

2017

PROTECTING ASSETS & CHILD CUSTODY IN THE FACE OF DEPORTATION

A GUIDE FOR PRACTITIONERS ASSISTING IMMIGRANT FAMILIES

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PROTECTING ASSETS & CHILD CUSTODY IN THE FACE OF DEPORTATION

2017 EDITION



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ACKNOWLEDGEMENTS

Appleseed wishes to extend our thanks and gratitude to the dozens of lawyers, administrative staff, foundation staff, immigration and mental health experts, advocates and others who reviewed this manual and provided edits, feedback, suggestions and support. Without their help, this publication simply would not have been possible. Contributors to each chapter are noted below, but we would like to specifically thank Richard Carmody and Anna Davis at Adams & Reese for their extensive research and editing support and Kelsey Snapp for providing a valuable legal aid perspective on this work.

Finally, we want to thank our staff and partners for their outstanding contributions to this work: Annette LoVoi for taking on the daunting task of managing and coordinating all content for the manual; Karyn A. Cassella for editing and formatting the entire manual as well as managing our website and social media presence; Elisa Ortiz for reaching out to dozens of organizations to let them know about the manual and managing the translation process; and Maru Cortazar of Mexico Appleseed who translated and/or reviewed the entire Spanish version of the manual and worked directly with the Mexican government to ensure that the manual was a relevant and as useful as possible.

This project was made possible in part through the generous support of the Ford Foundation and the Annie E. Casey Foundation. Lastly, we thank DLA Piper LLP for printing and binding print copies of the manual for our official release event.

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INTRODUCTION

Dear Friends,

Can you imagine being abruptly ejected from the United States — and leaving behind your home, your children, your job, your bank account, and everything else you've spent years to build? Can you imagine what your children would feel when they arrived home and you're gone?

Deportation can be a cataclysm for families and communities, destroying decades of hard-earned assets and rupturing family development. But with advanced planning, immigrant families can prevent an enormous amount of this damage.

That's why Appleseed is proud to present an updated version of its 2012 Manual, "Protecting Assets and Child Custody in the Face of Deportation." This one-of-a-kind resource is designed for immigrants and those who work with them; the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times.

Appleseed's Manual will help families develop plans in advance to deal with critical financial and family issues in the event of deportation, arrest, and other family emergencies. It will help immigrant families deal with child custody and related children's issues, personal finances, assets and personal property, remittance payments, wages and benefits, business issues, and taxes. And it includes special guidance for family and children's issues, including professional advice for parents to help their families deal with painful psychological issues, and for immigrant survivors of domestic violence and sexual assault.

Make no mistake: for vulnerable immigrant families, advance planning can make all the difference. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, or even impossible, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

We are grateful to our pro bono law firms, volunteer psychologists, translation companies, and more than 20 nonprofit partners across the country who wrote, researched, proofread, and translated this manual into Spanish. We could simply not have done it without you. Thank you so much to Adams and Reese LLP, the Asian Pacific Institute on Gender-based Violence, ASISTA, Ballard Spahr LLP, BGBG Abogados, Cooley LLP,

Directum Translations, Hogan Lovells LLP, Mexico Appleseed, the Mexico City Department of Labor, MomsRising/MamasConPoder, Norton Rose Fulbright, O'Melveny & Myers, The William Alanson White Institute Center for Public Mental Health, and White & Case for your commitment, careful drafting, and counsel during this process. We are also deeply grateful to the Annie E. Casey Foundation and the Ford Foundation for their support of these efforts.

Immigrants come to the United States to build a better future and to unite with family members. Most have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses and build personal assets. When they build better lives, they make our country stronger.

That's why this Manual is a labor of love for all who worked on it. We are committed to fairness and compassion for the millions of immigrants living in our country. Our hope is that you can use this resource to help them build better lives.

Sincerely,

A handwritten signature in black ink that reads "Bert Brandenburg". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Bert Brandenburg, President, Appleseed

A handwritten signature in black ink that reads "Annette LoVoi". The signature is written in a cursive style with a large, stylized initial "A".

Annette LoVoi, Director, Financial Access and Asset Building, Appleseed

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Disclaimer

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

1. CHILD CUSTODY

In the face of deportation, an immigrant may face wrenching decisions about child custody. This section outlines the basic custody issues facing immigrant parents and offers guidance on protecting parental rights before, during, and after deportation. This section addresses the following issues:

●● **Understanding Child Custody and Guardianship: Basic Definitions** ●●
Who Can Seek Custody or Guardianship and How Does a Court Determine It? ●● **Planning Child Custody Arrangements before Detention or Deportation** ●● **Protecting Parental Rights During Detention** ●●
Options for Parents Facing Deportation ●● **Barriers an Immigrant Family May Face in Court** ●●

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Understanding Child Custody and Guardianship: Basic Definitions

“**Child Custody**” is a collection of various legal rights to care for a child and make major decisions about that child’s life. These various legal rights – physical custody, legal custody, joint custody, sole custody – are described below.

“**Custodian**” is the person to whom a court grants custodial rights. This may be a parent or another person, as a court may deem appropriate.

“**Physical Custody**” is the parent or custodian’s right to have a child live with him or her. The person with physical custody may make decisions about the routine day-to-day activities of the child.

“Legal Custody” is the right to make decisions about the child’s upbringing. A person with legal custody may make decisions about how to raise the child, including decisions about schooling, religion or medical care.

“Sole Custody” is when one parent has all the custodial rights. This could be sole physical custody, sole legal custody or both.

Note: In a number of states, courts will not award sole custody to one parent unless the court deems that the other parent is “unfit,” meaning the parent is not capable of caring for the child. Examples of being “unfit” include a parent’s alcohol or drug dependency or history of child abuse. Also, even if a court awards sole physical custody to one parent, it may still grant visitation rights to the other parent.

“Joint Custody” is an arrangement where both parents share custodial rights of their child. It may be joint physical custody, joint legal custody or both. Courts in some states regularly award joint legal custody, which means that both parents share the right to make decisions about a child’s upbringing.

“Legal Guardian” is a person other than the child’s parent who is granted the legal right to care for and make certain decisions for a child by court order or another process accepted by the state. For example, some states allow a parent to name a guardian through signing a document without court involvement. Other states require a petition to be filed for guardianship and place duties on the guardian, such as regular reporting to the court on the child’s well-being.

“Visitation” or **“Parenting Time”** is a legal right granted by the court that gives a parent or others the right to spend periods of time with the child. A person granted visitation rights may not have the right to make major decisions about the child’s wellbeing or upbringing depending on what the court orders. Once a court determines visitation rights, all parents and custodians are bound by the court’s order. Visitation rights often can only be changed by a new court order.

Visitation rules may vary by state. Below are some examples of visitation rules:

- **California:** *In California, courts have the discretion to grant reasonable visitation rights to anyone who has an interest in a child’s welfare, provided that it would be in the best interest of the child. This may include a parent, pursuant to a custody order. It also may include a child’s grandparents or, if one of the child’s parents is deceased, the children, siblings, parents and grandparents of the deceased parent.*

- *New York: In addition to provisions for visitation by parents and grandparents, New York law contains a procedure for brothers and sisters of minor children to petition the court for visitation rights.*
- *Texas: Texas's visitation statutes are not as broad. Other than a parent, a grandparent is the only family member specifically identified as someone who may petition a court for visitation rights. In addition, a person who is actually caring for a child has standing.*

Who Can Seek Custody or Guardianship and How Does a Court Determine It?

Typically, children born during the parents' marriage are considered jointly in the custody of both parents unless a court orders otherwise. That means either parent can make legal decisions for the child or care for the child without a court order. Where there is no court order to the contrary and the other parent is available to care for the child, the parent facing deportation may not need to take any steps to provide for custody of the child.

If the parents were not married when the child was born, the mother's name is the only name on the child's birth certificate, or if the mother has been granted sole custody rights in a divorce or other legal proceeding, then she is typically the sole custodian of the child. However, that is not always the case. For example, if a father is not named on the birth certificate, but there has been a court determination of paternity and/or the father has always been regularly involved in the child's life, a court may determine that the father has equal custody rights. If both parents are named on the child's birth certificate, then they both will be joint custodians in many states. Some states, however, limit custody rights of unmarried fathers.

If the parents are divorced, then child custody rights are usually determined in the divorce documents. As explained below, a court can change these custody rights.

The child's parents, other adult family members or other adult individuals designated by a child's parents may be able to initiate child custody proceedings in court. Family members who can initiate a custody proceeding may include siblings, grandparents, aunts, uncles or cousins, depending on state law. Other people who have cared for the child may be permitted to seek custody rights as well. In some states, but not all, courts will not grant custody to a third party (non-parent) over the parents' objections unless the parents are found unable to care for the child.

Note: A custody order may be the easiest or only way for the parent to ensure visitation rights after deportation, although a judge in child welfare

proceeding could also order visits.

The “Best Interests of the Child” Standard

Regardless of who seeks custody of a child, a court will determine custody (and visitation rights) by using the “best interests of the child” standard. The “best interest” of the child typically will be the most important factor in the determination of custody. In determining the best interests of the child, the court may consider:

- *The preference of the child, considered in light of the child’s age and understanding;*
- *The physical, emotional or educational needs of the child;*
- *The length of time that the child has lived in a certain environment and the likely effect a change will have on the child;*
- *The age, sex, background or other relevant characteristics of the child;*
- *The likelihood of harm that may be suffered by the child;*
- *The capability and willingness of the parent, or other person asking for custody, to meet the child’s needs and to put the child’s needs before his or her own; and*
- *The moral fitness of the person asking for custody.*

Under most state laws, a request for custody must be filed in the child’s “home state.” The “home state” is the state where the child lived for at least six consecutive months before the child custody proceeding. If the non-parent seeking custody lives in the same state as the child, the request for custody can be filed in the county where he or she lives or where the child resides.

How Does a Court Establish Legal Guardianship?

Each state has a specific procedure for petitioning a court to have a legal guardian appointed for a minor child. Generally, these procedures are described in detail in the state’s domestic/family relations statutes or in the state’s probate statutes. The person interested in becoming guardian often must file a petition with the appropriate court. Then, the court will set a date for a hearing and decide whether it would be in the best interest of the child to have this person appointed as the child’s legal guardian.

When a non-parent asks to be appointed as the child’s legal guardian, it is helpful to have a sworn affidavit from both parents stating that the parents’ wish to have the person appointed as the legal guardian of their child. If there is only one parent listed on the child’s birth certificate, that parent alone will sign the sworn affidavit. If both parents are on the child’s birth certificate, or if the parents previously divorced and were granted joint legal or physical custody, then both parents should provide such an affidavit.

Without the affidavit from both parents, it is likely that courts would require a showing of a serious attempt to locate the missing parent and that obtaining the affidavit would be practically impossible.

In addition to having a formal court process to have a guardian appointed, some states permit a parent to designate a temporary guardian, as discussed below, who can make medical and school decisions for the child and, in some cases, travel with the child. Because not all states recognize this type of authorization, and some limit the amount of time and circumstances where it can be used, it is important to check with a local legal expert before attempting this kind of an arrangement.

When Will a Court Determine Custody or Guardianship?

The time it takes, from start to finish, for a court to determine custody or guardianship is highly variable and may take anywhere from several months to over a year. Many factors will affect the amount of time a custody or guardianship case will take before the court makes its final decision. These factors include, among other things, whether the custody or guardianship petition is contested, the specific procedure for determining custody or guardianship in the jurisdiction and how busy the court is.

Planning Child Custody Arrangements Before Detention or Deportation

If a parent believes he or she is at risk of being detained or deported by immigration officials or otherwise separated from their children for an uncertain period of time for another reason (*e.g.* arrest, medical incapacity), establishing a plan to have someone care for the child early will allow him or her to preserve parental rights where possible and prevent the children from entering foster care.

Because parental rights may be very limited once a parent is detained or deported, it is best to establish these plans in advance and carefully discuss them with children, the parent's spouse, other parents, relatives, and any other persons who may be involved in caring for the children in the parent's absence.

Parents at risk for detention, deportation or other sudden separation from their children may take the following preparatory steps.

1. Identify persons who will take care of the children

If a parent may be detained, deported, or otherwise unable to take care of their children, it is important to find a person that he or she trusts to

act as a caretaker that can take on the responsibility of caring for the children.

Parents should first identify persons who may currently have legal custody. As explained above, where parents share joint custody of the children, the other parent can step in to make legal decisions for a child, especially if he or she is not at risk of detention/deportation.

If another parent or person with legal custody is unable to take care of the child, or such person does not exist, parents should identify another caretaker of their choosing. Depending on the state, the caretaker may not need to have valid immigration status of their own to serve as the child's guardian or custodian. Always check state-specific forms and guidelines, as these policies may be subject to change.

Tip: Parents should be sure that the designated caretaker is someone they fully trust. Parents should also be sure to carefully consider and discuss various points when choosing a caretaker, such as the person's physical and financial capacity to care for children over a long and indefinite amount of time, other people in the household that will have regular contact with the children, and any special medical or other needs the children might have.

2. Prepare temporary guardianship arrangements, if applicable

Formalizing caretaker and temporary guardianship arrangements will grant the other person the proper legal authority to quickly step in and act on behalf of your children. Verbal agreements usually are not enough to grant another person legal authority to make certain decisions for your child.

Tip: A caregiver that already is the child's legal guardian does not need to seek legal custody through the courts, but should always determine how to exercise his or her existing rights as a legal guardian.

Other Reasons to Formalize Guardianship Plans Include the Following:

- *Some health insurance companies will not insure a child that is living with a caretaker who is not the child's parent or legal guardian;*
- *Many schools require that a child enroll through the child's parent or legal guardian or the current caregiver if the child would be homeless if not living with the current caregiver (some states permit the use of a "school affidavit," which allows another person to enroll the child in school);*

- *A caregiver generally cannot obtain medical care for a child without the signature of the child's parent or legal guardian or a court order;*
- *A child may not obtain a U.S. passport without the consent of the child's parents or legal guardian; and*
- *Courts may decline to grant legal guardian status to someone other than a parent without some indication that the parents desire to grant guardianship power to others.*

What is a Temporary Guardian and How Can They Care for Someone's Children?

If a detained individual is the sole custodian of a child, or if the non-detained custodian is also unable to care for the child, he or she should consider appointing a “temporary” guardian to temporarily care for the child if permitted by the state in which the child resides. The person appointed as a temporary guardian should be a person that the parent completely trusts to care for the child.

An individual may appoint a guardian by filling out and notarizing the applicable guardian designation form for that state, where the state permits it. This document authorizes who may care for the child and make important decisions for the child, such as:

- *Decisions about medical and dental care;*
- *Decisions about education and any special needs; and*
- *Decisions about travel.*

The name of the form and information needed to complete it varies by state. In some states, it is possible to place the designation of guardian on file with the court. For example, in Florida, parents may sign a written statement in which they name a “preneed” guardian for their child. The parents then file the statement with the court for the county in which they reside. If something happens to the parents and the child needs a guardian, the court will pull the parents’ statement from the court’s files and consider it in the guardianship proceeding. The parents’ statement is considered a “rebuttable presumption” that the person named in the statement should be the guardian. This means that the court will appoint that person as guardian unless the court determines that the person is not qualified to be the guardian.

Selecting a temporary guardian for the child in the event of an unforeseen circumstance typically does not put one's parental rights at risk. In many states, a parent may revoke a temporary guardianship at any time and select someone else as the child's temporary guardian by completing and notarizing a new guardianship designation form.

Completing guardianship forms may be different from the court custody process, depending on the state law. Depending on the state, notarized guardianship forms may or may not be legally binding. The legal weight given to a notarized guardianship form is determined on a state-by-state basis, so it may or may not be recognized if a child is taken to another state.

In states that do not recognize the parents' ability to designate a temporary guardian for the child, parents who want to grant legal rights to the caregiver in advance of their detention/deportation will need to consider other options. These options could include seeking to have the caregiver granted custodial rights by filing a petition for custody which the parent can support. Parents should weigh their options carefully and consult with local legal assistance because granting custodial rights to another person in anticipation of being deported may cause parents to lose legal rights over their children if they are not deported.

Standby Guardianships and Power of Attorney

Where permitted, parents may also choose to grant another person a power of attorney or standby guardianship. These agreements allow another person to care for children and make medical or school decisions only when a specific event takes place in the future (*e.g.* detention or deportation). The procedures needed to establish a power of attorney or standby guardianship vary by state. Once granted, powers of attorney or standby guardianships may be revoked at any time by the parent, where permitted by state law.

A court is not *required* to honor any temporary guardian form if it becomes necessary to appoint a permanent guardian for the child. Although the temporary guardian form is one factor the court generally will consider where recognized, the court's final decision will be based on the child's best interests. Accordingly, a parent should think carefully about whom to name as guardian in the document. Selecting someone a court will consider fit to care for the child will increase the chances that the court will follow the parent's request.

Custody Orders and Consent Decrees

When planning for potential deportation, parents should also review any existing child custody orders to determine whether any changes need to be made. Because the process of changing custody orders can take months, parents should consider starting that process as soon as possible, if appropriate.

Parents may also consider obtaining custody consent decrees from a court or appropriate authority in advance where recognized by state law.

Typically, the custody consent decree gives physical custody to caregiver but allows parents to retain legal custody of the children. It may also establish visitation arrangements.

As with any process that involves the courts, many undocumented parents may be reluctant to attend court proceedings. This may limit their ability to provide legal protection to their children and their caregiver in advance in states which do not recognize informal arrangements, such as privately prepared guardianship designations.

Formal custody arrangements, as explained above, may be made after a person is detained or ordered deported. After a parent is detained or deported, caregivers, guardians or others with standing can file for legal and/or physical custody of the children. Going through formal custody proceedings in advance of detention or deportation may cause a parent to lose certain parental rights unnecessarily, but it may be the only way to ensure that a caregiver is designated in advance and has legal authorization to care for and make necessary decisions for the child. Therefore, parents should carefully consider their options and consult state-specific information before making any decisions that would involve the potential to diminish their parental rights.

Important Legal Documents and Other Papers

It is important to be organized and know where to find all legal documents relevant to the care of a child, and to make sure all documents are up to date.

Tip: Families should keep all legal documents any other important papers in a safe location. Parents and custodians should also inform others, including older children, of where to find the documents in case they are detained or otherwise unable to care for the child.

Tip: Parents or custodians should keep all original copies of all documents and only provide copies to immigration officials or other persons.

The following are examples of essential legal documents to prepare or gather, with more information on each type of document below:

- *Child's birth certificate and social security card;*
- *Child's passport;*
- *Emergency contact forms;*
- *Current custody orders and guardian designations;*
- *Last will and testament with guardian provisions; and*
- *Child's school and medical records.*

Child's birth certificate and social security card

If a child was born in the United States, he or she should have a U.S. birth certificate and a social security card. Instructions on how to obtain a birth certificate can be found at:

<http://www.cdc.gov/nchs/howto/w2w/w2welcom.htm>

Social security card applications can be found at:

<https://www.ssa.gov/forms/ss-5.pdf>.

Tip: A parent should review his or her child's birth certificate to make sure that all the information is correct and nothing is missing. Whoever is named on a birth certificate is assumed to have custodial rights in many states. Therefore, if a parent at risk for getting detained is the only parent listed on the birth certificate, and the parents have so agreed, parents should consider amending the birth certificate to add the name of the other parent. This process is simpler and likely less expensive than having custody determined through court orders.

Child's passport

If a child is not a U.S. citizen and does not have a passport, parents can contact the consulate of the country where the child is a citizen to determine how to apply for a passport for the child.

If a child was born in the United States and does not have a valid U.S. passport, the parents should consider obtaining one for the child as soon as possible. If the parent is deported and chooses to have the child remain in the United States, the child will need a passport to visit the parent in the parent's home county.

Passport applications for minors are available at:

http://travel.state.gov/passport/get/minors/minors_834.html. Keep in mind, the U.S. Passport office has strict rules for who may and may not get passports for minor children. The passport application for a minor child **must** be submitted at a U.S. Post Office **by both parents of the minor child**. The only exceptions are: (1) if there is only one parent named on the child's birth certificate, (2) if there is a court order granting sole legal and physical custody to one parent, (3) if the parent has a special notarized letter, called a "Notarized Statement of Consent or Special Circumstances" (DS-3053), from the other parent who consents to getting a passport for the child, (4) if one of the child's parents has died, or (5) if there is a court order naming a legal guardian for the child.

During the application process, parents will be asked to show proof that the child is a U.S. citizen, which can be shown by presenting the child's U.S. birth certificate. Parents must also present proof that he or she is the custodian of the child either by presenting the child's U.S. birth certificate or a court custody order.

If one parent has died, the surviving parent may present the death certificate to show that he or she is now the sole custodian of the child. The surviving parent will also be asked to provide his or her own valid picture identification.

Tip: Child passport applications must be completed in person. If a parent tries to obtain a passport for his or her child while detained, the parent must complete and notarize the Notarized Statement of Consent or Special Circumstances (DS-3053) form, available here: http://travel.state.gov/passport/forms/ds3053/ds3053_846.html. If a detained parent does not have sole custody and the other non-detained parent is unavailable, the non-detained parent must also fill out the DC-3053. If a non-detained parent is available, he/she can accompany the child to apply for a passport with the notarized DS-3053 form. The detained parent does not have sole custody of the child when the non-detained parent is named on the child's birth certificate or was granted legal or physical custody by a court order.

Many countries allow children born in the U.S. to have dual citizenship, which may make it easier for the children to travel between the U.S. and the country of the deported parent. Parents can contact the consulate of their home country for more information.

Current custody orders and guardian designations

As discussed above, a parent may be able to sign a form that names someone to serve as the temporary guardian of the child if the parent is unable to care for the child. If a parent signs this form, he or she should keep the original with the other important papers. The parent should also give a copy of the form to the person named in the document as the temporary guardian.

Last Will and Testament with guardian provisions

Although the focus of this chapter has been on child custody issues arising during a deportation proceeding, it is also extremely important that a parent plan for the care of a child upon the parent's death. This is essential if the non-detained parent is not alive or has no custody rights.

In a Last Will and Testament, an individual says who should receive his or her property upon death. A Last Will and Testament may also name someone to care for any minor children upon the parent's death. If an individual is married and shares physical custody with a spouse, the guardian named in the will does not take care of the children unless both spouses have died. Alternatively, if an individual is the sole custodian, the guardian may be able to take over care of the children as soon as the individual passes away.

After the parent's death, the person named as guardian in the will may need to petition the appropriate court to be formally appointed as guardian. The will may serve as a guide for the court as it decides who should be appointed as the child's guardian. However, the court's final decision typically will be based on the best interests of the child. The requirements for a valid will vary on a state-by-state basis; therefore, it is advisable to consult with a lawyer to make sure that the document is prepared properly.

Emergency contacts

The parent should prepare an emergency contact list that includes multiple ways to contact critical family members, schools, childcare and healthcare providers, coaches (etc.) and the family's support network. Share the list with key contacts and keep one with you.

Medical and school records

Keep each child's medical and current school records organized and accessible for your emergency contacts. Be sure to include contact information for all medical, dental, and behavioral health care providers – including counselors and specialists. Request a current immunization record from your pediatrician and clearly document any current medications, allergies and treatment plans for each child. Note the location of current medications and be sure that they are clearly labeled with the correct frequency and dosage. If your child has supplemental services, individualized education plans (IEPs) or accommodations plans (504s) at school, gather the most current copies in one place.

In general:

- *Discuss custody plans to prepare entire family; and*
- *Seek additional legal or other help where needed.*

Protecting Parental Rights During Detention

This section discusses how parents can protect their rights if they are picked up by U.S. Immigration and Customs Enforcement (“ICE”), separated from their children, and facing time in detention with the possibility of being deported.

Parental rights are those rights that parents have to make decisions about the wellbeing of their children, including who cares for them and who they live with. Remember: even if ICE is trying to deport a parent, he or she still has the right to make these decisions for his or her children. It does not matter if the children are not U.S. citizens—parents still have parental rights.

Even if parents are detained, they can still advocate strongly for themselves as the parents of their children, particularly if being reunited with, or at least maintaining a relationship with, their children is their ultimate goal.

Steps Parents Can Take If Detained

If parents are detained, they likely will want to (1) ensure that their children are taken care of and (2) prevent themselves from being detained and/or limit their time in detention. This section focuses on what parents can do for their children, and does not address how parents can fight their own immigration cases. For that question, parents should review a resource specific to that topic, and consult with an immigration attorney.

If parents are stopped by ICE, regardless of whether their children are with them at the time, it is very important that they let ICE know that:

- *They have children who need their care;*
- *ICE does not need to detain them, and they will comply with ICE’s requests if ICE releases them; and*
- *They need to make a phone call to a caretaker or other emergency contact to arrange care for their children.*

If parents have their children with them when they are detained

If parents have their children with them when ICE tries to detain them, parents should tell the ICE officers that they need to make a phone call immediately so that a caretaker can come take care of their children before a child welfare agency takes them into custody.

ICE should allow parents to make such a call to their designated caretaker or emergency contact so that they can tell that person that (1) they are in ICE custody, and (2) that the person they are calling should follow any emergency plans the parent has prepared in

advance, or follow instructions that the parent gives to them at that time.

If ICE refuses to allow a parent to make a phone call, the parent should tell the officer(s) over and over again that he or she must place a call to arrange plans for his or her children so that the children are not taken into custody by a child welfare agency. Even if ICE still detains a parent, he or she should continue to communicate these things to every ICE officer encountered during his or her detention.

If children are NOT with their parents when their parents are detained

If children are not with their parents at the time their parents are picked up by ICE, parents should tell the ICE officer(s) immediately that they have children, and that they need to make a phone call to ensure their children are safe and taken care of.

It is likely that a parent picked up will spend at least a day or maybe a few days in an ICE facility while ICE decides what to do about his or her case. Detained parents may have very limited access to a phone, and ICE may not tell them anything about what will happen to them. If they are not released, they may be taken to an immigration detention center. If this happens, it is still possible but less likely that ICE may release them. At the very least, they will probably spend a few days or weeks in detention.

What Happens if No One Picks Up Children When Their Parents Are Detained?

If parents are unable to reach a designated caretaker or some other trusted friend or relative who is able to take care of their children right away, in most states, a state or local child welfare agency will take custody of their children. Each state and many localities (e.g., city or county) have child welfare agencies. These agencies have names like “Child Protective Services,” or the “Department of Children and Families.” Parents can consult a telephone directory to determine which agency may have taken or is seeking to take custody of their children if they are not contacted by the agency directly.

If parents facing detention have already chosen a caretaker, it is important that they contact their local agency immediately in order to seek to have the agency place the children in that person’s care. The more time that passes after a parent’s detention, the harder it may be for someone other than the parent to be granted access to care for his or her children, and the less likely it is that the care of the children will remain a private matter between the parent and a designated caregiver. Therefore, it is important for parents to

keep trying to contact a caregiver or other friend/relative until they are able to reach someone.

Parents should keep in mind that any caretaker, as well as adults living in the same household of the caretaker, may be subject to a criminal background check as well as a check of child abuse registries. Having a past criminal offense could disqualify that person from taking custody of children, even if parents have expressly chosen a specific person as a caretaker.

If no caregiver comes forward or is identified, the agency may begin a child welfare proceeding to determine where a child will live.

Child welfare proceedings

Once an agency takes custody of a child, the agency may try to identify a relative or friend willing to take care of the child. However, if an agency has taken a child into custody and cannot locate someone to care for the child, the agency will likely try to place the child in foster care. A foster parent is someone who has been trained and is licensed to care for children whose parents are unavailable or unable to care for them. Sometimes older children may be placed in a group home, which is a home where several older children live together with one or more trained adults who supervise and care for them.

If a child welfare agency takes custody of a child and is unable to find a known caregiver immediately, it will typically file a petition shortly after taking custody of the child. This begins what is called a “neglect proceeding,” or “child welfare proceeding,” although the name can be different depending on what state the child is in.

- *The purpose of a neglect proceeding is to determine where a child will live, and it is held before the court (usually a family court or juvenile court), although the process will differ depending on the state it is in.*
- *A parent may have the right to have an attorney appointed by the court to represent him or her during the neglect proceeding.*
- *It is also possible that the child will get an attorney or other form of guardian to represent his or her interests.*
- *The agency will likely also assign a caseworker, who will report to the judge handling a child’s case about the parent and the child. A caseworker generally has the power to make recommendations about what should happen to a child, so it is important for parents to maintain good relationships with their caseworkers, and*

frequently communicate, so that caseworkers know parents' wishes for the children they represent.

Under different circumstances, the court handling a child's case would notify the child's parent of all the hearings, and the parent could participate in the court process. If a parent is detained, courts may issue a "writ" to bring that parent to the court. However, if the court does not know that the parent has been detained, it may not send notice of a court hearing to the correct address. Additionally, a parent may not be able to participate in the hearing if he or she is detained in a different state from where the court is located, or if the parent is being detained at a federal (as opposed to a state) facility.

Note that the hearing will still take place even if a parent does not receive a notice about the hearing, or if the parent cannot attend the hearing. If a parent misses a hearing, even if the reasons are beyond his or her control, the court will make a decision about a child without the parent being there to tell the court his or her wishes. That is why it is important for parents to do everything possible to communicate with the court, caseworker and their attorney, as well as their children, while child welfare proceedings are going on.

Seeing Children While Parents Are Detained

ICE may permit minor children to visit a parent who is detained. It should not matter if a child does not have a Social Security Number, or if a child is not a U.S. Citizen, although adults may have to provide their date of birth and Social Security number, and be approved by ICE prior to the visit.

However, if there is an ongoing child welfare proceeding, whether or not a child can visit a parent in a detention facility will likely be up to a judge handling the case. The decision may be based on what the judge believes is in the child's best interests. For instance, for some children, seeing a parent in a detention facility could be difficult. If parents want their children to visit them, they should tell their attorney and/or caseworker, if they have one. Keep in mind that visitation by phone is another option that a court could order. Even if parents cannot visit, they can write letters to their children to keep in touch.

How Parents Who Have Been Detained Can Take Steps to Protect Their Parental Rights

Parents must play an active role in protecting their rights as parents, even while they are detained and possibly facing deportation. Here are some specific steps that parents can take:

Stay involved with their children

It is very important that parents do everything they can to stay as involved as possible in their children's lives, including making decisions about any medical or educational issues. It should be clear to everyone involved in a parent's case that he or she is actively involved in caring for his or her children, even from detention. Parents should call their children regularly, as well as write letters to them. Communication with caseworkers is also important, along with making a strong effort to see their children even while detained.

Parents should let people know where they are

Detained parents need to make sure that as many people as possible know where they are and how to contact them. They should make every effort to contact a designated caretaker, relatives, and friends, and be sure to tell such persons to provide the parents' location to any court or agency that may have a role in deciding who gets custody of their children. If a caseworker is assigned to a parent on behalf of the court, the parent should make sure the caseworker understands his or her situation and that he or she is detained.

Useful information that detained parents can communicate includes:

- *Their alien number ("A Number") that will be assigned to them;*
- *The name of their deportation officer; and*
- *The name and location of the facility where they are being detained, along with a phone number to make sure they receive notices about court hearings.*

The ICE Online Detainee Locator System

(<https://locator.ice.gov/odls/homePage.do>) may also be used to locate a person currently detained in ICE custody, or who was released from ICE custody for any reason within the last 60 days.

Contact their state or local child welfare agency and verify the location of their children

If parents think their children are not with a friend or family member and the children might be in the custody of a state or local agency, they should talk to their deportation officer and ask to contact the agency right away. It can be hard for agencies to locate a parent who is detained, so contacting the agency directly is very important. Many agencies have a hotline that parents can call.

When calling, parents should:

- *Give a full name and identify themselves as the parent;*
- *Give all children's full names and dates of birth;*
- *Explain that they are in immigration detention and believe that their children may be in the agency's custody;*
- *Be clear that this is an emergency situation, and that they need to know if the agency has an open case so they can contact their children right away;*
- *Give the name and contact information for their designated caretaker, if they have one or, if they do not have one, then the name and contact information for another trusted friend or relative who they think will be willing and able to take care of their children;*
- *Give their alien number and the name and address of the detention center where they are located; and*
- *Find out if a case number is available for their child's case.*

If parents cannot call the agency themselves, their caretaker or a relative or friend should call on their behalf and provide all the same information described above.

