HOW TO APPLY FOR VOLUNTARY DEPARTURE

WARNING: This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

This booklet was originally prepared in 2002 by the Florence Immigrant and Refugee Rights Project (Florence Project), a non-profit organization that provides free legal services to immigrants detained in Arizona. It was adapted in 2011 to provide more general information for immigrants detained across the country. It was not prepared by the Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) or the Department of Justice (DOJ)/Executive Office for Immigration Review (EOIR), but these agencies have reviewed its content.

Immigration law, unfortunately, is not always clear, and the Florence Project's understanding of the law may not always be the same as DHS' or the DOJ's interpretation of the law. The Florence Project believes that the information is correct and helpful, but the fact that this booklet is available in the libraries of detention centers for the use of detainees does not mean that DHS' or the DOJ's interpretation of the law is the same as that expressed in the booklet.

We wrote this booklet for two reasons. One is to help you find out if you may qualify for voluntary departure. The second is to help you apply for any relief that you may be eligible for either by yourself if you cannot get a lawyer to represent you, or to help you help your lawyer if you have one.

Who was this booklet written for?

This booklet is for people who are in the custody of DHS and who have been placed in removal proceedings. "Removal" is what used to be called "deportation." This booklet is not applicable to persons who are in deportation or exclusion proceedings. If you were placed in immigration proceedings after April 1, 1997, you are probably in "removal" proceedings. You can tell what type of proceedings you are in by the document you should have received from DHS that has the charges against you (or reasons you can be removed from the U.S.)

If the document is labeled "**Notice to Appear**," you are in removal proceedings.
If the document is labeled "**Order to Show Cause**," you are in deportation proceedings.
If the document is numbered at the bottom, "**Form I-110 or I-122**," you are in exclusion proceedings.

If you are in deportation or exclusion proceedings, the requirements for qualifying for voluntary departure may be different, and you should consult with an attorney or a legal agency or ask the judge if you qualify for voluntary departure.

If you are in "deportation" or "exclusion" proceedings,

this booklet does not apply to you and you should consult with an attorney if possible.

What is voluntary departure?

If you have no way of lawfully remaining in the United States, voluntary departure is permission to leave the country in a way that has fewer negative consequences than being "removed." "**Removal**" is when DHS removes you from the United States to the country where you are a citizen, whether you want to be removed or not. "**Voluntary departure**" is when DHS wants to remove you, but you ask to be allowed to "voluntarily" leave the United States using your own money for the trip to your country.

Not everyone qualifies to ask for voluntary departure, which we explain in more detail below. Also, there are consequences which affect your future ability to return to the United States, whether you get removed or leave voluntarily. We will explain these consequences, so you can make an informed decision on whether you want to apply for voluntary departure or not. It is almost always better not to ask for removal or voluntary departure unless you have no defense to removal such as asylum, withholding, NACARA, Cancellation of Removal or a pending family petition.

How do I use this booklet?

First, read the whole booklet. It will help you to understand how leaving the U.S. under an order of removal or voluntary departure may affect your ability to return to the United States lawfully in the future. If you decide you want to apply for voluntary departure, this booklet will help you understand whether you qualify for it and what you need to do to get evidence in support of a request for voluntary departure. It is important to understand that it is up to YOU to get together the papers and the travel money that you need. Also, it is up to you to get evidence in support of your voluntary departure request.

How do I apply for voluntary departure?

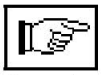
Depending on when you ask for voluntary departure, you may be able to ask DHS or the immigration judge for voluntary departure. You do not need to file any particular forms or papers. But, you may want to provide evidence in support of your request for voluntary departure, which we will discuss in detail later.

Can they really remove me if I have been here most of my life? What if I have a wife or children who are U.S. citizens?

Yes. Immigration judges remove people in these circumstances all the time. It is a mistake to think you cannot be removed. Only U.S. citizens cannot be removed.

What if I have a way of avoiding removal, but I don't want to stay in detention. Can't I try to get voluntary departure and come back later?

If you qualify for a defense to removal, such as asylum, withholding, or cancellation of removal, or NACARA, or a petition through a family member,



fight your case now before leaving the United States under voluntary departure!!!

You should have read a document on this CD explaining the various defenses to removal. If you think you might qualify for any of them, you should read the manuals which should be available to you entitled: "How to Apply for Asylum or Withholding of Removal" (includes discussion of NACARA), "How to Apply for Three or Ten Year Cancellation," "How to Apply for Cancellation for Certain Lawful Permanent Residents." If you qualify for any of these defenses, you should consider fighting your case! If you get an order of removal or voluntary departure, you give up your rights to fight for these defenses!!!

If you qualify for a defense and you are frustrated about being in detention, you should see if you qualify for a bond, and if so, try to bond out of the detention facility and continue fighting your case. There should be available to you a booklet that talks about bonds called "All About Bonds." Some people who were detained at a border checkpoint, an international airport or seaport do not qualify to ask the judge to let them out of detention or to give or lower their bond. However, in that situation, they might have the right to ask DHS, itself, rather than the judge for their release from custody.

What if one of my family members has filed for an immigrant visa ("green card") for me? Can't I just get voluntary departure and come back when the visa arrives?

