



TAKE ACTION:

PREVENT YOUR
NONCITIZEN
CLIENTS FROM
BEING DEPORTED
WHILE IN PRISON

A GUIDE TO THE INSTITUTIONAL
HEARING PROGRAM FOR STATE
AND FEDERAL CRIMINAL DEFENSE
ATTORNEYS IN CALIFORNIA

**Immigrant Legal
Resource Center**
www.ilrc.org

This guide was created by the Immigrants' Rights Clinic at Stanford Law School on behalf of the Immigrant Legal Resource Center. We do not work for, and are not funded by, any divisions of the Department of Homeland Security, including ICE, CBP, or USCIS.
Last updated: June 2021

**Stanford Law School
Immigrants' Rights
Clinic**
<https://law.stanford.edu/immigrants-rights-clinic/>

TABLE OF CONTENTS

This guide is for **criminal defense attorneys** with **noncitizen clients**. Some noncitizen clients may face deportation in prison through the Institutional Hearing Program ("IHP"). Included in this guide are steps that criminal defenders can take to help prevent deportation of noncitizens clients who are subject to IHP.

2	What is IHP?	6	What will happen to your client during the IHP process?
3	What can defenders do to protect the rights of noncitizen clients?	8	Appendix: Answers to common client questions about IHP
4	What can clients do to prepare now?	9	Appendix: IHP background and history
5	What are your client's options for immigration relief?	10	Appendix: IHP locations
		11	Appendix: Handout for Criminal Defendants (English and Spanish versions)

ACKNOWLEDGEMENTS

The authors would like to acknowledge Emma Winger, Tory Johnson, Claudia Valenzuela, Ingrid Eagley, and Steven Shafer for sharing their work and research on the Institutional Hearing Program. The authors also extend thanks to Rachel Keast, Beth Chance, Su Yon Yi, Chloe Dillon, Bernice Espinoza, David Menninger, Julia Rabinowitz, Graciela Martinez, Bobby Hill, Megan Hopkins, and Susan Beaty for sharing their wisdom, time and feedback. Finally, the authors want to extend a special thanks to Valerie Zukin and Rose Cahn for their partnership and incredibly thoughtful suggestions and edits to this toolkit.

WHAT IS IHP?

You are critical: Criminal defense attorneys can change outcomes for noncitizens in IHP.

IHP is a fast-track deportation initiative.

Typical deportation proceedings begin after serving a criminal sentence and transfer to ICE custody. But under IHP, ICE initiates and tries to finish deportation proceedings against noncitizens while they are still serving their criminal sentences in state and federal prisons.

IHP is not going anywhere. IHP is over 30 years old. All prior administrations and the current administration have prioritized removal of individuals with felony convictions.

Criminal defense attorneys can change outcomes for noncitizens in IHP. A criminal defense attorney may be the last lawyer an incarcerated noncitizen in IHP speaks with. Noncitizens in deportation proceedings are not entitled to appointed counsel. In fact, the vast majority of clients facing deportation will have no legal support after their criminal proceedings.

NONCITIZENS IN IHP NEED HELP

< 1%

Percentage of noncitizens in IHP in California who are represented by immigration counsel.

10%

Percentage of noncitizens in IHP nationwide who are represented by immigration counsel.

93%

Percentage of noncitizens in IHP nationwide who are ordered deported.

250,000+

Total number of incarcerated noncitizens who have been subject to IHP nationwide since 1980.

The government has implemented IHP in federal, state, and local facilities. In 2021, there were 17 federal IHP sites across 7 states in both for-profit and Bureau of Prison ("BOP")-run facilities. In addition, state and local facilities in 19 states actively use IHP. Implementation varies across states and localities. In some states, noncitizens in IHP are spread across dozens of facilities, while other states—including California—use a more centralized model.

California currently has 6 IHP sites.

Publicly available information suggests that there are currently three active *federal* IHP sites (USP Victorville, FCI Victorville Medium I, and FCI Victorville Medium II) in California. While Dublin FCI was an active IHP site for decades, it is no longer an active site. There are three *state* California Department of Corrections and Rehabilitation (CDCR) sites (Calipatria State Prison, Centinela State Prison, and Richard J. Donovan Correctional Facility). There are currently no IHP sites for women in CDCR or county jails in California.