Request a lawyer

Parents should consider having a lawyer to represent them at hearings during their detention. If they cannot afford a lawyer, they may be able to request that a lawyer be provided for them. The court may ask for information about income and any property the parent may own. Parents should be prepared to provide such information. In addition to lawyers provided by the court, parents may be able to talk to non-profit legal aid providers who provide legal services for free.

Once parents have a lawyer, they should stay in contact with him or her. If their lawyer does not answer when they call, they should always leave a message. Parents should always write down the date and time that they called their lawyer, and note whether they left a message.

Parents should make sure the officials handling their deportation case know about their custody concerns

Parents should also tell their deportation officer and the immigration judge overseeing their case that their child is in or may be placed in foster care, and their wishes for how their child should be cared for if they are deported. Parents should do their best to make sure that

the officials handling their deportation case are aware of the situation and that it is documented in the court's record.

Request an interpreter

If a parent's native language is not English, he or she can request to be provided with an interpreter at any hearings regarding their children.

Parents should contact their consulate

Their consulate may be able to provide parents with information or possibly advocate on their behalf.

Options for Parents Facing Deportation

A parent facing deportation may have to decide whether to bring his or her children to the parent's home country or to leave the children in the United States. This is a difficult decision, and the outcome may depend on several factors, including who has custody of the child and, if more than one person has custody, whether they agree on where the child should live.

Bringing a Child with a Deported Parent

Many factors affect whether a parent can bring a child with him or her upon deportation. First and foremost, if a parent is in detention and wishes to bring a child with him or her after deportation, he or she should make sure the deportation officer and immigration judge know this. The parent's next steps depend on whether the child is in foster care or under the custody of another person and whether the child has appropriate documentation to travel.

Foster care

If the child is in foster care, read the section above on "Child Welfare Proceedings." The parent should make sure that the family court judge, case worker, child's case worker and any other official or attorney involved in the child welfare case or any immigration case knows that the parent wishes to bring the child with him or her upon deportation. The parent should also ask to be reunited with his or her child at the airport before leaving the country.

Shared custody or visitation rights

If the parent facing deportation shares legal custody of the child, the parent's ability to bring the child out of the United States may depend on whether the parent can obtain either the other parent's or a court's permission. If the other parent agrees that the child can go

with the parent facing deportation, the parents should consider writing this agreement down and notarizing the parents' signatures. The parent leaving the country should keep a copy of this written document in a safe place and take the letter with them while traveling.

If the other parent does not want the child to leave the United States, the parent facing deportation may need to get a court order allowing the child to be taken out of the country. Since the likely outcome of the case will depend on many factors, the parent should contact a family law attorney for help.

Children traveling on airlines

Some airlines require special documentation for a minor child traveling with only one custodial parent. The parent should contact the airline for details on what may be needed to travel alone with the child. The parent may need to show one of the following: (a) the child's birth certificate showing that the parent is the sole custodian; (b) a court order showing that the parent is the sole custodian; or (c) a notarized letter of permission from the child's other parent. In addition, if the parent is travelling internationally, the parent will need to show the child's passport. (For information on how to obtain a child's passport, please read the "Child's Passport" section above.)

If the child was born in the U.S., the parent should make sure he or she has important documents like a birth certificate, social security card and passport before leaving the country with the child.

Note: An airline's documentation requirements for minor children also apply if the child is travelling with a guardian. In addition to the child's identification documents, the guardian will likely need to show either: (a) a court order granting that person legal guardianship; or (b) a notarized letter signed by the parents that give the guardian permission to travel with the child, often referred to as a "parental consent letter." The U.S. Customs and Border Protection Agency recommends that a parental consent letter is notarized, is less than one-year old, and includes the following information:

- *Who*
- *What*
- *Where*
- *When*
- *Why*
- *Contact information for the absent parent(s)*

For more information, visit the U.S. Customs and Border Protection Agency website at:

https://help.cbp.gov/app/answers/detail/a_id/1254/kw/1254/sno/1.

Whether a child is allowed to travel alone depends on the child's age and the airline. Under no circumstance can a child under the age of five travel alone. For children between the ages of five and eighteen, contact the airline for details on the airline's rules regarding child passengers. The child may be able to fly alone only on certain flights, under certain circumstances, if she or he has a notarized letter from the child's legal custodian.

Reuniting child with deported parent after deportation

If the deported parent obtained a temporary guardian for his or her child before deportation, the guardian may be able to assist the child with obtaining the necessary paperwork to travel out of the country and meet the deported parent. For more information on temporary guardians and their ability to act as a legal custodian, please read the "What is a Temporary Guardian?" section above. However, the temporary guardian may have no obligation to do so if they choose not to assist the child in relocating.

Keeping the Child in the U.S. when a Parent is Deported

Minor children need a legal custodian to make decisions on matters such as medical care, education and travel decisions. For this reason, a parent facing deportation that wants his or her child to stay in the U.S. should seek to have a guardian or other legal custodian appointed for the child.

Changing custody of a child after a custodial parent is deported

If a parent wants to change a custody order after deportation, he or she may need to go through the U.S. court system. If both parents are outside of the United States, someone inside the country could petition to be appointed as guardian, and the absent parent(s) could consent. If only one parent is outside of the United States, he or she can agree to give custody to the other parent in the United States. To do so, the parent in the United States can file a modification action with the court, and the absent parent can then consent to the modification action from outside of the United States.

Emancipation of an older child

Some states also permit older children (generally over the age of 16) to become emancipated. An emancipated child has the right to make

their own decisions about education, medical treatment, travel, and legal matters—*i.e.*, the decisions that a parent or guardian would otherwise make until the child becomes an adult. Thus, emancipation may provide a way for an older child to live on his or her own, rather than in state custody, upon the detention or deportation of the child’s parents. To become emancipated, a child may need to file a petition in family court that explains why emancipation is in his or her best interest and shows he or she is financially independent. Because emancipation will generally terminate parental rights, the parents and child should consider this option carefully. They should also consider talking to an attorney, as the law and process for emancipation varies from state to state.

Barriers an Immigrant Family May Face in Court

Immigrant families dealing with family issues in court may face several difficulties. Some of these potential obstacles are discussed below.

Finding an Interpreter and/or a Translator

In some cases, one of the greatest challenges in ensuring the proper care of a child is effective communication with authorities like case workers or a judge. If a parent does not speak English, it is important to find someone to interpret and/or translate documents.

Some states will provide interpretation and translation services for parents that are dealing with child services or the court system. For example, some California courts will provide interpreters for hearings involving Child Support Services in family law cases. Whether the state provides interpretation and translation services or not, the parent should consider finding his or her own interpreter or translator now, so the information is readily available in case an emergency arises. If the parent is having difficulty finding someone to interpret and/or translate, it may be possible to find an interpreter/translator through a community or religious organization that provides outreach to immigrants.

Finding Legal Service Providers or Other Family Law Advocates

In every state there are organizations that provide free legal services to low-income individuals, but their eligibility guidelines vary. In addition, immigrants may face barriers in obtaining access to legal and other assistance in some areas of the country. For example, some legal service providers clearly state on their websites and in their promotional materials that they will not help undocumented immigrants due to federal regulatory requirements. However, in some cases, there are exceptions for immigrants who are victims of domestic violence. Accordingly, in approaching a legal

service provider, an immigrant should ask whether they require proof of legal residence.

In some cities there are organizations that focus specifically on legal issues for immigrants. If an immigrant is unable to pay for a lawyer it may be possible to find an attorney or representative through these organizations. Typically, it is not a legal requirement for a parent to have a lawyer during a family court proceeding, but it is strongly recommended that an immigrant parent work with a lawyer if possible, especially when weighing their options to protect their children if they are detained or deported.

Unfavorable Immigrant Policies in Custody Hearings

Immigration status may be taken into account when a court is considering the best interests of a child. It is possible that a court will consider a potential guardian's undocumented immigration status as a factor against the child's best interests and may refuse to grant custody to that individual. An immigrant parent should be mindful of this problem when determining whom to name as the child's guardian or who may be seeking custody of the child.

2. ASSETS AND BENEFITS OF MINOR CHILDREN

Immigrants may hold, in a capacity as a “custodian” or “trustee,” assets for a child who is a U.S. citizen (“citizen child”) in the hopes that the citizen child will have a greater ability to protect the assets under U.S. law. Immigrants may also hold significant assets in their own name that they desire to leave to their citizen child upon deportation. This section highlights certain issues related to the protection of assets for the benefit of a citizen child (or children) and provides general guidance, including:

◎◎ **The Effect of Deportation on a Child’s Assets and Considerations for Protecting Those Assets** ◎◎ **Specific Considerations for Protecting Certain Common Assets** ◎◎ **Unclaimed Property Laws** ◎◎

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

The Effect of Deportation on a Child's Assets and General Considerations for Protecting Those Assets

Generally, minor children (those under 18 years of age, depending on state laws) cannot own property because they generally are not old enough to enter into legal contracts. Therefore, property in a minor’s possession is typically owned by a parent. Deportation of a parent can thus disrupt the child’s possession or use of the property, including access to a bank account, vehicle, home, and other personal property. While an immigrant parent should consider granting power of attorney to a trusted individual who will remain in the U.S. to handle financial matters in case of deportation, an immigrant might also consider transferring assets for the benefit of the citizen child. Similarly, when an immigrant parent currently holds property for the benefit of a minor child, the parent should consider transferring custodianship or trusteeship to an individual who will remain in the U.S. in case the immigrant parent may be deported. When assets are currently held in trust for the citizen child and the trustee is not subject to deportation, action may not be needed.

The Uniform Transfer to Minors Act

Almost every state has adopted some form of the Uniform Transfer to Minors Act (UTMA). The sole exception, South Carolina, has adopted a similar but less generous law, the Uniform Gifts to Minors Act (UGMA). The UTMA permits the transfer of a wide variety of property—including real or personal and tangible or intangible property—to a custodian for the benefit of a minor.

Transfers under the UTMA are irrevocable and leave the donor with no legal or equitable rights in the property. The owner transfers “legal title” of the property to an adult (custodian) while the minor retains “equitable title.” Equitable title means that the child gets the benefits of the property but cannot sell or mortgage the property until becoming a legal adult.

The custodian has broad powers regarding the use of the assets for the minor. For example, the custodian may use the funds toward the minor's rent, utilities, car payments and repair bills, activities, and spending money, in addition to expenses such as education and medical care. However, the custodian has a fiduciary duty to the beneficiary to manage the funds as “would be observed by a prudent person dealing with property of another.” Accordingly, the custodian can be personally responsible for losses of the minor's property if found to have acted imprudently. The beneficiary generally has a right of accounting, which requires the custodian to document what has happened to the minor's property. Most state laws hold that an account under UTMA must be turned over to the minor when the minor reaches the age of 21. In some states, this can be extended to age 25.

UTMA agreements are popular because they can be made with a simple writing, can appoint additional adults as substitute custodians, and generally do not require an attorney. However, in order for the state Transfer to Minors Act (TMA) to apply to a transfer, the agreement must explicitly state that the agreement is made pursuant to the state TMA. Assets may be identified by general description, but property not included in the document or inadequately identified will not be transferred.

As a general rule, custodial accounts under the TMA should not be used for significant gifts or for a series of gifts that will grow over time. UTMA accounts do not guarantee that funds will be used for a specific purpose and the entire amount of the account will be transferred to the minor for uninhibited use at the age of maturity. Also, when a significant amount of assets—more than a few thousand dollars—are transferred in a TMA agreement, courts may intervene to create a trust for management of the

assets. Courts may require investment of assets for return at a later time, or create a “blocked” account that permits withdrawals only by a court order.

Trusts, Guardianships, and Conservatorships

State law also provides for the creation of more formal arrangements for the management of assets, including: trusts; co-signed accounts or title documents; guardianships; or conservatorships. These arrangements are generally more appropriate for assets of significant value or when more complex schemes are desired to protect property from transferring to the citizen child immediately upon their reaching the age of maturity (generally, 21), or by creating special restrictions that assets be used for a specific purpose (e.g., education).

When the Departing Parent is the Custodian or Trustee

If the parent facing deportation is the custodian or trustee of the minor’s property, and the minor is remaining behind in the U.S., the parent should have an alternate custodian named to control and protect the assets. If an alternate custodian was named in the original document, the alternate may simply step into the role of custodian. In California, if the minor has reached the age of 14, the minor may appoint a new custodian whom is a member of the minor’s family. Other states may have similar or additional rules. For other situations, the court may need to approve the new custodian or trustee, depending on the assets and the nature of the trust or custodial property.

If the minor is leaving with the departing parent and the parent is the trustee of the minor’s property, the parent should confer with an attorney experienced in this area before cashing-out the assets and taking them out of the country. The trustee or custodian is obligated to protect the assets for the minor, and the specific requirements for protection will vary depending on the specifics of the original arrangement. In California, the sale of a minor’s property under the California TMA must be approved by a court if the value of the property is over \$10,000. The specific rules of other states may vary.

Restrictions on Transfer

Other laws, such as those governing the transfer of securities or investments, may require additional action for a transfer to be effective and enforceable. In an effort to protect the greatest amount of property, an immigrant parent should aim to include all potential property in a transfer, knowing that some transfers may be affected by other laws.

Taxes

Generally, special tax rules apply to assets held by minors. In some circumstances a minor will be taxed at the parent's or guardian's tax rate, and in other circumstances, special exclusions and tax rates may apply. If the minor's assets produce an income or a capital gain over a certain amount, taxes must be paid. Moreover, tax rates change regularly.

Personal Liability

The transfer of some property (e.g., real estate and motor vehicles) may create personal liability. For example, personal injury claims may be made against the owner of a motor vehicle or property even when the owner is a minor.

Emancipation

Emancipation is the legal process through which a minor, typically not less than the age of 16, can petition a court to be legally recognized as an adult. An emancipated minor may fully own property and enter into legally binding contracts. Because of the gravity of the order, the minor child must demonstrate that he or she is sufficiently mature to manage his or her own financial and health-related affairs. When a citizen child is supported by family and friends who will remain in the U.S., emancipation may not be needed. However, in some cases, emancipation avoids the use a custodian to transfer of property, or the creation of a trust.

Specific Considerations for Protecting Certain Common Assets

The following provides specific considerations for protecting certain common assets. This is not an exhaustive list, and immigrant parents should make an inventory of all possible assets, not just those listed below, and attempt to determine how each asset will be handled if the parent or parents is deported. If possible, the parent should consult an attorney for guidance.

Personal Property

A minor may acquire other valuable personal property, such as jewelry, computers, electronics, and other consumer products. Legally, this type of property is owned by the minor's parent or guardian. The UTMA allows transfer of most all personal property to the child. When considering what property to include in a transfer under the UTMA or the creation of a trust, parents should think broadly about all assets and personal property. This property may include cell phones and gift, payroll, or other prepaid cards. Property not described will not be transferred.

Bank Accounts

Banks and other financial institutions (such as credit unions) may be chartered under state or federal law. Accordingly, laws regarding account ownership vary among financial institutions. Generally speaking, however, if an immigrant parent is a joint account holder with a citizen child and faces deportation, he or she should consider modifying the account or transferring the funds to an account that allows another trusted adult to serve as a custodian. The institution will likely have a special form used to adjust ownership.

In many instances, bank accounts for minors reflect the UTMA. Accounts are held by “(the adult) as custodian for (the minor),” immediately become the property of the minor, cannot be undone, are automatically transferred to the minor upon reaching adulthood, and a custodian may only use the proceeds of the account only for the benefit of the minor.

Credit Cards

Generally, U.S. credit card companies do not issue credit cards to minors as primary account holders. However, credit card companies may issue credit cards to minors as authorized users on an adult’s account, when the adult is responsible for paying all debts incurred on the account. Transfer of the account is likely prohibited by the adult’s cardmember agreement. If the immigrant parent is deported, the minor’s continued use of the account can have negative consequences if arrangements are not made to satisfy any incurred debts. If credit is needed, the minor should seek to become an authorized user on the account of another adult.

Motor Vehicles

State laws vary on the age at which a person can legally own a motor vehicle. Generally, a minor cannot be the sole owner. Some states allow minors to register a car at the age of 16, while others require a parent or guardian to sign (*e.g.*, the registration or car loan) on behalf of a minor. Insurance companies may also restrict when a minor may qualify for insurance coverage. If a parent facing deportation is a co-signer on a minor’s car registration, car loan, or insurance policy, he or she should have a different adult serve as the adult co-signer.

Real Property (Land, House, or Condo)

Ownership of land, a house, or a condominium is governed by state law. In many states, a minor may own this property but cannot directly purchase, sell or make contracts relating to the property — this must be done indirectly through a trust, guardianship or conservatorship. If a parent facing deportation is the trustee, guardian, or conservator of a minor’s property, he

or she should consider transferring title to another adult for the benefit of the minor.

Lawsuit Settlements, Investment, and Inheritance

If a minor is the recipient of property or money from a legal judgment, a guardian or conservator is usually appointed to receive and manage those assets on behalf of the minor. Similarly, minors cannot own stocks, bonds, mutual funds, annuities, life insurance policies, patents, or royalties. If a minor receives property or money due to inheritance, the assets will either be placed in trust (for the benefit of the minor) or a court may supervise the administration of the assets. If a parent facing deportation is the guardian or conservator for any of these assets, a new guardian or conservator should be appointed to assume that role.

Child Support and Custody Orders

Family courts—which deal with issues such as divorce, custody, and child support—operate separately from immigration courts. In most cases, there is no communication between family and immigration courts. Therefore, a family court order will not automatically be modified upon a parent's deportation. If a family court order will be affected by deportation—including custody or child support—an individual must petition the court that created the order for modification.

Maintenance of child support payments can be a complicated problem depending on whether the obligee (person receiving money) or obligor (person owing money) is deported, whether the citizen child accompanies the deported parent, and whether the destination country recognizes a foreign child support order.

If the immigrant parent receiving child support faces deportation and the citizen child will remain in the U.S., the immigrant parent should immediately petition the family court for modification of the order to ensure that the citizen child will continue to receive support through a new guardian. If the immigrant parent has full custody of the citizen child and wants the child to accompany him or her outside of the U.S., the parent must typically receive permission from the court.

Numerous countries have reciprocal child support agreements with the United States, including: Australia, Canada, Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and The United Kingdom of Great Britain and Northern Ireland. If an obligor is deported to one of these countries, a U.S. child support order can be enforced in the foreign court. Also, when the

child lives in one of these countries, the foreign court may issue an order enforceable against an obligor remaining in the U.S.

Education Savings Plans

Education savings plans are different than a bank account that has been created for the purpose of saving for school. Depending on the type of plan, special transfer rules may apply.

Education Savings Accounts (ESAs)

An Education Savings Account, also called a Coverdell Education Savings Account, is considered an asset of the minor's parent or guardian. For a minor leaving the country with the deported parent, the account may generally be "liquidated" – that is, turned to cash – if this is not specifically prohibited by the account creation conditions. The funds may be used for non-educational purposes, but there may be an associated penalty. For a minor child remaining in the country, care should be taken to insure that a remaining parent or guardian is aware of the account. A financial consultant from the firm hosting the account should be able to ensure a smooth transition of account control.

529 Savings Plans

In contrast to the Coverdell ESA, a 529 plan remains in the control of the party creating the account. Because of this, the funds may not be considered an asset of either the minor or the minor's guardian, and the funds may become unavailable to the minor unexpectedly if the controlling party decides to remove them or change the beneficiary of the 529 plan. If a 529 plan designating the minor exists, a parent facing deportation or another parent or guardian may wish to discuss the minor's future educational plans with the party who created the 529 savings plan. If it is the parent being deported who created the 529 plan, such parent may wish to name a successor owner of the plan, recognizing that the successor owner has the ability to redirect the funds away from the minor. This may allow the minor to know if they may rely on the funds in the future despite any changed circumstances.

Government Benefits

A citizen child may be receiving benefits, grants, or financial aid from federal, state, county, and/or local governmental programs. Eligibility for these programs might be adversely affected by the deportation of a parent or guardian. Immigrant parents should investigate whether eligibility for the programs is conditional and whether action is necessary to maintain eligibility upon the parent's

deportation. The immigrant parent should also investigate whether a citizen child may qualify for assistance through other programs, including those that provide benefits to “unaccompanied” youths or minors. Where possible, a description for obtaining or maintaining these benefits should be provided to the citizen child and/or a guardian or custodian.

Unclaimed Property Laws

Unclaimed property laws, also known as “escheat” laws, require financial institutions to report when personal property has been abandoned or unclaimed after a period of time under state law—often five years. Before assets can be considered abandoned, the institution must make a diligent effort to try to locate the owner. After the property is abandoned, the state keeps record of the asset and the owner may make a claim to retrieve the property. The National Association of Unclaimed Property Administrators maintains databases to search for unclaimed property and state law may have special restrictions. Diligently drafted agreements may prevent the loss of these assets, though citizen children, custodians, and those with power of attorney should be aware that escheated property may be retrieved if later discovered.

CHECKLIST: ASSETS AND BENEFITS OF MINOR CHILDREN

- Property held by a minor is generally governed by state law. Where possible, consult a lawyer for advice on state-specific property laws and your individual best course of action.
- If you currently hold assets as custodian in the name of your minor citizen child, consider transfer of the custodianship to a trusted individual who will remain in the U.S. should you be deported.
- Create a list of all available assets not currently protected that may be transferred or otherwise protected for the benefit of your minor child (including real and personal, tangible and intangible property). Where practicable, consider consolidating assets for easier management and transfer.
- Draft an agreement for the transfer of the identified assets to a custodian for the minor under the Uniform Transfer to Minors Act (UTMA) to be executed immediately or, at a minimum, before deportation (including during detention, if needed).
- If in possession of significant or unique assets (including real estate), consult a lawyer to consider the formation of a trust, guardianship, or conservatorship for the benefit of your minor child with a trustee who will remain in the U.S.
- Investigate whether any government benefits your minor child receives may be affected by your deportation, whether your child may qualify for additional benefits upon your deportation, and leave instructions for your minor child and/or your child's guardian for maintaining and/or obtaining these benefits.
- If possible, ensure all bank accounts are jointly-held by your minor child and a custodian whom you trust and who will remain in the U.S. to ensure your citizen child has continued access.
- Consider granting power of attorney to someone who will remain in the U.S. to handle the disposition of any other assets in your absence.
- If your minor child is leaving the country with you during deportation, a professional with expertise should be consulted to determine if and how your child's assets may be sold and taken out of the country with him or her.

- You and your child may request an accounting from any custodian or trustee managing your child's assets in order to ensure that the assets are safe and are being managed appropriately.

3. ENHANCING SAFETY IN PUBLIC SCHOOLS

Following three Executive Orders concerning immigration laws and enforcement, immigrants and school administrators and officials are increasingly concerned about immigration enforcement at public schools. Most pressing, immigrant parents and children are worried that public schools may reveal their legal status or share their records with Immigration and Customs Enforcement (“ICE”) agents. Immigrant parents are also seeking guidance on how they and their children can best interact with schools and school officials, and how to prevent bullying or harassment of children by other members of the community. Finally, school administrators and educators may need guidance on how to recognize problems and address concerns.

☉☉ **Understanding Safety in Public Schools: Basic Definitions** ☉☉ **What Do the President’s New Executive Orders Say?** ☉☉ **Are There School Policies to Help Protect the Legal Status of Parents and Children?** ☉☉ **How Can Schools Recognize a Problem Without Danger to a Parent’s or Child’s Privacy?** ☉☉ **What Can Schools Do When They Notice a Problem, and How Have Other Schools Addressed These Problems?** ☉☉

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Understanding Safety in Public Schools: Basic Definitions

“**Alien**” is any person not a citizen or a national of the United States.

“**Deportable Alien**” is an alien in and admitted to the United States subject to any grounds of removal specified in the Immigration and Nationality Act. These grounds for removal include any alien illegally in the United States, regardless of whether the alien initially entered the country illegally or whether they entered legally but then later lost legal status.

“Deportation” is the formal removal of an alien from the United States. This is done when the alien has been found removable for violating immigration laws. Deportation is ordered by a judge.

“Immigrant” is an alien who is in the United States.

“Permanent Resident Alien” is an alien admitted to the United States as a lawful permanent resident. Lawful permanent residents and permanent resident aliens are legally accorded the privilege of residing permanently in the United States.

“Temporary Worker” is an alien coming to the United States to work for a temporary period of time.

“Voluntary Departure” is the departure of an alien from the United States without an order of removal. An alien allowed to voluntarily depart concedes removability but is not barred from seeking admission at any time.

What Do the President’s New Executive Orders Say?

The President has issued three Executive Orders that may impact students.

Border Security and Immigration Enforcement Improvements

(“Secure Borders”)

On January 25, 2017, President Trump signed an Executive Order titled “Border Security and Immigration Enforcement Improvements.” The stated purpose of this order, referred to as “Secure Borders,” is to improve security along the borders of the United States, specifically the southern border.

Most pertinent to schools, students, and parents, the Secure Borders order authorizes state and local law enforcement agencies to perform the functions of an immigration officer. This is typically accomplished through a Section 287(g) Agreement, which refers to the section of the Immigration and Nationality Act that allows state and local law enforcement to enter into a partnership with ICE. The Secure Borders order also prioritizes the detention of aliens violating immigration laws and focuses on prosecuting aliens who commit crimes along the southern border. The Secure Borders order also authorizes the construction of a wall and facilities to detain aliens at or near the border.

Enhancing Public Safety in the Interior of the United States

On January 25, 2017, President Trump signed an Executive Order titled “Enhancing Public Safety in the Interior of the United States.” The stated purpose of this order, referred to as the “Enforcement Order,” is to identify and deport deportable aliens. The Executive Order seeks to increase deportation of deportable aliens by increasing enforcement of immigration laws, punishing those jurisdictions referred to as “sanctuary” jurisdictions, and speeding up removal proceedings.

The Enforcement Order specifically targets a number of groups for removal:

- *Any alien who has been convicted of a crime;*
- *Any alien who has been charged with (but not yet convicted of) a crime;*
- *Any alien who commits an act that could constitute a crime;*
- *Any alien who has engaged in fraud or willful misrepresentation in an application or other business with a governmental agency;*
- *Any alien who has abused any program related to receiving public benefits;*
- *Any alien who has been ordered removed, but has not yet departed the United States; or*
- *Any alien who poses a risk to public safety or national security as determined by an immigration officer.*

The impact on schools, which previously were considered “sensitive locations,” thereby limiting enforcement of immigration laws, remains unclear. For example, the Enforcement Order could be read to apply to “abuse” of free and reduced school lunch programs, which would have an obvious effect on students and schools. Although, this contradicts United States Department of Agriculture guidelines on Supplemental Nutrition Assistance Program (SNAP) benefits for non-citizens.

The Enforcement Order also seeks to punish so-called “sanctuary” jurisdictions. Although there is no precise definition, generally a sanctuary jurisdiction is an area, such as a district, city, county, or state that does not use municipal funds to enforce national immigration laws. In some cases, sanctuary jurisdictions forbid their police and other employees from inquiring about immigration status of people in their area or from people receiving services. Specifically, the Enforcement Order states that jurisdictions that fail to comply with the Immigration and Nationality Act are not eligible to receive Federal grants. Whether an area or jurisdiction is labeled a sanctuary jurisdiction is left to the sole discretion of the Secretary of Homeland Security.

The Enforcement Order re-emphasizes that the Secretary of Homeland Security should empower and authorize local and state law enforcement officials to act as immigration officers through the use of a Section 287(g) Agreement, as described above, and by terminating the Priority Enforcement Program (“PEP”), which primarily focused on detention and deportation of national security threats and violent criminal offenders, and reinstating the “Secure Communities” program, which requires local law enforcement to share with ICE information about individuals in custody and allows ICE to issue immigration detainers that would require holding that person until ICE can take that person into custody.

Protecting the Nation from Foreign Terrorist Entry into the United States

On March 6, 2017, President Trump signed an Executive Order titled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” This order is commonly referred to as the “Travel Ban.” The March 6 order replaces a previous order that had been challenged and blocked by the courts. The Travel Ban suspends any entry into the United States by foreign nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen for ninety (90) days.

The Travel Ban affects only those foreign nationals from the six named countries who were outside of the United States on the date of the Travel Ban, did not have a valid visa at 5:00 p.m. EST on January 27, 2017, and did not have a valid visa as of the date of the Travel Ban. The Travel Ban also does not apply to any lawful permanent resident of the United States; any foreign national who is admitted to the United States after the Travel Ban was issued; any dual national (dual citizen); any foreign nationals traveling on a diplomatic visa; or any foreign national or refugee who has been granted asylum or has already been admitted to the United States.

While it is fairly unlikely that those individuals covered by the Travel Ban would be enrolled as students in the U.S., the ban may impact family members or friends of students. Therefore, understanding the contours of the Travel Ban will assist administrators and educators in interacting effectively with students and identifying issues that might be affecting students indirectly.

Note: As of May 2017, both the Enforcement Order and the Travel Ban have been challenged in various courts. Substantial portions of each Order have been stayed.

Are there School Policies to Help Protect the Legal Status of Parents and Children?

School officials should check with their school districts, superintendents, and local and state school boards to determine if there is a specific policy in place for their school.

Although specific policies will vary, as a general matter, there are three approaches schools have taken with regard to creating policies relating to immigration. The majority of school districts that have addressed this question have pledged not to cooperate with federal immigration authorities. Some school districts, however, have elected not to adopt an official policy, but instead have opted to gather information before issuing a policy. Finally, schools have the option of adopting a policy to cooperate with immigration authorities, but to date there is no record of any school district officially taking this position.

School Districts Could Pledge to Not Cooperate with Federal Immigration Authorities

The vast majority of school districts have adopted policies that demonstrate an unwillingness to cooperate with federal immigration authorities. These policies include barring staff from asking parents and children about their immigration status, barring staff from providing information to federal immigration authorities, referring any immigration inquiries by federal authorities to the superintendent, and prohibiting federal immigration authorities from entering school property without a lawfully issued judicial order or warrant. Significantly, the Los Angeles Unified School District has also approved a measure to have school district attorneys provide legal help to students facing deportation. School officials should consult with their local school districts and school boards to determine which policies, if any, have been implemented for their school.

Schools that pledge not to cooperate with federal immigration authorities should be aware that federal authorities may identify deportable or removable people and arrest them after dropping off or picking up their children from school. Schools should establish communication procedures so that students are not stranded in the event that a parent is detained; parents should identify and authorize other trusted adults or siblings to pick up children from school.

School Districts Could Gather Additional Information

Some school districts have postponed issuing a policy related to the executive orders to allow them to gather more information and draft a more

targeted policy to govern interacting with federal immigration officials. One example of this approach is the Salt Lake City Board of Education. The Salt Lake City Board of Education wanted to ensure that it received more input from both the district employees and the community before addressing this issue, which is politically charged. The Salt Lake City Board of Education expressed a desire to draft a resolution that had some legitimate legal backing and would address the Board's concern in one resolution (rather than multiple piecemeal policies). It is unknown how many other school boards are taking this approach. However, if the Salt Lake City Board of Education is any example, it appears likely that these school boards and districts will join the majority of others in not cooperating with federal immigration authorities.

School Districts Could Cooperate with Federal Immigration Authorities

A review of literature (as of May 2017) has found no record of any school district or school board that has elected to adopt a policy to cooperate with federal immigration authorities. Schools or school boards seeking to do so would likely face significant legal hurdles.

For example, the Federal Education Rights and Privacy Act ("FERPA") provides protections to students that would impede a school district's or school board's ability to adopt a blanket policy to cooperate with federal immigration authorities. FERPA applies to elementary, middle or junior high, and high schools. In general, FERPA gives parents access to their children's education records and provides some control of disclosure of personally identifiable information in those records. Furthermore, FERPA limits the circumstances under which education records and personally identifiable information can be disclosed to law enforcement officers. Typically, disclosure is permitted to identify, evaluate, and address threats to school and student security or to comply with a lawfully issued subpoena or judicial order. It is important to note that an immigration detainer is *not* considered a judicial order for purposes of disclosure under FERPA.

The National School Lunch Act ("NLSA") restricts who may access records of students who qualify for free or reduced-price meals. Individuals may be denied access to student information under the NLSA that they may otherwise be entitled to access under FERPA. The NLSA details which entities or individuals have authorization to access student eligibility information, but those entities or individuals must also have a legitimate "need to know" the information for the purpose of carrying out delineated authorized activities. The authorized entities include Medicaid and State Children's Health Insurance Programs ("SCHIPs") and federal and state education programs. Federal, state, or local law enforcement officials may only access information for the specific purpose of investigating violations

of the NLSA. Ultimately, the agency responsible for making free and reduced-price meal determinations (generally, individual school districts) makes the determination on whether or not to disclose student information under the NLSA. Unauthorized disclosure and improper use of student school lunch eligibility information in violation of the NLSA can result in both civil and criminal penalties.