If one of your family members has filed a petition (called an "I-130 petition") with INS or DHS to get you lawful permanent residency (a "green card"), it may or may not be a good idea to ask for voluntary departure. If your family member filed the I-130 petition before January 15, 1998, and if your visa is ready when you get placed in removal proceedings, in most cases, it is better to not ask for voluntary departure or removal. The reason is that if your visa is ready before your last court date, you can usually get your lawful permanent residency here in the United States and avoid having to leave the country at all. Leaving the country, even under an order of voluntary departure may affect your ability to return to the United States.

If your family member has not yet applied for you, or your visa is not going to be ready in time to avoid removal, it might be a good idea to try and get voluntary departure. Please read the booklet "How to Get Legal Status Through a Family Member (Adjustment of Status)" before you decide whether to apply for voluntary departure.

I. WHAT ARE THE CONSEQUENCES OF LEAVING UNDER REMOVAL OR VOLUNTARY DEPARTURE?

Generally, if you qualify for voluntary departure, it is better than getting ordered removed. But, **there are consequences regarding your ability to return to the U.S. in the future whether you leave through voluntary departure or removal**. It is important that you understand all of the possible consequences, which differ depending on where you were detained by DHS, your criminal history and the length of time you have been in the U.S.

If you have lived in the United States illegally over 180 days and you leave under voluntary departure, you may not be able to return to the United States for three years, ten years or more.

Read this booklet carefully before applying for voluntary departure!

The consequences of removal and voluntary departure are complicated. In certain cases, after leaving the U.S. under removal or voluntary departure, you cannot return to the U.S. for certain time periods without getting permission ("advance consent") from DHS. These time periods are called "bars" because they are a period in which you are barred from coming back to the United States, unless you have special permission to return. We will discuss later how to apply for such consent/permission.

We will explain when you can return to the United States after being removed. Then we will explain when you can return after voluntarily departing the United States. We will also explain the criminal and immigration consequences of returning to the United States unlawfully after leaving voluntarily or under an order or removal.

A. CONSEQUENCES OF BEING REMOVED FROM THE U.S.

1. IF DHS ARRESTED YOU AS YOU WERE ARRIVING IN THE UNITED STATES AND YOU GET REMOVED

If DHS arrested you at a land border checkpoint as you were trying to enter the United States, or at an international airport or seaport and you get removed from the United States, you cannot return to the United States for the following time periods without advanced consent from DHS:

- If this is your first removal: **5 years**.
- If after April 1, 1997, you have been in the U.S. unlawfully for 1 year or more prior to the time you are removed: **10 years**. (Note for this bar, in order to come back before the 10 years, you need to apply for a "hardship waiver" rather than advanced consent. See the explanation of the waiver on page 6).
- If you have been removed in the past: **20 years**.

- If you have been convicted of an aggravated felony: **forever**.

2. IF YOU WERE ARRESTED BY DHS AFTER YOUR ARRIVAL IN THE UNITED STATES AND YOU GET REMOVED

If DHS arrested you inside the United States after you entered the United States and you get removed, there are different time periods in which you cannot lawfully return to the United States unless you get advance consent from DHS:

- If this is your first removal: **10 years**.
- If you have been removed in the past: **20 years**.
- If you have been convicted of an aggravated felony: **forever**.

3. HOW DO I APPLY FOR ADVANCED CONSENT FROM DHS TO RETURN EARLY?

First, you have to have a way to come back lawfully such as a temporary visa, a valid passport, or a green card through a family member. Then, to seek the consent of DHS to return within the time period, you have to file a Form I-212 and a fee. You file it with the U.S. consulate in your home country. You should include a statement explaining why you think you should be given permission to come back early and a letter from any family members you are separated from. You have to make a very strong case that you have good character and that there are very important reasons that you need to come back early. You may need a lawyer's help in order to get this permission.

B. CONSEQUENCES OF LEAVING THE UNITED STATES UNDER VOLUNTARY DEPARTURE

Generally speaking, the bars to returning to the United States listed above do not apply if you leave the United States under an order of voluntary departure. However, if prior to being granted voluntary departure, you have lived in the United States unlawfully for certain periods of time, there are separate bars to returning to the United States.

1. IF YOU LEAVE THE UNITED STATES VOLUNTARILY AFTER LIVING IN THE UNITED STATES UNLAWFULLY FOR MORE THAN 180 DAYS BUT LESS THAN ONE YEAR

You **cannot** return lawfully to the United States **for three years** without the advance consent of DHS if:

- You have been continuously in the U.S. unlawfully for more than 180 days but less than a year and;
- You get voluntary departure **from DHS** or you leave voluntarily on your own and;
- Your voluntary departure happens before you receive the paper with your charges called a "Notice to Appear" and before your court hearings with the Immigration Judge.

Note: if you have been in the U.S. unlawfully for over 180 days but less than a year and you get voluntary departure **from the judge**, this three year bar to returning to the U.S. **does not apply**.

What does it mean to be in the United States unlawfully?

