

Deportation Defense Options



MARCH 2017

The risk of deportation has never been greater for immigrants, refugees, and other newcomers living in the United States, as well as those seeking protection at our borders. In this climate, understanding the deportation process and role of legal services providers is critical. Access to attorneys and sound legal advice is essential to helping immigrants navigate the complexities of our immigration laws—and often means the difference between gaining or maintaining lawful status and permanent separation from family and community. This document provides a brief overview of the deportation process and how legal services providers are striving to provide immigrants and refugees with access to affordable, qualified legal services.

How does an immigrant end up in deportation proceedings? Both documented and undocumented immigrants can be detained by Immigration and Customs Enforcement (ICE) in the interior of the United States or by Customs and Border Protection (CBP) along the border or at ports of entry, such as airports. ICE has the ability to apprehend immigrants in or near their homes and communities, as well as during workplace raids and when they appear for court hearings or ICE check-in appointments. Depending on local agreements, immigrants can also be transferred to ICE custody after having contact with local law enforcement officials. Once detained by ICE, an immigrant can be placed in deportation proceedings before an Immigration Judge, but **not** all detained immigrants have this opportunity. Instead, some are fast-tracked in an expedited or administrative process, which frequently deprives individuals of the ability to pursue available legal remedies. The use of expedited removal is likely to be expanded under the current administration.

What happens to an immigrant after being detained and placed in deportation proceedings? Detained immigrants, including children, may be placed in an immigration detention center or released, either on their own recognizance, with a monitoring device, or after paying a bond. If an immigrant is not placed in detention, they will need to go to their local immigration court for their deportation hearing. Some detained immigrants have also been prosecuted under a federal law for entry and reentry violations, in which case they go first to a federal prison, serve time, and then are placed in immigration detention. The United States has **more than 200 immigration detention centers** across the country, many run by **private prison companies**. Roughly **450,000 immigrants** have been held annually at these facilities in recent years, for periods lasting several months or sometimes even years. In addition to being separated from their families and communities, detained immigrants risk having their children placed in foster care; losing their jobs and **property, such as cars and homes**; and suffering from physical and mental health crises.

Why is access to legal services important? Some immigrants qualify for legal remedies under federal immigration law, yet are unaware of their options or lack access to qualified providers to pursue those claims. Although immigrants in deportation proceedings have a right to counsel, there are many obstacles. Individuals must either pay for a private attorney, often at a very high cost, or secure pro bono legal services from qualified providers, which can be extremely difficult to do while in detention due to limited providers in certain parts of the country and an overwhelming number of cases. Consequently, only **14 percent of immigrants in detention centers** have access to attorneys versus 37 percent of immigrants who are in deportation proceedings but not in detention. However, immigrants with access to quality legal representation are up to **10 times more likely** to win a successful outcome in their immigration court cases than those who do not have such access. Legal services can prevent families from being broken apart and relieve the psychological burdens of possible deportation. In the long term, lawful status expands economic opportunities for immigrants and their communities.



Photo: Joe Brusky/Creative Commons license

What can funders do?

Funders can support a wide range of services and supports for immigrants and refugees *before, during, and after* deportation proceedings or detention. These include:

- **direct legal services**
- **Know Your Rights workshops**
- **technological tools such as legal screening software**
- **organizing efforts that build support for alternatives to detention and deportation**

For further information or consultation on grantmaking strategies, contact **Aryah Somers Landsberger** (aryah@gcir.org), director of programs at Grantmakers Concerned with Immigrants and Refugees (GCIR).

To learn more about GCIR, visit gcir.org.

What kinds of legal services can be provided to immigrants at possible risk of deportation? Immigration legal services are as complex as the system in which they operate, and immigrants at risk of deportation can benefit from legal counsel at various junctures. In addition to representing immigrants in deportation proceedings, an immigration legal services provider can:

- File **affirmative applications for legal protection** to prevent deportation and obtain lawful status, such as humanitarian visas or naturalization.
- File defensive applications for legal protection while an immigrant is facing deportation proceedings.
- File an appeal with the Board of Immigration Appeals and federal court on behalf of immigrants denied relief by an immigration judge or where the government immigration counsel is appealing an immigration judge's decision to grant relief.
- Provide civil rights representation for violations that occur during the course of detention and removal.
- Provide representation in cases where immigrants experienced violations of their constitutional rights or were not advised of the consequences of criminal cases on their immigration status.
- Provide post-deportation remedies after an individual has already been removed from the country, such as civil rights violations, redress of wage theft, and continuance of U and T visa applications.
- Pursue impact litigation in cases involving fundamental rights and protections, such as the right to appointed counsel, conditions of detention, and access to bond hearings.