The Privacy Act of 1974 governs the use of social security numbers by federal, state, and local governments. The Privacy Act makes it unlawful to deny a right or benefit to any person based on that person's refusal to provide a social security number. Any collection of social security numbers must be undertaken for the specific reasons outlined in the Privacy Act. If social security numbers are requested for reasons other than those outlined in the Privacy Act, the requesting agency must give the specific reason for the collection and the limits on the use of the social security numbers.

Even if a school district does not adopt a blanket policy to cooperate with immigration authorities, it may elect to do so in more limited circumstances. For example, school districts may allow federal immigration authorities on school property if they present a detainer for an individual, even though a detainer is not considered a lawful court order unless doing so would violate school policies.

How Can Schools Recognize a Problem Without Danger to a Parent's or Child's Privacy?

Schools should understand that the executive orders can be a substantial source of fear for students and family members. The most effective way for schools to recognize a potential problem is to be vigilant in their observations of students. Changes in student behavior or other abnormal student behavior could signal problems or fears related to the immigration status of students, their family members, or friends. Such behaviors may include:

- *Students missing school for extended periods of time;*
- *Students changing their meal habits, such as not eating (particularly school lunch), or students who had regularly participated in school breakfast no longer participating;*
- *Students having difficulty paying attention in class. This could be a sign of problems at home – for example, families may be foregoing public assistance for food (food stamps) to avoid being caught in the Enforcement Order; or*
- *Students experiencing drastic changes in academic performance.*

In addition, school staff should be mindful to look for any signs of bullying by other students that might stem from the heightened attention to immigration status caused by recent executive orders.

What Can Schools Do When They Notice a Problem, and How Have Other Schools Addressed These Problems?

Schools are in a unique situation to provide a safe environment for students and parents. When school staff notices a potential problem, a counselor or other appropriately trained staff may meet with the student to ascertain their individual family circumstances and explain school policies. School staff may also meet with parents and students to explain what the school is doing to protect the children and the children's information from disclosure to federal immigration officials. Prior to undertaking any action, school staff should speak with an administrator to determine any policies or procedures in place governing the appropriate steps to be taken.

It may also be appropriate for schools or school districts to reach out to students and families. A number of schools and school districts have utilized a variety of means to communicate school policies to parents and students. These measures have included:

- *Placing signs and banners in multiple languages in school buildings announcing and explaining school policies;*
- *Distributing cards explaining the school policies;*
- *Distributing cards related to a "Know Your Rights" campaign to parents, student, and school staff;*
- *Sending automated phone messages to students and families explaining the school policies;*
- *Working with trusted community partners to reach out to families and students;*
- *Coordinating with families in which parents may be detained to prepare power of attorney and guardianship forms. This may require more intricate partnerships with local community groups; or*
- *Holding school or community events meant to explain the school policies.*

Schools should determine which method or methods of communication work best for their population. Schools should also be mindful that any community or school event may be met with distrust; particularly, parents and students may not attend for fear that the meeting may be a trap.

4. MANAGING THE PSYCHOLOGICAL ASPECTS OF DEPORTATION AND CHILD CUSTODY

Family is the building block of a healthy society and the environment where children develop their sense of security and belonging. Many immigrants came to the U.S. to give their children a better life and future than the one they had in their homeland. Deportation shatters that dream and all they managed to create during their time in the U.S. This is difficult for parents and children alike because it destroys the sense of safety and security they have worked so hard to construct. When safety and security are lost it is very stressful because of the uncertainty it creates. Children need a safe and secure environment to thrive physically, emotionally, socially and academically. Stress has a negative impact on a child's healthy development. Having conversations to address a child's worry can help alleviate their stress.

◎◎ Why Talking About Deportation is So Stressful ◎◎ Why it is Important to Talk About Deportation ◎◎ Ways of Monitoring Stress to Allow for Conversations ◎◎ Children of Different Ages Will Have Different Reactions and Concerns ◎◎ Strategies for Having Conversations with Children About Deportation ◎◎ How to Cope With Deportation By Helping Your Children Feel Safe ◎◎

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Why Talking about Deportation is So Stressful

Stressful events interfere with our ability to think. As human beings, we have an automatic response to moments when we feel scared or under threat. When we are very stressed, our natural tendency is to take flight, fight, freeze or faint. In many situations, when there is an immediate threat, this is very helpful for survival. In other situations, like the threat of deportation, when stress is not momentary but can last for long periods, it is important to find ways reduce stress. Because the topic of deportation is very stressful, it will take an active effort to think and plan.

In the past, many immigrants have managed stress by avoiding conversations about deportation. Some people may have chosen not to speak about their immigration status for protection and to feel safer. Others

have not spoken about deportation because it brings up memories that are too painful. It is hard to be close to painful feelings. Talking about one's immigration status can be emotionally painful. It may make a person feel afraid of deportation and the people they will lose if they have to leave. It may also bring to mind the difficult journey they made to come to the U.S., all they sacrificed, as well as the life and people they left behind.

Why it is Important to Talk About Deportation

Despite our natural tendency to do the opposite, having conversations about our fears can actually reduce stress. When we are stressed, having the support and love of those around us can help us feel better. In talking to each other we feel connected and this helps reduce stress. Children are very sensitive to what goes on around them. Think of them as emotional sponges that can soak up tensions. Even if emotionally charged topics like the fear of deportation are not discussed, many children are perceptive enough to pick up on the tension and fear and will be affected. It can be beneficial to help children find ways to talk about their feelings so they will feel less burdened. If families can talk about deportation together, children and parents will feel less alone.

Ways of Monitoring Stress to Allow for Conversations

Our brain and body tell us when we are stressed. Here are some of the ways you might notice you are stressed:

- *Difficulty thinking*
- *Difficulty planning*
- *Difficulty remembering*
- *Rapid heartbeat*
- *Shortness of breath*
- *Sweaty palms*
- *Dry mouth*
- *Muscular tension*
- *Butterflies in stomach or upset stomach*

It is important for parents to listen to their bodies to be able to manage their stress before taking on difficult conversations. It is helpful for parents to be aware of their own feelings before and during conversations with their children. Listening to our body's response can be a way of knowing about difficult feelings. When you are stressed, it might be helpful to practice deep breathing, take a slow walk, listen to comforting music or sharing your feelings with another supporting adult. It is important for parents to take care of themselves so they can take care of their children. Just like in the

event of an airplane emergency, adults should put the oxygen mask on themselves first so they can take care of their children. When parents are able to manage their own stress successfully, they are then better able to listen and be open to their children's worries.

Children of Different Ages Will Have Different Reactions and Concerns

Young children may not be able to put their questions or feelings into words. However, silence and behavior are forms of communication. A baseline principle that might be helpful to keep in mind as you think and talk about this in your families is that there is no such thing as non-communication. We are always communicating whether in words, behavior or silence. Did you ever hear the phrase that "silence is a powerful statement?" Even not saying something verbally can be making a powerful point. Along these same lines, babies, children and adults communicate something all the time. We just need to learn how to be sensitive to the message. But the important message here is that there might actually be a message that warrants attention.

Some Behaviors to Look for In Young Children

- **Increased restlessness at bedtime or naptime:** *Bedtime for children can be a time when many fears creep into their thoughts. They can also come up in the form of nightmares. For young children, nightmares of monsters, loss and separation, can be a way of expressing what they can't quite come to terms with, or what they are afraid of. Toddlers for example, might be very unnerved with a bad dream, and need the comfort of a parent or trusted caretaker to fall back asleep, because the lines between dreams and reality are still a little blurry. Do you remember what it felt like to wake up in the middle of a bad dream? It is likely you realized quickly where you were, and that it was a dream, and then hopefully you fell back asleep. Children struggle with this, because they still need their parent(s) for comfort.*
- **Fussiness or tantrums:** *Children at very young ages can become fussy and have more tantrums. It can be their way of telling you of their distress, that they are nervous too, and that they need you to help them calm down.*
- **Themes of sadness and loss in drawings and pretend play.**

Some Behaviors to Look for In Older Children at Home and at School

Children might be:

- *Withdrawn;*
- *Distractible;*

- *Angry; or*
- *Sad.*

You may find that they are:

- *Demonstrating poor school performance, or seeming less motivated in general;*
- *Being less social and having more conflicts with peers;*
- *Refusing to go to school, resulting in absenteeism;*
- *Conveying physical complaints: stomach aches, headaches etc.; or*
- *Having sleep problems and nightmares.*

All of these behaviors are examples of ways that children communicate that they are stressed and perhaps overwhelmed. When parents can address their children's stress, it will help them be calm and their behavior will improve.

What to Look for In Teenagers

Teenagers may feel the burden of increasing responsibilities. They may feel not yet ready or able to take on parental roles and responsibilities. Sometimes when people feel afraid or overwhelmed it is expressed as anger. It may be too difficult for them to feel sad and afraid. Anger can help people feel strong and empowered. It is important to recognize that when teenagers are angry the root is often fear.

Parents should also look for changes in their teenager. Are there big changes in how their teenager behaved at home or performed at school? These changes may be a sign that the teenager is stressed and something needs to be addressed.

Strategies for Having Conversations with Children About Deportation

Stress about deportation affects everyone. Even if your family is not facing the threat of deportation, you may be living in a community where others are. Your children may be affected by what is happening to other children around them, many of whom may be their friends. Children may be sad about friends who have left, afraid of losing more friends and afraid that what is happening to their friends, might happen to them. It is important for parents to listen and be open to what their child is feeling. It is natural to be sad and afraid at times. Having space to express feelings can help children cope. Ignoring or bottling up feelings may seem helpful in the short run, but in the long run, keeping feelings in may lead to outbursts or more negative behaviors. Having a safe outlet for feelings is very important.

Here are a few tips to help make these conversations less stressful:

- **Listen attentively.** A guiding principal for all conversations is to listen sensitively and thoughtfully to your child's questions and concerns.
- **Seek an appropriate setting.** When having a conversation it is important to have a quiet space, without interruptions and with adequate time, so you don't feel pressured or rushed. Depending upon the ages of the children, it might be helpful to have all family members present.
- **Be prepared.** Before beginning a conversation, have a plan in mind for what would happen if your family faced deportation. It is comforting to children to feel that their parents are in control and have a plan to take care of them.
- **Keep it simple.** If your children have questions, it is best to answer simply. Provide enough information to address their concerns, but not too much that they would be overwhelmed.
- **Make a stress meter.** As a way to gauge your family's stress, it might be helpful for each member to make a stress meter where green is calm, yellow is slightly stressed and red is very stressed. Older children might prefer a scale of 1-10. Think of it like a speedometer on a car that goes from soft soothing colors to strong colors or 1-10. The meter could be hung on the child's bedroom door or above the bed. Parents can let their child know that they will offer comfort when they see their child is stressed. This will also help parents feel that they are in touch with their children and able to help them feel better.

How to Cope with Deportation by Helping Your Children Feel Safe

Regardless if your plan is for your children to remain in the U.S. or go with you to your native country, the goal is to keep relationships alive. How can we bridge the gaps that physical separation creates? Throughout our lives human beings need to have the continuity of relationships to help us feel secure. Deportation can shatter the physical closeness of a family.

Here are a few strategies that can bring you closer and help your family feel connected if you are deported and your children remain in the U.S.:

- *Older children should know what the plan for the family's care will be if you are deported and they remain in the U.S. It is important to tell them the basics. Where will they live? Will they go to the same school? How will they reach their parents? Who will be taking care of them? It is important to maintain a sense of predictability in times of great fear and stress.*

Having a plan makes your children feel cared for. If you know what will happen and have a plan, it reduces stress and makes it less overwhelming.

- *Audio messages can be a way for a child to feel that they are not alone by hearing a parent's voice whenever they need to. The message should be uplifting and soothing. Think of a message that is meant to be comforting when your child or adolescent is distressed. For example, parents can sing a lullaby for a younger child, read a story, tell a joke or give an inspiring message to a teenager.*
- *Telephone and video conference. If possible, it is important to have regular and frequent times to talk.
Create a photo book or scrapbook of times shared together.*
- *Encourage the child to write letters, draw pictures or send photos that the parent receives and then shares with the child on live video showing that they received it. This might be a very tangible way for the child to feel that he or she is reaching parents across the border.*
- *If finances permit, the children might visit their parents for vacations or summers.*

If your child is accompanying you to your country of origin, you will need strategies for helping you and your child cope with the huge transition and loss of life in the U.S.

It is possible that you will not know the details of where you will be living. However, it is important to convey as much information as you can about your country to your child. It would be helpful to convey even general information about your homeland and culture. Making as much as you can known and predictable will help children feel calm, safe and secure.

If your children will be accompanying you, they will be leaving behind their home, their school, their friends and their country. They might need to learn a new language. There will be huge changes ahead. Your goal is to help them manage the change and to help them cope with the losses they are suffering. These will be challenging times and it is important to listen with eyes and ears. You can help them with strategies for keeping in touch with their friends in the U.S.. Families who are deported often feel stigmatized. Families and children may have challenges being accepted in their new home by other children and local residents. If your entire family leaves the U.S., the strategies mentioned above for listening and having conversations will help you maintain connections and face challenges together.

CHECKLIST: MANAGING THE PSYCHOLOGICAL ASPECTS OF DEPORTATION AND CHILD CUSTODY

- Learn to recognize signs of stress
- Practices strategies for managing stress
- Be aware of the needs of children of different age groups
- Recognize signs of stress in your children
- Know strategies for helping children reduce stress
- Listen sensitively and thoughtfully to your child's questions and concerns
- Create a safe space for the conversations to occur
- Have a safe outlet for feelings
- Answer questions simply
- Know your plan if deportation affects your family
- Share your plan with your children
- Learn strategies to maintain connection with your children after deportation
- Listening and having conversations will help your child manage loss and change if they leave the U.S. with you

5. CONSIDERATIONS FOR SURVIVORS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Immigrant survivors of domestic violence and sexual assault, and the advocates that serve them, have been deeply concerned about the effects that the administration's executive orders will have on a survivor's ability to seek safety and protection. This chapter will explore the intersections of domestic violence and sexual assault and immigration law, how the immigration executive orders particularly impact survivors, special immigration protections for immigrant survivors, and further resources.

©© Intersection between Immigration and Domestic Violence and Sexual Assault ©© Immigration Benefits ©©

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Intersection between Immigration and Domestic Violence and Sexual Assault

Abusers and perpetrators often use a survivor's immigration status as means to maintain power and control in relationships.¹ This can happen in instances where the survivor may be undocumented or where a survivor may rely on an abuser to obtain or maintain legal status. Some examples of this include:

¹See generally, Family Violence Prevention Fund for the Robert Wood Johnson Foundation "Intimate Partner Violence in Immigrant and Refugee Communities: Challenges, Promising Practices and Recommendations" (March 2009) Available at: https://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/IPV_Report_March_2009.pdf

- *Threats to have the survivor deported if he or she reaches out for help or calls the police;*
- *Threats to withdraw paperwork to secure immigration status or lying about the status of applications for immigration benefits;*
- *Compelling a survivor to commit acts that would negatively impact his or her immigration status; or*
- *Threats to take away children because a survivor does not have secure immigration status*
- *Withholding important documents from the survivor including immigration benefit applications and identification documents like passports, birth certificates of children, etc.²*

Furthermore, an immigrant survivor may face linguistic, cultural, or other difficulties accessing services or help. For example, an immigrant survivor may not know what resources and services are available due to isolation by the abuser, or else may not feel comfortable reaching out to law enforcement or the courts based upon experiences in his or her home country.³ Survivors may also feel that reaching out for help may result in immigration-related retaliation from the abuser.⁴ Furthermore, language access remains a significant barrier for survivors seeking protection. In a 2013 survey completed by the National Latin@ Network: Casa de Esperanza (the “Network”) and the National Domestic Violence Hotline, 31% of Spanish-speaking survey respondents reported that they encountered language barriers accessing services.⁵ In addition, immigration eligibility restrictions may limit survivors’ access to critical safety net resources.

To address this important problem, the Network and the Asian Pacific Institute on Gender-based Violence (APIGBV) have Language Access Toolkits to help service providers create and implement a proactive language access plan to assist all survivors, regardless of the language they speak.

² For more information, see Futures without Violence. “Immigration Power and Control Wheel” Available at: <http://www.thehotline.org/wp-content/uploads/2016/08/Power-Control-Wheel.pdf>

³ See National Coalition Against Domestic Violence. “Immigrant Victims of Domestic Violence” Available at: http://www.ncdsv.org/images/NCADV_ImmigrantVictimsOfDV.pdf

⁴ Id.

⁵ “Realidades Latinas: A National Survey on the Impact of Immigration and Language Access on Latina Survivors, Casa de Esperanza and the National Domestic Violence Hotline” (2013) pg. 5 Available at: http://www.nationallatinonetwork.org/images/files/NLNRealidades_Latinas_The_Impact_of_Immigration_and_Language_Access_FINAL.pdf

National Latin@ Network Language Access Toolkit:

<http://nationallatinonetwork.org/lep-toolkit-home>.

APIGBV's Interpretation Technical Assistance & Resource Center:

<http://www.api-gbv.org/organizing/interpretation.php>

Another barrier that immigrant survivors may face in accessing certain community services is that some services may have certain identification document requirements to be eligible for their programs. In the above mentioned survey conducted by the Network and the National Domestic Violence Hotline, some respondents noted that they had problems accessing shelters and “Several women reported being denied other critical services (including housing, food assistance and medical help) because they did not have proper identification.”⁶ While there may be some immigration status restrictions for certain services,⁷ there are often services available in the community that have no immigration eligibility requirements, such as domestic violence shelter and advocacy programs, rape crisis centers and other crime victim services. And indeed, some service providers have erroneously placed additional requirements regarding access to their programs by certain categories of immigrant survivors.

The Department of Housing and Urban Development, the Department of Justice and the Department of Health and Human Services issued a joint letter to address the problem of inconsistent and disparate treatment of immigrant survivors.⁸ This letter reminds agencies that there are certain services that are available to everyone regardless of immigration status if the services are necessary to protect life or safety. These programs include but are not limited to:

- *Short term shelter for homelessness or for victims of domestic violence;*
- *Soup kitchens and community food banks;*
- *Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or*
- *Medical and public health services necessary to protect life or safety.*⁹

All survivors, regardless of status, have the right to:

⁶ Id at 7.

⁷ For more information, see information about economic supports for immigrants from the National Immigration Law Center, at <https://www.nilc.org/issues/economic-support/>

⁸ “HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services” (August 5, 2016) <https://www.hudexchange.info/resources/documents/HUD-HHS-DOJ-Letter-Regarding-Immigrant-Access-to-Housing-and-Services.pdf>

⁹ Id.

- *Obtain a protection order against their abusers*
- *Seek legal separation, divorce, custody and financial support.*
- *Report a crime committed against them*¹⁰

We wish to highlight that all immigrants, regardless of status, have these basic rights related to protection and safety. However, in the sections below we will explore how the executive Orders (defined below) create a chilling effect on a survivor's willingness and ability to exercise these rights.

Immigration Benefits: VAWA

In 1994, Congress created the Violence Against Women Act (VAWA), which contained special protections for abused immigrants who were married for a self-petitioning process in order to provide protection for abused spouses and children of U.S. citizens (USCs) or legal permanent residents (LPRs) or abused parents of U.S. citizen adult children. By doing so, Congress recognized that providing immigrant survivors who were experiencing domestic violence with protection against deportation allows them to seek protection without fear of abuser retaliation¹¹

In 2000, Congress created additional protections for victims of human trafficking (T visas) and victims of other serious crimes (U visa) as part of reauthorization, to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking...and other crimes...committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”¹² Some of these benefits are described below.

VAWA Self-Petitions:

A VAWA self-petition is a way for domestic violence survivors who have a certain relationship to a US Citizen or legal permanent resident abuser not to have to remain in an abusive relationship for reasons related to their immigration status. The requirements are:

¹⁰ USCIS. “Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa Fact Sheet” (last updated 1/11/2011) Available at:

<https://www.uscis.gov/news/fact-sheets/information-legal-rights-available-immigrant-victims-domestic-violence-united-states-and-facts-about-immigrating-marriage-based-visa-fact-sheet> This also available as a brochure here:

[https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered Spouse, Children %26 Parents/IMBRA Pamphlet Final 01-07-2011 for Web Posting.pdf](https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse,%20Children%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011%20for%20Web%20Posting.pdf)

¹¹ Section 1502(a)(2) of Public Law 106-386—OCT. 28, 2000

¹² See section 1513(a)(2)(A), Public Law No: 106-386, 114 Stat. 1464.

- *Spouse or child of USC or LPR or parent of adult USC son or daughter;*
- *Suffered battery or extreme cruelty;*
- *Joint residency with the abuser;*
- *Can show good moral character; and*
- *For petitions based on marriage: applicants must show they entered the relationship in good faith*

If a VAWA self-petition is approved, then the applicant will be eligible for work authorization and may apply for legal permanent residence. Depending on the survivor's relationship with the abuser, a VAWA applicant may also have the ability to include other family members as derivatives on the application (e.g. minor children of an abused spouse).

U Visas:

Congress had a dual purpose when it created the U visa: to provide law enforcement with a tool to investigate and prosecute crimes and to provide victims who report them with protection. The requirements for a U visa are:

- *Victim of Qualifying Crime (including domestic violence, sexual assault, stalking, witness tampering, extortion, felonious assault, kidnapping, sexual exploitation, and others)¹³;*
- *Suffered substantial physical or mental abuse as a result of victimization;*
- *Had information about the crime;*
- *Was, is, or will be helpful in the investigation or prosecution of the crime. A signed form from a designated certifying agency attesting to the applicant's helpfulness in the investigation or prosecution is required;*
- *The crime occurred in the US or violated US law; and*
- *Is admissible or eligible for a waiver.*

Benefits: If a U visa is approved, then the applicant will obtain a 4-year visa, which will provide work authorization and the eventual ability to apply for permanent residence. Applicants may also include certain family members as derivative beneficiaries in their applications.

¹³ A full list of qualifying crimes can be found INA 101(a)(15)(u)(iii): Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Female Genital Mutilation, Felonious Assault, Fraud in Foreign Labor Contracting, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trade, Stalking, Torture, Trafficking, Witness Tampering, Unlawful Criminal Restraint, and Other Related Crimes, including any similar activity where the elements of the crimes are substantially similar. (Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crime)

Important Note on U visas: There is an annual cap on number of U visas available during a given year. Currently, the cap is set at 10,000 and applies to principal applicants only. The U.S. Citizenship and Immigration Service (USCIS) has met the cap every year since 2009. However, USCIS continues to process U visa applications even after the cap has been met. If a U visa application is acceptable but no visa is available because of the cap, the case is placed on a waitlist. If a case is on the waitlist, then USCIS will issue a 2-year work permit based on deferred action status, which is renewable until the time a visa becomes available.

Currently, there is a significant backlog of U visa applications. As of May 2017, USCIS is processing initial U visa applications that were filed on June 9, 2014.¹⁴ This means that it may take nearly 3 years for a U visa's applicant to receive an initial review.

T Visas:

Like the U visa, the T visa was created to give law enforcement a tool to investigate and prosecute human trafficking and to provide protection to victims. The requirements for a T visa are:

- *Victim of a severe form of trafficking (including labor and sex trafficking);*
- *Physically present in the U.S. or territories on account of the trafficking;*
- *Complied with reasonable requests for help in the investigation or prosecution of trafficking. Note: In these cases, unlike the U visa, there is no requirement for a signed form from a certifying agency; and*
- *Would suffer extreme hardship if returned to the home country.*

Benefits: If a T visa is approved, then the applicant will obtain a 4-year visa, which will provide work authorization and the eventual ability to apply for permanent residence. T visa applicants may also include certain family members as derivative beneficiaries in their applications.

Work Authorization for Abused Spouses of A, E (iii), G and H visa holders

VAWA 2005 provided for work authorization for abused spouses of certain nonimmigrant visa holders, in particular A, E(iii), G and H visa holders.¹⁵ USCIS finally implemented this protection in 2017. Abused spouses must show that they:

¹⁴ According to USCIS Processing Times website for Vermont Service Center I-918 applications, last updated April 18, 2017. Last accessed May 19, 2017. Available at: <https://egov.uscis.gov/cris/processTimesDisplayInit.do>

¹⁵ See INA Section 106

- *Are or were married to a A, E(iii), G and H visa holder (special protections if there was the death of the principal visa holder, loss of status due to abuse, or a divorce within 2 years before filing);*
- *Entered the U.S. as a derivative spouse;*
- *Were subject to battery or extreme cruelty; and*
- *Currently reside in the U.S.*

Benefits: Survivors may receive work authorization for a limited period of time, which may be renewed in certain instances, but this benefit, by itself, does NOT establish a way to obtain legal permanent residence in the U.S.¹⁶

Resources Related to Immigrant Victims of Crime

KIND, Freedom Network, ASISTA, Tahirih Justice Center: Chart of Immigrant Options for Victims of Crime,
http://www.asistahelp.org/documents/resources/Immigration_Options_for_Victims_of_B13B63AC3B3D2.pdf

DHS Blue Campaign Library has materials related to immigration options for survivors of crime. The entire library is available at <https://www.dhs.gov/blue-campaign/library>, and there are two important resources below:

- *Information for Law Enforcement Re: Immigration Relief for Victims of Crime. <https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>.*
- *DHS Brochure on Immigration Options for Victims of Crime. <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse%2C%20Children%20%26%20Parents/Immigration%20Options%20for%20Victims%20of%20Crimes.pdf> Also available in Spanish, Chinese and Russian.*

NOTE: A qualified attorney or accredited representative with experience working with survivors of violence should determine a survivor's individual eligibility for these forms of relief. Advocates should avoid making any guarantees about eligibility for relief for survivors as there may be individual facts in an applicant's case that would affect his or her application for relief. At the end of this chapter, there is a services directory for referrals of survivors in their immigration cases.

¹⁶ For more information on this benefit, visit USCIS website at <https://www.uscis.gov/i-765v>

Impact of Executive Actions on Survivors of Gender-based Violence

The administration's Executive Orders on immigration have had a profound and specific impact on immigrant survivors of violence. This section will: explore which provisions of the Executive Orders most directly impact immigrant survivors of gender-based violence in the United States; discuss the impact of these provisions; identify special protections for survivors related to immigration enforcement actions; and provide some additional resources to assist survivors in the current climate.

Executive Actions

On January 25 and 27, the Administration released three immigration-related Executive Orders related to immigration enforcement on the border; immigration enforcement in the interior of the U.S., and the other related to the travel and refugee ban. All three of these Executive Orders impact survivors of gender-based violence.¹⁷

Travel and Refugee Ban

This Executive Order of January 27th related to a travel ban on visa holders from seven Muslim-majority countries and a halt in processing refugee applications. This order was revised in March 2017 to bar travel from six Muslim Majority nations seeking new visas and also halted the US. Refugee admission program.¹⁸ While this Order has been stayed by pending litigation in the Ninth Circuit¹⁹, this Order, if ever implemented, would certainly impact survivors of gender-based violence seeking protection in the United States as refugees, leaving them without the possibility of entry and open to further persecution.²⁰

Exterior Enforcement Memo

This Executive Order of January 25th relates to the creation of a border wall as well as a massive increase in detention facilities and immigration officers at the Southern border of the United States. It

¹⁷ Tahirih Justice Center. "Summary of January 25 and January 27 Executive Actions." (Last Accessed May 19, 2017) Available at: <http://www.tahirih.org/pubs/summary-of-january-25-and-january-27-2017-executive-actions/>

¹⁸ For a comparison of what changes were made from the initial to the revised travel and refugee ban memo, see Kim Soffen and Darla Cameron, "What Trump changed in the new travel ban" Washington Post (March 6, 2017). Available at: <https://www.washingtonpost.com/graphics/politics/trump-compare-travel-ban/>

¹⁹ Associated Press, "Hawaii Judge Extends Order Blocking Trump's Travel Ban" New York Times (March 29, 2017) Available at: <https://www.nytimes.com/2017/03/29/us/politics/travel-ban-trump-judge-hawaii.html>

²⁰ See note 11 at page 5.

also calls for an expansion of the use of expedited removal, and encourages the use of 287(g) programs, which promote the cooperation of state and local law enforcement authorities and immigration enforcement personnel.²¹ This Order would have a significant impact on women and children who are fleeing domestic and sexual violence in their home countries, especially in the Northern Triangle countries of Guatemala, Honduras and El Salvador, and seeking protection within the United States. Expanding the use of detention facilities re-traumatizes survivors and limits their ability to find effective representation and fully present their cases.²²

Interior Enforcement Memo

This Executive Order of January 25 contains new enforcement priorities for removal, encourages the use of 287(g) programs which promotes the cooperation of state and local law enforcement authorities and immigration enforcement personnel, calls for consequences for places designated as “Sanctuary” jurisdictions, and the hiring of new ICE agents.²³ This is the Order that most directly impacts an immigrant survivor of gender-based violence in the United States, as discussed below.

Expansion of Immigration Enforcement Priorities

The broad enforcement priorities presented in the Interior Enforcement Memo may result in immigrant survivors of gender-based violence being detained and/or removed before they have a chance to apply for immigration benefits for which they may be eligible. This includes survivors who may have a criminal record or immigration violations connected to the violence they have suffered.

Threats to Sanctuary jurisdictions and the promotion of 287(g) programs create a chilling effect on survivors reaching out for help.

If survivors feel that calling the police or going to the courthouse for help will result in their deportation or being separated from their families, this will only further drive them into the shadows. There have been reports out of Los Angeles, Houston, and Camden County

²¹ American Immigration Council. “Summary of Executive Order “Border Security and Immigration Enforcement Improvements” February 27, 2017. Available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/summary_of_executive_order_border_security_and_immigration_enforcement_improvements.pdf

²² See note 11 at page 2.

²³ American Immigration Council. “Summary of Executive Order Enhancing Public Safety in the Interior of the United States.” (May 19, 2017). Available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/summary_of_executive_order_enhancing_public_safety_in_the_interior_of_the_united_states.pdf

New Jersey that reports of crimes from Latino populations have decreased.²⁴

Chuck Wexler, Executive Director of the Police Executive Research Forum recently stated, “The reason police chiefs are so concerned is that an **unreported domestic violence case can become a reported homicide if police are not alerted**,” Wexler said. “It’s only a few months since the national perspective has changed, but I think most police chiefs would agree that for those who have large immigrant communities, this will definitely make them reticent about interacting with the police if they’re involved with witnessing a crime or are a victim.”²⁵

On May 17, 2017, New York Attorney General Eric Schneiderman in collaboration with the consultation with the Attorneys General of California, Oregon, Rhode Island, Washington, and the District of Columbia, released a report entitled “Setting the Record Straight on Local Involvement in Federal Civil Immigration Enforcement: The Facts and The Laws” which seeks to address the Administration’s misconceptions about “Sanctuary” policies²⁶ This report illustrates the damage that can be done in the community if there is entanglement between state and local law enforcement agencies (LEAs) and immigration. Specifically, it states:

“Many experienced sheriffs and police officers have found that LEA involvement with federal immigration enforcement drives immigrants in their communities behind closed doors, thereby decreasing the likelihood that crimes will be reported, trials will go forward, and criminals will be prosecuted. Put simply, many LEAs have a sound basis for concluding that their communities are less safe when an immigrant who witnesses a shooting does not call the police, or does not come to court to testify against the accused, for fear that he or she will be detained.”²⁷

Weakening Existing Protections:

The T and U visa programs in particular offer important mechanisms for local law enforcement to help fight crimes and hold perpetrators accountable. Threats to Sanctuary jurisdictions and the

²⁴Lindsey Bever. “Hispanics ‘are going further into the shadows’ amid chilling immigration debate, police say” Washington Post (May 12, 2017). Available at: https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say/?utm_term=.3ac597f40dc1

²⁵Id.

²⁶Report available at: https://ag.ny.gov/sites/default/files/setting_the_record_straight.pdf

²⁷Id. At 14.

encouragement of increased collaboration between state and local police and immigration enforcement diminishes these tools by making immigrant survivors less likely to reach out for help.

