete a set of fingerprints, and pay $18. If there is an organization near you that provides assistance to individuals after deportation, you should contact them and see if they can help you with the fingerprinting process. If not, you should contact your nearest U.S. Embassy or Consulate to arrange to have your fingerprints taken, as there is a special "fingerprint card" on which these must be done.

After you have your fingerprint card, you should mail the card, along with a printed copy of your confirmation email from submitting the Applicant Information Form online to:

FBI CJIS Division
ATTN: ELECTRONIC SUMMARY REQUEST
1000 Custer Hollow Road
Clarksburg, WV 26306

You can find more information about the process and how to submit payment online here: https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/identity-history-summary-checks.

D. Appendix D: Additional Immigration Resources

- The Florence Immigrant & Refugee Rights Project has a number of excellent *pro se* resources for individuals fighting deportation or seeking to apply for benefits or adjust their status within the United States.
- If you are applying for asylum within the United States, you may want to consult the Pro Se Asylum Manual put out by the Political Asylum/Immigrant Representation (PAIR) Project.
- Financial Handbook for Families Facing Detention & Deportation (Families for Freedom): Suggestions for handling your finances and protecting your social security benefits in case of detention or deportation.
- A New Path: A Guide to the Challenges & Opportunities After Deportation (Education Justice Project): A guide for individuals facing deportation to Mexico or Central America.

E. Appendix E: Post-Deportation Country-Specific Resources:

- Veteran-specific organizations
    - Repatriate Our Patriots
    - Unified U.S. Deported Veterans (Tijuana, Mexico)
    - Deported Veterans Support House (Tijuana, Mexico)
- Mexico:
    - Al Otro Lado (Tijuana)
    - Otros Dreams en Acción (Mexico City)
    - Comunidad en Retorno (Mexico City)
    - Rhizome Center (Guadalajara)
    - Dream in Mexico (León)
    - Map of organizations and initiatives in Mexico offering support to deported or returned individuals
- Guatemala:
    - Asociación de Retornados Guatemaltecos
- Cambodia
    - Khmer Vulnerability Aid Organization
- Haiti
    - Alternative Chance
- Jamaica
    - Family Unification

F. Appendix F: Finding Competent Legal Counsel

Post-deportation immigration cases often include complex legal issues that fall outside of the daily practice of many immigration lawyers and representatives in the United States. For this reason, it is important that you thoroughly investigate and vet any legal counsel that you are planning to consult with and/or hire to represent you on an application to return to the United States. This includes both attorneys and Board of Immigration Appeals (BIA) accredited representatives. A BIA accredited representative is a non-attorney who has been accredited by the BIA to represent individuals in immigration proceedings.

Beware of individuals that offer their assistance but who are not licensed attorneys or BIA accredited representatives. They sometimes use the title "notario" or "immigration consultant" but they are not authorized to practice law in the United States.

- Ascertain that the counsel is either a U.S.-licensed attorney or BIA accredited representative.
    - For attorneys: in what state are they licensed? What is their bar number? Are they in current good standing with the bar?
        - You can generally search for attorneys on state bar websites to determine whether they are in active status with the state bar and whether the attorney has any disciplinary history.
    - For accredited representatives: For what organization do they work? How long have they worked as an accredited representative?
        - A list of organizations currently authorized to employ BIA accredited representatives is available here.

- Determine whether counsel has relevant experience to assess and represent you in your case.
    - How long have they practiced immigration law?
    - (If you have prior criminal convictions) Do they have experience with criminal-immigration law or regularly consult with a criminal attorney?
    - Have they represented individuals after deportation before?
    - Have they represented individuals with prior removal orders and/or criminal convictions on visa applications?
    - How many motions to reopen have they represented? Have they ever represented someone who was already deported on a motion to reopen?