

Resource Guide

for Southeast Asian Americans Facing Criminal Deportation

**SOUTHEAST ASIA RESOURCE ACTION CENTER &
AMERICAN UNIVERSITY WILLIAMS COLLEGE OF LAW
IMMIGRANT JUSTICE CLINIC**



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Introduction

This resource guide was designed to help noncitizens from Cambodian, Hmong, Laotian, and Vietnamese American communities who have criminal convictions and currently face deportation, or who have pending criminal charges and may face deportation in the future. Given the extremely painful impact that deportation has had on these communities, this guide is being produced by advocates who believe in fighting for families to stay together, and producing information to support the legal community and impacted families to navigate this difficult process.

People facing deportation to Cambodia, Laos, and Vietnam often share unique experiences. Many arrived in the U.S. as refugee children with their families and grew up in U.S. schools and neighborhoods. Around 65 to 85% of deportation orders to these countries are because of old criminal convictions, and over half of those are because of convictions categorized as “aggravated felonies” that lead to automatic deportation and limit forms of possible relief.¹ With some aggravated felony convictions, noncitizens with no legal status do not even have the opportunity to go before a judge to challenge their deportation. Because of unusual repatriation agreements between the U.S. and Cambodia, Laos, and Vietnam, thousands of people remain in the U.S. for years or even decades with final orders of removal, never knowing when they might be deported.

Because of these unique experiences, this guide focuses on how to navigate the detention and deportation system for Southeast Asian American (SEAA) immigrants who have criminal convictions that triggered their deportation proceedings.

Topics include:

- Your right to know the deportation consequences of your criminal conviction or guilty plea entered in court
- Whether you can request to be released from immigration detention and, if so, how
- Information on mandatory detention
- Options for fighting your deportation, including various waivers and other forms of relief
- Details of repatriation agreements between the U.S. and Cambodia and Vietnam and the absence of an agreement between the U.S. and Laos

Much of the advice in this guide is best discussed with an experienced immigration lawyer who understands criminal immigration law. The guide also provides a directory of:

- University immigration law clinics that provide pro bono services
- Attorneys and organizations that have specialized knowledge of SEAA deportation issues
- SEAA organizations that can provide information, support, and community

Pre-deportation

Pre-deportation refers to the period prior to deportation proceedings or arrest by immigration officers.

Q: If I have a green card, will a criminal conviction affect my status?

A: Yes. Even if you have a green card, you may be deported based on certain criminal convictions.

Under immigration laws, many types of criminal convictions can lead to deportation.² If you are convicted of a crime that is considered an aggravated felony (see Glossary of terms, p. 22), then you will face possible deportation, unless you qualify for one of the few forms of relief available.³ The most common aggravated felony crimes include certain theft offenses with a sentence of one year or more, violent crimes with a sentence of one year or more, drug trafficking offenses (including possession with intent to distribute), and firearms offenses.⁴ Other kinds of crimes may be considered “crimes involving moral turpitude” (see Glossary), and may also trigger

deportation proceedings. Talk to an experienced immigration lawyer if you aren’t sure what the immigration consequences are of your conviction.

If possible, try to naturalize before you face problems with the criminal justice system. Becoming a U.S. citizen means that criminal convictions after you become a citizen will not lead to deportation. If you have prior convictions and wish to naturalize, you should speak to an immigration attorney because attempting to naturalize could trigger deportation proceedings. See Individual practitioners and organizations chart, p. 20.

Q: What should I know as a noncitizen facing criminal charges?

A: Your criminal defense lawyer is required by law to advise you about immigration consequences of a conviction or plea agreement.

In March 2010, the U.S. Supreme Court issued an important decision for noncitizens who face criminal charges in *Padilla v. Kentucky*.⁵ In *Padilla*, the Court held that criminal defense attorneys must advise their noncitizen clients about the deportation consequences of criminal convictions if those consequences are clear based on the law. If the consequences are not clear, criminal defense attorneys still have the obligation to tell their noncitizen clients that a criminal conviction or plea deal may result in immigration consequences such as deportation.

This important decision means that you should tell your criminal defense attorney if you are not a citizen of the United States. In criminal proceedings,

you have the right to an attorney, so if you cannot afford one, the court will appoint an attorney to your case. Once you tell your attorney that you are not a U.S. citizen, he or she must tell you if there are deportation consequences of certain convictions—even those that result from plea agreements. You may also wish to tell your attorney that you are concerned about whether the criminal charges may impact your immigration status or may lead to deportation. Your criminal defense attorney should do research and explain the potential immigration consequences and/or advise you to seek advice from an immigration attorney.

Q: What if my case is closed and my lawyer didn't tell me about the deportation consequences of my conviction or plea?

A: You may be able to challenge your conviction, depending on the date of the conviction and the circumstances of the case.

Three years after the Padilla decision, the U.S. Supreme Court determined that the decision did not apply retroactively.⁶ That means that the decision could only be applied to convictions after the date that the decision was issued. If your criminal conviction was final after March 31, 2010, then you may be able to challenge your conviction under Padilla if your case meets certain requirements by filing an “ineffective assistance of counsel” claim.

An ineffective assistance of counsel claim under Padilla requires you to meet two requirements. You must show that:

1. **Your criminal defense attorney did not inform you of the immigration consequences of your conviction, and that**
2. **This failure to inform you impacted the outcome of your case.**

For instance, if your criminal defense attorney did not provide any information about the deportation consequences of your criminal conviction, and you were placed in deportation proceedings because of that conviction, you may have strong support for an ineffective assistance of counsel claim. Then, you must be able to show that you clearly would have rejected the plea bargain if you had known it would lead to deportation.⁸

You may need an affidavit from your criminal defense attorney, if possible, or other criminal law practitioners in your area. *Because these claims may become very complicated, you should contact an attorney if you think you have such a claim.* See Individual practitioners and organizations chart, p. 20.

Q: What if my lawyer didn't inform me of the immigration consequences of my plea, but my conviction was final before March 31, 2010?

A: Unfortunately, any convictions that were final before March 31, 2010 do not fall under Padilla, but it is possible you may be able to pursue another type of “post-conviction relief.”

Post-conviction relief claims may include other reasons why your attorney was not effective, such as failing to present an insanity defense when there were issues of mental health. Other claims may include stating that you did not voluntarily make a plea. In general, post-conviction relief claims are very difficult

to win. The procedures vary greatly by state. Additionally, you must WIN your post-conviction case before it can have any impact on your immigration case. To determine whether you have a claim for relief, you should seek an attorney to assist you with the process.

Detention

Q: How does immigration enforcement know about any criminal convictions or charges against me?