Courthouse Enforcement

While not specifically mentioned in the Administration's immigration-related Executive Orders, the Department of Homeland Security has stated that it will continue to consider enforcement actions at courthouses.²⁸ On February 9, 2017, a survivor of domestic violence was arrested inside a courthouse after receiving a protection order against her abuser.²⁹ This story received nationwide attention and raised serious concerns for survivors and their advocates regarding whether going to the courthouse for help would be a risk for survivors who are undocumented. For example, shortly after the report of that arrest, the Denver City Attorney reported that their office had to dismiss four separate domestic violence prosecutions because the undocumented *victims were afraid to continue with the case for fear of deportation*.³⁰ Other prosecutors nationwide have echoed this concern. For example, in April 2017, twelve prosecutors from California wrote a letter to DHS Secretary Kelly and Attorney General Sessions stating that courthouse arrests “deter residents concerned about their immigration status from appearing in court — including as crime victims and witnesses — jeopardizing effective prosecution of criminals.”³¹

²⁸ DHS Secretary John F Kelly and Attorney General Jefferson B. Sessions. “Letter to the Honorable Tani Cantil-Sakauye” (March 29, 2017). Available at:

<http://www.politico.com/f/?id=0000015b-23c8-d874-addf-33e83a8c0001>

²⁹ Katie Mettler. “This is Really Unprecedented: ICE detains Woman seeking Domestic Abuse Protection at Texas Courthouse” Washington Post February 16, 2017 Available at: https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm_term=.2bc2226df9a8

³⁰ Mark Joseph Stern “Bad for Undocumented Immigrants, a Gift to Domestic Abusers” Slate March 8, 2017) Available at: (http://www.slate.com/articles/news_and_politics/jurisprudence/2017/03/denver_city_attorney_kristin_bronson_on_the_trump_immigration_crackdown.html

³¹ CA Prosecutors Letter to DHS Secretary Kelly and Attorney General Sessions available here: <http://freepdfhosting.com/b3da7bbbf5.pdf> See Also, Devlin Barrett, “DHS: Immigration agents may arrest crime victims, witnesses at courthouses” Washington Post. April 4, 2017. Available at: https://www.washingtonpost.com/world/national-security/dhs-immigrationagents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html

Impact on Survivors

On May 18, 2017 a coalition of organizations released the results of a survey of domestic and sexual assault survivor advocates regarding their work with immigrant survivors.³²

- *The survey documents that 78 percent of advocates reported that immigrant survivors expressed concerns about contacting police.*
- *Similarly, three in four service providers responding to the survey reported that immigrant survivors have concerns about going to court for a matter related to the abuser.*
- *Finally, 43 percent of advocates worked with immigrant survivors who dropped civil or criminal cases because they were fearful of continuing with their cases.*³³

Available Rights and Protections Related to Survivors and Enforcement

VAWA Confidentiality

The reauthorization of VAWA in 2005 created special protections regarding a survivor's information as well as special provisions related to immigration enforcement actions at places where a survivor is likely to go to seek help.³⁴ In particular:

- a. *Prohibition on disclosure to a third-party of any information relating to a survivor who is a VAWA self-petitioner, U visa or T visa applicant, with certain limited exceptions.*³⁵
- b. *Employees of DHS, the Department of Justice, and Department of State are prohibited from using information provided **solely** from an abusive spouse or parent (including any family members living in the same household as the survivor) as the basis for make an adverse determination of admissibility or deportability, unless the survivor has been convicted of certain crimes.*³⁶ *This provision also applies to T and U visa applicants.*

³² The survey was sponsored by seven national organizations including Asian Pacific Institute on Gender-Based Violence (APIGBV), ASISTA, Casa de Esperanza: National Latin@ Network, National Alliance to End Sexual Violence (NAESV), National Domestic Violence Hotline (NDVH), National Network to End Domestic Violence (NNEDV), and Tahirih Justice Center. Survey results available at: <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>

³³ Id.

³⁴ Violence Against Women Act (VAWA) and Department of Justice Reauthorization Act of 2005, Pub L. 109–162, 119 Stat. 2960 (2006)

³⁵ See 8 U.S.C. § 1367 (a)(2) & (b).

³⁶ See 8 U.S.C. § 1367 (a)(1). The criminal activities that would preclude this from applying are found at 237(a)(2) of the Immigration and Nationality Act; 8 USC 1227(a)(2).

- c. *DHS must certify that it has complied with the VAWA confidentiality provisions when an enforcement action of a survivor occurred at domestic violence shelter, family justice center, rape crisis center, supervised visitation center, victim services provider or a community based organization or at a courthouse if a survivor is there for a matter related to the abuse he or she has suffered.*³⁷

Violations of these VAWA Confidentiality provisions carry certain penalties if they are willfully violated, including disciplinary action and a civil penalty of \$5,000 for each violation.³⁸ If survivors believe there was a violation of these protections, they may file a report with the DHS Office of Civil Rights and Civil Liberties (OCRCL) who will begin an investigation into the matter. For more information, see OCRCL website here:

<https://www.dhs.gov/violence-against-women-act>. If you suspect a violation of VAWA confidentiality provisions, please also contact ASISTA at questions@asistahelp.org so that they can help monitor trends where this is occurring.

For more information regarding DHS Guidance on VAWA Confidentiality provisions, see ASISTA's website at www.asistahelp.org

ICE Memoranda Related to Survivors

ICE had created special processes for victims and witnesses with regard to immigration and enforcement actions. Most notably, an ICE Memo from June 17, 2011 called for prosecutorial discretion to be exercised when ICE encounters victims of domestic violence, sexual assault, or human trafficking.³⁹ Despite language to the contrary in the Executive Orders and subsequent implementing guidance,⁴⁰ ICE has indicated that **this memo is still operational**.⁴¹

³⁷ See 8 U.S.C. § 1229(e).

³⁸ See 8 USC 1367(c)

³⁹ Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs," 10076.1 (June 17, 2011). Available at: <https://www.ice.gov/doclib/securecommunities/pdf/domestic-violence.pdf>

⁴⁰ DHS Secretary John F. Kelly. "Enforcement of the Immigration Laws to Serve the National Interest" (February 20, 2017). Available at: https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf

⁴¹ See Tyler Kingkade, "Domestic Abuse Victims Aren't Coming Forward Because They're Scared Of Being Deported" BuzzFeed. March 16, 2017. Available at: https://www.buzzfeed.com/tylerkingkade/under-trump-domestic-abuse-victims-are-more-afraid-ofbeing?utm_term=.yuR99PpQ0M-.kjPnnMzP7y (reporting that an ICE official "...said that the 2011 directive that advises immigration officers to use discretion when

Despite this assertion, advocates are reporting that this memo is not receiving adequate consideration by certain ICE District Offices. In addition, ICE has not yet issued a formal announcement to the field and to stakeholders regarding its effectiveness.⁴² Such an announcement would be instructive to clarify how ICE should consider a person's status as a survivor of domestic violence, sexual assault or human trafficking in their enforcement and detention determinations.

Furthermore, there are special memoranda with regard to removal actions and stays of removal for applicants with pending applications and those who are applying for U visa status.

These include:

- *ICE Parental Interest Directive (discussing how prosecutorial discretion should be exercised for primary caretakers of U.S. citizen or LPR children)*
- *September 24 2009 ICE Guidance to Field Office Directors re: Adjudicating Stays of Removal for U Nonimmigrant Status (providing guidance on the treatment of stay requests for U visa applicants)*
- *September 25 2009: ICE Guidance to OPLA on U visa Applicants in Removal Proceedings or with Final Orders of Removal: (providing guidance to ICE for U visa applicants in removal proceedings or with final removal orders)*
- *August 20, 2010: ICE Memo on Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions (providing guidance to ICE to request that USCIS expedite cases that are pending).*

dealing with abuse victims remains in effect.) See also Nora Caplan-Brickler. "I Wish I Never Called the Police" Slate. March 19, 2017. Available at: http://www.slate.com/articles/news_and_politics/cover_story/2017/03/u_visas_gave_a_safe_path_to_citizenship_to_victims_of_abuse_under_trump.html (reporting that "ICE spokeswoman Danielle Bennett told me that the 2011 policy remains in effect and that ICE 'will take into consideration if an individual is the immediate victim or witness to a crime, in determining whether to take enforcement action.'")

⁴²National Taskforce to End Domestic and Sexual Violence. "Letter to the Secretary of Department of Homeland Security to Protect Access to Safety and Justice for Immigrant Survivors of Gender-Based Violence" (April 17, 2017). Available at: <http://www.4vawa.org/ntf-action-alerts-and-news/2017/4/7/letter-to-the-secretary-of-department-of-homeland-security-to-protect-access-to-safety-and-justice-for-immigrant-survivors-of-gender-based-violence>

ASISTA and APIGBV would be very interested in knowing survivors' experiences when encountering ICE. If you have a story on the effectiveness of these memos, please fill out the survey here:

http://bit.ly/ASISTA_ICESurvey or contact questions@asistahelp.org

Enhancements to Safety Planning and Systems Advocacy

Advocates often work with survivors of domestic violence and sexual assault to create a safety plan to remain safe if they are experiencing an abusive relationship.⁴³ Safety planning can be done in several different areas, including if there are children in the home, if a survivor still lives with the abuser, or if a survivor is planning on leaving.⁴⁴ If a survivor is undocumented or depends on an abuser for immigration status, there should be additional considerations with regard to safety planning given potential ICE enforcement actions.

As survivors should do when safety planning for abusers, immigrant survivors should also identify when they could encounter ICE and develop a plan on how they will respond in such situations. For instance, in anticipation of any possible encounters with ICE, they should carry with them their attorney's business card or a copy of a letter from an immigration legal services provider, such as the "No ICE letter" on the special Survivor Safety section of ASISTA's website (see below for link). Similarly, the ILRC Family Preparedness Plan and CLINIC's Manual on Knowing Your Rights with Law Enforcement will help identify other issues survivors should resolve in anticipation of encounters with ICE (see links below).

In addition, it is important that service providers for survivors of domestic and sexual assault are consulted about immigration issues in your community to develop and share resources, for cross-training around confidentiality and safety planning, and for partnering on advocacy strategies.

⁴³ National Domestic Violence Hotline. "What is a Safety Plan?" Available at: <http://www.thehotline.org/help/path-to-safety/>

⁴⁴ National Domestic Violence Hotline. "Types of Safety Planning" Available at: <http://www.thehotline.org/help/path-to-safety/#types>

Resources for Survivors

National Sexual Assault Hotline: 1.800.656.HOPE

Women’s Law: National Network to End Domestic Violence

www.womenslaw.org

Directory of State and Local Programs:

http://www.womenslaw.org/gethelp_type.php?type_name=State%20and%20Local%20Programs

National Human Trafficking Hotline:

Website: <https://humantraffickinghotline.org/>

Phone: [1-888-373-7888](tel:1-888-373-7888)

Immi (online resource developed by Immigration Advocates Network (IAN) and Probono Net): <https://www.immi.org>

Women Step Forward (a project of We Belong Together, National Domestic Worker Alliance & IAN):

www.womenstepforward.org and www.mujereshaciadelante.org

Immigration Advocacy Network Legal Services Directory:

<https://www.immigrationadvocates.org/nonprofit/legaldirectory/>

Immigrant Defense Project: www.immdefense.org

VAWnet (NRCDV):

<http://vawnet.org/sc/immigrant-women-and-domestic-violence>

<http://vawnet.org/sc/immigrant-women-and-sexual-violence>

ASISTA page on Survivors at Risk of Removal

http://www.asistahelp.org/en/access_the_clearinghouse/working_with_survivors_at_risk_of_removal/

Asian Pacific Institute on Gender-based Violence: www.api-gbv.org/

IRLC Family Preparedness Plan:

<https://www.ilrc.org/family-preparedness-plan>.

Available In Spanish here:

<https://www.ilrc.org/plan-de-preparaci%C3%B3n-familiar>

CLINIC: Know Your Rights: A Guide to Your Rights When Interacting with Law Enforcement (Available in Spanish, Amharic, and Chinese).

<https://cliniclegal.org/resources/know-your-rights-law-enforcement>

6. MANAGING, ACCESSING AND CLOSING A BANK ACCOUNT

There are many ways to keep your hard-earned money if you are deported. There is no need to withdraw your full account and keep it at home or carry it with you. You may lose your money this way or it may be stolen. You don't have to lose your money because you are being deported. Call your bank and make sure you know all of your options before making decisions. This section provides suggestions to address the following issues:

**◎◎ Keeping Your Account Open ◎◎ Managing Your Account, Yourself ◎◎
 Creating a Joint Bank Account ◎◎ Granting a Financial or Limited Power
 of Attorney ◎◎ Closing Your Bank Account ◎◎ Safety Deposit Boxes ◎◎**

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Keeping Your Account Open

You may want to keep your account open if you have ongoing financial obligations in the U.S. such as a mortgage, children or family to care for, or a pension.

If you want to keep your account open you have a few options in how to manage the account from your home country. You can:

- *Manage the account yourself;*
- *Create a joint bank account; or*
- *Grant a financial or limited power of attorney so that the appointed person can manage the account on your behalf. (Note: A financial or limited power of attorney specifies the actions another person may take on your behalf. It differs from a custodial power of attorney that permits another*

person to care for your child; or a general power of attorney that allows another individual to handle all your personal business.)

Managing Your Account, Yourself

When you manage your account the account stays in your complete control. To make this possible, banks often have local branches or ATMs abroad. You also may be able to manage your account via telephone or online banking. Make sure to ask your bank what is the best way to manage your account abroad.

Be careful of:

- *Situations where you would have to come into a bank;*
- *The account becoming inactive;*
- *Fees that can accrue when money exchanges happen from abroad. Foreign transaction fees can deplete an account; and*
- *Banks possibly flagging your account for fraud or money laundering suspicion.*

Creating a Joint Bank Account

Adding someone to your account will give them the power to manage the account in full. They will also legally own everything in the account. For that reason, you should choose a person who is very close to you and whom you trust. To open a joint account, you must go with the person you choose to the bank.

Be aware that:

- *The other person has full access to your money;*
- *The account could be taken by the other person's creditors; and*
- *If you die, the other person may get all of the money.*

Granting a Financial or Limited Power of Attorney

You can choose a person you trust and give them a financial or limited power of attorney. This will allow the appointed person to manage the account on your behalf. You can learn more in the Power of Attorney section (Chapter 10).

Some banks do not allow for powers of attorney. Check with your bank.

Closing Your Bank Account

You may want to close your account if you don't have any financial obligations in the U.S. and you need easy access to the money in your home country.

To close your account, find out the procedures for your bank. Make sure all of your checks and automatic payments have cleared before closing the account. There may be special procedures if you have a joint account. If you are closing your account from abroad, you will have to write a letter with specific information to your local branch.

To get your money you will have to choose among a check or transfer or having your money loaded onto a pre-paid card that you can carry which may be safer than cash. If you choose a check, you will have to carry the check to your home country. When you are there you can deposit it in your home country account, but it may take 40-60 days to clear. For a bank draft and wire transfer you will already need an account in the home country.

Safety Deposit Boxes

If you want to keep your safety deposit box open you will have to add another person to the account as a joint renter, or choose a deputy who can access the safety deposit box. Some banks will not allow you to use a general power of attorney for safety deposit boxes. If you want to close your box make sure to do so before leaving for your home country.

CHECKLIST: MANAGING, ACCESSING AND CLOSING A BANK ACCOUNT

Decide whether to close your bank account(s) or leave them open.

- If you want to keep your bank account open**, decide whether it is best to manage your account from abroad or if it would be easier open a joint account with someone you trust. You may also consider giving someone you trust a financial or limited power of attorney to manage your account on your behalf.

 - *If you want to manage your bank account yourself, find out if you can access your account abroad either through local branches, ATMs, telephone or Internet. Make sure you also ask what fees there may be, how to avoid being flagged for fraud, and how to avoid letting the account become inactive.*
 - *If you are going to open a joint account pick someone you trust and go to the bank together and add that person to your account.*
 - *If you are going to grant a financial or limited power of attorney, ask the bank if it has special requirements for accepting a power of attorney.*

- If you want to close your bank account**, contact the bank to find out the bank's procedures for closing an account. If you are closing your account from abroad, you will most likely have to send a signed letter with specific information.

 - *Before closing your account it is best to open your new one if you can.*
 - *Make sure all checks and automatic payments have cleared the account.*
 - *Transfer any recurring payments to your new account if you have one.*
 - *Decide how you want the remaining balance in your bank account transferred to you. Most banks allow either check, bank draft or wire transfer to your home country. You can appoint a financial or limited power of attorney to help with this process.*

- If you rent a safety deposit box** at a bank and want to keep it open, consider either:

 - *Adding another person to the account as a joint renter; or*
 - *Appointing a deputy who can access the safety deposit box. Some banks will not recognize a power of attorney because of the confidential nature of safety deposit boxes. A power of attorney should specifically grant the right to access a safety deposit box (see prior page).*

7. CREDIT CARDS, PREPAID AND DEBIT CARDS

In the face of deportation, an immigrant can take steps to manage credit cards, prepaid cards, and debit cards. This section addresses these topics:

●● What is a Credit Card? ●● What Will Happen to Your Credit Card After You Leave the Country? ●● What Will Happen if You Try to Use Your Credit Card Outside the U.S.? ●● What is Credit Card Debt? ●● What Happens to Your Credit Card Debt After You Leave the Country? ●● What Should You Do to Pay Your Credit Card Debt? ●● What Happens if You Don't Pay Your Credit Card Debt? ●● What Happens if Your Credit Card Debt is Sold to a Debt Collector? ●● What is a Prepaid Card? ●● Can You Use Your Prepaid Card Outside the U.S.? ●● What Should You Do with Your Prepaid Card Before Leaving the Country? ●● What Should You Do if Your Prepaid Card is Stolen or Confiscated? ●● What is a Debit Card? ●● Can You Use Your Debit Card Outside the U.S.? ●● What Should You Do with Your Debit Card Before Leaving the Country? ●● What Should You Do if Your Debit Card is Stolen or Confiscated? ●●

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

First Steps: Gather Important Information

Before you begin, take a few moments to gather key documents and record important information about your cards. Keep this on your person or retain it in secure electronic file. Write down:

- *Brand name on card;*
- *Name of bank that works with the card company;*
- *Account number;*
- *Security code;*
- *Date of expiration; and*
- *Contact information for both the bank and card company*

Credit Cards

What is a Credit Card?

A credit card gives the credit card holder access to a revolving line of credit. Buying something with a credit card or using a credit card to get cash is borrowing money against the line of credit. The credit card holder can borrow an amount up to the credit card limit. To keep the line of credit open, the credit card holder must make at least minimum monthly payments against any accrued debt. These payments typically include relatively large interest payments and possibly other service charges as well.

What Will Happen to Your Credit Card After You Leave the Country?

You should check with your credit card company.

What Will Happen if You Try to Use Your Credit Card Outside the U.S.?

You may be able to use your credit card outside the U.S. In some cases, the credit card company may charge a foreign transaction fee to use a credit card outside the U.S. These fees may mount up. Be aware of the exchange rate used by the credit card company in processing the transaction. Check with your credit card company for details.

What is Credit Card Debt?

Credit card debt is the total amount borrowed against the line of credit plus any accrued interest and other fees. In some cases, the accrued interest and fees may exceed the line of credit.

What Happens to Your Credit Card Debt After You Leave the Country?

Credit card debt exists regardless of where you live. The obligation to repay the debt does not disappear when a person leaves the country. If you miss a credit card payment, you will likely incur fees and penalties on your debt. Once the debt reaches a certain level, the credit card company may cancel the credit card and sell the debt to a debt collector. Debt collectors have a limited time during which they can sue debtors for nonpayment of credit card bills. Such time limits differ by state and are set by each state's statute of limitations.

What Should You Do to Pay Your Credit Card Debt?

For Supervised Immigrants

Immigrants who have some time before they must leave the United States should (1) contact each of their credit card companies, (2) tell each company about their situation, and (3) provide a forwarding

address in their home country in a letter sent with a certified return receipt re-quested. This reduces the chance that the immigrant will miss a credit card payment.

For Detained Immigrants

Detained Immigrants may not have enough time during the transition from one location to another to inform their credit card companies that they are leaving. This increases the risk that the immigrant will miss payments which will likely result in fees and penalties on his or her debt. An immigrant who is subject to immediate removal from the United States should keep a record of his or her credit card company's contact numbers and addresses on their person or in a readily accessible place (e.g., in a secure email account or with a close friend or relative). Upon arriving in his or her home country, the immigrant should contact the credit card company and, if necessary, send in any payments that are owed.

What Happens if You Don't Pay Your Credit Card Debt?

If you don't pay your credit card debt, the credit card company may sell the debt to a debt collector for collection. Failure to pay credit card debt may also hurt your credit rating in the United States. Your credit rating probably won't affect an immigrant in his or her home country, but may complicate the immigrant's finances if the immigrant ever returns to the United States.

What Happens if Your Credit Card Debt is Sold to a Debt Collector?

The debt collector may contact you to arrange payment of the debt. Be aware of your rights and of acceptable debt collection practices. See, e.g., <https://www.usa.gov/debt#item-211305> for more information. International debt collection may be impractical for many debts.

Prepaid Cards

What is a Prepaid Card?

A prepaid card is like a credit card that the cardholder pays in advance. The cardholder loads money onto the prepaid card, then spends that money to buy things or withdraw cash. These cards usually require a PIN number. In some cases, money can be loaded onto prepaid cards directly from a paycheck or bank account. The money can be recovered if the prepaid card is lost or stolen. Unlike credit cards, there are no interest payments, but there may be hidden fees associated with setting up, loading, and using prepaid cards. These fees may mount up.

Can You Use Your Prepaid Card Outside the U.S.?

Some prepaid cards can be used outside the U.S. Indeed, some prepaid cards are intended to be used outside the U.S. (e.g., by American tourists). Check with the prepaid card company for information on whether or not your prepaid card can be used outside the U.S. and, if so, what fees and limitations apply.

What Should You Do with Your Prepaid Card Before Leaving the Country?

Check to see whether or not your prepaid card can be used outside the U.S. and, if so, whether or not it can be brought into your destination country. If not, consider alternatives such as spending or withdrawing the money on the prepaid card. You may also want to stop any recurring transfers to or from the prepaid card.

What Should You Do if Your Prepaid Card Is Stolen Or Confiscated?

If the prepaid card is stolen or confiscated, contact the prepaid card company to recover the funds on the prepaid cards.

Debit Cards

What is a Debit Card?

A debit card is like a credit card that is linked to a bank account. The cardholder puts money in the bank account, then spends that money to buy things or withdraw cash. In some cases, the cardholder can withdraw more than the amount in the bank account. These excess withdrawals may be subject to overdraft fees. These fees may mount up.

Can You Use Your Debit Card Outside the U.S.?

Some debit cards can be used outside the U.S. You should check with your bank for information on whether or not your debit card can be used outside the U.S. and, if so, what fees and limitations apply.

What Should You Do with Your Debit Card Before Leaving the Country?

You should decide whether or not to close the bank account linked to the debit card. If you close the bank account, then the debit card will no longer work and should be discarded. If you keep the bank account, then you should check with your bank for information on whether or not your debit card can be used outside the U.S. and, if so, what fees and limitations apply.

What Should You Do if Your Debit Card is Stolen or Confiscated?

If the debit card is stolen or confiscated, report the theft or loss to your bank as soon as possible.

CHECKLIST: CREDIT CARDS, PREPAID AND DEBIT CARDS

- List of credit cards:
 - *Credit card company phone numbers and addresses*
 - *Call credit card companies about departure*

- List of prepaid cards:
 - *Prepaid card company phone numbers and addresses*
 - *Call prepaid card companies about departure*

- List of debit cards:
 - *Bank phone numbers and addresses*
 - *Call bank(s) about departure*

Card nickname <i>(ie, Visa, Mastercard, Bank card)</i>	Last four digits on account	Type <i>(credit, prepaid, debit)</i>	Customer service phone number	Notes

8. MANAGING OUTSTANDING SHORT-TERM SERVICE CONTRACTS AND RELATED BILLS

This chapter is to help you get your short-term service contracts and bills in order and to decide whether and how to terminate these contracts.

☉☉ **Examples of Short-Term Service Contracts** ☉☉ **Initial Action Items** ☉☉ **Terminating a Contract** ☉☉ **Checklist for Short-Term Contracts and Related Bills** ☉☉

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Examples of Short-Term Service Contracts

There are many different kinds of short-term service contracts. These include the items listed below. You may also have others.

- *Water*
- *Electric*
- *Gas*
- *Cable/internet*
- *Phone, cell phone*
- *Trash/recycling pickup*
- *Other delivery services*
(newspaper, food, other)

Initial Action Items

In order to manage your contracts, the first thing you should do is to have all of the information about these contracts in one place. See suggested steps below.

Make a List of Your Contracts

- *Include the account number, name on account and contact information of the provider.*

- *Include the amount owing for each contract (estimate or get actual information). Note if the contract is month-to-month or for a set number of years.*
- *Put the list and a copy of each contract in a binder or folder (a hard copy and an electronic copy if possible).*
- *Include a copy of the last bill and last check or payment made for each contract.*

Check to See if the Provider Offers Services in the Country Where You Are Going

This will probably not apply but it might for some cell phone/wireless services. If “yes,” you can call the provider and ask about transferring the contract.

Check to See if the Contract Has a Termination Section

This is often found in “Terms of Service” but may be somewhere else. If yes, see if there is an early termination fee and specific information on how to terminate. Write the information on your list (or save a copy of the termination section). If there is no termination section, you can call the provider and ask them how to terminate.

Check to See if You Can Put Another Person on the Account Who Can Take Action

If “yes,” talk to the person you want to do this. Give them a copy of the information above and a copy of the contract. Follow the instructions on the contract to add another person. If there are no instructions, you can call the provider and ask them how to do this. Evaluate the potential liability of another person.

Share Your List

Send a copy of the above information to a trusted person in the United States who may be able to help you with this if you are not able to do so before you leave the country.

Points to Consider

If you don’t understand the contract, ask someone to help you read the contract or call the provider. Also, many contracts are available in Spanish.

Terminating a Contract

Most contracts will include instructions about terminating the service. This is often found in “Terms of Service.” If you cannot find the termination section, you can call the provider and ask them how to do this.

Each contract is different. Sometimes you have to appear in person or call customer service. Sometimes you can terminate online. Sometimes there is a termination fee. You must check each contract to see what steps are needed. You will always need your account information. You may be entitled to a refund of a deposit.

Since there may not be time to do everything, you should call each provider to see if you can name another person who can help manage your account. If “yes,” try to do so right away.

If you are not able to add another person to manage the account and there is insufficient time, you should contact the provider and give your new contact information.

Two Examples of Termination Provisions

- **PSEG (a New Jersey electric and gas company)** allows you to terminate service online by logging into your account. You need the date of termination and the mailing address where you wish to receive your final bill. They ask for two business days’ notice before termination.
- **Verizon (cell phones)** requires that termination be done in person at a Verizon store or by calling customer service. You are not able to cancel service online. Early termination fees are charged for each line terminated (these fees reduce the closer you get to the end of the term). You may be able to take, or “port”, your wireless phone number to another carrier but you will still be responsible for termination fees. You may be able to move service to someone else who assumes payment.

What Happens if You Don’t Pay the Bills or Terminate the Contract?

Each contract has its own terms but generally you will continue to be responsible for the contract and unpaid amounts. There may also be additional fees and charges for unpaid bills. Depending on the state and provider, sometimes the provider can suspend service (but you may still be responsible to pay). Many of these contracts automatically renew unless terminated. Some switch to month-to-month arrangements.

CHECKLIST: MANAGING SHORT-TERM CONTRACTS AND RELATED BILLS

- Create a file or binder (physical or electronic) to store copies of contracts and notes as you work through the following:
 - *List of contracts*
 - *Account number, name on account and contact information of the provider*
 - *Amount owed/balance remaining for each contract. Month-to-month or term? This may be on the most recent statement.*
 - *Copy of contracts*
 - *Copy of last bill and check for each contract*

- Review the contract and/or speak with a customer service representative to find answers to the following questions:
 - *Does provider permit another person to manage account? If yes, did you add someone? Who?*
 - *Does provider offer services in next country?*
 - *Do you know the fees for early termination?*
 - *What are the steps needed to terminate?*
 - *Did you send the information to a trusted person in the U.S.? Who?*
 - *Can you transfer your phone number? How?*

9. PAYDAY AND OTHER SHORT-TERM LOANS

Payday and other short-term debts, such as car title loans, do not go away. However, you can manage debt by prioritizing which debts are paid first, discontinuing automatic repayments and potentially working out a payment arrangement with the lender that the immigrant can afford. This section will address these topics:

●● What Happens to Your Loan Debt After You Leave the Country? ●● How to Prioritize the Repayment of Debt ●● Working With the Lender to Extend Payments for the Loan and/or Negotiate the Repayment Amount ●● Protecting Accounts from Automatic Withdrawals or Garnishment ●● It May Not Be Legal for the Debt to Be Collected ●●

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What Happens to Your Loan Debt After You Leave the Country?

The debt for a payday loan (sometimes also called cash advance loans) and other short-term loans exists regardless of where you live. The obligation to repay the debt does not disappear when you leave the country. If you miss a loan payment, you will likely incur fees and penalties on the debt. A lender may or may not try to collect this debt depending on the existence of collateral or co-signors and your location.

Loans Will Continue to Accrue Interest and Fees

The effective annual percentage rates (APR) on payday and other short-term loans is far greater than most other forms of debt, such as credit card debt. Payday loans often have an effective APR of 400% to 600% or higher. By comparison, APRs on credit cards can range from about 12% to 30%. Some states have rules related to how much interest a payday lender can charge; however, other states, such as Texas, allow payday lenders to charge unlimited interest and fees for nonpayment.

The Lender May Seek to Recover the Unpaid Debt

Debt collectors have a limited time during which they can sue debtors for nonpayment (see below under “The debt may no longer be legal”). If a lender sues the immigrant in a United States court and wins a favorable judgment against him or her (which can happen even without the immigrant present, in which case it is called a “default judgment”), it will only be able to enforce the judgment in a country outside of the United States if that country has an agreement with the United States that U.S. judgments are enforceable in that country.

How to Prioritize the Repayment of Debt

The National Consumer Law Center advises debtors to prioritize their debts and decide which bills they must pay first, usually household expenses (home, apartment, food and medicine), cell phone and other utilities, car and appliances such as refrigerator or washing machine.

These are some of the key steps they recommend:

- *Always pay family necessities and housing-related bills;*
- *Pay the minimum required to keep essential utility services;*
- *Pay car loans if a car is essential for an immigrant’s work and family;⁴⁵*
- *Pay child support debts and income taxes;*
- *Do not move a debt up in priority because the creditor threatens to sue you or continually calls your home; and*
- *Some debts may not be legally binding. See below under “It may not be legal for the debt to be collected.”*

Working with the Lender to Extend Payments for the Loan and/or Negotiate the Repayment Amount

You may be able to make an alternative payment arrangement directly with the lender, such as an extended payment period or change in repayment amount. Any new terms agreed to with the lender should be in writing and you or your representative should keep track of all communications with the lender, including notes about interactions in person or over the phone. Keep any emails or letters received from the lender and the lender’s contact information. You may also be able to get more time to repay a payday loan

⁴⁵ In the case of a car title loan which the immigrant cannot pay off, he or she can either find someone willing to buy the car and use that money to pay off the loan, or just turn the car in to the lender, especially if the debt is more than the value of the vehicle.

without being charged extra fees through an Extended Payment Plan (EPP), if permitted by state law.⁴⁶

Protecting Accounts from Automatic Withdrawals or Garnishment

Payday Loans Tied to Bank Accounts

You can withdraw your permission to the lender to take money from your bank account. Some payday and other short-term loans require a written Automated Clearing House (ACH) authorization, which gives the lender permission to electronically take money from the customer's checking or savings account when payment is due. Cancellation or revocation of an ACH authorization will prevent such withdrawals from being made from the account or stop payment on checks. However, it will not prevent the lender from applying fees and penalties on overdue payments or from seeking civil remedies. For example, if you gave the lender a post-dated check and there is not enough money in the account to pay the check when the lender submits it to the bank, the lender will charge you fees and penalties and the bank may charge you an overdraft fee.