In some cases your time living in the United States is not "unlawful" for purposes of the bars to returning. Your time spent in the United States in any of the following categories will not count against you:

1. Time **under 18** years of age;
2. Time during which **application for asylum pending**, unless application was frivolous (not in good faith) or you worked without authorization;
3. Time during which you were a **beneficiary of family unity** [Family unity is where a spouse or child of someone who got a green card through amnesty or field work was able to stay in the U.S. while they waited for their own green card];
4. If you are a **battered spouse or child** and you are able to show that the reason you were here unlawfully is connected to the abuse you suffered;
5. Time during which you were **lawfully admitted as a non-immigrant**--but if DHS determines that you violated the conditions of your status while it is considering an application for benefits or you are put in removal proceedings and a judge determines that you violated the conditions of your status or that you are removable for a crime, time after such a determination would be considered "illegal"; or
6. Time during which you **are waiting for a pending application for adjustment of status through a family member**, even if you entered the U.S. illegally. This means if a family member has petitioned to immigrate you and has filed both an "I-130 petition" and an "I-485 application" for you, the time you spend after that waiting for an appointment with DHS will not be considered to be "illegal."
7. Time during which you have been **granted voluntary departure** either from INS, DHS or the Immigration Judge.

Does my time in immigration proceedings count against me?

Yes, your time in immigration proceedings does count against you. However, if the Immigration Judge or DHS grants you voluntary departure, your time with voluntary departure does not count against you. As you will read later, you may be able to get "extended voluntary departure" up to 60 or 120 days. Those days would not be considered "unlawful" for purposes of the bars.

Are there any exceptions to the three year bar?

You might be able to get a "**hardship waiver**" of this three year bar to coming back to the U.S. if you have a spouse or parent who is a U.S. citizen or lawful permanent resident. If you qualify for the waiver, you can come back before the three years are over. To qualify, you must show that keeping you from returning to the United States for three years would cause "extreme hardship" to your U.S. citizen or lawful permanent resident child or parent. If you are barred from returning to the U.S. and you want to apply for this waiver, ask for it at the U.S. consulate in your home country. It is a good idea to get help from a lawyer if you can.

2. IF YOU LEAVE THE U.S. VOLUNTARILY AFTER LIVING IN THE U.S. UNLAWFULLY FOR ONE YEAR OR MORE

You cannot return to the United States lawfully for **ten years** if:

- You leave under an order of voluntary departure from either DHS or the Judge or you leave voluntarily on your own; and
- Your departure happens prior to being placed in immigration proceedings or while in immigration proceedings; and
- You have been in the United States continuously for 1 year or more unlawfully.

Are there situations where my time in the United States will not be considered to be "unlawful" time?

Yes. You should read the explanation of the three year bar above. On page 6, there is a list of seven cases when your time in the U.S. is not unlawful. This list also applies to the ten year bar.

Are there any exceptions to the ten year bar to returning to the United States?

You might be able to get a "**hardship waiver**" of the ten year bar to coming back to the U.S. if you have a spouse or parent who is a U.S. citizen or lawful permanent resident. If you qualify for the waiver, you can come back before the ten years are over. To qualify, you must show that keeping you from returning to the United States for ten years would cause "extreme hardship" to your U.S. citizen or lawful permanent resident child or spouse. If you are barred from returning to the U.S. and you want to apply for this waiver, ask for it at the U.S. consulate in your home country. It is a good idea to get help from a lawyer if you can.

C. CONSEQUENCES OF RETURNING TO THE U.S. WITHOUT PERMISSION AFTER BEING REMOVED OR LEAVING UNDER AN ORDER OF VOLUNTARY DEPARTURE

If you come back unlawfully after being removed or getting voluntary departure, it is a crime and you might face other separate bars to coming back lawfully in the future.

1. CRIMINAL CONSEQUENCES OF UNLAWFULLY REENTERING THE UNITED STATES AFTER REMOVAL OR VOLUNTARY DEPARTURE

If you get removed from the United States or you get voluntary departure and then you return *unlawfully*, your unlawful reentry is a crime. The crime is more serious if you reenter unlawfully after having been removed than if you reenter unlawfully after having left under voluntary departure. For example, if you are caught unlawfully reentering **after having been removed** and DHS charges you with this crime, you may get put into prison for 1 to 20 years, depending on your criminal history. The time you could spend in prison gets longer the worse your criminal history. The time you could spend is especially long if you have been convicted of an aggravated felony.

If you leave under **voluntary departure** and then unlawfully reenter the U.S., you could be put in jail, but you will serve less time than if you had unlawfully reentered after having been **removed.**

2. IMMIGRATION CONSEQUENCES OF UNLAWFULLY REENTERING THE UNITED STATES AFTER REMOVAL

If you are removed and you reenter the United States unlawfully or attempt to reenter unlawfully, you cannot return at all for ten years and after those ten years, you can only return if you first get consent from DHS.

3. IMMIGRATION CONSEQUENCES OF UNLAWFULLY REENTERING THE UNITED STATES AFTER VOLUNTARYDEPARTURE

If you leave the United States voluntarily and you reenter unlawfully or attempt to reenter unlawfully you cannot return to the United States at all for ten years and after the ten years, you can only return if you first get consent from DHS if you were in the United States unlawfully for a year or more in the aggregate (see below for definition) after April 1, 1997.

