

3. You do not have a criminal conviction that makes you ineligible. If you have a criminal conviction, you should consult an attorney about your eligibility.
4. Your removal would result in exceptional and extremely unusual hardship to your United States citizen or permanent resident spouse, parent or child.

A successful application for cancellation of removal requires careful documentation of your residence in the United States, good moral character, and hardship to your qualifying relative. Hardship to your relative can include but is not limited to emotional, financial, and medical hardship.

## ASYLUM, WITHHOLDING OF REMOVAL, AND CONVENTION AGAINST TORTURE

Asylum is a form of relief available to people who fear persecution in their home country on account of their race, religion, nationality, membership in a particular social group, or political opinion. Social groups can be defined by family ties, sexuality, clans, among others. You can apply for asylum whether or not you are in removal proceedings. Serious criminal convictions or past conduct may make you ineligible for asylum. The asylum application must be filed within one year of your entry to the United States. Exceptional circumstances may excuse filing the application late. A grant of asylum will give you a path to a green card and eventually citizenship.

Withholding of Removal and Convention Against Torture are also available to some people who fear harm in their home countries. However, there are several differences: 1) You can only apply for these if you are in removal proceedings. 2) A grant will stop you from being deported to a particular country but will not give you a path to a green card or other status in the United States. 3) There is no time limit on when you must apply.

## RESOURCES

### African Advocacy Network

938 Valencia Street, San Francisco, CA 94110  
415.503.1032

### Arab Resource and Organizing Center

522 Valencia Street, San Francisco, CA 94110  
415.861.7444

### Asian Law Caucus

55 Columbus Avenue, San Francisco, CA 94111  
415.896.1701

### Asian Pacific Islander Legal Outreach

1121 Mission Street, San Francisco, CA 94103  
415.567.6255

### Central American Resource Center

3101 Mission Street, San Francisco, CA 94110  
415.642.4402

### Dolores Street Community Services

938 Valencia Street, San Francisco, CA 94110  
415.282.6209

### La Raza Centro Legal

474 Valencia Street, #295, San Francisco, CA 94103  
415.575.3500

### La Raza Community Resource Center

474 Valencia Street, #100, San Francisco, CA 94103  
415.863.0764

**This NOT legal advice.** This brochure is intended to provide general information only. Each person's individual case is different and you should consult an attorney (not a notario) to find out how the law will apply to your life, your situation, and your specific case. If you are a low income resident of San Francisco, you may be eligible for free legal advice from the San Francisco Immigrant Legal & Education Network.

Be aware that many people misrepresent themselves as attorneys or immigration consultants. Some of these people may promise you legal outcomes, take your money, and harm your legal case. Be careful to make sure that you consult an attorney with a license, never sign blank forms or with false information, insist on a written contract for your services, get proof that your papers have been filed, get proof and a receipt that you have paid for any services, and be wary of promises and guarantees of legal outcomes.



### San Francisco Immigrant Legal & Education Network

938 Valencia Street  
San Francisco, CA 94110  
P: 415.282.6209 x115  
F: 415.282.2826  
[sfimmigrantnetwork.org](http://sfimmigrantnetwork.org)

# DEPORTATION DEFENSE—VARIOUS FORMS OF RELIEF

Provided by **San Francisco Immigrant Legal & Education Network**

## HOW CAN I FIGHT MY DEPORTATION IN IMMIGRATION COURT?

Removal (Deportation) Proceedings are a series of hearings in immigration court to determine whether someone will be ordered deported from the United States. Decisions in removal proceedings are made by an immigration judge. The Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) are represented at the hearings by an attorney. An attorney will not be provided for you by the government. It is important to attend every court hearing even if you do not have an attorney. If you fail to appear, the consequences are very severe, you will be ordered removed in your absence.

There are two types of hearings—master hearings and individual hearings. Master hearings are short hearings. In San Francisco, a volunteer attorney will be available at master hearings to help you for free but they will not be assigned to represent you for the duration of your case. Individual hearings are longer hearings where you may need to testify about your case. You may need to attend several master hearings. Generally, a decision will not be made on your case at your first hearing.

This brochure discusses some forms of legal relief in immigration court. If you are in removal proceedings you should consult with an attorney to discuss whether you might qualify for relief. You should never surrender or waive your right to fight your deportation case in court if you have not spoken to a qualified immigration attorney.

## CANCELLATION OF REMOVAL FOR NON-PERMANENT RESIDENTS

Cancellation of Removal is a form of relief available for some people in removal proceedings who do not have status. A different form of cancellation of removal is available for permanent residents in removal proceedings because of criminal convictions. Cancellation of removal for people without status requires that:

1. You were present in the United States for 10 years before removal proceedings began.
2. You have been a person of good moral character for the past 10 years.