WHAT CAN DEFENDERS DO TO PROTECT THE RIGHTS OF NONCITIZEN CLIENTS?

WHEN SHOULD YOU TALK WITH YOUR NONCITIZEN CLIENTS ABOUT IHP? Earlier is better.

You need not be certain that your client will be placed in IHP to share this information with your client. Defenders can inform clients about IHP pre-sentencing or even pre-plea. If you are concerned that a plea could result in a charge of removability, discuss the possibility of IHP.

FIVE STEPS YOU CAN TAKE TO TRY TO PREVENT YOUR NONCITIZEN CLIENT FROM BEING DEPORTED WHILE IN PRISON

- 1** Try to resolve the case in a way that protects the client from deportability or maintains the client's eligibility for relief.
Talk to your in-house Padilla counsel or seek advice from a crim/imm expert.
- 2** Talk to your client about finding an immigration attorney now.
See "What Can Clients Do To Prepare Now" (p. 4).
- 3** Talk to your client about gathering evidence for a potential deportation proceeding now.
See "What Can Clients Do To Prepare Now" (p. 4)
- 4** Screen your client for potential immigration relief and advise your client about relief they may want to raise to their judge.
See "What Are Your Client's Options for Immigration Relief" (p. 5).
- 5** Walk through the IHP process with your client so they know what to expect and what rights they can assert if they are placed in IHP.
See "What Will Happen To Your Client During the IHP Process?" (pp. 6-7).



If your client cannot find an immigration attorney, you will likely be the last lawyer the client speaks with before their deportation proceedings begin.

WHAT CAN CLIENTS DO TO PREPARE NOW?

If your client is placed in IHP, they will have to decide whether to fight their immigration case. Advise your client to discuss now with friends or family members how they will proceed if placed in IHP.

IF YOUR CLIENT PLANS TO FIGHT THEIR CASE OR IS UNSURE OF WHETHER TO FIGHT THEIR CASE, THEY (OR THEIR FAMILY MEMBERS) SHOULD START LOOKING FOR AN IMMIGRATION ATTORNEY NOW.

START COLLECTING EVIDENCE

EVIDENCE CLIENT IS AFRAID TO RETURN TO THEIR HOME COUNTRY

- Letters from friends and family describing the fear or danger
- Newspaper articles about danger and violence in the client's home country
- Evidence of threats, like screenshots of texts sent to the client or their family or social media posts directed at the client

EVIDENCE OF CLIENT'S TIES TO THE U.S.

- Documentation of client's immigration status and prior immigration petitions and applications
- Letters from friends and family
- Marriage certificate
- Children's birth certificates
- Tax returns
- Family photos

EVIDENCE OF DOMESTIC VIOLENCE OR TRAFFICKING

- Text messages or emails showing the client has been forced to work without pay or forced to have sex in the U.S.
- Evidence of threats and/or violence from partner, family member, or another person.

EVIDENCE OF CLIENT'S GOOD CHARACTER AND REHABILITATION

- Letters from friends, family, neighbors, or employers about the client's good character
- Certificates client received for education, programs, or community service
- Newspaper articles about the client's community or religious work

A reliable family member or friend outside of custody should collect and safeguard this evidence. If your client has no such contact, the next best option is for the client to safeguard this evidence themselves.

GET PREPARED AHEAD OF TIME

If your client is transferred to IHP, their ability to access an immigration lawyer or gather supporting documents may be limited.

- Advise your client to look for an immigration attorney. Unlike in their criminal case, the government does not pay for an immigration attorney. The client must find and hire their own lawyer. Your client can use <https://www.immigrationadvocates.org/nonprofit/legaldirectory/> to find a free or low-cost immigration attorney. Unfortunately, there is no general phone number clients can call to find free counsel.
- Advise your client to tell friends or family to begin gathering documents that may be relevant for your client's case now.

CONSIDER COMPETENCY

In the limited scenarios where a client is not sufficiently competent, the law requires that the immigration judge appoint them counsel at no cost if they are in ICE custody.

