

Immigration Basics

2022

Hon. Tamila E. Ipema

- **Judge for the Superior Court of San Diego County, California**

Kevin A. Gregg, Esq.

- **Partner at Kurzban Kurzban Tetzeli & Pratt, P.A.**
- **Host of Immigration Review[®] podcast**

Key players

DHS: Department of Homeland Security is a cabinet agency that also contains most of the immigration agencies; it absorbed the former I.N.S.

ICE: Immigration Customs **Enforcement** enforces immigration laws within the U.S. Includes (but is not limited to) the officers who enforce physical removal of noncitizens, and the U.S. government's "prosecutors" in immigration court.

CIS: Citizenship and Immigration **Services;** processes immigration applications.

CBP: Customs and Border Protection (**Border Patrol**) **enforces** immigration laws at the Border.

Local Police and Sheriffs: Do not enforce immigration laws, but may turn over unauthorized immigrants in their custody to ICE.

ICE on-line Detainee Locator System

<https://locator.ice.gov/odls/#/index>

Online Detainee Locator System

Select a different language

English ▼

Use this page to locate a detainee who is currently in ICE custody.

Online Detainee Locator System cannot search for records of persons under the age of 18.

Search by A-Number

If you know the detainee's A-Number, ICE recommends you use the A-Number search. The A-Number must be exactly nine digits long. If the A-Number has fewer than nine digits, please add zeros at the beginning. You are also required to select the detainee's correct Country of Birth. (* Required Field)

A-Number: *

A-Number

Country of Birth: *

-- Select a Country -- ▼

Search by A-Number

Search by Biographical Information

When searching by name, a detainee's first and last names are required and must be an exact match (e.g., John Doe will not find Jon Doe or John Doe-Smith). You are also required to select the detainee's Country of Birth. (* Required Field)

First Name: *

Last Name: *

Country of Birth: *

-- Select a Country -- ▼

Month:

▼

Day:

▼

Year:

▼

Search by Biographical Information

EOIR online resources

<https://icor.eoir.justice.gov/en/#explore>

I am an Individual in Immigration Proceedings Before EOIR

Contact the Immigration Court +	Contact the Board of Immigration Appeals +	Immigration Court Operational Status +	Learn About Legal Representation +
Learn About the Board of Immigration Appeals +	Appeal an Immigration Judge's Decision +	Learn About the Immigration Court +	Check Case Status +
EOIR Forms Webpage +	Explore Relief Options +	The Notice to Appear +	Update Respondent or Noncitizen Information +
List of Resources +	Migrant Protection Protocols (MPP) +	U.S. Citizenship +	

Pathways to lawful immigration status

Asylum

- **Available to** those persecuted by the government, or by those the government is unable or unwilling to control, on account of race, religion, nationality, membership in a particular social group or political opinion
- **Unavailable to:** (1) those convicted of an aggravated felony or particularly serious crime; (2) persecutors or those who meet the “terrorism” or other security inadmissibility bars; (3) firmly resettled in another country; or (4) failed to apply within one year of last arrival, unless changed conditions have occurred
- **Can apply** affirmatively with USCIS or defensively in immigration court
- **Withholding of removal or relief under the Convention Against Torture** are similar reliefs and protections potentially available to those ineligible for asylum, but are generally more difficult to obtain, only available in immigration court, and do not lead to lawful permanent residence or allow for family derivative applications

Pathways to lawful immigration status

Asylum Process for recent arrivals

- If a fear of harm is asserted at the border or shortly after arrival in the United States, asylum processing begins with Credible Fear or Reasonable Fear interview by asylum officer, which can take days/weeks
- If Credible/Reasonable fear is found, removal proceedings are initiated, case goes before an Immigration Judge for hearing on asylum/withholding claim, which can take months/years to process (detained cases are expedited)
- If Credible/Reasonable fear not found, the respondent can request a review of this decision before an Immigration Judge, must be done within 7 days
- If Immigration Judge finds requisite fear, case is processed for removal/withholding-only proceedings. If not individual is removed from the United States. No appeal of denial, but federal court review is available in the U.S. Court of Appeals for the Ninth Circuit.

While Awaiting Decision on Asylum

- Those persons presenting themselves at the border and who are not lawful residents of the United States are considered “arriving aliens,” and may be subject to civil detention for the duration of the processing of their asylum claim, including any appeals, at any detention facility DHS utilizes
- Bond is statutorily unavailable to “arriving aliens”, but DHS may parole these individuals into the United States for the duration of the removal process. Under the prior administration, DHS also had authority to require non-Mexican nationals to await processing in Mexico. This program, known as the MPP, is currently subject to protracted litigation.
- Those already physically present in the United States who apply for asylum are generally eligible for a bond before an immigration judge, provided they do not have disqualifying criminal or immigration histories
- As of the time of this writing and subject to exceptions, asylum applicants are eligible for work authorization once their application has remained pending for 365 days

Asylum Decisions

- If granted asylum, a noncitizen is considered admitted as an asylee, and may apply for immediate family members to also receive asylum status. After one year as asylee, the asylee may apply for lawful permanent residence; and after five years as a resident, for U.S. citizenship.
- DHS may appeal an Immigration Judge's grant of asylum (or any other relief) to the Board of Immigration Appeals. If DHS takes an appeal, a noncitizen does not have asylum until the BIA affirms the Immigration Judge.
- If asylum is denied, withholding of removal or Convention Against Torture protection can be granted. A noncitizen can file an appeal of the Immigration Judge's decision to the Board of Immigration Appeals, and appeal an adverse BIA decision to the U.S. Circuit Court of Appeals as of right, and ultimately (if accepted) to the U.S. Supreme Court .