A: Law enforcement officers share information about noncitizens with Immigration and Customs Enforcement, so any time you are fingerprinted for criminal charges, it alerts immigration enforcement.

After an individual is arrested for a crime, police officers book that individual, a process that involves taking fingerprints. The Department of Homeland Security (DHS), the umbrella agency for immigration, receives this fingerprint information from local law enforcement agencies. By sharing this information, DHS is then alerted about the individual's immigration status. In some cases, officers from Immigration and Customs Enforcement (ICE) may issue an immigration "detainer," which is a request to hold someone in criminal custody for an additional 48 hours so

that ICE can then take him or her into immigration custody.

Policies concerning transfers of individuals into immigration custody, especially those related to detainers, are evolving due to changes in various DHS programs.⁹ What will likely not change is the sharing of information between local law enforcement agencies and immigration enforcement. For that reason, noncitizens should be aware that all interactions with the criminal justice system may make them vulnerable to immigration enforcement.

Q: How do I get access to my immigration file?

A: You must request it through a Freedom of Information Act (FOIA) request.

In order to get your immigration file, also known as your "A file," you must file a Freedom of Information Act (FOIA) request. This request must be submitted in writing to U.S. Citizenship and Immigration Services (USCIS). You may also submit a Form G-639 to process this request, though it is not required by the agency.¹⁰ For a detailed guide about filing such a request, you can visit the USCIS website.¹¹ As stated in the guide, you need to request what documents you are seeking from the agency. If you are in removal proceedings, then it is possible to get faster processing if you submit a copy of your notice for the next scheduled hearing or a copy of your

Notice to Appear (NTA). See Glossary of terms, p. 22. If you have an attorney, then the attorney can submit a FOIA request on your behalf, but you need to consent to it first.

Finally, USCIS has only some information about your immigration case. If you seek information about entries and exits from the U.S., then U.S. Customs and Border Protection (CBP) may have that information. If you were previously in removal proceedings, you may also wish to request your Record of Proceeding from the Executive Office for Immigration Review (EOIR).

Q: How can I get out of immigration detention?

A: You may be able to request a bond hearing if your conviction does not trigger mandatory detention.

Most convictions trigger “mandatory detention,” making it nearly impossible to get out of immigration detention.¹² These include convictions that qualify as “aggravated felonies,” “crimes involving moral turpitude,” controlled substance offenses, and firearms offenses. For definitions of these terms, see Glossary of terms, p. 22.

Unless a lawyer is able to identify and clearly explain how the deportable offense does not fall within this category, it is very difficult to avoid detention.

If your criminal conviction does not fall into one of the categories that trigger mandatory detention, then you should be eligible for a bond hearing.¹³ You can request a bond hearing in immigration court at your first appearance, or you can submit a written request to the immigration judge for a bond hearing.

At a bond hearing, you have to show why you are not a flight risk and why you are not a danger to the community. To support both requirements, you should gather and submit the following to the court

(as many as you have available):

- Information about the fixed address where you will live during your removal proceedings if you are released from custody
- Declarations (or statements) from family and community members about your character, your responsibilities, or your service to the community
- Employment records, such as pay stubs
- Documents that show you have completed programs that may be relevant to your criminal conviction, like drug rehabilitation programs
- Information about forms of relief to which you are applying (see Deportation Proceedings section, p. 8) and the strength of those claims

During the actual bond hearing, your loved ones should also provide testimony in court, if possible. At the very least, it helps to have loved ones at the hearing to show that you have support in your family and community. In immigration proceedings, the minimum bond that you will have to pay is \$1,500.¹⁴

Q: What if my conviction makes me subject to mandatory detention?

A: If you are subject to mandatory detention, you usually do not get a bond hearing. However, depending on where you live and when you were taken into immigration detention, you might still be able to request a bond hearing.

If you have a criminal conviction that triggers mandatory detention, then it may be very difficult to get out of detention while your case is open.¹⁵ But you may still be eligible for a bond hearing, depending on the state where you live and when you were picked up by immigration enforcement. Different federal circuit courts of appeals¹⁶ have interpreted the mandatory detention statute differently. The statute says that immigration enforcement can detain noncitizens

“when... released” from criminal custody.¹⁷ In some circuit courts of appeals, immigration enforcement may detain people years after they have been released from criminal custody, and mandatory detention still applies to them.¹⁸ However, in other jurisdictions, the circuit court of appeals has determined that immigration enforcement had to pick you up immediately after you were released from jail in order for mandatory detention to apply.¹⁹

For example, imagine you have a conviction for theft and receive a 12-month sentence with 11 months suspended. This conviction would be considered an aggravated felony. You serve time for the one month and are then released from jail or prison. Two years after you are released, immigration enforcement picks you up and places you in immigration detention. In some circuits, the mandatory detention provision applies, so you would not receive a bond hearing. But, in other parts of the country, mandatory detention would not apply because immigration enforcement waited two years after your release from criminal custody to pick you up. In the First Circuit (Maine, New Hampshire, Massachusetts, and Rhode Island) and the Ninth Circuit (California, Washington, Oregon, Nevada, Montana, Idaho, Alaska, Hawaii, and Arizona), you are eligible for bond if you were not transferred directly from criminal custody into immigration detention.

In some circuit courts of appeals, you may be eligible for a bond hearing if you have been held in detention for a long period of time while your removal proceedings are pending, even if you are subject to mandatory detention. In the Ninth Circuit, you may be entitled to a bond hearing called a Rodriguez hearing after six months.²⁰ Although you should automatically receive a bond hearing, sometimes you may have to request one. If you live in a state within the Ninth Circuit, you should begin to gather documents needed for the bond hearing while you are in detention. Ask relatives or friends to help with this process. See “How can I get out of immigration detention?” p. 5.

The Ninth Circuit is the only circuit that provides for a bond hearing after six months; however, in other circuits, if the removal proceedings have taken an unreasonably long time, detained individuals have been released from custody.²¹ In the Sixth Circuit, one factor that the court examined was whether there was

a repatriation agreement with the country where the noncitizen may be ordered deported.²² The noncitizen in that case, Ly, was from Vietnam and had been held in immigration detention for one-and-a-half years.²³ He had not yet been ordered deported, but because it was taking so long and because his removal was ultimately very unlikely, the court decided that he should be released from detention. Now, the U.S. has a repatriation agreement with Vietnam (see Resources, Country Repatriation Agreements, p. 18), so that factor may not be as relevant for immigrants who came to the U.S. after 1995.

If you have been in immigration detention for an especially long time while you continue to fight your case, you may file a habeas petition. A habeas petition is a petition filed with the court where you are challenging your detention. In the petition, the person held in custody contests his or her detention. If you are held in immigration detention, then you are held by federal authorities, so you would file a petition in federal district court. It may be helpful to consult an attorney during this process.