- Unfortunately, this right only applies to individuals detained in ICE custody, not individuals in IHP who are still in criminal custody. If you believe your client may have a severe mental health issue or intellectual or developmental disability, a friend of the court can try to request that the case be removed from IHP or continued until after criminal sentence is complete due to competency concerns. Once the client is in ICE custody, they might be able to have a lawyer appointed to them to assist with their removal case.
- Consider giving your client documentation that describes your concern as to their competency, or if appropriate, findings of incompetency from client's criminal proceedings. Advise client to tell friends/family to gather any medical evidence relevant to competency.

WHAT ARE YOUR CLIENT'S OPTIONS FOR IMMIGRATION RELIEF?

Review these questions with your client. Advise them to tell the immigration judge if any of the following situations apply.

IMMIGRATION RELIEF SCREENING

For more comprehensive guidance on quickly screening your noncitizen client for immigration relief, see https://www.ilrc.org/sites/default/files/resources/relief_toolkit-20180827.pdf

Are you afraid to return to your country of origin?

- Tell the judge if you are afraid to go back to your home country or if someone seriously harmed or threatened you or a family member in your home country.

Could you be a citizen?

- Tell the judge if one of your parents or grandparents is a U.S. citizen.

Do you have prior immigration petitions?

- Tell the judge if someone has filed an immigration petition for you, your spouse, or your parent in the past, or if you have applied for immigration benefits in the past.

Have you been a victim of crime?

- Tell the judge if you or a close family member has been a victim of crime in the U.S.

Have you been a victim of trafficking?

- Tell the judge if you have been forced to work without pay or have sex, including forced to have sex for money.
- Tell the judge if someone harmed or threatened you on your way into the U.S.

Have you been a victim of domestic violence from a U.S. citizen or permanent resident?

- Tell the judge if you have been the victim of domestic violence or abuse in the U.S. by a spouse or parent who is a U.S. citizen or has a green card.
- Tell the judge if your child was abused by their other parent, who is a U.S. citizen or green card holder.

Have you lived in the U.S. for a long time? Do you have U.S. citizen or permanent resident family members?

- Tell the judge if you are undocumented, have lived in the U.S. for more than 10 years, and have a U.S. citizen or green card parent, spouse, or child (under 21 and unmarried) who would suffer serious harm if you were deported.
- Tell the judge if you are the spouse, child, or parent of a U.S. citizen or green card holder, or if you are the sibling of a U.S. citizen.
- Tell the judge if you have been a green card holder for at least 5 years and lived in the U.S. for at least 7 years before you received your notice to appear.



Some clients, like LPRs, may have strong arguments that they are not deportable based on their convictions. Have your client's NTA evaluated by in-house Padilla counsel or a crim/imm expert to assess whether the government has met its burden of proving deportability, in addition to assessing eligibility for relief.

KNOW YOUR CLIENTS' RIGHTS

During IHP, your client has the right to...

- An attorney at their own expense
- A list of lawyers offering pro bono representation
- Ask for more time to find an attorney
- Private phone calls, mail, and visits from their lawyer
- Ask for more time to decide whether to fight their case
- A court interpreter that speaks their preferred language
- Appeal an adverse decision to the Board of Immigration Appeals

WHAT WILL HAPPEN TO YOUR CLIENT DURING THE IHP PROCESS?

1 ICE Identification

While we know very little about the criteria that ICE or state officials use to target or prioritize noncitizens for IHP, we know that ICE can access databases and lists of noncitizens in federal and state prisons and local jails.

Criminal defense attorneys may have some influence on whether their clients are ultimately sentenced to IHP facilities. You can request that the sentencing judge make a (non-binding) sentencing recommendation that the noncitizen be sent to a known IHP facility or that the noncitizen be sent to a non-IHP facility. Of course, it is possible that even if the client is initially sentenced to a non IHP facility, they may later be transferred to one.

SHOULD YOUR CLIENTS TALK TO ICE?

In California, noncitizens have the right to refuse to speak with ICE while in prison. If your client has never had contact in ICE, exercising that right may prevent ICE from gathering evidence necessary for a Notice to Appear. But if your client has previously had contact with ICE, then ICE likely already has this information. Use these questions to assist you in determining if your client has previously had contact with ICE.

If your client answers "yes" to any of the following questions, ICE may already know about them:

- Have you ever been turned around or detained at the border?
- Has anyone (a family member or employer) ever filed an immigration petition for you?
- Have you ever applied for any kind of immigration relief?
- Have you ever submitted an application for DACA?
- Have you ever been deported?
- Have you ever previously been interviewed by ICE?