Pathways to lawful immigration status

Non-LPR Cancellation of Removal

- Pathway to lawful permanent resident (LPR) status
- Only available in immigration court
- Requirements:
 - Continuous physical presence for 10 years
 - Good moral character during 10 years immediately preceding filing of application
 - Exceptional and extremely unusual hardship to a U.S. citizen or lawful permanent resident spouse, parent, or child (under 21 years old)
 - Not convicted of certain crimes and no violation of certain laws
- Favorable change in law! *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021)

Pathways to lawful immigration status

Family-based Immigration Petitions

- U.S. Citizens and Green-Card Holders (LPRs) may petition for their spouses (and their children (under 21 years old)) for visas to permanently immigrate them to the U.S.
 - Wait times depend on whether petitioning spouse is U.S. citizen or LPR, and administrative delays
- U.S. citizens can also petition for their married or unmarried sons and daughters, and siblings (subject to delays and wait times)
- LPRs can also petition for their unmarried sons and daughters (subject to delays and wait times)
- **Requirements:** legitimate and good faith relationship, satisfaction of certain financial and health requirements.

Pathways to lawful immigration status

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- LPRs can also petition for their unmarried sons and daughters (subject to delays and wait times)
- **Requirements**: legitimate and good faith relationship, satisfaction of certain financial and health requirements.
- Can also be used as defense to removal in immigration court under certain conditions

Pathways to lawful immigration status

Self-Petitions under VAWA Violence Against Women Act

- Legally married to the abuser and marriage is terminated or divorce is pending within the prior 2 years in connection with Domestic Violence
- Abusive spouse is either a U.S. Citizen or LPR
- Lived with the abuser
- Good faith marriage
- Good moral character
- Subjected to battery or extreme cruelty in the hands of the abuser (must be well documented)
- Can apply affirmatively with USCIS, be used as defense to removal in immigration court under certain conditions, and even excuse certain conduct (unlawful reentry, etc.)

Pathways to lawful immigration status

“U” Visas for Victims of Crimes

- If victim of a crime and assist in investigation and prosecution of that crime, a noncitizen may qualify for U Visa and obtain LPR status (subject to extensive delays).
- **Requirements:**
 - Victim of qualifying criminal activity
 - Suffered substantial physical or emotional abuse
 - Helpful to law enforcement in providing information about the criminal activity to investigate and prosecute the crime
 - Crime occurred in the U.S. or violated the U.S. laws
 - Victim is admissible to the United States (generous waivers available)

How You Can Help!

- Warn against “Notarios” or “Public Notaries”
- Emotional support and “know your rights” flyers
- List of resources for legal assistance
- How to discover the whereabouts of a detained person or get information about a case pending in immigration court
- Immigration Review® podcast!



How You Can Help!

- Declarations about good moral character or hardship

Pursuant to 28 U.S.C. § 1746, I [NAME] declare under penalty of perjury that the foregoing is true and correct.

- Translation services

<p>CERTIFICATE OF TRANSLATION</p> <p>I, _____, certify that I am fluent in the English and _____ languages and that this is a complete and accurate translation of the attached document. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.</p> <p>Signature:</p> <p>Typed Name:</p> <p>Executed on (date):</p> <p>Address:</p>

- Keep copies of important papers and keep records of continuous residence in the U.S.
- Be aware of the various issues that can affect a person's immigration status and be prepared to refer them to the appropriate services for assistance; arrests criminal convictions, substance abuse, domestic violence etc.

Immigration Consequences and Criminal Cases

- Types of convictions that may trigger removal or preclude immigration relief (non-exhaustive):
 - Aggravated Felonies
 - Drug offenses
 - Crimes of Moral Turpitude
 - Firearms Offenses
 - Domestic Violence and Child Abuse
 - Violations of restraining or protective orders

Immigration Consequences and Criminal Cases

- Conviction not required for some consequences, such as:
 - Denial of re-entry for LPRs
 - Denial of entry
 - Denial of adjustment of status
- Offenses where no conviction required (non-exhaustive):
 - Drug offenses
 - Crimes of Moral Turpitude
 - Alien smuggling
 - Money laundering

How You Can Help!

- Contact and work with an attorney
- Help compile evidence for bond/parole request

Thank you!

You Make a Difference

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