Finally, if you are a green card holder being held under mandatory detention, and you believe your conviction is actually not one that triggers mandatory detention, then you can request a Joseph hearing.²⁴ For example, a conviction for theft with a sentence that is over 365 days, even if that sentence is suspended, is an aggravated felony. If your sentence was less than 365 days, then you should not be mandatorily detained as an aggravated felon. However, there are some exceptions. Talk to a lawyer if you think this applies to you. Additionally, mandatory detention provisions do not apply to those who were convicted of a criminal offense and released prior to October 8, 1998.²⁵

Q: Who do I contact if I face problems in detention, like lack of medical care or abuse?

A: File a grievance, and contact an attorney.

If you have problems receiving medication that you need or other needs are not being met, you may first file a grievance with the detention facility itself. All facilities should provide grievance forms to submit. Remember to keep copies of the grievances that you file and any responses that you receive. If you have an attorney, you should inform your

attorney of these problems. If you have complaints about conditions in the facility and access to attorneys, then you can call the hotline of the American Bar Association (ABA) Commission on Immigration at 202-442-3363. It is free for detainees to call this hotline number.

Q: Can I be transferred to another immigration detention facility?

A: Yes, ICE may transfer you to another facility anywhere in the country.

ICE does not inform detainees or even their attorneys if they plan to transfer them to a new immigration detention facility. For friends and relatives of people in immigration detention, you may use the online detainee locator system to locate them after they have been transferred.²⁶ You may search by “A number,” the identifying number used by immi-

gration enforcement, or biographical information, like name, country of birth, and date of birth. After a loved one has been transferred, it may take a few days for the system to update, so it is possible that you will not know right away where he or she has been transferred.

Deportation Proceedings

Q: Do I have the right to an attorney in deportation proceedings?

A: Yes, you have the right to an attorney but not at the government’s expense.

Unlike in criminal proceedings, you do not have the right to an attorney paid for by the government in deportation proceedings. You may hire an attorney at your own expense, or find a pro bono attorney who will represent you for free.²⁷ It is not a good idea to try to represent yourself in deportation proceedings.

If you have a relative in removal proceedings who has mental health issues or an intellectual disability, then you may be able to get them a competency hearing.²⁸ If the immigration judge determines that your

relative is not competent (or not mentally fit to stand trial), then the judge will implement certain protections for the rest of the proceedings,²⁹ including giving you additional time to find an attorney, or allowing you or another representative to assist your relative during the proceedings.

In California, Arizona, and Washington, the court must appoint an attorney or qualified representative to noncitizens who are mentally incompetent and must provide these noncitizens with a bond hearing.³⁰

Q: How can I fight my immigration case if I have a criminal conviction?

A: If your conviction is an aggravated felony, your options for relief are limited, but there are still some options to consider.

If you do not have any criminal convictions, or you have more minor convictions, then you may be eligible for other forms of relief. For example, if you have been a LPR for five years or more and lived in the United States for at least seven years, you may be eligible for cancellation of removal. If you are afraid to return

to your country and you do not have an aggravated felony, you may also be eligible for asylum.³¹ But, if you have other convictions, including those that may be aggravated felonies, you may want to consider the following options.

RELIEF	REQUIREMENTS	CRIMINAL BARS	BENEFITS
Withholding of removal	Must show “more likely than not” (50% or higher chance) that you will face a threat to life or freedom in the home country, based on race, religion, nationality, political opinion, or being part of some particular social group.	Cannot be convicted of “particularly serious crime” (generally aggravated felony with sentence of more than 5 years)	Work authorization, but no green card
Withholding of Removal or Deferral of Removal under the Convention Against Torture (CAT)	Must show “more likely than not” (50% or higher chance) that you will be tortured by gov’t official or with consent of gov’t in the home country.	No criminal bars	Work authorization, but no green card

RELIEF	REQUIREMENTS	CRIMINAL BARS	BENEFITS
U Visa	Must have helped law enforcement by reporting crime or assisting in investigation.	Waiver allowed for those with criminal convictions	Can lead to green card and citizenship
Potential citizenship	If you had a green card when you were under 18 years old and both of your parents became a citizen through naturalization when you were under 18 years old, then you automatically became a U.S. citizen (unless your parents were legally divorced and you were in legal custody of one parent that naturalized, then one parent may be enough).		U.S. citizens cannot be deported
212(h) waiver	Green card holders must show that deportation would result in “extreme hardship” to U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Only available in some states.	None	Individuals may keep their green cards
212(c) waiver	Must be green card holder with aggravated felony conviction before 1996.	Must not present national security threat, and for aggravated felonies between 11/30/1990 and 9/30/1996, served sentence of no more than 5 years	Individuals may keep their green cards
209(c)	For refugees and asylees who do not have green card yet, must show that remaining in the U.S. serves humanitarian, family unity, and public interest purposes in order to apply for a green card.	Must not present national security concerns, or have drug trafficking conviction	Individuals may get a green card
Prosecutorial discretion	Must show that you have specific positive factors in your favor, such as length of time in the U.S., family and community in the U.S., and other compelling humanitarian factors.	Discretionary decision, but lengthy criminal records or more serious criminal convictions are considered negative factors	If the case is administratively closed, then the person in removal proceedings returns to the status he or she had prior to the proceedings

WITHHOLDING OF REMOVAL

Withholding of removal is similar to asylum in that you have to be afraid to return to your home country based on a particular characteristic that you have, specifically race, religion, nationality, political opinion, or being part of a particular social group.³² Successful withholding claims for noncitizens in the Southeast Asian American community are detailed below. You use the same application form, the Form I-589, to apply for withholding of removal as you do to apply for asylum.³³

Withholding is different from asylum for two important reasons. First, you do not need to file a withholding application within one year of arriving in the United States. For asylum claims, you must file within one year, a restriction known as the “one-year bar.”³⁴ Second, individuals with aggravated felony convictions are barred from receiving asylum, but they are not barred from receiving withholding.

In order to win your claim, you must show that it is “more likely than not” that you will face a threat to life or freedom in the country to which you may be deported. That means that there is a 50% or more chance that you will be harmed if you are deported. By contrast, asylum only requires a lower standard of “well-founded fear”, so withholding requires more certainty of possible harm.

In order to show that you will face a threat to life or freedom in your home country if you are deported, you need to submit evidence in support of your claim. Such evidence may include:

- Your own declaration detailing any past harm or reasons for fearing future harm.
- Human rights reports from the U.S. Department of State.
- News articles detailing the violence or harm against individuals who share your characteristic in the country where you would be returned.
- Declarations, or sworn statements, from family members, friends, or other community members that can speak to the conditions in your home country or past events.