***Note that if your client is a green card holder, has another type of immigration status (e.g., DACA or TPS), or has ever been fingerprinted by DHS, ICE already has evidence of their nationality and citizenship.**

2 Notice to Appear

If the government starts removal proceedings against your client while they are still serving their sentence, the client will receive a Notice to Appear ("NTA"). The NTA is similar to a complaint or indictment. It includes the factual and legal allegations as to why the government thinks the noncitizen should be deported.

3 Master Calendar Hearing

Much like an arraignment in criminal cases, a Master Calendar Hearing ("MCH") is a noncitizen's initial appearance before an immigration judge. The judge must inform the noncitizen of her right to a court interpreter and her right to hire an attorney.

If your client would like additional time to hire an attorney for themselves or to decide whether to fight their case, they have the right to ask the judge for at least one continuance. The judge will require them to appear in court again in a matter of weeks. If they still cannot find an attorney, the judge may require them to represent themselves. A noncitizen may have more than one Master Calendar Hearing, especially if they ask for more time to find a lawyer.

If the noncitizen is ready to talk to the judge without a lawyer, the judge will ask a series of question about whether the noncitizen wants to either accept deportation or fight their case. If your client accepts deportation, the judge may issue a deportation order at the very first hearing. But they would not actually be deported until they are released from criminal custody.

Even when a client wants to fight their case, an immigration judge may decide at a Master Calendar Hearing that the client is removable and ineligible for any kind of relief. If that happens, the case would be resolved at the MCH stage and your client would not continue to an Individual Calendar Hearing.

4 Individual Calendar Hearing

If your client chooses to fight their case, the judge will schedule a final hearing, which is called an Individual Calendar Hearing. At this hearing, the noncitizen has the right to present any relevant applications for relief—like asylum, withholding, Convention Against Torture, or waivers based on criminal history and family ties—along with evidence to support those applications. The noncitizen and any expert or lay witnesses can also give testimony.

5 Immigration Judge Decision

At the end of the Individual Calendar Hearing, the judge will either issue a deportation order or an order granting the noncitizen permission to remain in the U.S. While the judge often issues a decision that same day from the bench, on some occasions they will take the case under submission and later issue a written decision. If the judge issues a written decision, the court will send the decision to the individual at their address in prison by mail.

6 Appeals

If the judge issues a deportation order, the noncitizen may appeal the judge's decision to the Board of Immigration Appeals ("BIA"). Your client should tell the judge if they wish to appeal to the BIA. The judge will give your client more information about appealing and the necessary forms. The client must complete and submit the forms within certain deadlines.

If the judge grants your client permission to remain in the U.S., the government can appeal the judge's decision to the BIA. Your client will receive notice if this happens.

If the noncitizen's release date arrives and the case is still pending (either before the judge or the BIA), the noncitizen will be transferred into ICE custody until the conclusion of their deportation proceedings.

APPENDIX: ANSWERS TO COMMON CLIENT QUESTIONS ABOUT IHP

→ How will I know if ICE is going to place me into IHP?

Unfortunately, we don't know for certain whether the government is going to place any particular individual in IHP. You will know for certain you have been placed in IHP if you receive a Notice to Appear and are told you have to speak to a judge while you are still serving your criminal sentence.

→ At what point in my sentence will I be placed in IHP?

It is possible to be placed into IHP at any point during your sentence. If you are in a California state prison, you may not be transferred to an IHP location until you are within 45 days of your release date.

→ Can I "opt out" of IHP and wait to start my immigration proceedings until I finish serving my sentence?

You cannot "opt out" of IHP. Once the government chooses to place you into IHP, you are required to go through the process.

→ If I am placed in IHP and ordered deported, can I end my sentence early?

No. Even if a judge issues a deportation order, you must still finish your criminal sentence. You will not be deported before your release date.

→ Do I have to fight my deportation case? Can I just ask the government to deport me to my home country?

You do not have to fight your immigration case if you do not want to. In your first hearing, you can tell the judge that you want to accept deportation. But even if you accept deportation, you still have to serve the rest of your criminal sentence before you are actually deported.

→ Will I still have to go to immigration detention after my release date?

