

## IMMIGRATION RIGHTS—REVIEW

### Who is YMCA International Services?

YMCA International Services is a non-profit organization that provides legal education to immigrants and detainees. This handout provides general information and is not specific legal advice. You should consult with an experienced immigration attorney for advice about your particular situation.

### Why are you being detained?

You are being detained because the U.S. Department of Homeland Security (DHS) has accused you of violating U.S. immigration laws. Generally, you violate U.S. immigration laws if: (1) you are in the U.S. illegally and/or (2) you have committed a crime that makes you deportable.

### What are your basic legal rights?

You have the right to: (1) legal representation at no cost to the U.S. Government; (2) present evidence; (3) examine evidence presented against you; (4) cross-examine any witnesses; (5) appeal the Judge's decision to a higher court.

### What is a Notice to Appear?

A "Notice to Appear" is a document that contains your name and country of origin, the date you entered the U.S., and the charges against you. You should read this document carefully before going to court because it may contain errors. If you do find errors, you can tell the Judge when you go to court.

### What are the types of Hearings in Immigration Court?

Master Calendar Hearing: The "Master Calendar" hearings are your preliminary hearings. The Judge explains the charges against you and the rights that you have in immigration court. The Judge also asks whether you agree or disagree with each charge in the Notice to Appear. You have the right to a lawyer, but the Government will not provide a lawyer. You may ask the Judge for more time to find a lawyer and to fight your case. If you do not fight your case, the Judge will make the final decision about your case.

Merits Hearing: If you decide to fight your case, the Judge will give you a date for a Merits Hearing, where you will return to present your case to the Judge. After you and the government finish presenting your cases, the Judge will make the final decision about your case.

Bond Hearing: At a bond hearing, you can ask the Judge to (1) set your bond amount or (2) reduce your bond amount if a bond has already been set. (See "What are Bonds?" below.)

### What are some Defenses that I can use in Immigration Court?

The following defenses are the most common. But they are not all of them. An experienced immigration attorney might be able to tell you about some additional options.

Citizenship: You may be a citizen if you answer "yes" to one of the following: Were you born in the U.S.? Do you have a parent or grandparent who was born in the U.S. or who became a U.S. citizen before you turned 18?

Adjustment of Status: Some family members can petition for your lawful permanent residence. One group is immediate relatives: a U.S. citizen spouse, U.S. citizen parent (if you are unmarried and under 21), or a U.S. citizen child 21 or older. If you have an immediate relative, s/he can file a Form I-130 with the U.S. Immigration office.

*If you originally came to the U.S. lawfully* with a visa or parole, you may be able to finish the adjustment process with the Judge at your Merits Hearing. *If you came to the U.S. unlawfully*, you can finish the adjustment process with the Judge only if your family member filed a petition on your behalf before **April 30, 2001**. Otherwise you will have to return to your home country and finish the process through the U.S. Consulate there.

Cancellation of Removal for Lawful Permanent Residents (LPR): If you are a lawful permanent resident who violated certain immigration laws or committed certain crimes, you could lose your residency status. You may be eligible for "Cancellation of Removal" if you meet **three** requirements: (1) you have been a lawful permanent resident for at least **five** years, (2) you have lived in the U.S. continuously for at least **seven** years after being lawfully admitted, and (3) you have not been convicted of an aggravated felony.

Cancellation of Removal for those who are not Lawful Permanent Residents: If you are not a lawful permanent resident, you still might be able to get cancellation and lawful residency if you meet **four** requirements: (1) you have lived in the U.S. continuously for at least **ten** years, (2) you have a U.S. citizen or LPR spouse/parent/child, (3) your U.S. citizen or LPR spouse/parent/child would suffer *exceptional and extremely unusual hardship* if you were removed, and (4) you have good moral character.

Cancellation of Removal for victims of domestic violence: Special rules apply if you or your child has been physically or psychologically abused by a spouse or parent. The abuser must be a U.S. citizen or lawful permanent resident. You must also meet the following requirements: (1) you have lived in the U.S.

continuously for the last **three** years, **(2)** you or your child will suffer hardship if you are removed, and **(3)** you have not had certain criminal problems.