Garnishment and Default Judgments

Garnishment is a court order that allows creditors take repayment directly from a debtor's paycheck or bank account. Garnishment varies significantly from state to state, so risks are higher for someone with assets who is in a more permissive garnishment state. The likelihood that a court will order a garnishment against you is higher if there is a default judgment. If the debt is taken to court for collection and you have granted someone your power of attorney, that person may engage a lawyer for you and make legal decisions on your behalf to avoid a default judgment (but unless the person is a lawyer s/he cannot represent you in court).

It May Not Be Legal for the Debt to Be Collected

Debt collectors have a limited time during which they can sue debtors for nonpayment. Such time limits differ by state and are set by each state's statute of limitations. For example, in Texas, after four years the debt is time-

⁴⁶ EPPs are offered by payday lenders that are members of the Consumer Financial Services Association of America (CFSA). Under an EPP, a customer may pay the transaction balance in four equal payments coinciding with the periodic payment dates. The general requirements and conditions of an EPP can be found at this website: <http://cfsaa.com/cfsa-member-best-practices/what-is-an-extended-payment-plan.aspx>. You can find out whether a payday lender is a member of the CFSA through this website: <http://cfsaa.com/about-cfsa/2017-cfsa-corporate-members.aspx>. There is no charge to enter into an EPP.

barred and the debtor can no longer pursue a court judgment for collections. In some states, where there is a 36% or lower rate cap in place and the loan is online, the loan could be illegal and thus not be required to be repaid because legally it is not collectible. Other states have limits on rollovers or other protections that may apply and allow you to stop payment. A local lawyer can provide more information.

CHECKLIST: PAYDAY AND OTHER SHORT-TERM LOANS

Your debt is not discharged after you leave the country. Payday and other short-term debt does not go away. But you can manage debt by discontinuing automatic repayment and working out something that you can afford. It is important to prioritize how you want to spend your money.

- If you have time before leaving the country, you should contact your lenders, notify them of the situation and provide a forwarding address in your home country. Be sure to contact them both by phone and by mail, and send your notification by certified mail, return receipt requested.
- If you are subject to immediate deportation, you should keep a record of each of your lender's contact information accessible and, if you can, send a payment to the lender upon arriving in your home country. You should also attempt to contact the lender after being deported to provide an updated mailing address.
- If you have granted a lender an ACH authorization to allow them to automatically withdraw money from your bank account, you may want to cancel the authorization.
- You may be eligible for an Extended Payment Plan (EPP) for your loan, if your loan meets certain requirements described above. You may also be able to work with your lender to extend your payment schedule or renegotiate your payment amount. Any changes to your loan should be in writing.

10. INSURANCE

This chapter describes how to approach issues related to an immigrant's insurance policies in the event of detention or deportation, including the options for handling current policies, factors to consider when choosing a path and how to plan ahead.

©© What Types of Insurance Policies Do You Have? ©© What Information Should You Gather About Each Insurance Policy? ©© What Happens to Your Insurance Policies if You are Detained or Deported? ©© What Else Should You Consider When Deciding the Fate of Your Insurance Policy?

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Types of Insurance Policies Do You Have?

If an immigrant has an insurance policy of any kind, it is important to decide how the policy will be handled if they are detained or deported. The first step in this process is to determine what types of insurance policies the immigrant or family has in force.

Common Kinds of Insurance Policies:

- *Health insurance, which may be covered by an employer or purchased individually;*
- *Car insurance, if they own, lease, or operate a car;*
- *Homeowner's insurance, if they own a residence;*
- *Renter's insurance, if they rent their residence;*
- *Insurance on a business, if they own one;*
- *Life insurance, which may be covered by an employer or purchased individually; or*
- *Other forms of liability insurance.*

Immigrants should familiarize themselves with the benefits received under their insurance policies, and what they would forgo in the event of change in status or cancellation of the policy.

Keep in mind that each type of insurance and each insurance carrier is different. The factors to consider and the strategy for handling each policy could depend on the insurance company's rules and protocols.

If the Individual Has Health Insurance Through the Affordable Care Act ("ACA")

Lawfully present immigrants are eligible to use the Health Insurance Marketplace, but undocumented immigrants are not. If a change in immigration status means the person is no longer lawfully present in the U.S., they are also no longer eligible for coverage under the ACA or for any other premium tax credits or savings on Marketplace plans that they receive. Marketplace recommends reporting any change in citizenship or immigration status to the insurance provider as soon as possible; however, each insurer will have different reporting requirements, policies on grace periods and consequences for failure to report. For more information, contact the Marketplace at 1-800-318-2596.

What Information Should You Gather About Each Insurance Policy?

The best way for an immigrant to manage insurance policies is simply to plan ahead.

Create a Master List

Immigrants should identify their insurance carriers and brokers and make a list containing contact information (phone number, address, email address) for each. For example, if an immigrant has car insurance through Geico, s/he should include the Geico customer service number as well as the contact information for the specific agent, if any.

The immigrant should distribute this list to her/his family or household members and keep a copy in an accessible location and another copy on their person (e.g., cell phone, wallet, or in a secure email account). This helps to ensure access to such information if required to leave the U.S. on short notice.

Gather Information and Review Insurance Plans

The immigrant should locate and review all insurance plan documents, whether in hard copy or online, and also contact their insurance company to

gather any missing information or ask any outstanding questions.

Immigrants Should Obtain, at Minimum, the Following Information

- *Method and requirements for termination or transfer of the insurance policy;*
- *Policy on reimbursement for coverage not used;*
- *Consequences of early termination, or termination generally;*
- *Consequences of non-payment of premiums;*
- *Necessity of reporting a change in immigration status;*
- *Ability to revive plan upon return to U.S.;*
- *Consequences of transfer or cancellation to other individuals covered under the policy; and*
- *Whether the premiums are being drafted from a bank account.*

Answers to the above questions will allow the immigrant to make an educated decision about whether to cancel, continue, or transfer the plan in the event of detention or deportation.

What Happens to Your Insurance Policies if You Are Detained or Deported?

Once the immigrant has gathered the requisite information, help devise a plan to handle a detention or deportation scenario. Generally, the immigrant has three options: (1) cancel the policy, (2) continue the policy, or (3) transfer the policy to another individual. Keep in mind that depending on the insurer's rules, one or more of these options may not be available for an insurance policy.

Cancellation

If the immigrant decides to terminate the policy, s/he may do so by following their carrier's procedure for cancellation. Certain carriers require notice in advance of termination and may have a waiting period before termination will take effect. Carriers may also specify the format for providing such notice (by email, in writing, by phone). If the provider does not specify a format, it is best to give notice in all three ways.

Some insurance policies may terminate automatically upon failure to pay the premium. Others may remain in place but accrue large balances from missed payments and late fees. It is crucial that the immigrant takes these factors into account when deciding on a path forward. In certain cases, automatic termination may be the simplest option; in others, default on payment can generate unexpected liability.

Transfer

If it is an option, the immigrant may decide to transfer the plan to another family member or beneficiary. Again, look to the carrier's procedure for guidance and associated cost.

Continuation

If the immigrant wants to keep the insurance policy in the face of detention or deportation, and such continuation is not prohibited by the insurance carrier, she or he can do so in several ways.

If already deported, the immigrant may continue to operate the plan remotely. Having a copy of all policy documents and complete contact information is key. Alternatively, the immigrant may appoint another individual or grant an individual power of attorney to operate the plan on her or his behalf. The immigrant should prepare and provide in advance to the appointed individual explicit instructions on how the insurance policy should be managed.

If this feature is available and she or he is set on continuation, the immigrant may have the option of setting up automatic payment for the amounts due on the policy, or paying amounts owed on the policy in advance. Counsel the immigrant to consider the irreversible nature of these decisions.

Most importantly, the immigrant should find out whether she or he is still eligible to receive the benefits of their insurance policy during detention or following deportation. Most likely, benefits will not be available to an individual who is no longer living in the U.S., and may not be available to the person even upon return.

What Else Should You Consider When Deciding the Fate of Your Insurance Policy?

Deciding how to handle insurance policies in the event of detention or deportation is a decision that cannot be made without careful consideration of an immigrant's personal circumstance. Attention to personal factors is just as important as the dictates of an insurance policy. Below are the sorts of things that every immigrant should consider.

Practicality

If considering continuation of an insurance policy, the immigrant should consider whether it is practical to maintain that policy remotely. If the home country lacks reliable internet or cell service, and s/he does not anticipate regular access to these features, it may make more sense to cancel or appoint another individual in the U.S. to exercise control.

Liability

Immigrants should compare the cost of cancelling the policy with the potential liability associated with continuation. Cost of cancellation should be relatively straightforward once details of the policy have been gathered and reviewed. On the other hand, liability associated with continuation of an insurance policy can be more uncertain. For example, if the immigrant keeps a car title and insurance plan despite detention or deportation and there is an accident involving their vehicle, they may be subject to liability.

Impact on Others

Immigrants should consider the impact on individuals covered by an insurance policy, other than themselves, when deciding whether to continue, transfer, or cancel the policy. For instance, if a relative or dependent covered by an insurance policy would be unable to obtain such a policy (due to immigration status or otherwise), continuing the policy despite the added risk or cost to the immigrant may be worthwhile.

Similarly, an immigrant should consider whether failure to pay insurance premiums or erroneous continuation of an insurance policy would create liability for or cause harm to family members that remain in the U.S. Careful review of the insurance policy documents and conversations with the immigrant's insurance broker should provide clarity on consequences of this nature.

Impact on Immigration Status

If removal proceedings are pending or anticipated, an immigrant should consider how the handling of insurance policies will affect such proceedings. Likewise, if the immigrant plans to return to the U.S., this weighs in favor of complying strictly with all regulations and procedures outlined by their insurance company. It also may provide an incentive to maintain an insurance policy, if permitted.

CHECKLIST: INSURANCE

Deciding how to manage your insurance policies is an important and complex process. Rules and procedures specific to your insurance carriers will provide the steps required to properly cancel, continue, or transfer a policy. Consult with your insurance companies in advance so that you are fully aware of your options, and create a detailed plan that can be implemented if you are detained or deported.

- Figure out what types of insurance policies you have and make a list of the contact information of all insurance providers.
 - *Include telephone numbers, email addresses, and mailing addresses. Consider keeping this information with you or in an accessible place. Give the information to a relative or close friend.*
 - *Consider granting powers of attorney in case of deportation.*
 - *Common types of policies include: health insurance, car insurance, homeowner's insurance, renter's insurance, business insurance, life insurance and liability insurance.*

- Gather and review your insurance policy documents. If you do not have all the information you need, contact your insurance provider and ask them questions.
 - *Be sure you know: the method and requirements for cancelling or transferring your policy; the consequences of cancellation; the consequences of failure to pay on time or at all; whether you can be reimbursed for benefits not used; whether you are required to report a change in your immigration status; and the consequences to other people covered by your policy.*

- Consider how your choice (to cancel, continue, or transfer your insurance policy) will impact you and the people you care about.
 - *Factors to keep in mind: liability associated with continuing your policy; ability to maintain your policy remotely; impact on other beneficiaries of policy; potential negative impact on your removal proceedings; impact on family members remaining in the U.S.; and whether you intend to return to the U.S., if deported.*

 - *Talk to your relatives and, if possible, your attorney about these issues.*

- Decide how you plan to handle your insurance policies if you are detained or deported. Generally, your options will be to cancel, continue, or transfer your policy.
 - *The pros and cons of each option will depend on the policies and procedures of your insurance carrier, as well as your personal priorities and circumstances.*
 - *Familiarize yourself with the basic process for each, and the consequences that may result.*

11. POWERS OF ATTORNEY

A “power of attorney” (POA) is a powerful tool available to immigrants to help them manage their property in the face of deportation. Because a POA can be an invaluable first step in protecting assets, we begin the manual with an in-depth discussion of the tool. This section answers the questions:

- ☉☉ **What Is a “Power of Attorney” (POA)?** ☉☉ **What Does a POA Look Like?**
- ☉☉ **Why Would Someone Facing Deportation Grant a POA?** ☉☉ **How Should You Choose the Kind of POA to Grant?** ☉☉ **How Should You Choose an Agent?** ☉☉ **How Long Does a POA Last, and Can It Be Changed?**
- ☉☉ **How Do You Draft a POA?** ☉☉

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What Is a Power of Attorney (POA)?

A power of attorney (POA) is a written document that allows a person (who will be called the “principal” in the POA) to choose someone else (who will be called the “agent” in the POA) to act on his or her behalf with respect to finances, business, or a child’s care. A POA is especially useful for a person facing deportation or detention who simply does not have the time to get everything done before leaving the country or getting detained. For example, a POA can give an agent the power to sign checks from an immigrant’s bank account, make decisions about a child’s schooling and healthcare, or use an immigrant’s money to buy or sell major items like a car.

While the term “power of attorney” might sound like something related to an attorney, such as an immigration attorney, it is not. It is simply a legal term used for the document that gives one person the legal right to act on behalf of another. Neither person needs to be an attorney. However, consulting with an attorney, where possible, can help a principal ensure the POA is effective and that the powers granted by the POA match the principal’s wishes.

What Does a POA Look Like?

Generally, a POA starts with a paragraph identifying the state and county where an immigrant is when he or she is signing the form, giving the names of the principal and the agent. The next paragraph is usually a list of possible powers a principal can give an agent. An immigrant will check off all the powers he or she would like the agent to have. Again, these can range from authority over an immigrant's bank account to authority to make decisions regarding a child's health or education. The last paragraph typically explains whether the POA takes effect immediately or upon the occurrence of some event in the future. Finally, there are signature lines for the principal and the agent, as well as a place for a notary public or witnesses to sign.

This is a very general description of what a POA looks like. The requirements in each state differ, so before trying to write one, search the internet for a sample POA from your state or consult a local lawyer. Some sample state POA forms, current as of the time this manual was written, are provided in the Appendix section of this manual. There are a number of websites that prepare the appropriate state form for you for a fee, for example: www.legacywriter.com (\$20) or www.legalzoom.com (\$35). As discussed below, an immigrant's bank may have its own POA form to cover banking transactions or access to a safety deposit box. Additionally, as discussed in the following section, many states have their own "statutory" POA forms that an immigrant can use. Finally, organizations such as Legal Aid, local Bar Associations or Voluntary Legal Services organizations may have sample POAs that can be used as a model or may be able to draft a POA at no cost.

Why Would Someone Facing Deportation Grant a POA?

A POA can be a useful tool for a person wishing to settle his or her affairs before or after being deported. The first thing an individual may wish to do when facing deportation is to grant a POA to a trusted family member or other person that will be staying behind in the United States. When an individual is detained and awaiting deportation, it can be very difficult to sell a house, end a rental agreement or access a safety deposit box. With a POA, a trusted friend or family member can act on a person's behalf in these matters with full legal authority.

POAs can be used to accomplish many things. For example, a health care power of attorney can be created appointing an agent to act for a person if she or he is injured or too ill to make decisions for themselves. POAs can also be used to provide for the care and education of children or to handle

almost any financial or business issue, such as banking, gaining access to safety deposit boxes, entering into contracts, filing tax returns or settling legal claims.

How Should You Choose the Kind of POA to Grant?

A principal has to make several decisions about what kind of POA to use. First, the principal should decide whether the POA should grant the agent “general” authority or “special”/“limited” authority. Then she or he decide when the POA will become effective: immediately or only if a particular triggering or “springing” event occurs. As explained later, a principal also needs to decide how long the POA will last. There are advantages and disadvantages to different choices.

The “General” POA

A “general” POA gives an agent a wide range of powers, essentially enabling the agent to do almost anything on behalf of the principal. However, even with such broad powers, there are some things that an agent with a general POA cannot do. For example, an agent acting under a general POA cannot take oaths, go through marriage ceremonies, sign wills or, in some circumstances, access a safety deposit box on behalf of an immigrant.

A general POA is not necessary, or even recommended, for most people who face deportation. However, it can be useful when an immigrant does not have much time before being deported and needs to sell a business or have access to money when they get to her or his home country.

The “Special” Or “Limited” POA

A “special” or “limited” POA allows an agent to do only the specific acts listed in the POA document. It can be used for a wide range of activities. For example, a special POA can give an agent authority to access a bank account, sell an immigrant’s home or car, ship personal property to another country, or care for minor children.

Although this type of POA is called “limited,” in many instances it can actually be more useful and effective than a general POA. Banks, doctors or school officials may be more likely to accept limited POAs because the acts that the agent can undertake are clearly specified, giving a clearer idea of the principal’s intent. This type of document is therefore considered more trustworthy.

The General Rule: POA Effective Immediately

Generally, a POA becomes effective as soon as it is signed.

The Springing POA: POA Effective in The Future

In many states, a general, special, or limited POA can be written as a “springing” POA that becomes effective only after a certain event occurs. These types of POA are sometimes used for sick people who want the POA to become effective only if they become too sick to make decisions. In the immigration context, a springing POA might be used to make the POA effective only if the principal is detained or deported.

A springing power of attorney may be a good option for a person who wants to ensure that a potential agent cannot take action on his or her behalf unless a specific condition occurs. It has the advantage of ensuring that an agent cannot use a POA to influence or coerce the principal before the triggering condition occurs.

However, there are disadvantages to using a springing a POA:

- *First, under a regular, non-springing POA, the agent is required to execute the wishes of the principal, so a trustworthy agent should not take action using a general POA under any circumstances that do not match the wishes of the principal. If the immigrant feels he or she cannot trust a potential agent to act in accordance with his or her wishes under a general POA, he or she should consider naming a different agent.*
- *Second, many institutions may be unwilling to accept a springing POA as a matter of policy, because they are not accustomed to seeing this type of document, or because they feel they cannot adequately verify that the triggering event has occurred.*
- *Third, in the immigration context, a springing POA may be difficult to use in circumstances where the incapacity of the immigrant may not be permanent, such as if an immigrant is detained but not yet deported.*

If a person wishes to use a springing power of attorney, the POA should be very clear about **what** the triggering event is, and **how** the agent will prove that it has occurred.

- *Some state POA forms may have a “special instructions” or “agent’s certification” section that can be used to explain the triggering event and how the agent must prove it.*
- *One option could be to state that the POA becomes effective if the principal is deported from the United States, and that this must be proven by having a specific person swear to that fact before a notary public. For example, the person would write “I [name] declare that [principal’s name] has been deported.” If the principal is deported, the person would then sign and date the piece of paper and attach it to the power of attorney. The POA would be effective as of that date.*

- *Some states may also require specific language to make effective the declaration that a springing event has occurred. For example, California requires the statement: "I certify (or declare) under penalty of perjury that the foregoing is true and correct."⁴⁷*

Remember, however, that many institutions may be hesitant to honor a springing POA, so making the required proof of triggering more official may help make the POA more effective. Consider consulting an attorney to identify types of formal proof that may be available to show that deportation or another triggering event has occurred, then stating, in the POA, that the proof must be attached to the POA in order to be effective.

How Should You Choose an Agent?

It is very important to choose the right agent. POAs can be abused, especially when the immigrant is detained or has been deported and cannot monitor the agent's actions.

An agent must be a legal adult (18, 19 or 21 years old) depending on the state), but otherwise an immigrant has a very wide range of choices when picking agents for a POA. It is not necessary that the agent speaks English or has any kind of educational qualifications. It is also not necessary to include the agent's contact information or proof of identity when drafting the POA (though for practical purposes it may be useful to include the agent's address on the document).

When choosing an agent, an immigrant should consider:

- *A person who resides in the same state where the POA will be used, since different states may have different requirements for writing a valid POA;*
- *A person who can be trusted to act wisely and in accordance with the immigrant's wishes;*
- *A person willing to expend the time and effort necessary to manage the immigrant's financial assets;*
- *A person who is comfortable dealing with banks and other financial institutions and who has a basic understanding of financial issues; and*
- *A person who has the necessary documentation to be in the United States legally or who will not otherwise be subject to detention or deportation in the near future, if possible.*

Note: An immigrant should take caution in choosing a spouse or intimate partner as his or her agent. Especially in abusive relationships, the parties' interests

⁴⁷ Cal. Prob. Code § 4129(b) (West, Westlaw through Ch. 4 of 2017 Reg. Sess.).

often become quickly opposed if there is a divorce or breakup. Many service providers have seen immigration status used as a means of control and coercion by abusive partners.

It is possible to draft several different POAs and to choose different agents to do specific things. For example, an immigrant could write one POA naming his business partner as agent and give that business partner the power to sell the immigrant's interest in the business or to run the business on his behalf. The same immigrant could then also write a second POA naming, for example, his sister and brother-in-law as agents to take care of his minor children.

In some states, it is also possible to draft a POA that names more than one agent. Unless the POA specifies that the agents are authorized to do different things or otherwise do not have to act jointly, this will mean that both agents must authorize any action under the POA. This can ensure that no single agent can use or abuse the POA, but can also make it difficult to use the POA by requiring the presence of two people for any action.

If an immigrant has bank accounts or other property in several states, it may be necessary to write a POA for different agents who reside in each of those states.⁴⁸

A NOTE TO AGENTS

It is possible that a third party (like a bank or a school) will refuse to honor a POA, regardless of its legality or specificity. If an agent encounters this type of problem, he or she should contact a lawyer for advice. The agent may be able to bring a lawsuit against the third party to enforce the POA. While the rules surrounding such lawsuits vary from state to state, the case would likely focus on whether the third party is acting reasonably or unreasonably. To avoid these issues, entities with whom you do business may have approved forms for your use.

Additionally, to protect the agent's personal assets, the immigrant may want to write in the POA that if the agent has to bring a lawsuit to enforce the POA, the attorney's fees will be paid from the principal's money.

1. An agent will need to use the original POA, and the principal should keep a copy for his or her records.
2. An agent is legally obligated to act in the principal's best interests. Among

⁴⁸ Please also review the "How do you draft a POA?" section below for information on how to draft a POA granting authority to an agent that will be valid in most, if not all, of the states where it may be used.

other duties:

- *An agent must keep his or her money separate from the principal's money;*
- *An agent must not stand to profit from any transaction where they are acting as the principal's agent;*
- *An agent must not give or transfer the principal's money or property to the agent, unless the POA specifically allows the agent to do this; and*
- *An agent should keep clear records of his or her activities as agent under a POA.*

How Long Does a POA Last, and Can It Be Changed?

You may see a POA referred to as a “durable” power of attorney. Most POAs are “durable,” meaning that the POA is effective even after the principal becomes “incapacitated” —unable to act on his or her own behalf. For this reason, a durable POA may be especially important for an immigrant facing the possibility of deportation. In most states, the POA must say that it is durable to have this effect; however, in a strong minority of states, if the POA is silent on the issue, it will be deemed to be durable. For example, California, New York, Arizona, and Florida are in the majority of states that require durability to be explicitly stated, while Nevada, Colorado, Pennsylvania, and New Mexico are in the minority.

A POA generally lasts until it is revoked in writing or until the principal dies (or for a POA that is not durable, until the principal becomes incapacitated). In some circumstances, a POA may terminate earlier. For example, in some states, a POA that designates the principal's spouse as an agent may terminate if the couple divorces.

A principal can also specify in the POA that it ends on a certain date or upon the happening of a certain event. A POA with a set ending point may be considered more trustworthy than one without an ending point. However, if a person facing deportation decides to put a time limit on her or his POA, she or he should be sure to give their agent enough time to finish everything that needs to be done.

On the other hand, one disadvantage to having a POA with no ending point is that POAs can be difficult to cancel. An immigrant principal can cancel a POA by signing a separate piece of paper that says the POA is cancelled, sending a copy of the paper to the agent and to anyone (such as a bank) that had dealings with the agent, and physically taking back the original POA and all copies that have been given to anyone. Despite the principal's best efforts, it is hard to tell everyone that a POA has been cancelled, and this can

lead to unwanted results. For example, if the principal's property gets sold after the POA has been cancelled, but neither the buyer nor the buyer's creditor was aware of the cancellation, it will be difficult to get the property back.

An immigrant principal can change a POA (for example to give an agent a new task or to take away one of the agent's tasks) by canceling the original POA and making a new one. This can be done with one document, as long as the new POA says that all previous POAs are cancelled. Many statutory form POAs already contain this language. Statutory form POAs are discussed in further detail in the following section. However, for the same reasons that it is hard to cancel a POA, it is also hard to change POAs. It is hard to know whether anyone is still relying on the original POA, so, it is important that all recipients of the original POA receive notice of the cancellation or new POA. Also, as noted in the next section, modifying or cancelling a POA while detained can be especially challenging, so when crafting a POA it is important for the principal to consider his or her current situation and wishes, as well as how those could change in the future.

If the principal wants to amend the POA from her or his home country, she or he should review the section below about drafting POAs after deportation. In addition to following these rules, once the new POA is created, the principal should have her or his agent in the United States collect and destroy all copies of the original POA to avoid any confusion.

How Do You Draft A POA?

For Non-detained Immigrants

Different states have different rules for how to properly execute a POA. In general, a POA must always be in writing, and may have to be witnessed by one or more persons and notarized or recorded at the county courthouse, depending on where, and for what purpose, the POA is being used.

Some states, such as New York, have a "statutory form," which is a model POA form written in a statute created by the state legislature.⁴⁹ These forms often contain instructions on exactly what actions are required to make the POA valid. Statutory form POAs are often widely recognized and accepted

⁴⁹ Statutory form POAs for California (CA Probate Code § 4401), New York (NY General Obligations Law § 5-1513), Texas (Texas Probate Code § 490), and Florida (Florida Statutes Annotated § 709.08) can be found in this manual's appendices. These forms are valid as of April 2017. For subsequent years, go to a local law library and look for current versions of these statutes or try running searches on the Internet for "statutory form power of attorney" and the relevant state.

at banks and other institutions within the state.

If the immigrant has particular bank or other accounts that she or he wants the agent to be able to access, he or she should look online or contact the institution to determine whether it has a particular POA form for customer use. Although banks and other institutions should honor other POA forms that are valid, the easiest way to make sure that an institution will honor a POA may be to use any specific forms that it suggests. Some sample bank POA forms, current as of the time of writing, are included in the Appendix of this manual.

As noted above, if an immigrant has property in several states, it may be valuable to have separate POAs executed according to the rules of each relevant state. However, an individual facing deportation may not have the time or resources to make valid POAs for several states. In those circumstances, an individual may want to execute one POA that complies with the strictest requirements for POAs in the United States. This would require the immigrant's signature and the date, the signatures of two witnesses, the signature of a notary public and acknowledgments by the agent(s).

For special POAs, the document should be as detailed as possible. For example, the POA should list all relevant bank account numbers over which the agent may have control, as well as the name of the bank(s) and the addresses of the immigrant's local United States branch. If the POA gives the agent authority to sell a house or car, the property for sale should be described in detail, including any identifying marks or numbers, such as serial and registration numbers. Other terms, such as a minimum-selling price, that are important to the immigrant should also be included.

Note: Persons who wish to use a POA to carry out real estate transactions almost always need to "record" or "file" the POA with the local clerk or land records office, and should check local requirements.

For Detained Immigrants

It is possible for detained immigrants to prepare POAs while in detention, though it may be difficult to have the documents properly witnessed and notarized. A detained immigrant is advised to contact a lawyer to help with this process, preferably one familiar with the regulations of the detention center where the individuals are being held (e.g., visiting hours, rules regarding making telephone calls and mailing letters and other details about how a detention center is staffed and organized). If an attorney's help is not available, one option is to hire a notary who agrees to come to the detention facility. Such notaries can usually be found on the Internet by searching

for “notary” and “prison” or “detention.” During visiting hours, a notary, agents and any witnesses can execute the POA forms along with the immigrant.

Note: Notaries are not the same as notaries.

For Deported Immigrants: The “Apostille” Process

It is also possible to prepare or amend a valid POA after an individual has been deported. The most straightforward way to do so is to have the POA drafted by the immigrant or if possible by a notary public (or similar official in the immigrant’s home country), have the notary notarize the POA, and then have the POA “apostilled.”

An “apostille” is a way to authenticate or legalize documents so that they will be honored in another country. The process is recognized by every country, including the United States, that has signed the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of 1961 (the ‘Convention’). Thus, a document, like a POA, that has been properly apostilled in Mexico will be recognized in the United States. To get a document apostilled, the immigrant must take it to one of the designated people in his or her home country for signature. The link below provides information about where to find those individuals in several countries: <https://www.hcch.net/en/instruments/conventions/specialised-sections/faq1>

A sample apostille form is available online here:

http://www.hcch.net/index_en.php?act=publications.details&pid=3198&dtid=28

If the POA and any accompanying documents, including the apostille, are not in English, it is recommended that an English translation be attached. If possible, the translation should be certified as true and correct. Generally, this can be done by having the translator sign a statement that he or she believes the translation is accurate and complete, then getting the statement notarized by a Notary Public. This signed, notarized statement, sometimes called a “Certificate of Accuracy,” should be attached to the POA and the translation.

If an individual is removed to a country that is not a signatory to the Convention, such as China,⁵⁰ Jamaica, Canada, Vietnam, and most of the Middle East, he or she should seek the advice of local lawyers or the local

⁵⁰ While China is not a signatory to the Convention, the Convention does apply in the special administrative regions of Hong Kong and Macau.

United States embassy or consulate about how to properly authenticate locally notarized POAs so that they will be valid in the United States.

CHECKLIST: POWERS OF ATTORNEY

- ❑ Consider whether you want the POA to be “general” or “special”/ “limited.” You can grant a general power of attorney to one agent who can handle all of your matters, but you may want to grant separate powers of attorneys to different people for different purposes. For example, you might grant a power of attorney to your aunt to make decisions regarding your children and a separate one to your brother to handle financial matters such as managing your bank account or selling your car.
- ❑ Consider whether you want the POA to take effect immediately, or to become effective at some point in the future (a “springing” POA).
- ❑ Be careful in choosing an agent, especially if he or she will have access to your bank account. You should consider the following criteria:
 - *A person who resides in the same state where the POA will be used, since different states may have different requirements for writing a valid POA;*
 - *A person who can be trusted to act wisely and in accordance with your wishes;*
 - *A person willing to expend the time and effort necessary to manage your financial assets;*
 - *A person who is comfortable dealing with banks and other financial institutions and who has a basic understanding of financial issues; and*
 - *A person who has the necessary documentation to be in the United States legally or who will not otherwise be subject to detention or deportation in the near future, if possible.*
- ❑ Make a list of all of the financial matters you would need an agent to help you handle.
- ❑ Write the document authorizing the power of attorney. Consider the following when writing it:
 - *Determine how long the power of attorney should last. Different states have different rules on how long POAs last if it is not explicitly stated in the document, so you should make sure to make your intentions clear;*
 - *Try to provide as many details about the assets as possible. For example, list the names of the banks, the account numbers, the car registration numbers and the locations of assets; and*
 - *Find out the legal requirements for a power of attorney in your state. If you have already left the U.S., a power of attorney can be drafted from*

abroad; however, this may require an authentication process depending on which country it is drafted in.

- Give the original power of attorney to the agent you have chosen (perhaps several signed copies). Keep a copy of your records.
- Circulate the POA to all third parties who you think would need to rely on it. This is to provide notice to those who will be impacted by the POA. Keep a list of the parties to whom the POA was circulated, as any change to or cancellation of the POA would need to be circulated to them.
- Ask the agent to keep clear records of all the actions he or she takes as your agent under the power of attorney. If another person refuses to accept your agent's power of attorney, contact a lawyer.
- When making any changes to or cancelling a POA, make sure you use certified mail or some other method that provides a record of receipt.