It depends. If you are placed in IHP early in your sentence, your immigration case may be resolved before the end of your sentence. If you win your case before your criminal sentence is over, you will be released from criminal custody as soon as you complete your sentence in most cases. If you are placed in IHP towards the end of your sentence and choose to fight your deportation, you may be transferred to immigration detention at the end of your sentence to finish your removal case.

More questions? If your client has other questions about the immigration consequences of their criminal proceedings, refer to ILRC's resources at https://www.ilrc.org/sites/default/files/resources/relief_toolkit-20180827.pdf or Stanford Immigrants' Rights Clinic's IHP Know Your Rights resources at <https://law.stanford.edu/immigrants-rights-clinic/> for more information.

APPENDIX: IHP BACKGROUND AND HISTORY

IHP has existed in some form for well over three decades, and was previously known as the Institutional Hearing and Removal Program (IHRP). From 1980 through 2019, over 250,000 incarcerated noncitizens passed through IHP in federal, state, and local correctional facilities.

The earliest origins of IHP can be traced to a 1980 effort to fast-track the deportation of large numbers of Cuban asylum seekers by detaining them in a BOP facility in Atlanta and holding on-site removal hearings—the first time such proceedings were carried out in a federal correctional facility. Congress later formalized IHP via landmark immigration legislation in 1986 and 1988.

After the Immigration Reform and Control Act passed in 1986, EOIR established a prison-based hearing program to implement Section 701 of the statute, requiring the Attorney General to expeditiously deport noncitizens with criminal convictions. Following the enactment of the Anti-Drug Abuse Act in 1988, which mandated deportation hearings for non-citizens with aggravated felony convictions prior to the end of their sentence, EOIR moved to expand IHP across federal, state, and local correctional facilities.

IHP saw its greatest growth in the 1990s under the Clinton administration. By 1995, IHP was active in 41 states, D.C., and the U.S. Virgin Islands. In FY 1997, 18,000 IHP cases were processed, a high-water mark for the program. The number of IHP cases tapered off after 1996 immigration legislation provided for noncitizens with certain criminal convictions or prior removal orders to be removed without a hearing.

While the number of noncitizens in IHP has decreased since the late 1990s, in 2017 President Trump sought to expand the program through executive order. A DHS memo issued later that year signaled that the administration intended to expand IHP to the “maximum extent possible” to “all eligible cases.”

There is no reason to expect President Biden will make fundamental changes or downsize IHP. The program has proven durable, persisting through both Republican and Democratic administrations. Both parties have long prioritized removing noncitizens with criminal convictions. Indeed, recently released policy guidance from the Biden administration suggests that this is unlikely to be an area of significant reform.

Absent major policy shifts, federal immigration initiatives that prioritize the use of enforcement resources against noncitizens with criminal histories—like IHP—are likely here to stay.

APPENDIX: IHP LOCATIONS



IHP IN CALIFORNIA

IHP IN CALIFORNIA FEDERAL PRISONS

- US Penitentiary Victorville ←
- FCI Victorville Medium I ←
- FCI Victorville Medium II ←

IHP IN CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION FACILITIES

- Calipatria State Prison ←
- Centinela State Prison ←
- Richard J. Donovan Correctional Facility ←

FEDERAL IHP SITES NATIONWIDE

WEST COAST

- Federal Detention Center SeaTac
Seattle, WA
- Victorville Federal Correctional Complex
(Three Facilities)
Victorville, CA

MIDWEST AND MIDATLANTIC

- Correctional Institution Moshannon Valley
Phillipsburg, PA
- Allenwood Federal Correctional Complex
Allenwood, PA
- FCI Waseca
Waseca, MN

SOUTH

- FCI La Tuna
Anthony, TX
- Correctional Institution Reeves III
Pecos County, TX
- Correctional Institution Big Spring
Big Spring, TX
- Correctional Institution Giles W. Dalby
Post, TX
- FCI Oakdale II
Oakdale, TX
- Pollock Federal Correctional Complex
Pollock, LA
- FCI Aliceville
Aliceville, AL

**APPENDIX:
HANDOUT FOR CRIMINAL
DEFENDANTS
(ENGLISH AND SPANISH VERSIONS)**

THE PAGES THAT FOLLOW ARE CLIENT-FACING HANDOUTS. WHILE THE MAJORITY OF THIS DOCUMENT, INCLUDING ALL PRIOR APPENDICES, WAS CREATED FOR THE ATTORNEY AUDIENCE, WE ENCOURAGE YOU TO SHARE THIS HANDOUT WITH YOUR CLIENTS. PLEASE NOTE THAT WE HAVE ALSO CIRCULATED THESE ENGLISH AND SPANISH HANDOUTS AS SEPARATE PDFS FOR EASE OF ACCESS.