Not all immigration legal service providers have the same expertise. Some work with particular populations, such as asylum seekers, unaccompanied children, trafficking victims, as well as individuals pursuing family-based visas, humanitarian protection, and who have experienced workplace violations, etc. Others have experience working in certain settings, such as detention centers, public defender offices, and immigration courts. Legal services providers take different approaches based on their capacity, specializations, and the needs in their communities. In most communities, there is insufficient capacity to represent all the types of cases that may arise.

What forms of protection are available to immigrants who are in removal proceedings? Qualified immigrants are eligible for a range of legal remedies, some of which are outlined in the accompanying chart. However, all of the pathways detailed in the chart require applicants to have access to reliable information, legal assistance, and financial resources for the application process and legal fees, which can range from hundreds to thousands of dollars.

Contact **Aryah Somers Landsberger** (aryah@gcir.org), director of programs at Grantmakers Concerned with Immigrants and Refugees (GCIR), with questions. Visit www.gcir.org to learn about GCIR.

Many immigrants qualify for legal remedies, yet are unaware of their options or lack access to qualified providers to pursue those claims. All potential pathways require applicants to have access to reliable information, legal assistance, and financial resources.



Photo: Joe Brusky/Creative Commons license

Sample of Legal Remedies in Deportation Proceedings

Possible paths to citizenship

Form of Relief	Eligibility
Derivative Citizenship	Applicants must apply before age 18 and have one U.S. citizen parent, who must be a U.S. citizen by birth or have naturalized before the child's 18th birthday and while the child resided with the parent; this method can be used for any qualifying individual facing deportation and leads directly to citizenship
Acquisition of U.S. Citizenship	Applicants are born outside of the United States or its territories, but acquire citizenship at birth through a U.S. citizen; requirements are complex, based on factors including the parents' marital status, what year the child was born, when the parents married, etc.; this method can be used for any qualifying individual facing deportation and leads directly to citizenship
Adjustment of Status	Applicants must have some type of valid visa and are eligible to become lawful permanent residents; filing for this adjustment during deportation proceedings can allow them to remain in the United States with lawful permanent residency status
Cancellation of Removal for Nonpermanent Residents	Applicants, who are usually undocumented, must prove 10 years' physical presence in the United States and that being deported would cause "exceptional and extremely unusual hardship" to a spouse, parent, or child who is a U.S. citizen or permanent resident; this method can lead to lawful permanent residency status
Cancellation of Removal for Permanent Residents; Waiver of Grounds of Inadmissibility	Applicants are either (a) eligible for or (b) are already lawful permanent residents who seek to waive the grounds of inadmissibility or deportability, such as a criminal conviction, that would otherwise cause either (a) a permanent residency application to be denied or (b) status to be revoked; the laws in question are very complex
Cancellation of removal under Violence Against Women Act (VAWA)	Applicants are victims of domestic violence committed by a U.S. citizen or lawful permanent resident; they must show they have been "battered or subjected to extreme cruelty" by a "qualifying relative," as well as three years of physical presence in the United States and good moral character; this method can lead to lawful permanent residency status
Gaining protection and residency through a spouse	Applicants who had "conditional" permanent residency through marriage but have allowed it to lapse and are now in deportation proceedings can apply for removal of the conditions and restore their lawful permanent residency status
Asylum	Applicants must show reasonable fear based on past or future persecution on account of race, religion, nationality/ethnicity, political opinion, or social group (e.g. gender or sexual orientation)
U Visa	Applicants are victims of certain crimes, including violent and sexual crimes, and must demonstrate mental or physical abuse; certification of cooperation required from a government agency, such as a local police department, court, or district attorney's office
T Visa	Applicants are victims of human trafficking and are present in the United States on account of sex or labor trafficking; they must be cooperating with law enforcement in investigation of traffickers
SIJS Visa	Applicants are abused, neglected, or abandoned children (under age 21) and state court judge must make special findings on abuse, abandonment, and/or neglect by parents

No path to citizenship

Form of Relief	Eligibility
Withholding of Removal	Applicants must show it is "more likely than not" they would face persecution in their home country on account of race, religion, nationality/ethnicity, political opinion, or social group; withholding is more difficult than asylum and provides fewer benefits, such as not being able to travel abroad or obtain permanent residency status
Protection under Convention Against Torture (CAT)	Applicants must show it is "more likely than not" that their home country's government or a non-state actor not in the government's control would torture them; very difficult to prove and offers fewer benefits than asylum
Voluntary Departure	Applicants pay their own flight to country of origin and accept a one-year bar on their reentry to the United States; voluntary departure is commonly used if there is an outstanding family, employment, or humanitarian visa that is not ready yet and the immigrant will need to wait outside of the country to return lawfully
Prosecutorial discretion	At the discretion of the Department of Homeland Security, the deportation proceeding can be closed and the immigrant could be released and obtain work authorization, but would not be able to travel or be eligible for permanent residency status
Constitutional and Civil Rights Violations	If an individual's constitutional rights were violated by law enforcement or immigration officials, the applicant may seek to have deportation proceedings terminated