Are there situations where my time in the United States will not be considered to be "unlawful" time?

Yes. You should read the explanation of the three year bar above. On page 6, there is a list of seven cases when your time in the U.S. is not unlawful. This list also applies here.

What does "in the aggregate" mean?

"In the aggregate" means you count every day you lived in the United States after April 1, 1997, even if you left the United States and came back. In other words, the days do not have to be all in a row, one following the other. There can be breaks in your time and if all of your days in the United States add up to a year or more, you are subject to this bar to returning to the United States.

How should these various bars and consequences affect my decision of whether to leave the U.S. now?

If you will be subject to any of these bars, you should fight your case now if you have a case to fight!!!

Now that you have read through these consequences, if you still want to apply for voluntary departure, keep reading to see if you qualify for voluntary departure.

II. WHO QUALIFIES FOR VOLUNTARY DEPARTURE?

There are different stages during your immigration proceedings when you can ask for voluntary departure. The requirements become stricter the longer you wait to ask for voluntary departure. We will describe in detail the requirements at each stage. But, at all stages, if you are deportable as an aggravated felon, you are not eligible for voluntary departure. This means that if DHS has charged you as an aggravated felon and the Immigration Judge agrees that the charge is correct, you will not be eligible to apply for voluntary departure.

What is an aggravated felony?

Immigration law is not the same as criminal law. Many crimes can be aggravated felonies under immigration law. The crime does not have to be a felony in the state where you were convicted. Often misdemeanors and minor crimes are considered aggravated felonies under immigration law.

Under immigration law, you will not be eligible for voluntary departure if you have any of the crimes considered to be an aggravated felony in the following list (this list includes most, but not all, aggravated felonies; the complete list can be found in section 101(a)(43) of the Immigration and Nationality Act):

- Rape
- Sexual abuse of a minor
- Murder
- Firearms Offenses, including possession of prohibited firearms
- Felony alien smuggling (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)
- Fraud or income tax evasion, if the victim lost over $10,000
- Money laundering of over $10,000

- **Certain drug crimes or trafficking in firearms, explosive devices or drugs. Drug trafficking includes:**
  - transportation, distribution, importation
  - sale and possession for sale
  - possession of over 5 grams of cocaine base (<u>not</u> possession of cocaine – "cocaine base" is different from "cocaine")
  - <u>maybe</u> two convictions for simple possession of drugs (If you have been convicted of two crimes of simple possession, try to get a lawyer's help.)

- **A certain <u>crime for which you received a sentence of one year or more</u>, (whether you served time or not) including any of these:**
  - theft (including receipt of stolen property)
  - burglary
  - a crime of violence (including anything with a <u>risk</u> that force will be used against a person or property, even if no force was used)
  - document fraud (including possessing, using, or making false papers unless it was your first time and you did it only to help your husband, wife, child, or parent)
  - obstruction of justice, perjury, bribing a witness
  - commercial bribery, counterfeiting, forgery, trafficking in stolen vehicles with altered identification numbers
  - certain gambling crimes if you have another gambling conviction
  - failure to appear if you were <u>convicted</u> of (1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years – even if you were not sentenced to 2 years; or (2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years

- **You are also an aggravated felon if your conviction was for attempt or conspiracy to commit one of the crimes just listed.**

Also, please keep in mind that just because DHS charges you with a certain type of crime does not mean that your crime is that kind of crime. There are different legal arguments a lawyer or someone like you can make. These arguments are complicated and we advise you to get help from a lawyer or legal agency if you can.

If you have been convicted of an aggravated felony and can get assistance from an immigration lawyer, ask your lawyer to review your conviction carefully. Sometimes an immigration lawyer has an argument that your conviction is not an aggravated felony. Also, in some cases, a criminal defense lawyer might be able to reopen your conviction to change the sentence or the nature of your conviction.

It is difficult to reopen criminal cases once you have been convicted of a crime and only certain ways of changing your conviction in criminal court will change your conviction for immigration purposes. To find out more about this, you will need to talk to an experienced immigration lawyer.

III. <u>WHEN SHOULD I REQUEST VOLUNTARY DEPARTURE?</u>

You can ask for voluntary departure at three different stages. Below, we explain who qualifies at each stage and what conditions may be imposed at each stage.

A. <u>STAGE ONE: BEFORE COURT HEARINGS</u>

Stage One is before you even see an immigration judge.

At Stage One, who can grant me voluntary departure?

Before you even see a judge, you can request voluntary departure from DHS. If DHS agrees to give you voluntary departure, you will probably never see an immigration judge or go to court. You will leave the country. If DHS grants you voluntary departure, you might have to leave right away or you could be given up to 120 days to depart.

If DHS gives you a date in the future by which you must leave the U.S. and you are detained, you might be able to ask for your release under bond or on your own recognizance. **You MUST leave the U.S. before the deadline given to you by DHS.**

Remember from our discussion above, if you have been in the United States unlawfully for more than six months, it is usually better to wait to ask for voluntary departure at least until you are served with a Notice to Appear and probably until you see the judge. If you are granted voluntary departure by DHS before this, you will not be able to come back to the U.S. for three years without special permission!! If you have been in the U.S. for over a year, it does not matter whether you ask for voluntary departure prior to your court hearings or from the judge, either way, you cannot come back to the U.S. for ten years without special permission.