As noted above, you must show that you will face a threat to life or freedom based on one of the five categories: race, religion, nationality, political opinion, or being part of some particular social group.

In Cambodia, Vietnam, and Laos, people have received withholding based on a variety of categories. If you belong to a specific ethnic minority, such as the Hmong, Cham, or Mien, you may have a claim. Political organizers and dissidents who face persecution also may have a potential claim. A particular social group identified as drug users or former drug users in one of these countries has had some success for withholding claims. In Vietnam in particular, other groups may have claims for withholding based on certain identities, including: Amerasians, reeducation camp survivors or possibly descendants of such survivors, and certain religious leaders, particularly Catholic or Protestant leaders. In Cambodia, labor union organizers or members of the opposition political party may have potential claims for withholding. If you belong in any of these categories, you should speak with an attorney who can help find evidence to support your claim and assist you in filing your claim.³⁵ There may be other categories under which you may apply for withholding of removal. The ones listed here are claims that have had limited success.

If you do not belong to any of these particular groups, then any effort to gain relief in this matter will likely fail. For many Southeast Asians who entered the country as refugees at a young age, many are unlikely to face forms of persecution or torture that would make them eligible for this form of relief.

Although there is not a specific bar for aggravated felonies, you cannot receive withholding if you have a conviction that falls into the category of a “particularly serious crime.” A crime is considered particularly serious if it is an aggravated felony with a sentence of more than 5 years.³⁶ In some states, even crimes that are not aggravated felonies may be considered particularly serious crimes. Like other criminal convictions, the law varies greatly depending on the state that you are in. In general, particularly serious crimes involve danger or harm to another person.³⁷

Finally, withholding of removal does not have the same benefits as asylum. Although it allows you to remain in the U.S. and work, you cannot get a green card. This means that you cannot become a U.S. citizen, and you cannot sponsor family members to come to the United States.

WITHHOLDING OF REMOVAL OR DEFERRAL OF REMOVAL UNDER THE CONVENTION AGAINST TORTURE (CAT)

Similar to withholding of removal, if you apply for deferral or withholding of removal under CAT, then you must show that it is more likely than not that you will be harmed if deported. Again, this requires showing a likelihood of 50% or more that you will be tortured if returned to your home country. CAT relief is different than withholding, however, because you must show that it is more likely that not that you will face torture by a government official, or with the consent of the government. Torture is defined as, “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as... any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”³⁸ Unlike withholding of removal and asylum, there is no requirement that this torture be on account of a specific characteristic that you have.

The benefits that you receive under CAT relief are also similar to those under withholding of removal. You can remain in the U.S. and you can work here. However, you cannot get a green card or become a U.S. citizen. You also cannot sponsor family members to come to the United States. The difference between withholding of removal under CAT and deferral of removal under CAT is that deferral of removal can be terminated by the government more easily. If you receive withholding of removal under CAT, however, it can only be terminated if the government re-opens your immigration case, which is a more complicated process.

Importantly, unlike withholding of removal, there

are no bars for individuals with criminal convictions. CAT relief may be difficult to show. But, if you have faced torture by the government in your home country in the past, and/or fear torture in the future, then you should speak with an attorney who can help you with your claim.

It is important to note that withholding of removal and CAT claims are extremely difficult to secure. Although some people have been successful, they are the exception to the rule. Because of the history of Southeast Asian migration, a vast majority do not fall under categories that would make them eligible. In all cases, if you plan to pay attorney fees to fight your deportation, make sure that your attorney is able to articulate the legal argument that would a) qualify you for the very narrow exception to the rule of mandatory detention for criminal convictions and b) justify a possible withholding or CAT claim despite an aggravated felony conviction.

U VISA

Were you ever the victim of a crime in the United States? If so, you may be able to apply for a U visa if the crime falls within one of the categories of qualifying crimes.³⁹ The first step in any application for U visa is getting a certification from law enforcement. That means that you need to report (or have already reported) the crime to a law enforcement agency. A law enforcement agency can be the police or the District Attorney’s Office, among other agencies. You have to help the law enforcement agency with the investigation somehow, and the level of assistance may vary depending on the agency. Some require that you report the details of the crime, and others require that you testify in court proceedings. Each agency decides if you have met the requirements for the certification.

If you have criminal convictions, then you may still be eligible for a U visa. You need to submit a waiver along with your application. Along with that waiver, you should submit evidence, like statements from family or community members, that show that you have changed and been rehabilitated. The benefit of a U visa is that it provides a path to getting a green card and then, eventually, U.S. citizenship.

Like these other forms of relief, it is best to consult an attorney if you can. However, if you cannot afford an attorney, there is a useful guide by the Immigrant Legal Resource Center about preparing a U visa on your own.⁴⁰

In general, the success of securing a U visa petition is extremely rare, and in many cases, even more challenging to secure than withholding of removal.

POTENTIAL CITIZENSHIP

If you had a green card when you were under 18 years old and both of your parents became a citizen through naturalization when you were under 18 years old, then you automatically became a U.S. citizen (unless your parents were legally divorced and you were in legal custody of one parent that naturalized, then one parent may be enough). If this is the case, then you are protected from deportation. You still need to gather the necessary documents to demonstrate that you are a U.S. citizen.⁴¹

WAIVERS FOR LAWFUL PERMANENT RESIDENTS

If you have a green card, it is possible that you may be eligible for certain waivers (see below) for your criminal convictions. The process for applying for these waivers is extremely complicated, so speak with an attorney to confirm that you are eligible to apply and to get assistance with the application.

1. 212(h)

This waiver allows you to “waive” certain criminal convictions that may make you inadmissible (see Glossary of terms, p. 22).⁴² In the case of green card holders, you may be able to receive this type of waiver if you can show that deportation would result in “extreme hardship” to your U.S. citizen or lawful permanent resident (LPR) spouse, parent, son, or daughter. Extreme hardship is more than the normal hardship that your U.S. citizen or LPR spouse, parent, or child would face without you in the United States.

Showing extreme hardship varies case-by-case. It may be shown if your relative has a serious medical condition and depends on you for care, or if your relative would experience extreme psychological harm if you are removed.

2. 212(c)

This waiver is only available to noncitizens who have criminal convictions prior to 1996 that make them deportable. The basic requirements for this waiver are: (1) you have a green card; (2) you do not present any national security concerns; and (3) for aggravated felony convictions between 11/30/1990 and 9/30/1996, you did not serve more than 5 years in prison.⁴³ This waiver is discretionary, which means that the immigration judge does not have to grant it even if you meet all of the requirements.