THE GOVERNMENT MAY PLACE YOU IN DEPORTATION PROCEEDINGS WHILE YOU ARE IN PRISON

WHAT DO YOU NEED TO KNOW?

INSTITUTIONAL HEARING PROGRAM ("IHP")

- What is IHP? Some prisons have a program called IHP where your deportation proceedings are conducted while you are still serving your criminal sentence.
- If you are placed in IHP, the government will try to **start and finish** your removal proceedings while you are still serving your prison sentence. If your case is not finished before your sentence ends you may be transferred to an ICE detention facility in order to complete your immigration case.
- The government places some, but not all, immigrants serving prison time in IHP. You can't opt out of IHP. Even if you are not placed in IHP while you are in prison, ICE may still try to deport you after you finish your prison sentence.



YOU ARE ALLOWED TO HAVE A LAWYER TO HELP YOU FIGHT YOUR DEPORTATION, BUT YOU MUST FIND ONE

- Unlike in your criminal case, for your immigration proceedings you must find and hire your own attorney at your own expense.
- You have the right to ask the judge to delay your hearing at least once to find yourself a lawyer.

Finding a lawyer can take a while, so it is best to start now.
Use this link to find a free or low-cost lawyer near you: <https://bit.ly/3h6txap>



YOU HAVE THE RIGHT TO FIGHT YOUR CASE EVEN IF YOU CAN'T FIND A LAWYER

- There are many defenses to deportation. You can find self-help resources about some potential defenses here: <https://law.stanford.edu/immigrants-rights-clinic/know-your-rights-and-pro-se-materials/>. If you think one of the defenses applies in your case, you can tell the judge why.
- You can present evidence to the judge.
- You have the right to a court interpreter that speaks the language you feel most comfortable speaking.



IT IS IMPORTANT TO TELL THE JUDGE IF....

- You are scared to go back to your country of origin.
- You think you might be a U.S. citizen.
- You have U.S. citizen or permanent resident (green card) family members.
- You were a victim of a crime, including domestic violence or trafficking, in the U.S.



IHP WILL NOT MAKE YOUR PRISON SENTENCE SHORTER

- Even if you accept deportation, you won't be deported until after you finish your sentence.



IF YOU ARE PLACED IN DEPORTATION PROCEEDINGS WHILE IN PRISON

WHAT CAN YOU EXPECT?

HOW DOES IT START?

The government sends you a document that says why the government thinks you don't have a legal right to stay in the U.S. This document is called a "Notice to Appear." If you get a Notice to Appear and your hearing is scheduled while you are still in prison, this means that you have been placed in the Institutional Hearing Program.

"MASTER CALENDAR HEARING"

Your first immigration court hearing (usually held over videoconference) is called a master calendar hearing. At this hearing the judge will ask you if you want time to look for an attorney.

If you are a lawful permanent resident (you have a green card), the government has to prove that your conviction means you should be deported. If you have a green card, you *do not* have to agree that you are deportable when the judge asks you.

DO YOU WANT TO FIGHT YOUR DEPORTATION?

NO

YES

At the master calendar hearing you can tell the judge that you don't want to fight your case. The judge will enter an order of deportation at the hearing, meaning you probably cannot ever legally return to the U.S.

You must complete your prison sentence. The government will only deport you after your sentence ends.

If you are not sure if you want to fight your case, **ask the judge for more time**. Tell the judge you're thinking about how to proceed with your case.

If you know that you want to fight your case and you don't have a lawyer, **tell the judge you would like more time to try to find a lawyer**. If you can't find an attorney, you'll have to represent yourself. You can fight your case even if you don't have a lawyer.

SUBMIT YOUR FORMS

The judge will give you time to prepare the forms that explain why you should be allowed to stay. The judge will also make sure that the forms are provided to you. After you give the forms to the judge, the judge will schedule an individual calendar hearing.