STATE-BY-STATE RESOURCES: POWERS OF ATTORNEY

State	Document	Hyperlink
Alabama	Durable Power of Attorney	http://a18c.org/wp-content/uploads/2015/07/durable-power-of-attorney.pdf
Alaska	Durable Power of Attorney	http://alaskalawhelp.org/resource/power-of-attorney-form?ref=2SMd5
Arizona	Power of Attorney	https://www.superiorcourt.maricopa.gov/sscDocs/packets/gnpoa1z.pdf
California	Uniform Statutory Power of Attorney	https://eap.ucsb.edu/sites/default/files/PowerofAttorney.pdf
Colorado	Statutory Form Power of Attorney	http://lawhelp.coloradolegalservices.org/files/C778C1AF-0259-C21E-D854-1BFD140C9164/attachments/3739D440-A5CC-58E0-7A6F-88EDB11D0E53/241391Statutory%20POA%20-%20new%202010.pdf
Connecticut	Statutory Long Form Power of Attorney	https://c.ymcdn.com/sites/ctbar.site-ym.com/resource/resmgr/legislative_affairs/2016_new_POA_LONG_form.pdf
Connecticut	Statutory Short Form Power of Attorney	https://c.ymcdn.com/sites/ctbar.site-ym.com/resource/resmgr/legislative_affairs/2016_new_POA_SHORT_Form.pdf
Delaware	Durable Personal Power of Attorney	http://dhss.delaware.gov/dhss/dlcrp/files/poaforn.pdf
District of Columbia	General Power of Attorney	http://legalforms.org/download/washington-dc-power-of-attorney.pdf
District of Columbia	Durable Power of Attorney	http://legalforms.org/download/washington-dc-durable-power-of-attorney.pdf
Florida	Durable Power of Attorney	https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/03C771C7FD5B863E8525802800718227/\$FILE/Example%20of%20a%20Durable%20Power%20of%20Attorney%20form.pdf?OpenElement
Georgia	Financial Power of Attorney	http://www.georgialegalaid.org/files/6FCBD72D-B465-109D-9EC1-5A4F52A74EE9/attachments/A90BB7AC-9026-DE04-20CA-B128FB942604/52221197FPOA.pdf
Idaho	Durable Power of Attorney for Financial Affairs	http://www.idaholegalaid.org/node/2234/durable-power-attorney-financial-affairs
Illinois	Statutory Short Form Power of Attorney for Property	https://www.illinois.gov/sites/gac/Forms/Documents/POA_Property_July2011.pdf

Iowa	Statutory Power of Attorney	https://nhlp.law.uiowa.edu/sites/nhlp.law.uiowa.edu/files/Iowa-Uniform-POA-SHORT-FORM.pdf
Kansas	General Durable Power of Attorney	https://c.ymcdn.com/sites/www.ksbar.org/resource/resmgr/Public_Services/pamphlets/durable_power_of_attorney/DurablePowerofAttorney_Gen.pdf
Louisiana	Durable Power of Attorney	http://batonrougenotary.info/wp-content/uploads/2013/06/LOUISIANA-DURABLE-POWER-OF-ATTORNEY.pdf
Maryland	Statutory Form Personal Financial Power of Attorney	http://mgaleg.maryland.gov/2016RS/Statute_Web/get/17-202.pdf
Maryland	Statutory Form Limited Power of Attorney	http://mgaleg.maryland.gov/2016RS/Statute_Web/get/17-203.pdf
Michigan	Durable Power of Attorney for Finances	http://www.med.umich.edu/socialwork/docs/resources/DPOA_Finances.pdf
Minnesota	Statutory Short Form General Power of Attorney	https://www.revisor.leg.state.mn.us/statutes/?id=523.23
Montana	Statutory Form Power of Attorney	http://www.montana.edu/estateplanning/documents/powerofattorneyform.pdf
Nebraska	Power of Attorney	https://supremecourt.nebraska.gov/sites/court.cdc.nol.org/files/forms/DC-6-12-fillin.pdf
Nevada	Statutory Form Power of Attorney	https://www.washoecourts.com/library/PDF/STATUTORY%20FORM%20POWER%20OF%20ATTORNEY.pdf
New Mexico	Statutory Power of Attorney	http://coc.unm.edu/common/pdf/nmpoa.pdf
New York	Statutory Short Form Power of Attorney	http://www.nysba.org/CustomTemplates/Content.aspx?id=6554
North Carolina	Statutory Short Form of Power of Attorney	http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_32A/GS_32A-1.pdf
North Dakota	General Durable Power of Attorney	http://www.ndcourts.gov/ndlshc/POAGC/Adult/GENERALDURABLEPOWEROFATTORNEY.pdf
Ohio	Statutory Form Power of Attorney	http://www.akronbar.org/wp-content/uploads/2015/08/3-NLTBasicProbateEstatePlanning.pdf
Oklahoma	Statutory Form Power of Attorney	http://law.justia.com/codes/oklahoma/2014/title-15/section-15-1003
Rhode Island	Statutory Short Form Power of Attorney	http://webserver.rilin.state.ri.us/Statutes/TITLE18/18-16/18-16-2.HTM
Texas	Statutory Durable Power of Attorney	http://www.usfhp-health.org/wp-content/uploads/2015/10/texpoa.pdf

Utah	Statutory Form Power of Attorney	https://www.utcourts.gov/howto/family/power_of_attorney_general/docs/01_Power_of_Attorney.pdf
Vermont	General Power of Attorney Financial Affairs	https://www.vtlawhelp.org/sites/default/files/Financial%20Power%20of%20Attorney%20Form%202014.pdf
Washington	Durable Power of Attorney for Finances	http://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/392A5117-D581-FCE9-5EF2-E382E46B92AC/9608en_power-of-attorney-documents.pdf
West Virginia	Statutory Form Power of Attorney	http://www.legis.state.wv.us/WVCODe/Code.cfm?chap=39b&art=3
West Virginia	Durable Power of Attorney	http://www.wvlegalservices.org/poa.pdf
Wisconsin	Statutory Power of Attorney for Finances and Property	https://www.dhs.wisconsin.gov/forms/advdirectives/f00036.pdf

12. OWNED REAL PROPERTY

In the face of deportation, if you own real property you must make decisions on what to do with this property and how to manage loans which may be owed for this property. This section will address some of the choices and more important decisions to be made. Transfers of real property are complicated.

©© Do You Own Real Property? ©© What If There is a Co-Owner? ©© What If There is a Loan, Mortgage or Deed on the Property? ©© Should You Keep, Sell or Gift your Real Property? ©© Do You Have a Loan and Mortgage (or Deed of Trust) on Your Property? ©© How Can You Get Professional Help with Handling Property? ©©

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Do You Own Real Property?

This could be a home, an apartment, a business location or any other owned land or building.

What If There Is a Co-Owner?

If there is a co-owner, it is a good idea to include the co-owner in any decision regarding the property and a transfer of your interest. Depending on how the property is co-owned different laws will apply to how your interest can be transferred. An attorney or real estate professional should be consulted to make sure any transfer is done properly.

If the co-owner is not at risk for deportation, you may consider transferring your entire interest in the property to such co-owner or otherwise give the co-owner a right (by limited power of attorney) to act on your behalf with respect to the property and any related loans.

What If There Is a Loan, Mortgage or Deed on the Property?

If there is a loan for and mortgage (or deed of trust) on the property, the lender must be consulted prior to any transfer of interests or of the property. In almost all circumstances the lender must consent to what is being done. See section below on loans and mortgages.

Should You Keep, Sell or Gift Your Real Property?

You will have choices to make on what to do with your real property. Each choice must be considered carefully to see (1) what is required to be done under the law and any mortgage documents (if applicable), (2) if there are tax and other financial concerns, and (3) what makes sense for you and your family.

Keeping Your Property

You can retain ownership of your real property even if you are deported. However, you must make arrangements for the property to be managed and all loans and taxes to be paid in your absence. Perhaps there is a trusted person who can rent out the property or live on the property and cover necessary payments.

If there is a co-owner, as said above, it is a good idea to include the co-owner in any decision regarding the property. If the co-owner is not at risk of deportation, you may consider having him or her take care of things in your absence.

Selling or Gifting Your Property

If you cannot or don't want to retain ownership, you can sell or gift the property to a co-owner or someone else.

With respect to these options, if there is a loan for and mortgage on the property, the lender must be consulted on all actions and transfers. In almost all circumstances the lender must consent to any transfers. See section below on loans and mortgages.

A sale or gift of the property or your interest in the property may result in taxes that must be paid by sellers, and by givers and receivers of gifts. A professional must be consulted in advance so that you know which method of transfer is more beneficial to you and the receiver of a gift.

If time is an issue (and even if it is not), it may be necessary or desirable to prepare a limited power of attorney giving a trusted person (co-owner, attorney, realtor or other) authority to sell the real property or otherwise work with lenders and manage the property. An attorney or realtor should be consulted in preparing a power of attorney to make sure it complies with state requirements and is limited to only the authority needed to transfer the real property, work with lenders and/or manage the property.

Do You Have a Loan and Mortgage (or Deed of Trust) on Your Property?

Under all circumstances, you are responsible to pay the lender the full amount of the loan.

- *If you continue to own the property, you must continue to make all your regular payments to the lender.*
- *If you sell or transfer the property, you will need to pay the lender the full amount of the loan and any other charges due under the loan documents.*

Consequences of Non-Payment

If you do not make these payments to the lender, the loan will be in default and the lender can take action to possess and sell the real property. This is known as a foreclosure by the lender. There may be some protections under certain state laws. A real estate attorney or other real estate professional in your local area should know the laws that apply. If you think there is a chance you will not be able to repay your loan, you should reach out for help in your state to understand the full risks.

Forfeiting a Property with a Loan

If your property is worth less than the loan payoff and you can't make the payments, you might consider giving the property to the lender. You may still owe the lender the remaining amount of the payoff unless the lender agrees otherwise.

Selling a Property with a Loan

If the value of the property is worth more than the loan, you may be able to sell the property. You would then pay the lender from the sale and keep any remaining funds.

Other Considerations for Handling Properties with Loans

- *Unpaid property taxes must be paid;*

- *If there is a co-owner, actions which affect the loan and mortgage will often require the cooperation and/or the consent of the co-owner;*
- *A limited power of attorney can be give to someone so that they can work with the lender and take steps to avoid a foreclosure; and*
- *If possible, speak with your lender to try and put a feasible plan in place. Keep copies of all communications with the lender and the lender's contact information.*

How Can You Get Professional Help with Handling Property?

Transfers of real property are complicated. It can be done by a trusted person to whom you grant a limited power of attorney. You will need the assistance of a lawyer and/or real estate broker. Do not try to sell real property by yourself unless you are a professional. Personal references are always a good source of finding a professional. If you or your family and friends do not know of anyone, below are some examples of links and resources.

- *Visit the National Association of Realtors' website (www.nar.realtor), click Directories in the upper right corner and then click Find a Realtor.*
- *An easy way to find a real estate lawyer is to log onto an industry website, such as www.lawyers.com, which lists real estate attorneys. In addition, you can call your local bar association, title insurers, mortgage lenders, or escrow agents for referrals.*
- *In many areas, various organizations provide free legal services to individuals and families who meet certain requirements. In New York City, Housing Conservation Coordinators (www.hcc-nyc.org); in Texas <http://www.txtenants.org/links.html>; in California <http://portal.hud.gov:80/portal/HUD?src=/states/california/homeowne rship/legalaid> provide these services. Immigrants should contact these or similar organizations and ask if they can benefit from free legal services related to housing and if the organizations serve immigrants. Many assistance programs are available only to United States citizens—but immigrants should still check if they qualify for any such programs.*

13. CARS, CAR LOANS, AND CAR LEASES

If you are being deported, you can sell your car, give it up, or take it with you. It depends on whether you own or lease your car and if you have a car loan. This section provides suggestions to address the following issues:

☉☉ **What Can You Do with Your Car If You're Being Deported?** ☉☉ **What Can You Do If You Own Your Car Outright?** ☉☉ **What Can You Do If You Have a Car Loan?** ☉☉ **What Can You Do If You Lease Your Car?** ☉☉ **Surrendering Your Car to a Lender or Leasing Company** ☉☉ **Selling Your Car** ☉☉ **Insurance and Registration** ☉☉ **Exporting Your Car** ☉☉ **U.S. Exportation Requirements** ☉☉ **Mexican Importation Requirements**

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Can You Do with Your Car If You're Being Deported?

It depends on whether you own or lease your car. If you own your car, it also depends on whether or not you have a loan.

What Can You Do If You Own Your Car Outright?

If you own your car, you can sell it or export it. Exporting a car can be complicated, so it may be simpler to sell your car in the U.S. and buy a new car in your destination country. Please see below for more information about selling or exporting your car.

What Can You Do If You Have a Car Loan?

If you have a car loan, you should start by reviewing your loan documents. Depending on what they say, you may be able to:

- *Pay off the loan and export your car;*
- *Sell your car and pay off the loan with proceeds;*

- *Sell your car to someone who is willing to assume the loan; or*
- *Surrender your car to the lender.*

Please see below for more information on selling or exporting your car.

What Can You Do If You Lease Your Car?

If you lease your car, you should start by reviewing your lease. Depending on what it says, you may be able to:

- *Terminate and pay off the lease;*
- *Sell the lease to someone else (e.g., using online or other services);*
- *Surrender the vehicle to the leasing company (you will owe any deficiency);*
or
- *If your car is worth more than the lease payoff, you can sell your car and pay off the lease at the same time.*

If another person is obligated on the lease, you should tell that person about your situation.

See online websites or other resources for more information on ending your lease early. While we do not endorse particular businesses, we believe it is important to point immigrants who may not have made similar transactions to examples of services. Some examples are:

- <http://www.jdpower.com/cars/articles/tips-advice/how-end-your-lease-early>
- <https://www.moneyunder30.com/get-out-of-a-car-lease-early>

Surrendering Your Car to a Lender or Leasing Company

If you have a car loan, you can surrender your car to your lender. Check your loan documents for details. You may be able to negotiate any fees for defaulting on your car loan if you explain your situation to the lender.

If you lease your car, you can return your car to the leasing company. Check your lease agreement for details, especially because there may be a penalty for ending your lease early. You may be able to negotiate this penalty if you explain your situation to the leasing company.

Selling Your Car

Before selling your car, find out how much your car is worth using the Kelley Blue Book (<http://www.kbb.com>) or another resource. Decide the lowest price that you would accept for your car.

If you still owe money on the car, compare the value of your car to the amount left on your loan. If your car is worth more than the loan and you have enough money to pay off the loan, you can pay off the loan, then sell your car. If you do not have enough money to pay off the car loan before finding a buyer, you can use the buyer's payment to pay off the loan and keep the difference as profit. You will have to get permission from your lender(s) to make the sale in order to transfer clear title to the buyer. If the car is worth less than the loan, consider surrendering the car to the lender instead of selling it.

You can sell your car to another person using on-line or paper classified advertisements or word-of-mouth. You can also sell your car to a used-car dealership.

Before allowing a potential buyer to test drive the car, make sure that your insurance policy covers test drives.

Put the sale terms in writing and get the payment from the buyer in cash or a certified check to limit the chances of fraud before giving the keys or transferring the title to the buyer.

File the necessary forms for transferring title and for sales tax purposes.

If you don't have time to sell your car before you leave, you could give a limited Power of Attorney (POA) to a trusted friend and ask the friend to sell the car for you. You will have to give your friend the signed vehicle title to give to a buyer.

See these websites for more information on selling your car:

- <https://www.kbb.com/sell-your-car/steps-to-sell-your-car/>
- <https://www.carfax.com/guides/selling/private-party-sale>
- <https://www.edmunds.com/sell-car/10-steps-to-selling-your-car.html>

Insurance and Registration

If you sell or surrender your car, cancel your car insurance and registration and take your license plates to the Department of Motor Vehicles. You may have to take the registration sticker and inspection sticker off the car too.

Exporting Your Car

To export your car, you have to meet exportation requirements in the United States and importation requirements in your destination country.

U.S. Exportation Requirements

If you want to export your car, you'll have to hire a U.S. agent (a Freight Forwarder, Broker, etc.) to file export information with U.S. Customs on your behalf. This information includes the original Certificate of Title for your car or a Certified Copy of the Certificate of Title and two complete copies of the original Certificate of Title or the Certified Copy. Your agent will have to file this information at least three days before you plan to export your car.

If the title to your car shows that there is a lien on your car, you will have to show that the lien has been removed or that you have the lienholder's permission to export your car. A **lien** is a legal document that permits the lender to repossess your car if you fail to make payments.

See online websites or other resources for more information on exporting your car. While we do not endorse particular businesses or services, we believe it is important to point immigrants who may not have made similar transactions to sources of information. Some examples are:

- <https://www.cbp.gov/trade/basic-import-export/export-docs/motor-vehicle>
- <https://www.cbp.gov/sites/default/files/assets/documents/2016-Jun/Flyer-ExportingVehiclesGeneral%20pdf%20revised%20%28003%29.pdf>

Mexican Importation Requirements

Importing a car to Mexico is relatively complicated. The requirements depend on your car's age and Vehicle Identification Number (VIN). Consider hiring a Mexican Customs Broker Agency to import your car for you.

See online websites or other resources for more information on importing your car to Mexico. While we do not endorse particular businesses or

services, we believe it is important to point immigrants who may not have made similar transactions to sources of information. Some examples are:

- <http://www.expatsinmonterrey.com/single-post/2016/04/14/FAQ%C2%B4s-Importing-cars-in-to-M%C3%A9xico>
- <http://www.bajainsider.com/article/how-import-your-car-mexico>

14. ENDING A RESIDENTIAL LEASE

Deportation can cause many concerns about living situations. This section outlines the basic things to consider about your residential lease if you may be facing deportation. The most important things to keep in mind are understanding your lease and speaking to your landlord.

[Understanding a Residential Lease](#)
[Terminating a Residential Lease](#)
[Right to Enter](#)
[Continuing a Lease](#)
[Checklist: Ending a Residential Lease](#)

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Understanding a Residential Lease

The most important step in transitioning from a residential lease is understanding the lease. As a precaution, it is best if you learn about your lease before being detained or deported.

If the lease is a written lease, the terms of the lease govern termination and the recovery of personal property.

If the lease is not in writing, state, county and city statutes will govern the relationship.

If your lease is not in writing, you may want to consult with an attorney. There are many organizations that provide tenant-landlord legal advice. For example, you can:

- *Reach out to local law schools and ask if they have housing clinics; or*
- *Reach out to organizations such as the Housing Rights Center or the Legal Aid Society and ask where you can get free legal advice.*

Remember, even if these organizations cannot help you themselves, they may be able to point you in the right direction. You do not have to try and understand everything on your own!

Terminating a Residential Lease

If you live alone, or if everyone in your household will be moving out, you will likely want to end your lease. Your written lease or local law will regulate how to properly end your lease. As mentioned above, most leases require that you give your landlord a minimum of 30 days' notice that you will be terminating your lease. Depending on your arrangement, you may need to give more or less notice.

If the term of the lease has not run out, it is possible that you will be responsible for finding a new tenant or paying the remainder owed.

Make sure you discuss your situation with your landlord as early as possible. If instead of giving notice, an individual refuses to pay rent when it is next due, the landlord can start the eviction process.

Right to Enter

The circumstances by which you end your lease may determine your right to enter the property later to claim your belongings or retrieve mail. If you are providing notice to terminate the lease you should plan to have all items removed by the last day covered by your rent payment. If you are facing eviction due to non-payment, written notices from your landlord or the courts may stipulate specific deadlines; review such documents carefully and seek legal help if needed.

If you do not remove your things within a reasonable time, you may owe the landlord for expenses associated with storing or disposing of the property. Do not assume that you will be allowed to enter after your lease is terminated. Whenever possible, try to get all agreements with your landlord documented in writing.

To avoid complications down the line, you should make arrangements for the safekeeping of your personal items. For example, you can arrange for a trusted person to have keys so someone can remove personal property within a reasonable amount of time, if you are detained or deported. Submit a change of address form with the post office as early as possible so that you can forward your mail – do not expect your landlord to hold or forward it for you.

Continuing a Lease

You may want to continue your lease, especially if you have family members or friends living in the residence who are staying in the U.S. In this scenario, there are a few options:

- ***You can continue the original lease.** This often will require the landlord's consent because you will no longer occupy the space.*
- ***You can terminate the lease,** and the remaining occupants can start a new lease with the landlord's permission.*
- ***You can assign or sublet the lease.** Be aware that traditionally, when a lease is sublet the individual will still be ultimately responsible for the payments. In addition, subletting is prohibited under many statutes and written leases, and can lead to eviction of the subletter.*

In all continuing lease scenarios, open and honest communication with the landlord is key.

CHECKLIST: ENDING A RESIDENTIAL LEASE

- Find out if you have a written lease. If so your lease is governed by that document. If not, your lease is governed by the local law.
- If you want to terminate your lease find out how much notice you are obligated to give your landlord, whether you will have to pay the remaining rent due under your lease, and how much time you will have to retrieve your things.
- Reach out to local organizations and law schools if you need legal advice.
- Arrange for a trusted person to have keys to ensure that someone is able to remove your personal property if you are detained or deported. Remember that you have the right to enter your home to remove your property within a reasonable time, likely three days or less, after a lease is terminated. If you fail to remove property within a reasonable time you may owe the landlord for expenses associated with storing or disposing of the property.
- If you have friends or family members who wish to continue your lease you have three options:
 - *Continue the original lease with the landlord's consent;*
 - *End the original lease and enter into a new lease with the landlord's consent; or*
 - *"Succeed" the lease through an assignment or sublease from you.*

15. HANDLING VALUABLES

This section describes how to approach issues related to an immigrant's valuable personal property in the event of detention or deportation, including potential confiscation or destruction, options for handling property still in possession, factors to consider when choosing a path, and how to plan ahead.

This section targets Preparing Immigrants, but contains useful information for Detained and Supervised Immigrants as well. It addresses the following questions:

⦿⦿ **What is Valuable Personal Property?** ⦿⦿ **What Types of Valuable Personal Property Do You Have?** ⦿⦿ **Planning in Advance – What Are the Options?** ⦿⦿ **Other Factors to Consider What Should You Do if Your Property is Taken Away?** ⦿⦿ **Avoiding or Mitigating the Risk** ⦿⦿ **How Can an Immigrant Get Their Possessions Back?** ⦿⦿ **Checklist for Handling Valuables** ⦿⦿

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Is Valuable Personal Property?

Any of an immigrant's possessions that are worth money or that the immigrant would be disappointed to lose can be considered valuable personal property, and should be assessed in accordance with this chapter.

What Types of Valuable Personal Property Do You Have?

If an immigrant has valuables of any kind, it is important to decide how those valuables will be handled in the event that they are detained or deported. The first step in this process is to determine what types of valuable personal property the immigrant or their family has.

Common Kinds of Valuable Personal Property

- *Electronics, machinery and appliances;*
- *Jewelry and clothing;*

- *Furniture and art;*
- *Identification (license, ID card, passport, birth certificate); or*
- *Family heirlooms or sentimental items*

Keep in mind that each type of property is different, and the factors to consider and the strategy for handling the valuable may differ as well.

Planning in Advance – What Are the Options?

Once the immigrant has a grasp on what valuable personal property they own, help them devise a plan to handle a detention or deportation scenario. Generally, the immigrant has four main options: (1) sell the property, (2) transfer the property to another person, either temporarily or permanently as a gift, (3) ship the property to their home country, or (4) store the property in the U.S., either in a storage unit or safety deposit box. Keep in mind that depending on the type and size of the property, one or more of these options may not be available.

Sale

If the immigrant decides to sell the property, the first step is to determine the appropriate price for the property. If the immigrant knows the original price of the property, they can use that as a starting point and discount for any damage to the property or time that has passed. Otherwise, if the immigrant has access to the Internet, they should search for similar items (perhaps on a second-hand website like ebay.com or craigslist.com; business shown as examples only with no endorsement) to determine how much to charge.

Once settled on a price, the immigrant should consider documenting the sale. A simple document containing the following will be handy in case of future disputes regarding the sale: (1) a description of the item, (2) the date, (3) the agreed upon price, (4) the printed names and signatures of buyer and seller, and (5) a quick statement that the buyer has had a chance to inspect the property and is satisfied with the condition, and/or that the property is being sold “as is” and with no warranties by the seller.

Form of payment is another important consideration. To protect against fraud, advise the immigrant against accepting personal checks. Personal checks may be written from a bank account that does not have enough money to cover the amount of the check. It is best to receive payment in cash, a bank certified check, or money order.

Transfer

If the immigrant wants to transfer the property to another person, they have two options – they can give the property to another person on a permanent basis, as a gift; or, they can transfer the property to another person temporarily, with the expectation that it will be returned upon request in the future.

If the immigrant seeks to transfer the property to a minor child, he or she should consider transferring the property to another adult or setting up a formal transfer pursuant to certain statutes that allow assets and property to be held in an adult custodian’s name for the benefit of a minor. This is discussed in more detail in [the UTMA/UGMA] chapter of this guide

If participating in a temporary transfer, it is best to create a document reflecting the agreement between the parties (transferring only physical possession, not ownership, and only temporarily), signed and dated by the participants.

Storage

For small items like jewelry and identification, the immigrant may want to store them in a safety deposit box at a local bank. The cost for a safety deposit box varies depending on size, and rent for such a space is charged annually. For larger items like furniture, art, or machinery, the immigrant should consider obtaining a storage unit.

Storage options make the most sense for immigrants who plan to return to the U.S. or who have family members or relatives who will use the items in short order. It does not make sense to store items for long periods of time given the associated cost.

Outsource

Appoint an individual with “limited” or “special” power of attorney to take any of the actions described above.

Other Factors to Consider

Deciding how to handle valuable personal property in the event of detention or deportation is a decision that cannot be made without careful consideration of an immigrant’s personal circumstance. Below are the sorts of things that every immigrant should consider:

Value v. Cost

An immigrant should consider the value of the item in comparison to the

cost of shipment or storage. For example, it would not be economical to store or ship a large item of little value, because cost of storage or shipment depends on size and weight of the item.

Availability

Consider shipping only items not available in the immigrant's home country, rather than incurring the additional cost of shipment for items they could purchase again following deportation. Similarly, if the item is widely available in the U.S., it may make more sense to sell and then repurchase rather than incur the interim cost of storage.

Financing

If an immigrant still owes money on an item of personal property, the immigrant should review all documents relating to the loan to be sure they understand the consequences of non-payment and their options for sale of the item or termination of the arrangement.

It may be necessary to repay the amount owed on the item of property prior to sale, or there may be a requirement associated with returning the property to the lender. If the immigrant is confused or has questions you can't answer, advise them to contact the company that provided the financing.

Tax Considerations

It is possible that the sale, purchase, or transfer of an item of personal property can result in tax liability or benefit. If the immigrant is dealing with a high-value item, counsel them to contact a tax professional.

Impact on Others

Immigrants should consider the impact on other individuals using the item of personal property when deciding whether to sell, store, transfer, or ship the property. For instance, if a relative or dependent lives in the home and uses the furniture or appliances, it may be most cost- and time-efficient to transfer the items to them rather than sell and replace them.

Similarly, an immigrant should consider whether failure to pay money owed on an item of personal property could cause harm to family members that remain in the U.S. Careful review of the terms any loan and conversations with any lenders or landlords should provide clarity on consequences of this nature.

Impact on Immigration Status

If removal proceedings are pending or anticipated, an immigrant should

consider how their handling of property will affect such proceedings. Likewise, if the immigrant plans to return to the U.S., this weighs in favor of complying strictly with all regulations and acting fairly in the context of a sale.

What Should You Do If Your Property Is Taken Away?

Confiscation or destruction of personal property is a risk. A detainee's belongings are often lost, destroyed, or stolen.

Even in the event that belongings are managed in accordance with proper protocols, these agencies (U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the U.S. Marshals Service, and the Bureau of Prisons) all have different regulations regarding what belongings can follow a detainee along the chain of custody and how long personal possessions will be held for safekeeping.⁵¹ As well, immigrants are often transferred between agencies, which increases potential for lost or destroyed items.⁵²

If the immigrant is carrying cash the time that they are apprehended, that cash will be taken from them. Often, the cash is eventually returned in a form that is unusable to the immigrant – either in the form of checks or money orders that cannot be cashed in their home country, or in the form of prepaid debit cards that may be difficult, confusing, expensive, or impossible to activate.⁵³

Avoiding or Mitigating the Risk

The best way for an immigrant to manage this risk is to know their rights and plan ahead.

Avoid Carrying a Lot of Cash

Aside from the obvious risk of loss, if you are deported with more than \$10,000 in cash you are required to file a declaration on CBP form 4790.⁵⁴ Failure to report currency can result in a civil and even criminal charge and forfeiture of money in an amount to be determined by CBP or ICE officials.

⁵¹ Available at: <https://www.americanimmigrationcouncil.org/research/deported-no-possessions>

⁵² Available at: https://www.vice.com/en_us/article/what-happens-to-your-stuff-when-you-get-deported

⁵³ Available at: <https://www.americanimmigrationcouncil.org/research/deported-no-possessions>

⁵⁴ Available at: <https://ilw.com/articles/2010,0706-DuPont.shtm>

Make Arrangements for Handling of Valuables In Advance

Be sure the immigrant knows where all their valuables are located, and advise them to keep a list of what they have (in a secure place or on your phone or computer). The immigrant should consider giving a trusted friend or family member, or someone with power of attorney, a copy of the list. A “special” or “limited” power of attorney will allow the agent to do specific acts listed; for example, to sell an immigrant’s couch or ship a box of jewelry to another country.

If the immigrant rents their home or apartment, help them review their lease for information on what the landlord can do if personal property is abandoned in the residence. It is best to arrange for a trusted person to have keys to ensure that someone can remove the immigrant’s personal property within a reasonable amount of time if they are detained or deported.

It may make sense to keep smaller valuable items in one or two places in the home, that way they are easily accessible for anyone handling personal property in the event of detention or deportation.

Know Your Rights

Property on your person

Once in custody, immigrants generally have 30 days to get their valuables back from CBP.⁵⁵ Arrangements between the U.S. and Mexico provide that “all feasible steps” should be taken to return property to its owner when he or she is released. Despite lapses in procedure and performance, knowledge of the rules will allow them to advocate for themselves more effectively.

Property in your home

In general, tenants will not lose their property by failing to remove it after the termination of a lease. Tenants have the right to enter the premises to remove their property within a reasonable time after a lease is terminated. Most often, tenants do not lose the right to their property even if they fail to remove it from the property within a reasonable time after the end of the lease; however, some locales hold that tenants may give up the right to recover their property by not removing it within a reasonable time.

⁵⁵ Available at: https://www.vice.com/en_us/article/what-happens-to-your-stuff-when-you-get-deported

How Can Immigrants Get Their Possessions Back?

Let the immigrant know of their options for retrieving their valuables if confiscated; that way, they can make an informed decision when confronted with a fast-moving situation.

By Mail

It may be advisable for an immigrant, if given the option, to mail certain personal property confiscated at the time they are taken into custody to a relative, friend, or attorney who can keep it in a safe place. Note, however, that the immigrant runs the risk of deportation without those items, which will be especially problematic with respect to identification and money.

Pickup

If deported, CBP will not mail the immigrant's leftover personal property anywhere. Leftover belongings can only be picked up by the owner or an individual with power of attorney.⁵⁶ It is wise to appoint a person with power of attorney in advance.

If deported, CBP will not mail the immigrant's leftover personal property anywhere. Leftover belongings can only be picked up by the owner or an individual with power of attorney.⁵⁷ It is wise to appoint a person with power of attorney in advance.

If the immigrant is unable to arrange for pickup of property, there are certain organizations that offer assistance in specific parts of the country. No More Deaths is one such organization (<http://forms.nomoredeaths.org/en/>).⁵⁸

Petition

File a petition with Customs and Border Protection to get your possessions back. Recent changes require filing of the petition with CBP even if the confiscation took place through Customs officials or through ICE officers.⁵⁹

Theoretically, it should be possible to obtain return of personal property and return of all or nearly all the funds seized by the government. Crucial to a successful petition is to show that the funds or assets were not used or obtained in the commission of a crime and that seizure of the funds would

⁵⁶ Available at: https://www.vice.com/en_us/article/what-happens-to-your-stuff-when-you-get-deported

⁵⁷ Available at: https://www.vice.com/en_us/article/what-happens-to-your-stuff-when-you-get-deported

⁵⁸ Available at: https://www.vice.com/en_us/article/what-happens-to-your-stuff-when-you-get-deported

⁵⁹ Available at: <https://ilw.com/articles/2010,0706-DuPont.shtm>

violate the excessive fines clause of the 8th Amendment to the U.S. Constitution.⁶⁰ Advise the immigrant to consult with an attorney regarding their petition.

⁶⁰ Id.