3. 209(c)

This waiver is available for refugees or asylees who are hoping to get a green card.⁴⁴ It only applies for those who have certain criminal convictions. It does not apply to those who have drug trafficking convictions or who present national security concerns. For this waiver, you must show that it serves humanitarian, family unity, and public interest purposes.⁴⁵

PROSECUTORIAL DISCRETION

Another option for immigrants in removal proceedings is asking the government to close their deportation case because they have certain positive factors that outweigh the negative factors. The government can exercise “prosecutorial discretion” to close cases that they believe are not “priorities” for deportation. In November 2014, DHS released a memorandum stating new deportation priorities.⁴⁶ According to this memorandum, the top priorities for immigration enforcement, in order of priority, are: (1) threats to national security, border security, and public safety, including noncitizens with aggravated felony convictions; (2) noncitizens with multiple misdemeanor convictions and new immigration violators, such as noncitizens who re-enter the United States

without documentation; and (3) other immigration violators, including those who have been ordered removed and have not left the country.

If you fall into one of these categories, you may still have positive factors in your favor that you could argue deserve prosecutorial discretion. Such factors may include the length of time since your criminal conviction with no other interactions with the criminal justice system, length of time in the U.S., military service, strong family and community ties in the U.S., status as a victim or witness of a crime, or other compelling humanitarian factors, like poor health, age, pregnancy, a young child, or a seriously ill relative.

In your request for prosecutorial discretion, you should state these positive factors in your favor and provide support, such as letters from relatives or employers. Once you have filed your request for prosecutorial discretion, ICE has created a way to follow up on the progress of the request online.⁴⁷ If the government exercises discretion in your removal case, then the case is “administratively closed.” This means that you will revert to whatever status you had before removal proceedings, and you will be allowed to remain in the U.S. In some cases, you may need to take additional steps, but then you may also be able to get a work permit, which is discussed in more detail in the post-removal order section.

Q: Is it possible to get deported without seeing an immigration judge?

A: Yes, under a procedure known as “expedited removal,” noncitizens who do not have green cards and who have certain criminal convictions are ordered deported without going before an immigration judge.

Under the process known as “expedited removal,” noncitizens with no legal status (i.e., who are undocumented or out of status) and who have more serious criminal convictions can be ordered deported without seeing a judge. Noncitizens subject to expedited removal have convictions for aggravated felonies, controlled substance offenses, or firearms offenses.⁴⁸

If you have a more serious criminal conviction and you fear returning to your home country, then you must communicate that clearly to the ICE official. The official may ask you to sign papers related to your removal order, so you should communicate your fear of returning to your home country before signing such papers. Immigration enforcement then must provide

you with an interview with an asylum officer. If you pass this interview, then you will have the opportunity to present your case to an immigration judge.

A separate “expedited removal” process applies to noncitizens who are green card holders and who have certain criminal convictions, like aggravated felonies.⁴⁹ Under that provision, the noncitizen gets to see an immigration judge, but that removal hearing may be conducted while the noncitizen is still serving his or her criminal sentence. If you are not sure if you already have a final removal order, then you can get your immigration file (see “How do I get access to my immigration file?” p. 4).

Post-deportation order

Q: What happens if I get ordered deported?

A: If the immigration judge orders you deported, then you may appeal your case, but you need to do so quickly.

If you think that the judge wrongfully denied your claim for relief, then you may file an appeal. You must file your appeal within 30 days of your final removal order.⁵⁰ If you think you want to fight the final removal order, then you should file the appeal as soon as possible. In your appeal, you must state why the immigration judge was wrong.

In most states, if you were detained during your removal proceedings, you will likely remain in detention while you appeal your case. However, in states

that fall in the Ninth Circuit, you may request a bond hearing, also called a Casas⁵¹ hearing, if you are still seeking review of your removal order.

It is extremely difficult to win an appeal. Unless your attorney can describe to you how the immigration judge specifically made a legal or factual error in your case, it may not be worth the process of spending money on a lawyer to navigate an appeals process that will just end in in prolonged detention and denial.

Q: Can I reopen my case before the immigration court?

A: Yes, if new information or facts have arisen in your case, then you may file a motion to reopen.

If the time has passed to appeal, but new facts or information have come up in your case, you may file a motion to reopen.⁵² For example, if your criminal conviction that led to your deportation is vacated because your attorney did not tell you about the immigration consequences of the conviction (see Pre-deportation section, p. 2), then that would be considered new information. This motion must be filed within 90 days of your final removal order, though there are exceptions in some circumstances,

including for those applying for asylum or other fear-based claims. However, if you vacate the underlying conviction and move to reopen outside of the 90 day window, then you need ICE to join in the motion, which they are unlikely to do. In your motion, you have to present the new information or facts, and you should include statements or other evidence supporting these new facts that you will introduce if you get a new hearing.

Q: Can I get out of detention after I have been ordered removed?

A: Yes, if you are held for six months after your deportation order and have not yet been removed, then you should be released from detention.

In 2001, the Supreme Court determined that six months is the reasonable time that a noncitizen can be held after receiving a final order of removal.⁵³ For immigrants from Laos or those who came from Vietnam before July 12, 1995, deportation is not usually reasonably foreseeable in the future. For immigrants from Cambodia or those from Vietnam who came after July 12, 1995, it almost always takes time (from months to years) to get the travel documents for the person who is being deported. If you are from any of these three countries and you have been held for more than six months after getting a final removal order, then you should be able to get out of detention.

Your release is not automatic, however. Shortly after you are ordered deported, you can file a post-order custody review with your deportation officer. Along with this request, you should include evidence that you are not a flight risk or danger to the community. This evidence is similar to what you would submit for your bond hearing (see “How can I get

out of immigration detention?” p. 5). After three months in detention, you should send a notice to your deportation officer requesting release from detention. Then, after six months, you must send a letter to ICE to have your custody reviewed.⁵⁴ Deportation officers who are familiar with deportations to Cambodia, Vietnam, and Laos will likely understand that deportation will probably not happen any time soon, and the process will be fairly straightforward.

If you go through this process and you are still not released from detention, then you may file a habeas corpus petition in federal district court. A habeas petition asks the court to order your release from custody because immigration enforcement cannot hold you beyond six months after your final removal order. The Florence Project has put together a short guide about filing a habeas petition that may be helpful if you are filing this petition without an attorney.⁵⁵

Q: Are there any requirements after I am released?

A: Yes. You will be provided with an order of supervision, and you will have to check in with your deportation officer periodically.