## U VISA

If you or certain family members have been the victim of a crime, you may be eligible for a U Visa. In order to be granted a U Visa, you or a family member must have been:

1. the victim of a serious crime (only certain crimes qualify so you should consult with an attorney);
2. suffered substantial physical or mental abuse resulting from the crime;
3. have information about the crime; and
4. have been or will be helpful to law enforcement authorities in the investigation or prosecution of the crime.

You may apply for a U Visa even if the crime occurred many years ago. If you are granted a U Visa you will have legal status to reside and work in the United States. After you have been physically present in the United States for a continuous period of at least three years since the date of issuance of the U Visa, you are eligible to apply to become a legal permanent resident (that is, obtain a “green card”). You are eligible to apply for a U Visa even if you entered the United States unlawfully and/or you have a deportation order.

## TEMPORARY PROTECTED STATUS

Temporary Protected Status (“TPS”) is a temporary immigration status for foreign nationals residing in the United States whose home countries are unsafe or dangerous to return to due to a variety of reasons, such as war, political turmoil, or natural disasters. The United States has designated the following countries for TPS: Haiti, Honduras, Nicaragua, El Salvador, Somalia, Sudan, South Sudan, and Syria.

In order to be eligible for TPS, you must be a national of a country designated for TPS and file during the open initial registration or during a re-registration period. There are specific requirements for continuous physical presence in the United States which vary depending on which country you are from. If you ever applied for TPS and were denied, you may be able to re-apply in immigration court if you are in removal proceedings.

You may not be eligible for TPS or to renew your existing TPS if you have been convicted of any felony or two or more misdemeanors committed in the United States, have failed to continuously reside in the United States, or did not meet TPS registration or re-registration requirements. If you have TPS and want to travel outside of the United States, you must apply for travel authorization. If you depart the United States without requesting advance permission, you risk losing your TPS and may not be allowed to re-enter the United States.

Once you are granted TPS, you are in legal status and can obtain permission to work in the United States. TPS is only a temporary immigration benefit and unlike other forms of legal relief described in this brochure does not give you a path to lawful permanent residency (green card) or other status in the United States.

## ADJUSTMENT OF STATUS

Adjustment of Status (“AOS”) is a procedure which allows an individual to apply for lawful permanent resident status (green card) without having to depart the United States. There are several ways you may be eligible to adjust status. The most common way to adjust is through a family based petition or an employer based petition, which means that either a family member or an employer have filed a visa petition for you that has been approved.

If, however, you entered the United States unlawfully, that is without a visa, you will generally not be able to adjust status in the United States even if your spouse, child, or parent has filed a family petition for you unless you are covered by an exception. One of the more common exceptions is Section 245(i) which allows individuals, whose family members or employers filed a petition prior to April 30, 2001, to adjust status without leaving the United States. Given the complexity of this form of legal relief, it is best to consult with an attorney about whether you are eligible for adjustment of status.

## CONSTITUTIONAL VIOLATIONS

If you were illegally arrested by immigration agents, or local police, which led you to removal proceedings, you may be able to challenge the evidence against you in immigration court. Immigrants have constitutional rights, and if law enforcement agents seriously violate those rights, any evidence taken as a result of the constitutional violation can be suppressed in immigration court. If you believe you were arrested unlawfully, you should contact an attorney to determine whether you may be eligible to have the evidence against you dismissed.

## MENTAL HEALTH ISSUES

Immigration courts apply special standards for people with serious mental health issues. You may be able to fight your case on the basis that you are not competent to stand trial. You should contact an attorney if you believe mental health issues prevent an individual from fully understanding court proceedings.

## PROSECUTORIAL DISCRETION

In June, 2011, the Director of Immigration & Customs Enforcement (ICE) published a guideline for immigration agents to refrain from deporting people that are not considered to be a danger to the community. If you believe that you have strong personal qualities, family ties, community ties, a very serious illness, or any other extraordinary quality that should require reconsideration of your deportation, you should contact an attorney to see if you are eligible for prosecutorial discretion.

## IF YOU HAVE A PRIOR REMOVAL ORDER

If you are in immigration custody but have previously been deported, or have taken voluntary departure, you do not automatically have a right to go before a judge, and your remedies are very limited. These are very complicated cases, and it is very important to speak with a lawyer in these situations. There are generally few ways to fight your case if you have a previous removal order but you might be able to:

1. File a Humanitarian Stay of Removal
2. File a Motion to Reopen your case with the immigration judge that ordered you removed
3. File a U-Visa petition (a successful U-Visa application may waive a prior order of removal)
4. Request an interview with the asylum office (even if you have previously been deported, you can make this request if you fear you will be harmed if forced to return to your country of origin).