"INDIVIDUAL CALENDAR HEARING"

This is the final hearing. It is typically a longer hearing, also usually over video. Like a trial, this is when the judge will look at your evidence and hear your testimony. During the hearing you can present evidence and you should **tell the judge why you think you should be allowed to stay in the U.S.**

IMMIGRATION JUDGE DECISION

The judge will make a decision about whether to let you stay in the U.S. The judge will give you a written document that tells you the judge's decision. This might happen the same day or the judge might send you a letter to your address in prison with the decision.

If you lose your case and you disagree with the judge's decision, you have the right to ask another court to review the judge's decision. This is called an appeal. Similarly, if you win and the government disagrees, the government can appeal. If you want to appeal, the judge will give you instructions about what to do. You have 30 days to appeal.

IF THERE IS AN APPEAL

You will have to wait. The new court will send you a written decision explaining whether it agrees or disagrees with the immigration judge. If the new court disagrees, it can determine a new winner or send the case back to the judge for a new decision. If your sentence ends while the new court is still reviewing the judge's decision, you will probably be detained by ICE until your case ends.

IF THERE IS NO APPEAL

If you win and the government doesn't appeal, the government can't deport you. Usually, you'll be released to your family when you finish your sentence.

If you lose and you chose not to appeal, the government will try to deport you after your sentence ends.

EL GOBIERNO PUEDE PONERLO EN PROCEDIMIENTOS DE DEPORTACIÓN MIENTRAS USTED ESTÁ EN PRISIÓN

¿QUÉ NECESITA SABER?

PROGRAMA DE AUDIENCIA INSTITUCIONAL (“IHP”)

- ¿Qué es IHP? Algunas prisiones tienen un programa llamado IHP donde los procedimientos de deportación se realizan mientras usted sigue sirviendo su condena penal.
- Si lo ponen en el programa de IHP, el gobierno va a intentar **comenzar y terminar** los procedimientos de deportación en su caso mientras usted sigue sirviendo su condena penal. Si su caso de inmigración no ha terminado antes de que termine su pena, puede ser transferido a un centro de detención de ICE para completar su caso de inmigración.
- El gobierno pone algunos inmigrantes sirviendo su condena penal en IHP, pero no a todos. No hay forma de evitar ser puesto en IHP. Aun si no lo ponen en IHP mientras está en la prisión, ICE todavía puede intentar deportarlo después de que usted termine su condena en prisión.



Usted tiene el derecho de negar hablar con ICE mientras está en la prisión. Hable con su abogado sobre si debería ejercer este derecho.



SE LE PERMITE TENER ABOGADO PARA AYUDARLE A PELEAR SU DEPORTACIÓN, PERO USTED TIENE QUE BUSCARLO.



- A diferencia de su caso penal, tendrá que buscar y contratar su propio abogado por su propia cuenta.
- Tiene el derecho de pedirle al juez que retrase su audiencia por lo menos una vez para que pueda encontrar un abogado.

Toma tiempo encontrar un abogado, así que es mejor comenzar ya.

Use este enlace para encontrar un abogado gratis o de costo bajo en su área: <https://bit.ly/3h6txap>



TIENE EL DERECHO DE PELEAR SU CASO INCLUSIVE SI NO PUEDE ENCONTRAR UN ABOGADO.

- Hay varias defensas a la deportación. Puede encontrar recursos de autoayuda de defensas posibles aquí: <https://law.stanford.edu/immigrants-rights-clinic/know-your-rights-and-pro-se-materials/>. Si usted cree que una de las defensas aplica a su caso, se lo puede decir al juez.
- Puede presentar evidencia (pruebas) al juez.
- Tiene el derecho a un intérprete de la corte que hable el idioma con el que usted se sienta más cómodo hablando.



ES IMPORTANTE DECIRLE AL JUEZ SI...



- Usted tiene temor de regresar a su país de origen.
- Usted cree que posiblemente es ciudadano de los Estados Unidos.
- Usted tiene familiares con ciudadanía estadounidense o residencia permanente (tarjeta verde).
- Usted fue víctima de un crimen, incluyendo violencia doméstica o tráfico de personas, en los Estados Unidos.