What if I do not leave by the deadline given to you by DHS?

If you do not depart the U.S. before the deadline, your grant of voluntary departure will turn into an order of removal, and you might have to pay a fine of $1,000 to $5,000. Also, if you do not leave when you are supposed to, you will not be eligible to get a green card through a family member or cancellation of removal for ten years.

Who qualifies for voluntary departure at Stage One?

You do NOT qualify for voluntary departure at this stage if you:

- have an aggravated felony conviction (even if DHS does not list aggravated felony on your sheet of charges); or
- are deportable for terrorist activities.

If you do not have either of these you qualify.

Even if you qualify for voluntary departure, DHS is more likely to give voluntary departure to people who have no criminal history and no history of immigration violations. If you are not an aggravated felon and want voluntary departure but have criminal problems, you need to support your request for voluntary departure with evidence of your good character, which we discuss later in this booklet.

At Stage One, are there any conditions I must satisfy in order to be granted voluntary departure?

At this stage, there are no definite requirements, but DHS may impose certain conditions including:

- You may have to post a bond
- You may have to present your passport or other travel documents to DHS, unless documents are not required for you to lawfully reenter your country (such as when returning from the U.S. to Mexico)
- You may have to pay for your trip back to your country

Regarding bond: If you are detained and are going to leave the U.S. right away from DHS custody, it is not likely that DHS would require a bond. If you are from Canada or Mexico and detained along the border, you might be able to leave right away. If DHS gives you an extended amount of time to show up for voluntary departure, you will probably have to post a bond in order to leave detention and to ensure that you leave the U.S. by the deadline.

How much will the trip cost if I am required to pay for it?

The cost of the trip varies depending on the country you are from. If you are detained in a state bordering your native country, the price could be very low. For example, if you are detained in Arizona, the charge to voluntarily depart to Mexico is $7.50. But, if you will need to take an airplane to return to your country, the price can be substantially higher.

How do I request voluntary departure from DHS?

If you are interested in voluntary departure at Stage One, before you ever go to Court, you should tell an immigration officer that you want to request voluntary departure. DHS should give you a decision in writing on a form called, "Form I-210, Notice of Action— Voluntary Departure."

What if my request for voluntary departure is denied at Stage One?

You cannot appeal DHS's decision, but you can ask the judge for voluntary departure at any of your court hearings. Read further to learn more about asking for voluntary departure from the judge (Stage Two).

B. STAGE TWO: DURING INITIAL COURT PROCEEDINGS

It is not clear which of your court hearings will fall into Stage Two. Generally, Stage Two is after your immigration proceedings have begun, but before you are scheduled for an "individual hearing" with a judge. Your "individual hearing" is usually your final hearing, when the judge decides whether you deserve to be granted the defense you may have requested such as asylum, withholding, cancellation, NACARA or adjustment of status through a family member.

An "individual hearing" might also include a court hearing where the judge decides if the reasons DHS says you should leave the country (the "charges" against you) are correct, but only if you deny these reasons. Even then, the hearing in which the judge decides the charges may not qualify as an individual hearing.

Because Stage Two is difficult to understand, if you are sure you want to ask for voluntary departure and you have not asked for it before your first court date, make your request as soon as possible. The longer you wait, the harder it will be for you to qualify for voluntary departure.

At Stage Two, who can grant me voluntary departure?
During Stage Two, you can request voluntary departure from either DHS or the Immigration Judge.

At Stage Two, who qualifies for voluntary departure?

<u>You do NOT qualify for voluntary departure at this stage if you:</u>

- have an **aggravated felony** conviction (even if DHS does not list aggravated felony on your sheet of charges) (see page 9 for a partial list of aggravated felonies) ;
- are deportable for **terrorist activities**; or
- are a **security risk** to the United States government.

Everyone else can ask for voluntary departure and may or may not be given it. As we explained above, if you have had criminal or immigration problems, it will be harder to get voluntary departure. We explain how to prove to the judge you deserve voluntary departure later in this booklet.

During Stage Two, are there any other conditions I must satisfy in order to be granted voluntary departure?

If you request voluntary departure at Stage Two, **you MUST:**

- Withdraw all requests for other relief, if you have made any;
- Agree that you are removable from the U.S., --that is you agree that you are an alien who has violated immigration and/or criminal laws and that DHS can send you back to your native country;
- Agree to waive your appeal rights (your right to fight your case in a higher court); AND
- Present your passport or other travel documents to DHS, unless documents are not required for you to lawfully reenter your country (such as when returning from the U.S. to Mexico).

What does it mean to "withdraw all requests for other relief?"

This means that you agree that besides voluntary departure, you will not apply for any other defenses to removal such as asylum, withholding, cancellation, NACARA, or adjustment of status through a family member.

If you do not want to give up your right to fight your case,

you <u>should not</u> ask for voluntary departure!!!!

What if I do not have my travel documents when I request voluntary departure?