After you are released from detention, you will be handed a document called an “order of supervision.” You need to hold on to this document for future check-ins with ICE. The document identifies the date, time, and location for your first check-in with ICE. You must take these check-ins seriously and report to ICE at your designated date and time. If you cannot make it to your check-in that day, then you should inform the ICE officer and reschedule your check-in date. Those who are granted withholding of removal or relief under the Convention Against Torture (see Withholding of removal section, p.10) also receive orders of supervision.

As part of the order of supervision, you also must inform ICE if you move or change jobs. You should do so by sending a letter, or email if you have access, to the ICE office where you do your check-ins.

There may be other requirements for your order of supervision, like seeking permission before leaving the state you are in, so be sure to comply with these as well.

Finally, ICE may choose to use more serious supervision measures. Some noncitizens with orders of supervision are enrolled in the Intensive Supervision Appearance Program (ISAP). You may be required to wear an ankle bracelet and to participate in more frequent check-ins with ICE officers. Such measures may depend on the seriousness of your criminal conviction. It depends on the ICE office.

If you comply with the check-ins and the order of supervision, then the check-ins will probably become less frequent. At a minimum, you will be required to check in once a year.

Q: Can I get a work permit with a final deportation order?

A: Yes. You may apply for a work permit.

If you have been ordered deported and released from detention, or if you have an order of supervision, then you can apply for a work permit, also known as employment authorization. You first need to apply for employment authorization from U.S. Citizenship and Immigration Services (USCIS). The agency has discretion to grant you a work permit, meaning it does not have to issue a work permit to you even if you submitted all of the documents that were needed.

To apply for a work permit, you need to file a Form I-765.⁵⁶ For question 16, it asks you to enter your category of status. If you have a final removal order and

you are applying for work authorization, you should enter (c)(18) in the boxes. Each time you apply, the cost of the application is \$380. The cost may vary over time, so be sure to check the cost of filing before submitting your application. You will probably have to apply every year for the permit. However, you can apply for a fee waiver. To do so, you may submit a Form I-912 along with your application. You also need to submit two passport photos.⁵⁷

Resources

CONNECTING WITH OTHER SEAS

If you have a final order of removal, you are not alone. Over 15,000 people are living and working day-to-day in the U.S. with years-old final deportation orders to Cambodia, Laos, or Vietnam.¹ No matter where you live, you should feel free to reach out to these community-based organizations and community leaders. They can share resources and information with you, and potentially connect you with other people going through similar experiences.

ORGANIZATION	LOCATION	INFORMATION CONTACT
Southeast Asia Resource Action Center (SEARAC)	Washington, DC	Katrina Dizon Mariategue, Policy Manager katrina@searac.org
Khmer Girls in Action	Long Beach, CA	Lian Cheun, Executive Director lian@kgalb.org
VAYLA-NO	New Orleans, LA	Minh Nguyen, Executive Director minhnguyen@vayla-no.org
Southeast Asian Coalition	Charlotte, NC	Cat Bao Le, Executive Director catbaole@gmail.com
Fathers and Families of San Joaquin County	Stockton, CA	Alejandra Gutierrez agutierrez@ffsj.org
APSARA	Stockton, CA	Sothea Ung unghengsothea@gmail.com
Many Uch and Vanna Sing	Seattle, WA	Manny Uch deportableguy@gmail.com Vanna Sing Yunvme253@yahoo.com

1. Figure calculated by looking at total number of deportation orders minus the number of actual removals to those countries to Cambodia, Laos, and Vietnam since 1998. See Transactional Records Access Clearinghouse (TRAC), Deportation Outcomes by Charge, available at http://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php; U.S. Department of Homeland Security, 2012 Yearbook of Immigration Statistics, Table 41, available at <http://www.dhs.gov/publication/yearbook-2012>.

COUNTRY REPATRIATION AGREEMENTS

Cambodia, Laos, and Vietnam are some of the only countries in the world that delay or obstruct the repatriation of deportees from the United States. Certain members of Congress frequently propose legislation to pressure these countries to accept any and all deportees. Because of this, it is important to assume that a final order of deportation to any of these countries is potentially risky, and could result in actual removal from the country in the future.

COUNTRY	AGREEMENT SIGNED	DETAILS
Cambodia	2002	Cambodia officially accepts up to 120 deportees per year. In practice, the average has been around 33 per year, but sometimes as high as 88.
Laos	None yet	Laos does not officially accept deportees at this time, though the U.S. has been actively pressuring Laos to sign a repatriation agreement.
Vietnam	2008	Vietnam currently only accepts deportees who entered the U.S. on or after July 12, 1995.

GETTING LEGAL HELP

Much of the advice in this guide is best discussed with an attorney. Many of the legal clinics and organizations below may be able to connect you with pro bono (free) help if you do not have the resources to pay for an attorney.

1. Law School Clinics

LAW SCHOOL	LOCATION	CLINIC	CONTACT INFO
American University Washington College of Law	Washington, DC	Immigrant Justice Clinic	(202) 274-4147
Benjamin N. Cardozo School of Law	55 Fifth Avenue, Room 1108 New York, NY 10003	Kathryn O. Greenberg Immigration Justice Clinic	(212) 790-0895
Loyola New Orleans College of Law	7214 St. Charles Avenue, Box 902 (Physical address: 540 Broadway) New Orleans, LA 70118	Stuart H. Smith Law Clinic & Center for Social Justice	(504) 861-5595

LAW SCHOOL	LOCATION	CLINIC	CONTACT INFO
New York University Law School	245 Sullivan Street New York, New York 10012	Immigrant Rights Clinic	(212) 998-6430
Suffolk University Law School	120 Tremont Street, Suite 150 Boston, MA 02108	Immigration Clinic	(617) 573-8100 Only able to take detainees housed in Suffolk County
University of Arkansas Law School	107 Waterman Hall 1045 W. Maple St. Fayetteville, AR 72701	Immigration Law Clinic	(479) 575-3056
University of California, Davis	School of Law Clinical Programs One Shields Avenue TB 30 Davis, CA 95616-8821	Immigration Law Clinic	(530) 754-4833
University of Massachusetts School of Law- Dartmouth	333 Faunce Corner Road Dartmouth, MA 02747-1252	Immigration Law Clinic	(508) 985-1174 Irene M. Scharf, Clinical Director: ischarf@umassd.edu Crystal Desirey, Clinic Coordinator: cdesirey@umassd.edu
University of San Francisco	San Francisco, CA	Immigration and Deportation Defense Clinic	(415) 422-6171 immlawclinic@usfca.edu