IHP NO ACORTARÁ SU CONDENA PENAL

- Aun si usted acepta la deportación, no será deportado hasta después que haya cumplido su condena penal.



¿QUÉ PUEDE ESPERAR SI LO PONEN EN PROCEDIMIENTOS DE DEPORTACIÓN MIENTRAS ESTÁ EN PRISIÓN?

¿COMO COMIENZA?

El gobierno le manda un documento diciendo porque el gobierno piensa que usted puede ser expulsado de los Estados Unidos. Este documento le llegará en inglés y se llama "Notice to Appear" o "Aviso de Comparecencia." Si recibe un Aviso de Comparecencia y su audiencia es programada mientras todavía está en prisión, esto quiere decir que lo han puesto en el Programa de Audiencia Institucional (IHP).

"AUDIENCIA PRELIMINAR"

Su primera audiencia en la corte de inmigración (usualmente por medio de videoconferencia) se llama una audiencia preliminar ("Master Calendar Hearing"). En esta audiencia el juez le preguntará si quiere tiempo para buscar un abogado.

Si tiene su residencia permanente (tiene una tarjeta verde/Green card), el gobierno está obligado a demostrar que su condena significa que debería ser deportado. Si usted tiene una tarjeta verde, no tiene que indicar que está de acuerdo con que usted debería ser deportado cuando el juez le pregunte esto.

¿QUIERE PELEAR SU DEPORTACIÓN?

NO

En la audiencia preliminar usted puede decirle al juez que no quiere pelear su caso. El juez entrará una orden de deportación en la audiencia, significando que usted probablemente jamás podrá regresar legalmente a los Estados Unidos.

Tiene que completar su condena penal. El gobierno solamente lo deportará hasta después que usted haya terminado su condena penal.

SI

Si usted no está seguro si quiere pelear su caso, pídale al juez que le dé más tiempo. Dígale al juez que está pensando en cómo proceder con su caso.

Si usted sabe que quiere pelear su caso y no tiene abogado, dígale al juez que le gustaría tener más tiempo para tratar de encontrar un abogado. Si no puede encontrar un abogado, tendrá que representarse a usted mismo. Usted puede pelear su caso aun si no tiene un abogado.

ENTREGUE SUS FORMULARIOS

El juez le dará tiempo para preparar sus formularios que explican por qué se le debería permitir permanecer en los Estados Unidos. El juez también se asegurará que le provean los formularios. Después de que entregue los formularios al juez, el juez programará una audiencia individual.

"AUDIENCIA INDIVIDUAL"

Esta es la audiencia final. Normalmente, es una audiencia más larga, y también usualmente por video. Al igual que en un juicio, el juez mirará su evidencia y escuchará su testimonio. Durante la audiencia usted puede presentar evidencia y deberá decirle al juez por qué e debería permitir que permanezca en los Estados Unidos.

LA DECISIÓN DEL JUEZ DE INMIGRACIÓN

El juez tomará una decisión su permanencia en los Estados Unidos. El juez le dará un documento escrito con su decisión. Esto posiblemente ocurrirá el mismo día que la audiencia. De lo contrario, le enviará una carta a su dirección en la prisión con la decisión.

Si usted pierde su caso y no está de acuerdo con la decisión del juez, usted tiene el derecho de pedirle a otra corte que revise la decisión del juez. Esto se llama una apelación. De manera similar, si usted gana y el gobierno no está de acuerdo, el gobierno puede apelar. Si usted quiere apelar, el juez le dará instrucciones para hacerlo. Usted tiene que apelar dentro de 30 días.

SI HAY UNA APELACIÓN

Tendrá que esperar. La corte nueva le mandará una decisión escrita explicando si está de acuerdo o no está de acuerdo con la decisión del juez de inmigración. Si la corte nueva no está de acuerdo, puede elegir a un ganador nuevo o mandar el caso de regreso al juez de inmigración para una nueva decisión. Si su condena penal se termina mientras la corte nueva sigue revisando la decisión del juez, probablemente será detenido por ICE hasta que se termine su caso.

SI NO HAY APELACIÓN

Si usted gana y el gobierno no lo apela, el gobierno no lo puede deportar. Usualmente, usted será liberado a su familia cuando termine su condena penal.

Si usted pierde y decide no apelar, debería ser deportado cuando se termine su condena penal.