If you are asking for voluntary departure from the judge and you do not have the travel documents you need, you can ask the judge for up to 60 days to get your travel documents. If you do not have your documents by the deadline given to you by the judge, your voluntary departure will turn into an order of removal. As we discussed above, generally voluntary departure is better than removal.

At Stage Two, if I am granted voluntary departure, do I have to pay a bond?

A bond is not required at this stage, but the judge or DHS can require you to post a bond, if they want to do so. If you are departing the U.S. directly from DHS detention, a bond will probably not be required.

At Stage Two, how do I ask for voluntary departure?

As we mentioned earlier, you can ask either the Immigration Judge or DHS for voluntary departure at this stage. If you request it from DHS, you should ask the attorney for the government in the courtroom. If he or she agrees that you should get voluntary departure, he or she can do a motion to terminate your proceedings and may ask you to join in the motion. This motion would end your court proceedings and then DHS would give you voluntary departure. If you want to ask the judge, simply ask him or her when you are in court.

Will I leave right away if I am granted voluntary departure?

If you are granted voluntary departure and you are detained, the judge might require you to leave the U.S. as soon as your travel can be arranged. The judge could agree to let you out of detention on bond and give you up to 120 days to leave the country on your own. Ask for this if you can pay a bond and if there are things you need to do before you leave the country. If you are detained and you are ordered to leave right away, your trip can be often arranged that same day if you are returning to a border state. Otherwise, it can take as much as three weeks or more to get your trip arranged.

If you are given a deadline to voluntarily depart and you do not leave the U.S. by the deadline,

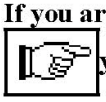
--your grant of voluntary departure turns into an order of removal,

--you might have to pay a fine of $1,000 to $5,000, <u>AND</u>
--you cannot get a green card through a family member for ten years.

C. STAGE THREE: AT THE END OF COURT PROCEEDINGS

Stage Three includes your individual hearing which is usually your last court hearing when the judge decides whether you get to stay in the U.S. or not. Voluntary departure is harder to obtain at Stage Three than at Stage One or Stage Two. If you have a defense to removal, as we have said, you should fight your case. If you lose your case, you will be in Stage Three. You might decide to appeal your case if you lose. But, if you lose your case and do not appeal, you should ask for voluntary departure if you qualify. Again, if you do not have a defense to removal, you should ask for voluntary departure at your first court hearing.

If you are sure you want to request voluntary departure,



you should request voluntary departure at your first court hearing.

At Stage Three, who can grant me voluntary departure?

At Stage Three, you can only request voluntary departure from the Immigration Judge.

At Stage Three, who qualifies for voluntary departure?

To qualify for voluntary departure at Stage Three, **you MUST**:

- have been physically present in the United States for 1 year or more before the date that DHS gives you a Notice to Appear (this is the paper that contains the reasons that DHS says you must leave the U.S.);
- have had "good moral character" for 5 years prior to requesting voluntary departure;
- not be convicted of an aggravated felony;
- not be deportable for terrorist activities;
- not have previously received voluntary departure after you were found inadmissible as an alien who was present in the United States without being admitted or paroled into this country; and
- be able to show that you have the means to depart the United States and that you intend to depart.

What does "good moral character" mean?

Proving "good moral character" does not mean proving to the judge that you are a good person. The term "good moral character" has its own definition in immigration law.

You do not have good moral character if during the five years before you request voluntary departure, any of the following is true:

- You have spent six months or more in jail or prison

- You have been a habitual drunkard
- Your income has been derived principally from illegal gambling activities;
- You have convictions for 2 or more gambling offenses committed during the 5 year period;
- You gave false testimony to get immigration benefits;
- You have been convicted or admit committing any of the following offenses during the last 5 years. (Admission of commission of offense might apply to you if, for example, you pled guilty to an offense in a court of law but got diversion for that offense and did not end up with a conviction):
    - crime of moral turpitude (Could include theft, larceny, fraud, aggravated assault or other crimes of dishonesty or violence; see explanation below);
    - drug offense, except one offense of simple possession of 30 grams or less of marijuana;
    - 2 or more offenses with aggregate sentences to confinement actually imposed of 5 years or more;
    - drug trafficking;
    - prostitution;
    - commercialized vice; or
    - knowingly helping another alien to enter or to try to enter the U.S. unlawfully;
- You were previously ordered removed by DHS or by an immigration judge and you sought admission within 5 years of the removal, or within 20 years of a second removal, or within 20 years of your removal if you have been convicted of an aggravated felony; or
- You were previously ordered removed and you left the United States while the order was outstanding and then tried to seek admission to the United States within 10 years of the date you left or were removed, or within 20 years of the date of your departure or removal if it was a second removal or more, or within 20 years of the date of your departure or removal if you have been convicted of an aggravated felony.

What is a crime of moral turpitude?

A crime of moral turpitude can be many different types of crimes, both felonies and misdemeanors. Generally, a crime involves "moral turpitude" if it involves an intent to steal or get something by fraud. The crime may involve "moral turpitude" if it was done carelessly or on purpose and someone was or could have been greatly harmed. Also, acts considered lewd or perverted are often crimes involving "moral turpitude."

At Stage Three, are there any other conditions I must satisfy?