Victims of Crime: If you have been a victim of crime and can help the police in an investigation, you may be eligible for temporary permission to live and work in the U.S.

### **Asylum, Withholding of Removal, & Convention Against Torture**

Asylum: An Immigration Judge may grant you asylum if you fear you will be harmed if you return to your home country. The threat or harm must come from the government or someone the government cannot or will not control. You must show that the threat or harm is because of your race, religion, nationality, political beliefs, or membership in a particular group. You are required to apply for asylum within one year of entering the U.S. There are various factors that may make you ineligible for asylum--including if you have been convicted of an aggravated felony--and you should discuss these with an attorney. The Judge weighs all the facts of your case in deciding whether or not to grant you asylum.

Withholding of Removal: The same requirements for asylum apply, but you have to show that it is more likely than not that your life or freedom would be threatened if you return to your home country. Unlike asylum, you are not required to apply within one year of entering the U.S., and the Judge cannot decide to deny you Withholding of Removal if you show that you meet the standard (unless certain bars apply, for example, if you are a persecutor or have committed Nazi crimes or other serious crimes).

Convention Against Torture: You must show that a government official or another person or group with the government's consent would torture or kill you if you return to your home country.

### **What is Voluntary Departure?**

If you are not eligible for any of these defenses, but you want to try to return to the United States **lawfully** in the future, you may consider asking for voluntary departure. If granted voluntary departure, you will have to pay for your return ticket to your home country. You will not be eligible for voluntary departure if you have been convicted of certain crimes, if you have been granted voluntary departure in the past, or if you have previous deportations. You must show the Judge you are a good person and deserve the opportunity to return to the U.S. lawfully in the future. The Judge may consider other factors when deciding your case, such as your moral character.

### **What are the Consequences of Deportation?**

If you are deported for conviction of an aggravated felony, you can never return to the U.S. lawfully. If you have already been deported once before and are caught again in the U.S., you cannot return lawfully for 20 years and you face criminal charges that can also result in a prison term (up to 20 years). If you have not been deported before, but have at least one year presence in the U.S., there is a 3 year bar to your return. If your NTA states you are an "arriving alien," then there is a 5 year bar to your return.

If you want to return to the U.S. lawfully within the time you are barred (for example, if you marry a U.S. citizen), you must request a waiver from the U.S. consulate in your home country.

### **What are Bonds?**

A bond is a guarantee to the government that if you are let out of detention, you will go to all of your hearings and will obey the Judge's order at the end of the case. A bond is not a fine. To be let out of the detention center "on bond," you or a friend or relative must pay the bond money at the detention facility or at a U.S. Immigration office. If you go to all your immigration hearings or interviews, whoever paid your bond will get the money back when your case is over. If you lose your case, you must report to DHS for departure from the U.S. when required or you will not get the bond money back. **Paying your bond does not buy you absolute freedom.** If you get out on bond it is not the end of your case. You still have to attend all your hearings outside of detention. **If you miss even one immigration hearing, you can be ordered removed** (or "deported") without the chance to give evidence to the Judge or apply for permission to stay in the U.S., and the bond money will not be returned. The minimum bond amount is \$1,500, but bonds are rarely set that low.

Not everyone is eligible to be released on bond. Among those ineligible for bond include **(1)** "arriving aliens" (see item #1 on your Notice to Appear), **(2)** those with convictions of drug trafficking, possession of controlled substances, aggravated felonies, terrorist activities, and **(3)** certain persons convicted of crimes of moral turpitude.

At your bond hearing, you should demonstrate ties to the community, good moral character, that you will not be a danger to other people or property, that you will attend each of your hearings, and that you will report for removal if ordered removed. Evidence to prove these things includes but is not limited to: letters from U.S. citizen or LPR family members, former employers, friends, and church members; a list of property you own in the U.S.; your work history; and possible defenses in your case.

\*\*This pamphlet was not prepared by the Department of Homeland Security (DHS), the Department of Justice (DOJ), nor by any other part of the U.S. Government, nor is the U.S. Government responsible for the contents of this material. It is NOT intended to be legal advice in your case.\*\*