2. Individual Practitioners and Organizations

NAME	ORGANIZATION	LOCATION	FOCUS	CONTACT INFO
Prof. Bill Hing	University of San Francisco Law School	San Francisco, CA	Long-time expert in criminal deportation issues, especially for Southeast Asians	bhing@usfca.edu
Prof. Holly Cooper	University of California, Davis	Davis, CA	Detention work/post removal defense	hscooper@ucdavis.edu (530)754-4833
Amagda Perez			Removal defense	aaperez@ucdavis.edu (530) 752-6942
Prof. Tracy Harachi	University of Washington	Seattle, WA	Post-deportation support in Cambodia	tharachi@uw.edu (206) 409-2707
Shiu-Ming Cheer	National Immigration Law Center	Los Angeles, CA	Information, resources, and referrals on deportation	cheer@nilc.org (213) 674-2833
Tin Nguyen	Private practice	Charlotte, NC	Deportation defense	ttnguyen.esq@gmail.com (704) 461-1527
Jay Stansell	Private practice	Seattle, WA	Deportation defense	jaywstansell@yahoo.com (206) 276-0710
Anoop Prasad	Advancing Justice – Asian Law Caucus	San Francisco, CA	Deportation defense	anoopp@advancingjustice-alc.org (415) 848-7722
Jacqueline Dan	Advancing Justice – Orange County, CA	Garden Grove, CA	Deportation defense	jd@advancingjustice-la.org English: (888) 349-9695 Vietnamese: (800) 267-7395 Khmer: (800) 867-3126 Thai: (800) 914-9583
	Northwest Immigrant Rights Project	Seattle, WA	Deportation defense	Intake Line: (206) 587-4009
Ada Plascencia	ABA Immigrant Justice Project of San Diego	San Diego, CA	Removal proceedings, legal orientation	Ada.plascencia@abaijp.org (619) 699-2932

NAME	ORGANIZATION	LOCATION	FOCUS	CONTACT INFO
Alisa Wellek, ED	Immigrant Defense Project	New York, NY	Deportation defense	awellek@immigrantdefenseproject.org 212 725-6422
Paromita Shah	National Immigration Project of the National Lawyers Guild	Boston, MA	Immigration crimes and enforcement	paromita@nationalimmigrationproject.org (For those currently incarcerated, you may send a letter to: 14 Beacon Street Boston, MA 02108)
Anne Benson	Washington Defenders Project	Seattle, WA	Deportation defense	Abenson@defense.net.org (206) 623-4321

GLOSSARY OF TERMS

Aggravated felony

This term is unique to immigration law. It is defined under the Immigration and Nationality Act (INA) § 101(a)(43). It identifies a certain set of crimes that trigger immigration consequences. It includes 21 categories of crimes, the most common being controlled substance offenses, firearms offenses, violent crimes with a sentence of one year or more, and theft offenses with a sentence of one year or more.

Crime involving moral turpitude (CIMT)

The definition is not clear, but “refers generally to conduct that shocks the public conscience.” *Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989). Fraud or theft crimes are considered CIMTs. To be a CIMT, there must be intent, so regulatory offenses, such as speeding, are not CIMTs.

Deportability

Noncitizens are “deportable” if they have committed certain crimes, entered without inspection, and many other reasons. The grounds of deportability are found under the Immigration and Nationality Act (INA) § 237. Just because a noncitizen is “deportable” does not mean that he or she will be deported. A deportable noncitizen may still apply for certain forms of relief before the immigration court.

Inadmissibility

Characteristic or quality that a noncitizen has that prohibits him or her from being admitted to the United States. The grounds of inadmissibility are found in the Immigration and Nationality Act (INA) § 212. These grounds include criminal convictions, such as drug trafficking offenses or multiple criminal convictions with a total sentence of 5 or more years. These types of criminal convictions are not always the same as the types of criminal convictions that makes you deportable.

Lawful permanent resident (LPR)

Green card holder

Naturalization

The process of becoming a U.S. citizen, which offers even greater protections than just being a green card holder (also known as a lawful permanent resident) because U.S. citizens cannot be deported.

Notice to Appear (NTA)

This is the document that an individual receives from ICE when ICE begins removal proceedings against him or her. It contains the reasons why the government thinks the person is deportable. There are two parts: (1) factual allegations that detail the noncitizen’s entry to the United States and current citizenship status and (2) charges where the government states under what legal provisions the noncitizen should be deported.

Particularly serious crime

This term is unique to immigration law. The definition varies depending on the circumstances of the case, but, in general, crimes that are dangerous and harm others are considered particularly serious. Aggravated felonies with a sentence of five years or more are considered particularly serious.