If you request voluntary departure at Stage Three of proceedings, **you MUST**:

- Present your passport or other travel documents to DHS and
- Pay a bond of at least $500, possibly more.

Immigration law requires that you present travel documents and post a bond of at least $500, but the judge might not require these things if you are being returned immediately from DHS detention to a border country. If a bond is required, you must pay it within 5 business days of the

date the judge gave you voluntary departure or your order of voluntary departure turns into an order of removal.

Will I leave right away if I am granted voluntary departure?

If you are granted voluntary departure and you are detained, the judge might require you to leave the U.S. as soon as your travel can be arranged. The judge could agree to let you out of detention on bond and give you up to 60 days to leave the country on your own. If you are detained and you are ordered to leave right away, your trip can be often be arranged that same day if you are returning to a border state. Otherwise, it can take as much as three weeks or more to get your trip arranged.

If you are given a deadline to voluntarily depart and you do not leave the U.S. by the deadline,

--your grant of voluntary departure turns into an order of removal,

--you might have to pay a fine of $1,000 to $5,000, AND
--you cannot get a green card through a family member for ten years.

At Stage Three, how do I ask for voluntary departure?

Just ask the judge for voluntary departure in court. Read the following section on how to get evidence to support your request.

IV. HOW DO I SUPPORT MY REQUEST FOR VOLUNTARY DEPARTURE?

When making a request for voluntary departure at any of the above stages, you should gather together evidence that you are someone who has contributed to your family or community and that you are generally a good person.

If you can, you should get letters from friends, family members and people from the community who know you and who can say positive things about you. For example, if you are a member of a church or other religious organization, you may want to get a letter from your pastor or religious leader. If you have been involved in activities in your community such as volunteering for a charitable organization, you might want to get a letter from a staff member of the organization. If any other important members of your community know you and think well of you, get letters from them. If you have been working lawfully, you can get a letter from your employer. If you have been working unlawfully, this is probably not a good idea.

If you are applying for voluntary departure from the judge, ask these people to attend your hearing and speak on your behalf. But, even if someone tells you they will attend your hearing, ask them to also provide a letter to the judge, in case they do not get to attend or perhaps do not get to say everything they want to the judge.

Examples of supporting documents include:

- Letters of support from your employer(s) or former employer(s) or other proof of a steady work history (such as pay stubs)
- Letters of support from family members, friends, neighbors, and members of your community
- Proof of classes you have completed or volunteer work you have done
- Copies of your recent tax returns (if you have been working with permission)
- Proof that you support your family members
- Proof that a family member has filed an "I-130 petition" for you to get a green card
- Copies of marriage certificate to U.S. citizen or lawful permanent resident spouse
- Copies of birth certificates of U.S. citizen spouse, children or other family members
- Copies of green cards of spouse, children or other family members

What should people say in their letters to DHS or the judge?

You should not simply tell your friends, family members and past employers to write letters and hope that they will know what to say. Instead, you should write down for them what kinds of things they should talk about in their letters. Write to each person you want to get a letter from. In your letters, you should:

- Explain that you are facing removal from the U.S. and explain why. If you served time in jail, say so, and explain that you need to show the judge that you are a productive member of society, despite your criminal problems.
- Explain that the purpose of the letter is to show the judge why you deserve to be allowed to leave the United States voluntarily. If you are applying for voluntary departure from DHS, the letter should be addressed "Dear District Director." If you are applying for voluntary departure from the judge, the letter should be addressed "Dear Immigration Judge," or "Honorable Immigration Judge." Ask the person to include:
  - His or her name, age (if a family member), address, occupation, and immigration status (for example, U.S. citizen or permanent resident).
  - How he or she knows you (for example, she is your sister, your neighbor, or your boss) and for how long he or she has known you or your family.
  - Other information about you that the judge will want to know in deciding whether you should be given voluntary departure, such as:
    - How are you important to the person writing the letter? Is this a family member who depends on you in some way? How? For money to pay the rent, buy food, and pay other bills? If so, how much money do you usually pay every month? Is this a sick or old person who needs you to help them, and if so, how do you help this person? Is this person close to you emotionally? What will it mean to this person (or others in the family) if you are removed rather than given voluntary departure?
    - What good things does this person know about you? What are your strongest points? What good things have you done for others that this person knows about? For example, do you do volunteer work for a religious organization or a charity? Do you help out the person who wrote the letter in any way?

- What kind of a work record do you have? Your employer or former employer should state how long you worked for him or her, what your job and responsibilities were, how well you performed your job. Again, if you worked unlawfully, you may not want to talk about your work history.

- Tell the person to write the letter in his or her own words. The judge will not be convinced if the letters from all your family members sound the same.
- Ask the person to sign the letter before a Notary Public, if possible. Many banks have a Notary Public, as do offices of some lawyers, accountants or real estate agents. A Notary is someone who just witnesses the signature of the person who wrote the letter. The person signing the letter usually must show a photo I.D. to the Notary, unless the Notary knows him or her personally.

Should I ask people to talk about my problems in the letters to the judge?