CHECKLIST: HANDLING VALUABLES

- ❑ Figure out what types of valuables you have, both in your home and on your person. This may include: electronics, jewelry, furniture, art, clothing, machinery, appliances, identification (license, ID card, passport, birth certificate), heirlooms or sentimental items.
- ❑ Understand that your property may be taken from you and destroyed.
 - *Make arrangements for handling of valuables in advance to minimize this risk.*
 - *Know your rights regarding property on your person if you are detained.*
 - *If your belongings are taken, you may petition to get it back by filing with Customs and Border Protection.*
- ❑ Avoid carrying a lot of cash.
 - *If you plan to carry more than \$10,000 out of the U.S., you are required to report it.*
 - *Failure to report can result in civil or criminal penalty, or you could have the money taken away.*
- ❑ Decide how you want your valuables handled if you are detained or deported.
 - *Explore the following paths: shipping valuables to your home country; selling your valuables; transferring valuables (either by gift or on a temporary basis); storing valuables (in a safety deposit box or storage unit, depending on size).*
 - *Familiarize yourself with the basic process for each, and the consequences that may result.*
 - *Let your family or household members know about your plan. Provide clear, written instructions.*
 - *Consider appointing a person with limited power of attorney to implement your plan.*
- ❑ Know the pros and cons of each option, and how your choice will impact you and your family.
 - *Factors to keep in mind: value of item vs. cost of storage; availability of item in home country; reliance of others remaining in the U.S. on item; sentimental value of item; tax consequences of transfer or sale; whether you still owe money on the item; whether you intend to return to the U.S., if deported.*

- *Talk to your relatives and, if possible, your attorney about these issues.*
- *The best strategy will depend on the type of item as well as your personal circumstances.*

16. TAKING MONEY ACROSS THE BORDER

Taking cash or things like cash (such as checks, money orders, etc.) across the border presents both legal and practical concerns. This section discusses these concerns, which are relevant to all people leaving the United States, both in the deportation context and otherwise. This chapter will answer these questions:

⦿⦿ **What Legal Obligations Does an Individual Have When Taking Cash or Things Like Cash When Leaving the United States?** ⦿⦿ **What Practical Issues Should an Immigrant Facing Deportation Consider?** ⦿⦿ **How Do You Find and Receive Your Unclaimed Assets?** ⦿⦿

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Legal Obligations Does a Person Have When Taking Cash or Things Like Cash When Leaving the United States?

There is no limit to how much cash a person may take when leaving the country. However, if a person takes more than \$10,000 in (1) cash, (2) traveler's checks, (3) checks that have not been made out to a specific person or (4) money orders across the border at one time, he or she must fill out a form called "Report of International Transportation of Currency or Monetary Instruments" or FinCEN Form 105. This form may be obtained from a Customs officer at the point of departure from the U.S. or online at https://www.fincen.gov/sites/default/files/shared/fin105_cmir.pdf If a person facing deportation does not make this declaration, the currency may be seized.

Note that a person does not have to report checks or money orders made payable to the order of named person if the check or money order has not yet been endorsed or if it does not contain any restrictive endorsements. Although these checks are not required to be reported, the person should consider reporting the checks to avoid any delays in crossing the border.

Is There a Cost to Filing This Form?

No. There is no cost for filing FinCen Form 105. The form may be obtained for free from the Customs officers or Customs website.

Is There a Duty or Tax on the Money Reported?

No. Customs does not charge taxes on cash or things like cash that must be reported in FinCEN Form 105.

What May Happen if the Cash or Money is Not Reported or Not Properly Reported?

If a person does not report amounts greater than \$10,000, then Customs may seize the money. If the money is seized by Customs, there is a risk that the money will not be returned to the person. In some cases, especially if there is related criminal activity, there may be criminal penalties for failing to report the money.

What Practical Issues Should an Immigrant Facing Deportation Consider?

There are risks associated with transporting large amounts of cash or things like cash across the border or generally when leaving the country. Cash and checks are generally not retrievable if lost or stolen while traveling.

A person facing deportation should consider carefully whether he or she is willing to take this risk. There may be other options for removing cash assets from the United States upon deportation.

For Preparing and Supervised Immigrants

Preparing and Supervised Immigrants who are able to go to the bank in person may request a bank draft made out to “payee.” This is slightly safer than cash because the draft can be cancelled if lost or stolen. But the lost or stolen draft must be cancelled before another person finds the draft and cashes it, and it may be difficult to cancel the draft quickly (because a deported immigrant would have to contact the United States bank from the home country, taking into account business hours and time differences). Also, some banks charge fees to issue and cancel a bank draft, and banks in the immigrant’s home country may charge a fee to cash the draft.

For Detained Immigrants

For an individual who has been detained and who will not be released prior to deportation, it may be impossible to go to the bank in person. However,

the immigrant can take certain steps so that he or she will have the cash when they arrive in their home country.

Withdrawing Cash While the Immigrant is Detained

An individual in detention who has cash in a bank account can withdraw that cash using a variety of methods. One option is for the person facing deportation to give his or her bank card to a trusted friend or family member and ask them to withdraw the cash. Later, this person can send the money to the immigrant once he or she reaches their home country. Keep in mind that the individual withdrawing the money will need to know the immigrant's PIN number to get the cash and will have access to all of the immigrant's money.

Another option is to have the bank card itself mailed to a trusted friend or family member in the immigrant's home country and then have the immigrant retrieve the card and withdraw the cash upon arrival.

Third, if the immigrant had a chance to set up power of attorney (POA), their agent can authorize a bank draft or wire transfer of the money to the immigrant's account in their home country (assuming the immigrant has a bank account in their home country) or, alternatively, the agent can send a check or money order directly to the immigrant in their home country.

Withdrawing Cash Outside of the United States

As discussed above, a United States bank account is accessible in many foreign countries through ATMs. Whether this is a useful or reliable method for extracting cash will depend on individual circumstances, including whether and to what extent ATMs are available. Note that this option also requires that the immigrant keep the United States bank account open after deportation. Nevertheless, in certain situations, this option may be best.

How Do You Find and Receive Your Unclaimed Assets?

An immigrant may have property in an account that has been unclaimed of which they have no knowledge. These assets may have come from various sources, and many times people are unaware of their existence. An immigrant can reclaim this property by contacting the unclaimed property office in their state. Or you can go to <https://www.usa.gov/unclaimed-money> (sponsored by the National Association of Unclaimed Property

Administrators) for instructions on doing a more general search that covers more than one jurisdiction.

CHECKLIST: TAKING MONEY ACROSS THE BORDER

- ❑ If you take more than \$10,000 in cash, traveler’s checks, checks not made out in your name or which have been endorsed but not made out to any specific person or money at one time when you leave the United States, you must fill out a form called “Report of International Transportation of Currency or Monetary Instruments,” also known as FinCEN Form 105, which can be obtained from a Customs officer at the point of departure or online at http://www.fincen.gov/forms/files/fin105_cmir.pdf. If you do not make this declaration, the currency may be seized.
- ❑ Be careful when transporting cash since it is not recoverable if it gets lost.
- ❑ If you are detained, you may have limited options for accessing your funds.
- ❑ If you have time to make arrangements to mail a debit card, or expect to withdraw money from the U.S. bank account in your home country, call the bank ahead of your departure to your home country to let them know there will be activity from your home country.
- ❑ If you plan to take any checks or money orders, you can make traveling with these items safer if they are made out to a specific person, or contain certain restrictions, such as, “for deposit only account number xxxxxx.” Keep in mind that placing such restrictions on the check or money order may also make it harder for you to cash the check in your home country if you do not have proper identification to show the bank in your home country.
 - *You may want to select a trusted friend or family member to give your debit card to in order to withdraw cash for you. The friend could give you the cash or send it to you by wire transfer once you reach your home country.*
 - *If you have had a chance to set up a power of attorney, your agent could authorize a bank to draft or wire transfer of money to an account in your home country or send you a check or money order there.*

KEY TAKEAWAY

Given that there are risks associated with each option for transporting cash or things like cash across the border, to the extent possible, it is best to plan ahead and weigh the pros and cons of each of these options.

17. REMITTANCE TRANSFER CONSUMER RIGHTS

United States consumer protection law protects individuals who send remittance transfers to recipients in another country. This section discusses the details and applicability of these protections. This chapter answers the following questions:

☉☉ **What Remittance Transfers are Protected?** ☉☉ **What Protections Apply to Remittance Transfers?** ☉☉ **What if You Want to Cancel Your Remittance Transfer?** ☉☉ **What if There is a Problem with Your Remittance Transfer?** ☉☉

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Remittance Transfers Are Protected?

A remittance is money sent by an individual in the United States through a remittance transfer provider to recipients abroad.

An individual who sends a remittance of \$15 or more is protected by certain federal disclosure requirements imposed on most businesses that provide the remittance transfer service.

Not all businesses that provide remittance transfer services are covered by the law. Only companies that provide more than 100 remittance transfers per year (“remittance transfer service providers”) are required to comply with the law. Remittance transfer service providers generally include money transmitter companies, banks and credit unions, and many other types of financial services companies.

Generally, businesses that send remittances on behalf of customers are regulated entities, either because they are regulated banking organizations or they are nonbank businesses that have state licenses as money

transmitters. Almost all states now license and regulate nonbank money transmitters. For your protection, you should use only a regulated bank or a licensed money transmitter to send your remittance.

What Protections Apply to Remittance Transfers?

Under federal law, remittance transfer service providers are required to provide readily understandable, clear and conspicuous disclosures of certain information concerning your remittance transfer.

Under federal regulations, remittance transfer providers must provide you with the following information before you pay to send a remittance:

- *The applicable exchange rate;*
- *Any fees and taxes that the remittance transfer provider collects from you;*
- *Any fees charged by any third parties involved in the transfer process, including the remittance transfer provider's agents or other companies involved in the transfer process;*
- *The total amount of money expected to be delivered (not including foreign taxes or certain fees charged to the recipient of the remittance); and*
- *A statement that additional foreign taxes and fees may apply.*

Remittance transfer providers must also provide the following information after you pay to send the remittance:

- *The date that the money will be available to the recipient;*
- *Instructions on your right to cancel the remittance;*
- *What to do in case there is an error with your remittance; and*
- *How to submit a complaint about your remittance.*

Generally speaking, these disclosures must be provided in English and either in: (1) each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services at the office in which a sender conducts a transaction or asserts an error; or (2) the foreign language primarily used by the sender to conduct the transaction, provided that the foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services at the office in which a sender conducts a transaction or asserts an error. Generally speaking, transfers conducted solely through telephone, mobile and text should be made in the language used by the sender to conduct the remittance transfer transaction.

What If You Want to Cancel Your Remittance Transfer?

After paying for a remittance, you have 30 minutes to cancel the transaction but only if the request to cancel permits the remittance transfer provider to identify the sender and the particular transfer to be cancelled, and the transfer has not already been picked up or deposited into the recipient's account.

After the request to transfer, the remittance transfer provider has three business days to refund your remittance and any fees or taxes if allowed by law.

What If There is a Problem with Your Remittance Transfer?

If you think that there was an error or mistake with your remittance transfer, you should immediately contact the remittance transfer provider. You have 180 days from the date the money was supposed to be available to the recipient of the remittance (this date must be disclosed by the remittance transfer provider) to notify the provider of the error.

The remittance transfer provider has 90 days from the date of your complaint to investigate your concern.

If certain errors occur, then you may be able to choose to receive a refund or re-send the remittance. These errors include payment of the wrong amount, failure to deliver funds on time or to the right person, and failure to deliver the funds at all.

If you do not receive a satisfactory response, from the provider, you can submit a complaint to the United States' Consumer Financial Protection Bureau (CFPB). Complaints may be submitted online at:

<https://www.consumerfinance.gov/complaint/>.

18. COLLECTING UNPAID WAGES

Immigrants in the United States, both with and without work authorization, are legally entitled to overtime pay and the minimum wage. Despite these rights, immigrants working in the United States must often respond to employers' violations of labor law. In the face of deportation, an immigrant often must also take steps to recover their last paycheck. Often, simply sending an updated address to an employer will resolve this issue, but sometimes an immigrant may need to take further steps to protect his or her rights to a last paycheck. This section provides concrete advice for recovering a final paycheck during and after deportation. The section will answer these questions:

☞ **What Are Your Rights to Wages for Work You Perform?** ☞ **How Long Does an Employer Have to Pay the Last Paycheck?** ☞ **How Can You Get Your Last Paycheck if You Are Detained or Deported?** ☞ **What if the Employer Does Not Pay the Last Paycheck?** ☞ **What if There are Other Wage Problems Beyond the Last Paycheck?** ☞

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Are Your Rights to Wages for Work You Perform?

As an employee in the United States, an immigrant has the right to be paid for the work that he or she has done. An employer cannot refuse to pay wages for work performed simply because an employee does not have a work permit or a Social Security number.

How Long Does an Employer Have to Pay the Last Check?

The amount of time within which an employer must pay a last paycheck is established by state laws and varies from state to state. The amount of time also depends on whether an employee is discharged (is fired or laid off) or leaves employment for another reason (such as quitting, detention or

deportation). If an employee is discharged, most states require the employer to pay the last paycheck immediately or within a few days of discharge. In Texas, for example, an employer must pay a discharged employee by the sixth day after discharge. California requires an employer to pay a discharged employee immediately upon discharge. New York requires that a discharged employee be paid on the next regular payday.

If an employee leaves employment for another reason, such as detention or deportation, most states, including Texas and New York, require the employer to pay the last paycheck on the next regularly scheduled payday. California requires an employer to pay within 72 hours in this situation unless the employee has given 72 hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. New York and California laws also specifically provide that if requested by the employee, such wages shall be paid by mail to the designated address.

A list of state final pay laws can be found at <http://smallbusiness.findlaw.com/employment-law-and-human-resources/final-paycheck-laws-by-state.html>. Please verify any information posted on the Web and consult a local lawyer with any legal questions.

How Can You Get Your Last Paycheck If You Are Detained or Deported?

Most often, simply informing an employer of a change of address will be sufficient to receive a last paycheck.

In addition to requesting the last paycheck be sent to the new address, a detained or deported immigrant can ask the employer to send the last paycheck to another person chosen by the immigrant. This designation must be made in writing by the immigrant employee. There is a sample letter at the end of this chapter.

What If the Employer Does Not Pay the Last Paycheck?

If any employer does not pay the last paycheck, an immigrant may decide to send a letter demanding payment. There is a sample letter at the end of this chapter.

In addition to the demand letter, an immigrant may decide to make a complaint with the U.S. Department of Labor if the immigrant's work affects interstate commerce (most work does). Complaints should be made to the nearest District Office of the U.S. Wage and Hour Division of the

Department of Labor. A directory of Wage and Hour District Offices can be found on the Department of Labor website at <http://www.dol.gov/dol/location.htm>. The Wage and Hour Division's toll-free help line can be reached at 1-866-487-9243.

An immigrant may also decide to file complaints with their state government. A list of state labor offices is included at the end of this chapter and can be found on the Department of Labor website at https://www.dol.gov/whd/contacts/state_of.htm. There are often long delays in investigations by state labor offices.

The Consulado de Mexico in the area where the work was performed or where the immigrant lived in the United States may also be able to help.

Many nonprofit organizations provide support for immigrant workers. Resources include:

National Immigration Law Center

<https://www.nilc.org>

Equal Justice Center

<http://www.equaljusticecenter.org>

National Employment Law Project

<http://www.nelp.org>

Texas RioGrande Legal Aid

<http://www.trla.org>

For Deported Immigrants in Mexico

Deported Mexican Immigrants can receive support for wage violations from the Centro de los Derechos del Migrante (<http://www.cdmigrante.org/> or toll-free from the United States at 1-855-234-9699 or toll free from Mexico at 01-800-590-1773) and the Global Workers Justice Alliance (<http://www.globalworkers.org>).

What If There Are Other Wage Problems Beyond the Last Paycheck?

Many immigrants experience violation of their employment rights beyond nonpayment of the last paycheck. A complaint made to the U.S. Department of Labor or state government agencies can also include complaints about other labor law violations, including unpaid overtime, workers' compensation abuses and minimum wage violations.

Many of the groups listed above under "What If the Employer Does Not Pay the Last Paycheck?" can also assist in addressing other labor law violations.

Note: It is illegal for an employer to retaliate against an immigrant employee for demanding his or her rights.

SAMPLE LETTER: DESIGNATING METHOD OF RECEIVING LAST PAYCHECK⁶¹

[Employer Name
Employer Address
City, State, Zip code]

[Date]

Dear [Employer],

Please deliver all of the remaining wages that I am owed to the following address:

[Worker's Name]
Care of [Relative's or Friend's Name]
Address
City, State, Zip code]

--OR--

I hereby designate [Name of Relative or Friend] to receive all of the remaining wages that I am owed. Please deliver my wages to [Designee] in person at my regular place of work during working hours, no later than the next regularly scheduled payday.

I would also remind you that if an employee is discharged or leaves employment for another reason, the employee has a right to fair wages for work performed and employer must pay the last paycheck no later than provided by applicable state law.⁶²

Thank you for your assistance.

Sincerely,
[Signature
Employee Name]

⁶¹ This sample letter conforms to Texas law. Check your state's laws to determine your employer's obligations to deliver paychecks to employees in the manners listed in this letter.

⁶² Most states require the employer to pay the last paycheck on the next regularly scheduled payday. Check your state's laws to determine your rights in your specific situation. A list of state final pay laws can be found at <http://smallbusiness.findlaw.com/employment-employer/employment-employer-ending/employment-employer-ending-paycheck-final.html>. Please verify any information posted on the Web and consult a local lawyer with any legal questions.

SAMPLE LETTER: DEMAND LETTER FOR WAGES OWED

[Employer Name
Employer Address
City, State, Zip Code]

[Date]

Dear [Employer],

My name is [Employee's name] and I was employed by you from approximately [date] until [date]. I am owed [\$ amount] for [type of work, i.e. – gardening, landscaping, hauling] work I performed for you at [location] from [date] until [date]. Due to your failure to pay me for the work that I performed for you, you are in breach of contract, and could be in violation of federal and state minimum wage laws.

I would prefer to resolve this dispute through friendly negotiation. To resolve this matter immediately, please send a check for money order for [\$ amount] made payable to [Employee's Name] to: [Employee's Address]. If you have questions or would like to discuss this matter, please contact me immediately at: [Telephone number: (123) 452-8888].

If the [\$ amount] owed for my work is not paid in full before [date], an administrative complaint and/or lawsuit may be filed and you could become liable for additional damages available under law and costs of suit.

I would also remind you that it is against the law to retaliate against me for assertion of my claims and any retaliatory action could result in the assessment of additional damages.

Sincerely,
[Signature
Employee Name]

19. SOCIAL SECURITY

For immigrants who are Non-U.S. Citizens, whether Preparing Immigrants or Supervised Immigrants in the face of Voluntary Departure, there are steps they can take to determine their eligibility for U.S. Social Security Benefits (“SS Benefits”). The section, which is only relevant to a small subset of immigrants, either Insured Workers or dependents or survivors, addresses both the legal and practical considerations. This chapter will answer these questions:

◎◎ Understanding Social Security: Basic Definitions ◎◎ Which Immigrants Are Eligible to Receive Social Security Benefits? ◎◎ What Should You Do if You Are Already Receiving Social Security Benefits Payments? ◎◎ Are Immigrants Facing Deportation Eligible for Social Security Benefits? ◎◎ My Social Security Benefits Have Been Suspended Since I Have Been in Detention - What Should I Do? ◎◎ Can Immigrants Continue Receiving Social Security Benefits After Deportation? ◎◎ What Should Preparing and Supervised Immigrants Do Before Leaving the U.S.? ◎◎ What Can Detained Immigrants Do After Deportation? ◎◎

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Understanding Social Security: Basic Definitions

“**Dependents and Survivors Benefits**” include (1) Wife’s / Husband’s Insurance Benefits; (2) Child’s Insurance Benefits; (3) Widow’s / Widower’s Insurance Benefits; (4) Mother’s and Father’s Insurance Benefits; (5) Parent’s Insurance Benefits; and (6) Lump-Sum Death Payments.

“**Deportable Aliens**” are individuals who are removed or deported. Individuals who fall within this category will have their Social Security Benefits suspended. Deportable Aliens does not include aliens who violate nonimmigrant status or condition of entry.

“Insured Workers” are any individual immigrants who have a Social Security number (“SSN”) and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances.

“Qualified Aliens” are any Non-U.S. Citizens who, at the time they apply for, receive, or attempt to receive a federal public benefit, fall within of any of the seven categories of the Department of Homeland Security immigration statuses.

“Retirement Benefits” are Old-Age Insurance Benefits.

“SSA” is the abbreviation for the Social Security Administration.

“SS Benefits” are Retirement Benefits, Dependent and Survivor Benefits, Social Security Disability (SSD) Benefits or Supplemental Security Income (SSI) Benefits.

“SSD Benefits” are Social Security Disability Benefits. The Social Security disability insurance program is designed to help people who can’t work because they have a medical condition that’s expected to last at least one year or result in death.

“SSI Benefits” are Supplemental Security Income Benefits. A federal income supplement program designed to help aged, blind, and persons with disabilities who have little or no income. Supplemental Security Income Benefits can never be received by dependents.

“SSN” is the abbreviation for Social Security Number.

“U.S.” is the abbreviation for United States.

“Voluntary Departure” is an option that may be granted by either the Department of Homeland Security or an immigration court judge to immigrants facing deportation who meet the following requirements: (1) Presence in the U.S. for at least one year immediately prior to the date notice to appear was served; (2) Person of good moral character for at least five years immediately preceding application for voluntary departure; (3) Not accused of an aggravated felony; and (4) Not deportable for public safety or national security reasons. Immigrants granted Voluntary Departure are not deemed “deported” or “removed” and may be able to receive benefits once back in Mexico.

“Voluntary Return” is an option for Preparing Immigrants before notice of a hearing on removal (not to be confused with a grant of “Voluntary Departure”).

Which Immigrants Are Eligible to Receive Social Security Benefits?

Insured Workers

If you are an Insured Worker, to be eligible to receive Social Security Benefits you must meet the following criteria:

- *Retirement Benefits if worked for 10 years and obtain retirement age (age 66 or 67);*
- *Social Security Disability Benefits (“SSD Benefits”) if a person with disabilities is not able to work and typically worked 10 years; or*
- *Depending on your age, you may be able to receive Social Security Disability Benefits with fewer years of work.*

Additionally, you can receive Supplemental Security Income Benefits (“SSI Benefits”) if you are a qualified alien who has limited income and resources and is either aged 65 or older, and is blind or has disabilities.

Dependents or Survivors

If you are a dependent or survivor of an Insured Worker, to be eligible to receive Social Security Benefits you must meet the following criteria:

- *Spouse (including former) age 62 or older;*
- *Spouse younger than 62 taking care of an entitled child under 16 or with disabilities (Spouses who have never worked or have low earning get up to half of a retired worker’s full benefit);*
- *Children up to age 18, or 19 if full-time students and have not graduated from high school; and*
- *Children with disabilities, even if 18 or older.*

What Should You Do if You are Already Receiving Social Security Benefit Payments?

If you are an Insured Worker planning to stay in the U.S. you should continue contributing to the Social Security Administration, and check with the Social Security Administration to see if you or any of your family members are eligible to apply for benefits. You should have their Social Security numbers and their birth certificates readily available. You should explain to your family members that they may be entitled to survivor benefits if you pass away and confirm that they know how to apply for Social Security Benefits in such case.

If you are an Insured Worker considering a Voluntary Return to your home country (not to be confused with a grant of “Voluntary Departure”), you

may continue receiving Social Security Benefits payments while you are outside the U.S. depending on which country the payments are to be sent. You must confirm with the Social Security Administration (SSA) that payments can be sent to your destination country. If the country is eligible, once you are outside the U.S. you will need to (1) complete an annual questionnaire sent by the Social Security Administration between May and June; and (2) report any changes in address, work, improvement in disability, marriage, divorce, annulment, adoption, child leaving the care of a spouse, child nearing age 18 is a full-time student or is disabled, death, inability to manage funds, deportation or removal from the U.S., changes in parental circumstances, and eligibility for a pension from work. Consider signing up for direct deposit to avoid problems with lost checks. Supplemental Security Income Benefits can never be received if you are outside of the U.S. for more than one month.

If you are a dependent or survivor considering a Voluntary Return to your home country, you may continue receiving Social Security Benefits payments while you are outside the U.S. depending on your destination country. If the country is eligible, once you are outside the U.S. you will need to: (1) show that you lived in the U.S. for at least five years; (2) during those five years, the family relationship on which benefits are based must have continued to exist (unless your entitlement is based on a worker who died during U.S. military service or because of service. These requirements are automatically met for a child if the worker or other parent meets them); and (3) complete the Social Security Administration annual questionnaire and notify the Social Security Administration about changes as mentioned above.

Are Immigrants Facing Deportation Eligible for Social Security Benefits?

If you are an immigrant who has been classified as “Qualified Alien” in the past and qualified for Social Security Benefits, but have since had your legal status revoked and face deportation, you *may* be eligible to make claims for Social Security Benefits only if you meet the following criteria:

- *Lawfully admitted for permanent residence; and*
- *Granted non-citizen classification within the last seven years through a withholding of deportation or removal.*

If you are an immigrant not lawfully admitted for permanent *residence*, but your deportation is being withheld, you *may* still receive Social Security Benefits if you fulfill any of the following:

- *If you were lawfully residing in the U.S. on August 22, 1996, and you are blind or disabled;*
- *If you were lawfully residing in the U.S. and you were receiving Social Security Benefits on August 22, 1996; or*
- *Your deportation or removal was withheld within the last seven years.*

If non-U.S. citizens meet one of these criteria, they are eligible to receive Social Security Benefits, provided their noncitizen statuses remain legal and they are not deported.

If you are a Detained Immigrant who was already receiving Social Security Benefits, the government may suspend your Social Security Benefits while you are detained. Nevertheless, you may appeal a decision by the Social Security Administration to suspend your Social Security Benefits while you are in immigration detention. While you are in detention you should take the following steps:

1. *Have the person you designated make copies of all letters you receive from the Social Security Administration.*
2. *Create a log of every communication with the Social Security Administration, the date of the communication, the content of it, and the follow up steps the Social Security Administration or you will make.*
3. *Add copies of your checks from the Social Security Administration to the log. Also, watch your bank account (or have the person you designated do it) if you are receiving direct deposit.*
4. *If the Social Security Administration sends a letter telling you that your benefits have been suspended because you are in detention, you should be prepared to appeal. You will then follow the steps outlined below.*

My Social Security Benefits Have Been Suspended Since I Have Been in Detention - What Should I Do?

If the Social Security Administration sends a letter telling you that your benefits have been suspended because you are in detention, you should be prepared to appeal. You should follow the steps outlined below:

1. *The first step in the appeal process is a request for reconsideration. The request should be made in writing within 60 days of receipt of the original letter from the Social Security Administration suspending benefits. Try to have someone outside (not in detention) send it in, since mail in detention*

facilities can be unreliable.

2. *The letter must include: (a) the name of the wage earner (you); (b) the Social Security Number of the wage earner (your SSN); (c) an address and a current day-time phone number; (d) where the Social Security Administration may reach you; (e) the type of decision on which you wish reconsideration (suspension of retirement benefits); and (f) why you disagree with the determination.*
3. *If your request for reconsideration has been denied, the next step is to request a hearing in front of an administrative judge.*
4. *The next step is to request a review of the decision by the Appeal Council.*
5. *The next step after that would be to request a hearing in the federal District Court.*

At these stages, you will have to proceed pro se (on your own without a lawyer) unless you can afford a lawyer or can obtain the services of a free legal services agency. There is no filing fee at the administrative level. There is a filing fee at the District Court level, but you can file “in forma pauperis,” which means the court will waive the filing fee.

Can Immigrants Continue Receiving Social Security Benefits After Deportation?

If you are a non-U.S. citizen Insured Worker, once you are deported, you cannot receive any benefits for any month after the Social Security Administration receives notice of your deportation from the Secretary of the Department of Homeland Security or the Attorney General. If you are subsequently lawfully readmitted to the U.S. for permanent residence after being deported, any unpaid benefits may be payable upon readmission.

If you are a dependent or survivor and the Insured Worker is deported, then you can continue receiving Retirement Benefits payments only if: (1) you are a U.S. citizen, or (2) you were lawfully present in the U.S. for the entire month. However, if you are a dependent and a non-U.S. citizen, you are not entitled to receive benefits during any period where you are not present in the U.S.

A lump sum death payment cannot be based on the record of a person who died after the Social Security Administration received notice of his deportation and before he was thereafter lawfully admitted.

If you are a dependent who is deported and the Insured Worker is not, the Insured Worker will continue to receive benefits but you will not.

It is difficult to receive Social Security Disability Benefits if the Insured Worker is abroad for logistical reasons (the Social Security Administration may not accept a re-evaluation done abroad).

Finally, if you are a dependent and the Insured Worker dies during or after the month the Social Security Administration receives notice of the immigrant's deportation or removal, you cannot receive a standard lump-sum death payment based on the Insured Worker's earnings unless the Insured Worker was subsequently admitted for permanent residence after deportation or removal.

What Should Preparing and Supervised Immigrants Do Before Leaving the U.S.?

If you are an immigrant Insured Worker, including both Preparing and Supervised Immigrants with dependents and you face the possibility of future removal from the U.S., you should take measures to obtain U.S. citizenship for your dependents. If your dependents cannot obtain U.S. citizenship, they should understand that if they leave the U.S. for any period after you are deported, they will waive their rights to Social Security Benefits for their period of absence.

If you are an Insured Worker and your dependents are deported but you are not, you should arrange for the means to wire or otherwise transfer the benefits to your dependent to their home countries, if necessary.

Supervised Immigrants lose the option of staying in the U.S. or of leaving voluntarily.

If Preparing Immigrants and Supervised Immigrants already received a notice of hearing on removal, consider asking for "Voluntary Departure;"⁶³ immigrants granted Voluntary Departure are not deemed "deported" or "removed" and may be able to receive benefits once back in Mexico.

To qualify for Voluntary Departure, the following criteria must be met: (1) presence in the U.S. for at least one year prior to the date notice to appear was served; (2) person of good moral character for at least 5 years directly before applying for Voluntary Departure; (3) not accused of an aggravated felony; and (4) not deportable for public safety or national security reasons.

⁶³ Immigrants have to pay for their own expenses to leave and post a bond and if they fail to leave within the specified timeframe there is a large fine, the bond is lost, and the immigrants face a 10-year bar to lawful re-entry.

What Can Detained Immigrants Do After Deportation?

If Detained Immigrant Insured Workers are removed from the U.S. all Social Security Benefits will end. However, their dependents may be entitled to continue receiving benefits if they are U.S. citizens and they were present in the U.S. for the entire month.

The dependents should understand that they waive their dependent benefits for any month that they spend any part of that month outside the U.S.

CHECKLIST: SOCIAL SECURITY

- ❑ If you are an Insured Worker or the dependent or survivor of an Insured Worker and you are eligible to receive Social Security Benefits, to obtain those benefits you must apply (at the website www.socialsecurity.gov or in person) with the following documentation and information:⁶⁴
 - *Your SSN;*
 - *Your birth certificate;*
 - *Your W-2 forms or self-employment tax return for last year;*
 - *Your military discharge papers if you had military service;*
 - *Your spouse's birth certificate and SSN if they're applying for benefits;*
 - *Your children's birth certificates and SSN, if you're applying on your children's behalf;*
 - *Proof of U.S. citizenship or lawful alien status if you (or a spouse or child applying for benefits) were not born in the U.S.; and*
 - *The name of your financial institution, the routing number, and your account number for direct deposit. If you don't have an account at a financial institution, or prefer to do so, you can sign up to get your benefits on a prepaid card.*

KEY TAKEAWAYS

- ❑ Deportation of an immigrant Insured Worker or his dependents or survivors can affect Social Security benefits.
- ❑ If you were an Insured Worker in the U.S. and received Social Security Benefits, your children and other dependents can continue receiving benefits if they are U.S. citizens.
- ❑ If you were an Insured Worker in the U.S. and received Social Security Benefits and your dependents do not have legal status in the U.S., you and they should understand that they cannot receive benefits for any month that they are outside the U.S. for any length of time
- ❑ You will not be able to receive Social Security Benefits once the Social Security Administration is notified that you have been deported. However, if you are lawfully admitted to the U.S. for permanent residence after being deported, any benefits that were unpaid because of your deportation may be payable when you are readmitted
- ❑ If you are an Insured Worker, a lump sum death payment cannot be made to your survivor on your record if you died after the Social Security

⁶⁴ If you disagree with a decision made on your claim, you can appeal it.

Administration received notice of your removal and before you were thereafter lawfully admitted.

- If you receive Social Security Benefits as the dependent of an Insured Worker, and you are deported but the wage earner is not, the Insured Worker will continue to receive benefits but you will not.