REFERENCES

1. Percentages of deportation orders to Cambodia, Laos, and Vietnam were calculated using Syracuse University's Transactional Records Access Clearinghouse, "Deportation Outcomes by Charge," available at http://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php. The percentage for criminal deportation grounds based on an aggravated felony was calculated using TRAC's "U.S. Deportation Proceedings in Immigration Courts by Nationality, Geographic Location, Year and Type of Charge," available at http://trac.syr.edu/phptools/immigration/charges/deport_filing_charge.php.
2. INA § 237(a)(2)(A). A free electronic copy of the Immigration and Nationality Act (INA) is available online at the U.S. Citizenship and Immigration Services website. Go to: <http://www.uscis.gov/iframe/ilink/docView/SLB/HTML/SLB/act.html>.
3. INA § 237(a)(2)(A)(iii).
4. For the full list of categories of crimes that are considered aggravated felonies, see INA § 101(a)(43).
5. 559 U.S. 356 (2010).
6. *Chaidez v. United States*, 133 S.Ct. 1103 (2013).
7. For a more detailed explanation, see "Seeking Post-Conviction Relief under *Padilla v. Kentucky* After *Chaidez v. U.S.*" Immigrant Defense Project & National Immigration Project of the National Lawyers' Guild (Feb. 28, 2013), available at <http://immigrantdefenseproject.org/wp-content/uploads/2013/03/Chaidez-advisory-FINAL-201302281.pdf>.
8. *Id.* at 372.
9. Memorandum from Jeh Charles Johnson (Nov. 20, 2014), available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.
10. Instructions and the form are available here: <http://www.uscis.gov/g-639>.
11. USCIS, "Freedom of Information Act Request Guide," available at <http://www.uscis.gov/sites/default/files/USCIS/About%20Us/FOIA/How%20to%20File%20a%20FOIA%20Request%20Request/USCIS%20FOIA%20Request%20Guide.pdf>.
12. The statute articulates four different categories of criminal convictions that would make a noncitizen subject to mandatory detention. INA § 236(c).
13. All noncitizens in custody who face deportation and who do not fall under section 236(c) mandatory detention then fall under section INA § 236(a), which is non-mandatory, discretionary detention.
14. INA § 236(a)(2)(A).
15. INA § 236(c). In *Demore v. Kim*, the U.S. Supreme Court determined that the mandatory detention statute did not violate the Constitution. 538 U.S. 510 (2003).
16. There are twelve regional Circuit Courts of Appeals. They are made up of a cluster of states in a specific region, with the exception of the District of Columbia, which has its own circuit, the D.C. Circuit. Check out this map to determine which Circuit Court your state is in.
17. INA § 236(c)(1).
18. *Sylvain v. Att'y Gen.*, 714 F.3d 150 (3d Cir. 2013) (concluding that immigration enforcement does not have to take noncitizens into custody immediately after they are released from their criminal sentence).
19. *Saysana v. Gillen*, 590 F.3d 7 (1st Cir. 2009); *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005).
20. *Rodriguez v. Holder*, 715 F.3d 1127 (9th Cir. 2013).
21. *Diop v. ICE/Homeland Security*, 656 F. 3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).
22. The factors analyzed by the court were: (1) the overall length of detention; (2) whether the civil detention was for a longer period than the criminal sentence for the crimes resulting in the deportable status; (3) whether actual removal was reasonably foreseeable; (4) whether the immigration authority acted promptly to advance its interests; and (5) whether the petitioner intentionally caused delays in the immigration court. *Ly*, 351 F.3d at 271-72.
23. *Id.* at 267, 271.
24. According to this case, a noncitizen should not be held in mandatory detention if the government is "substantially unlikely" to be able to establish the charge(s) that subject the noncitizen to mandatory detention. In re *Joseph*, 22 I&N Dec. 799 (BIA 1999).
25. In re *Adeniji*, 22 I&N Dec. 1102 (BIA 1999).
26. Online Detainee Locator System, available at <https://locator.ice.gov/odls/homePage.do>.
27. INA § 240(b)(4)(A).
28. The leading case for mental competency in removal proceedings in *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).
29. § 240(b)(3).
30. *Franco-Gonzalez v. Holder*, No. CV 10-02211 DMG, 2013 WL 3674492 (Apr. 23, 2013).
31. For a more comprehensive explanation of these forms of relief, check out "Deportation 101," available at http://www.nationalimmigrationproject.org/Deportation101_LowRes_January_2011.pdf.
32. INA § 241(b)(3).
33. For more detailed information about fear-based forms of relief, such as asylum, withholding of removal, and deferral of removal under the Convention Against Torture (CAT), go to: http://www.firrp.org/media/Asylum_WOR_CAT-Guide-2013.pdf.
34. There are exceptions for "changed circumstances" and "extraordinary circumstances," both of which are defined by federal regulations. See 8 C.F.R. § 1208.4(a)(4)-(5).

35. Human Rights Watch has written a report about the mistreatment of drug users in Cambodia. See Human Rights Watch, “They Treat Us Like Animals’ Mistreatment of Drug Users and ‘Undesirables’ in Cambodia’s Drug Detention Centers (2013), available at http://www.hrw.org/sites/default/files/reports/cambodia1213_ForUpload_1.pdf.
36. INA § 241(b)(3)(B)(iv).
37. *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007).
38. 8 C.F.R. § 208.18(a)(2).
39. For a list of the crimes that qualify for a U visa, visit: <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.
40. “Getting a U Visa: Immigration help for victims of crime,” available at http://www.ilrc.org/files/documents/proseuvisamanual_english.pdf.
41. For additional guidance about this process and if you are eligible, go to: <http://www.lawhelpmn.org/files/1765CC5E-1EC9-4FC4-65EC-957272D8A04E/attachments/2973308D-B5A3-41F6-9E5E-1DD94DFBCC57/i-12-proving-your-childs-citizenship.pdf>.
42. INA § 212(h).
43. *Immigration & Naturalization Serv. v. St. Cyr*, 533 U.S. 289 (2001).
44. INA § 209(c).
45. For more information about 209(c) waivers, go to: http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/209cadjwvr103105.pdf.
46. For the full memorandum about prosecutorial discretion, go to: http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
47. You can find more information about emailing ICE directly about prosecutorial discretion requests at this link: <http://www.ice.gov/contact/detention-information-line>.
48. INA § 238(b).
49. INA § 238(a)(1).
50. § 240(c)(6).
51. *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008).
52. INA § 240(c)(7).
53. *Zadvydas v. Davis*, 533 U.S. 678 (2001).
54. For more detailed instructions and sample letters and templates for filing these letters, check out the guide from American Bar Association (ABA): http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/legalguide_indefinitedetention.authcheckdam.pdf.
55. For additional information about filing a habeas petition and to see templates, go to: <http://www.firrp.org/media/Habeas-Guide-2013.pdf>.
56. These forms are available online through the USCIS website. The Form I-765 is available here: <http://www.uscis.gov/sites/default/files/files/form/i-765.pdf>.
57. For more detailed instructions about filing for a work permit, go to: <http://www.uscis.gov/sites/default/files/files/form/i-765instr.pdf>.

ABOUT THE AUTHORS

SOUTHEAST ASIA RESOURCE ACTION CENTER (SEARAC)

SEARAC is a national organization that advances the interests of Cambodian, Laotian, and Vietnamese Americans by empowering communities through advocacy, leadership development, and capacity building to create a socially just and equitable society. SEARAC defines Southeast Asian Americans as people in the United States whose heritage stems from Cambodia, Laos, or Vietnam. Southeast Asian Americans now number approximately 2.5 million, and most of them either arrived in the U.S. as refugees or are the children of refugees. SEARAC has been advocating for humane and just laws for immigrants with criminal convictions for over a decade to help keep more Southeast Asian American families together.

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW IMMIGRANT JUSTICE CLINIC

The Immigrant Justice Clinic (IJC) is one of 11 law clinics within the Clinical Program at American University Washington College of Law (WCL). The Clinical Program is designed to give students the opportunity to represent real clients with real legal problems, to handle litigation from beginning to end, to explore and address pressing legal issues with institutional clients, and to learn lawyering skills at both a practical and theoretical level. Student Attorneys enrolled in IJC work in teams under the supervision of a full-time faculty member and handle a broad range of cases and projects involving immigrant communities in the Washington, D.C. metropolitan area. IJC is structured so as to develop in students the skills and values needed to be effective immigrants' rights practitioners and respond to the unmet legal needs of the client community. As is true of this guide, many of the matters handled by IJC reside at the intersection of immigration and criminal law. Other cases and projects handled by IJC have included the following: the representation of detained immigrants with criminal convictions; the representation of domestic workers seeking wage recovery and immigration relief; and advocacy work related to language access to social services in Washington, D.C.



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