20. VETERANS BENEFITS

Because it is possible for non-U.S. citizens to serve in the U.S. Armed Forces and become entitled to veterans benefits and because some of these honorably-discharged veterans could subsequently be convicted and imprisoned for commission of a felony, they could be subjected to removal (deportation) proceedings upon release from prison. Unfortunately, some of these veterans, perhaps thinking that military service alone would confer citizenship, did not avail themselves of the process for expedited citizenship while they served on active duty or after their retirement. This chapter discusses the rights of non-U.S. citizen veterans to benefits and the effect on those benefits of the veteran being imprisoned and subsequently removed (deported).

◎◎ **Non-Citizens are Eligible to Serve in the U.S Armed Forces** ◎◎
 Expedited Citizenship for Military Members and Their Families ◎◎
 Veterans Benefits for Military Veterans, Dependents and Survivors ◎◎
 Potential for Non-Citizen Veterans to be Removed (Deported) ◎◎ Loss of
 Benefits Because of a Veteran’s Felony Conviction and Imprisonment ◎◎
 Veterans Benefits after Removal (Deportation) ◎◎

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Non-Citizens are Eligible to Serve in the U.S. Armed Forces

To enlist in any branch of the U.S. military, you must either be a U.S. citizen or a legal permanent resident with a green card physically living in the United States.

For enlistment purposes, citizens of the United States include citizens of Guam, Puerto Rico, the U.S. Virgin Islands, the Northern Marianas Islands, American Samoa, the Federated States of Micronesia, and the Republic of the Marshall Islands, as well as the 50 states.

Expedited Citizenship for Military Members and Their Families

Citizenship for Military Members

<https://www.uscis.gov/military/citizenship-military-personnel-family-members/citizenship-military-members>

<https://my.uscis.gov/helpcenter/article/what-is-the-naturalization-at-basic-training-initiative>

Citizenship for Spouses and Children of Military Members

<https://www.uscis.gov/military/citizenship-military-personnel-family-members/citizenship-spouses-and-children-military-members>

Veterans Benefits for Military Veterans, Dependents and Survivors

Special Veterans Benefits (SSA)

Under certain circumstances, military veterans who served between 1940 and 2001 can be credited for special extra earnings for Social Security purposes. These extra earnings may help you qualify for Social Security or increase the amount of your Social Security benefit. Depending on the length and time frame of military service, some veterans may find that the benefit increase may be minimal. These special extra earnings are granted for periods of active duty or active duty for training. Special extra earnings are not granted for inactive duty training.

Veterans Administration (VA)

The benefits include health care, disability compensation, special monthly compensation, allowances and grants (related to disability), vocational rehabilitation and employment (for disabled), pensions and education. A thorough discussion can be found at:

https://www.va.gov/opa/publications/benefits_book/2016_Federal_Benefits_for_Veterans.pdf

Potential for Non-Citizen Veterans to be Removed (Deported)

Non-citizen veterans of military service may be subject to removal for a variety of reasons, including the commission of crimes worthy of imprisonment, engagement in terrorist activities and failure to comply with visa requirements. In a 2012 article by the Veterans United Network, federal authorities estimated anywhere from several hundred to as many as 3,000

men and women who served in the U.S. Armed Forces have been deported since 2007.

Loss of Benefits Because of a Veteran's Felony Conviction and Imprisonment (Applies to All Veterans)

SSA Benefits

See, generally, <https://www.ssa.gov/pubs/EN-05-10133.pdf>

VA Benefits

Veterans could lose their VA benefits because of incarceration. For incarcerated veterans, a reduction or loss of benefits is determined by the crime committed and the resulting prison sentence, e.g. whether the offense was a felony or misdemeanor. Benefits commonly affected by a prison sentence include educational as well as disability entitlements. VA disability compensation payments are reduced if a veteran is convicted of a felony and imprisoned for more than 60 days. Veterans rated 20 percent or more are limited to the 10 percent disability rate. For a veteran whose disability rating is 10 percent, the payment is reduced by one-half. Unlike disability compensation, a disability pension will be lost completely regardless of the crime committed and the accompanying sentence. Payments will stop on the 61st day of incarceration. These payments may be collected again following a release from prison, but only if all VA eligibility requirements are again met. Inmates who are not receiving their benefits in prison can opt to have the payments sent to their spouse, children, or parents if they are dependents of the inmate. Whoever is to receive the benefit payments, must apply to get the money from the VA, because it will not be sent automatically. Benefits and compensation can be resumed on the date the inmate is released from prison. For this to happen, the Department of Veterans Affairs must be notified of the scheduled release date within one year of it. Furthermore, this release date must be confirmed with the VA 30 days from release. Education benefits are reduced but partially available during imprisonment. See, generally, <http://www.benefits.va.gov/persona/veteran-incarcerated.asp>

Veterans Benefits after Removal (Deportation)

SSA Benefits

The removal of an immigrant may result in non-payment of Special Veterans Benefits (see section 804 of the Social Security Act). Suspension of benefits begins the month after the month that the SSA receives notice of his or her removal from the Secretary of Homeland Security, DHS, the Attorney General, or DOJ. Once the immigrant is subject to non-payment of benefits, payments cannot be reinstated until he or she is granted lawful admission for permanent residence in the United States subsequent to removal.

Dependent or survivor benefits on a removed immigrant's record cannot be paid for any month in which:

- *Benefits are or would have been suspended;*
- *The dependent or survivor is a non-U.S. citizen; and*
- *The dependent or survivor was outside the United States at any time during the month, even if the absence was only for part of a day.*

VA Benefits

The removal of an immigrant should not generally affect his or her VA benefits, but it will require compliance with additional procedures. The VA should treat the veteran just as it treats other veterans who are living abroad. See, generally, <http://www.benefits.va.gov/persona/veteran-abroad.asp>.

21. DISSOLVING OR SELLING A BUSINESS

Selling or dissolving a business may pose many legal complexities depending on a number of factors, such as the form of business, whether the business is jointly owned and the need to address the tax matters and licenses associated with the business. For this reason, this is an area where professional legal support is often needed. This chapter highlights high level issues to consider.

©© **What are Common Forms of Business Organizations?** ©© **What are the Considerations When Selling or Dissolving a Sole Proprietorship?** ©© **What are the Considerations When Selling a Jointly Owned Business?** ©©

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What are Common Forms of Business Organizations?

State and federal laws govern businesses, and outline various forms of business organizations. For the purposes of federal law, the most common types of business entities are: (1) the sole proprietorship; (2) the partnership; (3) the corporation; and (4) the limited liability company.

The majority of small businesses begin as sole proprietorships. As a result, this chapter is tailored to sole proprietorships. In a sole proprietorship the owner faces unlimited liability for all debts incurred by the business. On the upside, there is relatively little paperwork required in order to start and dissolve a sole proprietorship. Additionally, all income derived from the business flows directly to the owner and is reflected on the owner's personal tax returns. As a result sole proprietors may need to file several tax forms including but not limited to:

- *Form 1040 (an Individual Income Tax Return);*
- *Schedule SE (Self-employment Tax);*
- *Form 4562 (Depreciation and Amortization);*

- *Form 8829 (Expenses for Business Use of Home; and*
- *Employment tax forms.*

When facing potential deportation, individuals should check with a tax attorney or specialist to make sure they have filed the correct forms. Filing the wrong forms can be seen as tax evasion or fraud which are deportable offenses and which could affect future re-entry.

In a **partnership**, two or more individuals run and operate a business, and normally each partner has unlimited liability for the debts and obligations of the partnership. There are three types of partnerships: general partnership, limited partnership and limited liability partnership. In a limited liability partnership, each individual partnership has a reduced amount of liability. Instead the limited liability partnership as a whole maintains liability.

In contrast, a **corporation** is a business entity that has separate legal standing from its owners. The defining characteristic of a corporation is that it has limited liability for its owners – specifically, that its members are not personally liable for the debts and obligations of the corporation. This chapter does not focus on corporations because they are not common in the small business context, but it is still important to seek legal support when selling or dissolving a corporation.

A **limited liability company (LLC)** is a business structure whereby the members of the company cannot be held personally liable for the company's debts or liabilities. LLCs are essentially hybrid entities that combine the liability protection of a corporation and the tax characteristics of a partnership or sole proprietorship.

What are the Considerations When Selling or Dissolving a Sole Proprietorship?

An individual must take into account several considerations when he or she wishes to sell or dissolve a sole proprietorship because all states and localities have different requirements for terminating sole proprietorships. Additionally, it is wise to check with an attorney familiar with the requirements of the Secretary of State, county, city and small business administration and knows the appropriate steps to take.

Dissolving a Sole Proprietorship

Dissolving an individual business as opposed to selling the business may be preferred when there are time constraints. Closing a sole proprietorship does not require negotiations or transfers. As a result it may be faster than

selling a business. In either case, it is important to keep accurate records and set aside a reserve for unexpected debts, taxes and bills.

When dissolving a sole proprietorship, the owner must notify: (1) Secretary of State; (2) the county and city clerk's office; (3) local, state and federal tax authorities; (4) licensing entities and trade associations; (5) creditors and suppliers; (6) customers; (7) employees; (8) landlords and equipment lessors; and (9) banks. However, unlike many other businesses there is no need to officially register the dissolution of a sole proprietorship.

Nonetheless, there is no shortage of tasks to complete before dissolution. Owners should complete all final orders, notify customers, and pay outstanding debts. It is just as important to cancel registration, permits licenses and business names. Employment and labor laws may also dictate how to notify, terminate and pay employees and file related tax paperwork.

Owners who are facing deportation should consider what assets they can sell after dissolving the business, such as equipment or merchandise. After selling assets, owners should close all business bank accounts and credit cards.

Selling a Sole Proprietorship

Selling a sole proprietorship is advantageous when time constraints are not present, when a buyer has already shown interest, or when the business has a particularly high valuation. The process for selling a sole proprietorship may be complicated and it is recommended that an owner who wishes to sell the business obtain the advice of an attorney and business broker.

An owner must first consider the valuation of the business taking into account the licenses, leases, and other assets of the business. As a procedural matter, an individual who sells a business must reflect the sale on all tax forms. For federal purposes, the seller must document the sale on the Form 8594 (Asset Acquisition Statement). In some states, such as Texas, an individual can dissolve and a new owner can register the business on sales tax forms. In Wisconsin, if the business name is not the new owner's full legal name, the new owner must file a "doing business as" application. There are many state specific variances.

If the owner has a mortgage or lease on the business property or on equipment used for the business, he or she should also transfer these to the new owner and get releases from the lenders and lessors. Failure to do so could result in the individual being responsible for payments or injuries long after he or she has left the country and is no longer running the business.

If the business is worth less than its debts, a business owner might consider initiating a state law remedy usually called an “assignment for the benefit of creditors.” This involves transferring all of the assets to an assignee (liquidator) who sells the assets and distributes the proceeds pro-rata to creditors who file claims after being notified. This process is most often used for businesses (corporations or limited liability companies) as state law typically will not provide an individual or sole proprietor with a “discharge” of their debts. While the owner still may have personal liability for any unpaid trust fund taxes, creditors may be less likely to pursue collection efforts.

What Are the Considerations When Selling a Jointly Owned Business?

In a jointly owned business or partnership, it is critical to have open dialogue with the co-owner. If one of the parties wants to remain in business, the parties should read their agreements and consider the co-owner’s right of first refusal, consent or notification rights and change of control procedures.

Co-owner’s Right of First Refusal

In general, a right of first refusal is the right of a person to buy something before the offer is made available to others. A right of first refusal is often stated in an agreement between the business owners. Thus, the parties will need to refer to their agreements. If an individual’s agreement with his or her co-owners contains a right of first refusal provision, he or she must offer to sell their share of the business to the co-owners before offering it to anyone else.

Co-owner’s Consent and Notification

Even if the co-owners do not have, or decide not to pursue, a right of first refusal, they may still want to have some control over who gets the individual’s share of the business. Before selling his or her interest, an owner should check to see if the owners’ agreement requires a seller to get consent from the other co-owners. The agreement may at least require the seller to tell the co-owners about the sale. If provisions like this exist in the contract, an individual must abide by them.

Change of Control

Furthermore, if an individual and others jointly own the business, the seller, before selling his or her interest, should determine whether any contracts related to the business require notification to anyone upon a “change of control.” A change of control can occur when a business owner sells his or her portion of the business. For example, some contracts require that upon a change of control, a business owner, before selling his or her interest, notify

the bank that loaned money to the business, the bank that holds the business' mortgage, or any entity that gave a license to the business. If the owner's contract contains a change of control provision that is triggered by the sale of his or her interest, then he or she must abide by the terms of that provision.

CHECKLIST: DISSOLVING OR SELLING A BUSINESS

- Decide if you want to dissolve or sell your business. Depending on the type of business, dissolving your business may take less time.
- Once you know what you want to do with your business, it is best to hire an attorney as soon as possible to help you with the following steps.
- Determine what type of business you own:
 - ***Sole Proprietorship*** – single owner with full liability of costs incurred by the business.
 - ***Partnership*** – two or more individuals run and operate the business and each has full liability of costs incurred by the business.
 - ***Corporation*** – business entity that has separate legal standing from its owners.

Dissolving a Business (Sole Proprietorship)

- If dissolving a business check requirements of your state, locality, and small business administration in order to determine what steps must be taken.
- Notify your:
 - *Secretary of State;*
 - *County and City Clerk's office;*
 - *Local federal tax authorities;*
 - *Licensing entities and trade associations;*
 - *Creditors, insurers and suppliers; and*
 - *Customers.*
- In addition, before dissolution you must:
 - *Pay all bills and debts;*
 - *Abide by employment laws; and*
 - *Keep records for tax purposes.*

Selling a Sole Proprietorship

- It is best to first get the advice of an attorney and a business broker.
- You should consider how much your business is worth. To do this take into account the licenses, leases and other assets of the business etc.
- You must document the sale on the Form 8594 (Asset Acquisition Statement).
- There are probably state filing requirements as well.
- In the sale make sure to transfer all mortgages or leases on the business property or on equipment used for the business.

Selling a Jointly Owned Business

- You should speak to your co-owner early to determine if he or she wants to dissolve your company as well.
- If your co-owner wants to continue to own the company look to the agreement to see if your owner has a right of first refusal, consent or notification rights, or what change of control procedures are necessary.
- If any of these terms are present you must abide by them.

22. TAX FILING ISSUES

Filing taxes and receiving a tax refund (if an immigrant has overpaid taxes) is a necessary part of earning income in the United States. Under the “substantial presence” test, most immigrants are classified as resident aliens for tax purposes and must file the standard form 1040. This section answers the following questions:

☉☉ **Are You a Resident or Non-resident Alien for Tax Filing Purposes?** ☉☉
Are You Required to File a Tax Return? Should You Anyway? ☉☉ **What If Your Spouse Is Deported and You Remain in the Country?** ☉☉ **When Do You Receive Your Tax Refund if One is Owed to You?** ☉☉ **What Are the Penalties for Failure to File Tax Returns?** ☉☉ **Where Can You Obtain the Necessary Forms to File Taxes?** ☉☉

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Are You a Resident or Non-resident Alien for Tax Filing Purposes?

An immigrant must first determine whether he or she is a resident or non-resident alien for tax purposes in order to determine which forms to use and what income should be taxed. Resident aliens generally are taxed on their worldwide income, the same as U.S. citizens. Non-resident aliens are taxed only on their income from sources within the United States and on certain income connected with the conduct of a trade or business in the United States.

An immigrant that is not a lawful permanent resident for immigration law purposes may, and probably often will be, a resident alien for tax purposes. Section 7701(b) of the Internal Revenue Code (IRC) includes as a resident alien anyone who maintains a “substantial presence” in the United States, which requires (1) 31 days of presence during the year in question and (2) the sum of the number of days of presence during the year in question plus the two preceding years is at least 183 after weighting. To meet the second prong, days from the present year are multiplied by one, days from the prior

year are multiplied by one-third, and days from the second preceding year are multiplied by one-sixth, then the resulting numbers are added. Thus, immigrants living in the United States full time are probably considered resident aliens for tax purposes. Resident aliens are required to file Form 1040 while they are in the United States, and when back in their home country, may continue to be treated as resident aliens as long as the substantial presence test is satisfied.

Are You Required to File a Tax Return? Should You Anyway?

A resident alien must file a tax return if her or his income is above a certain level. The amount varies depending on filing status, age, and the type of income earned. For example, for 2016, a married couple both under age 65 generally was not required to file unless their joint income exceeded \$20,700. However, self-employed individuals generally must file a tax return if their net income from self-employment was at least \$400. Tax issues are covered by the Internal Revenue Code (the “IRC”) and regulations.

A non-resident alien must file a tax return unless his only income connected to the United States is wages less than the amount of the personal exemption, currently \$4,050.

There are no special laws or regulations for immigrants facing deportation.

Even if an individual is not required to file taxes, she or he may choose to file in order to receive a refund of any overpaid taxes or to receive tax credits such as the Earned Income Tax Credit.

What If Your Spouse is Deported and You Remain in the Country?

Once the deported spouse fails the “substantial presence” test and is considered a non-resident alien for tax purposes, the resident spouse may still file a joint return if the deported spouse chooses to be treated as a resident alien for tax purposes. In other words, even though your spouse is out of the country and no longer a resident of the United States, the spouse who remains in the country may choose to file as married filing jointly with the deported spouse. This may be beneficial to the resident because of the favorable tax treatment of a couple filing jointly.

If a joint return is filed, however, the non-resident alien spouse must declare her or his worldwide income on the U.S. tax return.

When Do You Receive Your Tax Refund If One is Owed to You?

Refunds will not be paid at the time of an immigrant's departure. Immigrants classified as resident aliens for tax purposes must complete Form 1040, 1040A, or 1040-EZ and will receive a refund if one is owed. If non-resident aliens are owed tax refunds, they must complete Form 1040NR or 1040NR-EZ at the end of the tax year to receive their refunds. A claim for refund must be made within three years of the due date of the return, or you lose your right to that refund. Once a tax return is submitted to the IRS reflecting that a refund is owed, the amount due is ordinarily paid within approximately 21 days, however payments sometimes take longer.

What Are the Penalties for Failure to File Tax Returns?

If an immigrant fails to file tax returns, the immigrant may be subject to civil and criminal penalties. While criminal penalties may not be enforceable on the immigrant once they have left the United States, civil penalties could potentially be enforceable on property owned by the immigrant that is left behind in the United States. There are different civil penalties for filing late, fraud, paying the tax late, and accuracy problems. The civil penalty for filing late is based on the tax not paid by the due date. The penalty is usually 5% for each month or part of a month that a return is late, but not more than 25%. In addition, if the immigrant owes income tax, the IRS has ten years from the date the tax is assessed to collect the tax. But if the immigrant fails to file a tax return, the ten-year period for collection does not start running. In this case, the IRS has an indefinite time to collect the owed taxes. Failing to file tax returns also may have negative consequences should the immigrant seek to immigrate to the United States again in the future.

Where Can You Obtain the Necessary Forms to File Taxes?

All necessary forms are available on the IRS website at www.irs.gov (Spanish language version: www.irs.gov/spanish) for downloading and printing. Alternatively, one can request copies of forms by phone (1-800-829-1040). The IRS provides International Services by phone at (1-267-941-1000, not toll-free) or by mail at:

Internal Revenue Service
International Accounts
Philadelphia, PA 19255-0725

One can also contact the Taxpayer Advocate assigned to international taxpayers for help with tax problems.

By mail:
IRS Taxpayer Advocate Service
PO Box 11996
San Juan, PR 00922

In person:
City View Plaza
48 Carr 165, 5th Floor
Guaynabo, PR 00968-8000

By phone:
1-877-777-4778 (Toll-free)
1-787-522-8600 (Spanish)
1-787-522-8601 (English)

Additional information about IRS services for international taxpayers is available at <https://www.irs.gov/individuals/international-taxpayers>.

CHECKLIST: FILING TAXES

- Even if you are not a lawful permanent resident for immigration law purposes, you may be – and if you have lived in the U.S. for a long time, you probably are – a resident alien for tax law purposes.
- If you are a resident alien for tax law purposes, you should complete the Form 1040 at the end of the tax year as you would have if you were in the United States.
- If you are a nonresident alien for tax purposes, you should complete Form 1040NR or Form 1040NR-EZ at the end of the tax year in order to receive any refund for the year.
- A resident spouse can file his or her tax returns jointly with a deported spouse if the deported spouse chooses to be treated as a resident alien for tax purposes. In that case, the deported spouse must declare his or her worldwide income on the return.
- If you fail to file your appropriate tax forms, you may be subject to civil and criminal penalties. This may make it impossible for you to ever immigrate to the United States again.
- All necessary forms are available on the IRS website at www.irs.gov (Spanish language version: www.irs.gov/spanish).

KEY TAKEAWAY

If you are deported, you may still have to, or may wish to, file a Form 1040 or 1040 NR, as appropriate, at the end of the tax year. Filing a tax return will allow you to receive any overpaid taxes and any tax credits – such as the Earned Income Tax Credit – that you are owed.

APPENDIX: LIST OF STATE LABOR OFFICES

STATE	NAME/ADDRESS	PHONE	WEBSITE
ALABAMA	Commissioner, Alabama Dept. of Labor PO Box 303500 Montgomery, AL 36130-3500	334-242-3460	http://www.Alalabor.state.al.us/
ALASKA	Commissioner, Dept. of Labor and Workforce Development PO Box 11149 Juneau, AK 99811	907-465-2700	http://www.labor.state.AK.us/
ARIZONA	Chairman, Arizona Industrial Commission 800 West Washington St Pheonix, AZ 85007	602-542-4515	http://www.ica.state.AZ.us/
ARKANSAS	Director, Dept of Labor 10421 West Markham Little Rock, AR 72205	501-682-4500	www.Arkansas.gov/labor
CALIFORNIA	State Labor Commissioner, Division of Labor Standards Enforcement and the Office of the Labor Commissioner 455 Golden Gate Ave, 9 th Fl San Francisco, CA 94102-7004	844-522-6734 510-285-2118	www.dir.ca.gov/Contactus.html
COLORADO	Executive Director, Dept of Labor and Employment 633 17 th St, Suite 201 Denver, CO 80202- 3660	303-318-8441 fax 303-318-8400	www.coloradolaborlaw.gov

CONNECTICUT	Commissioner, Dept of Labor 200 Folly Brook Blvd Wethersfield, CT 06109-1114	860-263-6000 fax 860-263-6529	www.CT.gov/dol
DELAWARE	Secretary of Labor, Delaware Dept. of Labor 4425 N. Market St, 4 th Fl Wilmington, DE 19802	302-761-8200 fax 302-761-6621	www.Delawareworks.com
DISTRICT OF COLUMBIA	Director, Dept. of Employment Services 4058 Minnesota Ave, NE Washington, DC 20019	202-671-1900 fax 202-673-6993	www.DOES.DC.gov
FLORIDA	Director, Division of Workforce Services 107 East Madison St Tallahassee, FL 32399	850-245-7105 fax 850-921-3223	www.floridajobs.org
GEORGIA	Commissioner, Dept. of Labor Sussex Pl, Room 600 148 Andrew Young International Blvd, NE Atlanta, GA 30303	404-232-7300 fax 404-656-2683	www.dol.state.GA.us
HAWAII	Director, Dept. of Labor & Industrial Relations Princess Ruth Ke'elikolani Building 830 Punchbowl St, Room 321 Honolulu, HI 96813	808-586-8844 fax 808-586-9099	www.labor.hawaii.gov
IDAHO	Director, Dept. of Labor 317 W. Maine St Boise, ID 83735-0001	208-332-3579 fax 208-334-6430	www.labor.Idaho.gov
ILLINOIS	Director, Dept. of Labor 160 N. LaSalle St, 13 th Fl Suite C-1300 Chicago, IL 60601	312-793-2800 fax 312-793-5257	www.state.IL.us/agency/idol

INDIANA	Commissioner, Dept. of Labor Indiana Government Center South 402 W. Washington St, Room W195 Indianapolis, IN 46204	317-232-2655 fax 317-974-2001	www.in.gov/dol
IOWA	Labor Commissioner, Iowa Labor Services Division 1000 East Grand Ave Des Moines, IA 50319-0209	515-242-5870 fax 512-281-7995	www.iowadivisionoflabor.gov
KANSAS	Secretary, Dept. of Labor 401 S.W. Topeka Blvd Topeka, KS 66603- 3182	785-296-5000 fax 785-368-6294	www.dol.KS.gov
KENTUCKY	Secretary, Kentucky Labor Cabinet 1047 US Hwy 127 South, Suite 4 Frankfort, KY 40601- 4381	502-564-5387 fax 502-564-5387	www.labor.KY.gov
LOUISIANA	Executive Director, Louisiana Workforce Commission PO Box 94094 Baton Rouge, LA 70804-9094	225-342-3111 fax 225-342-7960	www.ldol.state.la.us/
MAINE	Commissioner, Dept. of Labor 54 State House Station Dr Augusta, ME 04333	207-621-5095 fax 207-287-5292	www.maine.gov/labor
MARYLAND	Secretary, Dept of Labor, Licensing and Regulation 500 N. Calvert St, Suite 401 Baltimore, MD 21202	410-230-6020 fax 410-333-0853	www.dllr.state.MD.us

MAS-SACHUSETTS	Secretary, Executive Office of Labor & Workforce Development One Ashburton Pl, Room 2112 Boston, MA 02108 -or- Chief, Fair Labor Division Office of the Attorney General One Ashburton Pl Boston, MA 02180	617-626-7122 fax 617-727-1090	www.Mass.gov/eolwd -or- www.state.ma.us/
MICHIGAN	Director, Dept. of Licensing and Regulatory Affairs (LARA) 611 W. Ottawa Lansing, MI 48909	517-373-1820 fax 517-373-2129	www.Michigan.gov/lara
MINNESOTA	Commissioner, Dept of Labor and Industry 443 Lafayette Rd North St. Paul, MN 55155	651-284-5010 fax 651-284-5270	www.dli.mn.gov
MISSISSIPPI	Executive Director, Dept. of Security 1235 Echelon Pkwy PO Box 1699 Jackson, MS 39215- 1699	601-321-6000 fax 601-321-6004	www.mdes.MS.gov
MISSOURI	Director, Labor and Industrial Relations Commission 3315 W. Truman Blvd PO Box 504 421 E. Dunklin Jefferson City, MO 65102-0504	573-751-4091 fax 573-751-4135	www.labor.mo.gov
MONTANA	Commissioner, Dept. of Labor and Industry PO Box 1728 Helena, MT 59624- 1728	406-444-9091 fax 406-444-1419	www.dli.MT.gov

NEBRASKA	Commissioner, Dept. of Labor 550 South 16 th St, Box 94600 Lincoln, NE 68508- 4600	402-471-9000 fax 402-471-2318	www.dol.Nebraska.gov
NEVADA	Commissioner, Dept. of Business and Industry 555 E. Washington Ave, Suite 4100 Las Vegas, NV 89101-1050	702-486-2650 fax 702-486-2660	www.labor.nv.gov
NEW HAMPSHIRE	Commissioner, Dept. of Labor State Office Park South 95 Pleasant Street Concord, NH 03301	603-271-3176 fax 603-271-6852	www.nh.gov/labor
NEW JERSEY	Commissioner, Dept. of Labor and Workforce Development #1 John Fitch Plaza, 13 th Fl, Suite D PO Box 110 Trenton, NJ 08625- 0110	609-659-9045 fax 609-633-9271	wd.dol.state.nj.us/labor/index.html
NEW MEXICO	Secretary, Dept. of Work Force Solutions PO Box 1928 401 Broadway, NE Albuquerque, NM 87102-1928	505-841-8405 fax 505-841-8491	www.dws.state.nm.us
NEW YORK	Acting Commissioner, Dept. of Labor State Office Bldg, #12 W.A. Harriman Campus Albany, NY 12240	518-457-9000 fax 518-457-6908	www.labor.ny.gov
NORTH DAKOTA	Commissioner, Dept. of Labor State Capitol Building 600 E Boulevard Ave, Dept 406 Bismark, ND 58505- 0340	701-328-2660 fax 701-328-2031	www.nd.gov/labor

OHIO	Director, Dept. of Commerce 77 So High St, 22 nd Fl Columbus, OH 43215	614-644-2239 fax 614-466-5650	www.com.state.OH.us
OKLAHOMA	Commissioner, Dept. of Labor 3017 N. Stiles Ave, Suite 100 Oklahoma City, OK 73105-5212	405-521-6100 fax 405-521-6018	www.labor.ok.gov
OREGON	Commissioner, Bureau of Labor and Industries 800 NE Oregon St, #1045 Portland, OR 97232	971-673-0761	www.Oregon.gov/boli
PENNSYLVANIA	Secretary, Dept. of Labor and Industry 1700 Labor and Industry Bldg 7 th and Forster Streets Harrisburg, PA 17120	717-7887- 2579 fax 717-787-8826	www.dli.state.PA.us
RHODE ISLAND	Director, Dept. of Labor and Training 1511 Pontiac Ave Cranston, RI 02920	401-462-8550 fax 401-462-8872	www.dlt.state.RI.us
SOUTH CAROLINA	Director, Dept. of Labor, Licensing & Regulations PO Box 11329 Columbia, SC 29211-1329	803-896-4300 fax 803-896-4393	www.llr.state.SC.us
SOUTH DAKOTA	Secretary, Dept. of Labor 700 Governors Dr Pierre, SD 57501-2291	605-773-3101 fax 605-773-6184	www.dlr.sd.gov
TENNESSEE	Commissioner, Dept. of Labor and Workforce Development 220 French Landing Nashville, TN 37243	844-224-5818 fax 615-253-8903	www.tn.gov/workforce

TEXAS	Commissioner, Representing Labor Texas Workforce Commission 101 East 15 th St Austin, TX 78778	512-475-2670 fax 512-475-2152	www.twc.state.TX.us
UTAH	Commissioner, Utah Labor Commission 160 E. 300 S., Suite 300 Salt Lake City, UT 84111	801-530-6800 fax 801-530-6804	www.Laborcommission.Utah.gov
VERMONT	Director of Workforce Development Department of Labor 5 Green Mountain Dr PO Box 488 Montpelier, VT 05601-0488	802-828-4000 fax 802-828-4022	www.labor.vermont.gov
VIRGINIA	Commissioner, Dept. of Labor and Industry Main Street Centre 600 East Main St, Suite 207 Richmond, VA 23219	804-371-2327 fax 804-371-6524	www.doli.Virginia.gov
WASHINGTON	Director, Dept. of Labor and Industries PO Box 44000 Olympia, WA 98504-4001	360-902-5800 fax 360-902-5708	www.lni.WA.gov
WEST VIRGINIA	Acting Commissioner, Division of Labor State Capitol Complex, #749-B Building #6 1900 Kanawha Blvd Charleston, WV 25305	304-558-7890 fax 304-558-2273	www.wvlabor.com/newwebsite/pages/index.html
WISCONSIN	Secretary, Dept. of Workforce Development 201 E Washington Ave, #A400 PO Box 7946 Madison, WI 53707- 7946	608-266-3131 fax 608-155-1784	dwd.wisconsin.gov

WYOMING	Director, Dept. of Workforce Service 1510 East Pershing Blvd Cheyenne, WY 82002	307-777-8728 fax 307-777-5857	www.wyomingworkforce.org/ Pages/default.aspx
GUAM	Acting Director, Dept. of Labor PO Box 9970 Tamuning, Guam 96931-9970	671-475-7043	www.dol.guam.gov/
PUERTO RICO	Secretary, Dept. of Labor and Human Resources Edificio Prudencio Rivera Martinez 505 Muniz Rivera Ave GPO Box 3088 Hato Rey, Puerto Rico 00918	787-754-2120	www.trabajo.pr.gov
VIRGIN ISLANDS	Commissioner, Department of Labor 2203 Church St St. Croix, US VI 00802-4612	St. Croix 340-692-9689 St. Thomas 340-776-3700	www.VIdol.gov



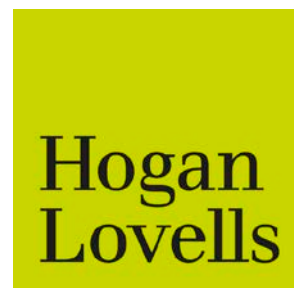
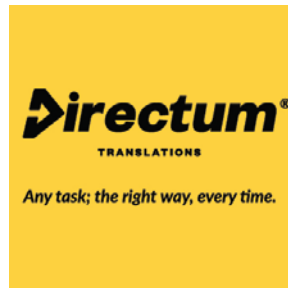
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