If you have any criminal problems, those who know you well and know about the problems you got into should talk about them. Your former teachers or employers do not necessarily have to talk about your problems, but at least some of your family members should. Otherwise, the judge will think that the family member is not telling the whole truth about you, or that the family member must not know you very well if he or she doesn't even know about your problems. In talking about your problems, the person should explain how you got into problems in the first place and how you have changed since then. **If your family and those who say they know you well do not mention your problems or state that you have no problems and that you are a "law-abiding" citizen, this will not help you obtain voluntary departure.** Tell your family and friends to speak from their hearts about you and to speak the truth about how you have improved. If your family or friends feel incompetent to speak from the heart in English, have them write the letter in their native language and get it translated.

What if the document or letter is not in English?

Everything that you give to DHS or the judge must be in English or translated into English. If a letter or other document is not in English, you need to find someone to translate it. At the end of the translated document or letter, the person who translated it should put the following:

> I, (name of translator), certify that I am competent to translate this document and that the translation is true and accurate to the best of my abilities.
> (signature of translator)/ (date)

All documents must be in English! If a document or letter is not in English,

attach an English translation!

What if I have family in the U.S. who has filed an "I-130" petition for me?

If you have a pending "I-130" petition, give the judge and DHS copies of the petition and proof that INS or DHS received the petition. If you have family members, such as a U.S. citizen spouse, who could file a petition for you, have the family member write a letter explaining that he or she plans to file such a petition. An "I-130 petition" is an application to get a green card/lawful permanent residency for a family member.

Who do I give all of this evidence to?

If you are applying for voluntary departure from DHS, give the evidence to an immigration officer with a written request for voluntary departure. If you are applying for voluntary departure from the judge, give the originals of your documents to the judge, with a copy to DHS.

How do I prepare my request for voluntary departure?

To prepare your request for voluntary departure:

1. Gather letters from friends, employers, family members or people in the community who know you well and can speak about your good character;
2. Get copies of "I-130" family petitions, birth certificates of U.S. citizen family members, and marriage certificate to U.S. citizen or lawful permanent resident spouse;
3. Make a list of questions that you think the judge or DHS may ask you at the hearing. Practice answering these questions out loud. If you have a friend who can help you, ask him or her to ask you questions as if you were at the hearing;
4. If you have witnesses, write out the questions that you will ask them in Court. Go over these questions and their answers with them.

V. VOLUNTARY DEPARTURE HEARING IN FRONT OF THE JUDGE

If you ask the judge for voluntary departure, you will have a hearing where you will present all of the letters and other evidence you've gathered. At your hearing, the people who will be in the court are the Immigration Judge, an interpreter (if you are not fluent in English), the lawyer representing DHS (known as the "trial attorney") and you. If you have witnesses, they have to be there, too. DHS may have witnesses against you, but that hardly ever happens.

What will the judge do?

The judge will decide whether you qualify for voluntary departure and whether you deserve it. He or she might ask you questions based on the charges against you, any letters you might submit, or any evidence DHS might submit, such as evidence of your criminal history or your prior immigration violations--if you have any.

What will the lawyer for DHS (trial attorney) do?

The trial attorney will also ask you questions. If the trial attorney does not agree that you should get voluntary departure, he or she will try to show the judge that you do not qualify for voluntary departure or that you do not deserve it. The trial attorney may ask you questions about whether

you have been rehabilitated (why are you not likely to commit other crimes), whether you have ever used public assistance such as welfare or food stamps, whether you can afford a bond if one has been set. He or she might ask you how the court should know that you are not going to come back again unlawfully if granted voluntary departure. He or she also may ask questions that confuse you or try to damage your testimony.. Remember your right to ask the trial attorney or judge to repeat and clarify their questions so you are sure you understand them before answering.

If you have had any criminal or immigration problems, you can be sure that the trial attorney will ask you about them, so you should be ready to talk about them. If you have had problems, it is not a good idea to deny them (especially if you pled guilty to a crime), because the judge may think you are refusing to accept responsibility for your own mistakes. Accept responsibility and explain what you have done to improve.

What will the interpreter do?

The interpreter will translate the questions asked by the judge and the trial attorney and will translate your answers into English. The interpreter's job is to translate every question you are asked and every word that you say.

If there are witnesses, what will they do?

It is helpful if someone else, such as a family member, can testify for you at your hearing. If you are going to have any witnesses, write out the questions you want to ask them and practice asking the questions so that both of you will be ready.

You should ask his or her name, address, occupation, and how he or she knows you. If the person has personal knowledge about your character, you should ask questions about this. Ask open questions like "Who?" "When?" "Where?" or "Why?" so that the person testifies in their own words instead of in your words. Avoid closed questions like, "I am a person of good moral character, right?"

You can also think of questions the judge or trial attorney might ask them so that they will be ready for that. If DHS has any witnesses against you, you will have the chance to ask them questions, too.

What should I do at the hearing?

Both you and the trial attorney will have a chance to give the judge papers. At the beginning of the hearing, make sure the judge and the attorney for DHS have copies of every document you want them to see. You should make a list of all these documents and give it to the judge, with a copy to DHS's trial attorney. In addition to any letters of support, if a family member has filed a petition (called an I-130) to get you permanent lawful status (a green card), make sure to give the judge proof that your I-130 petition has been approved if it has, or filed if you are still waiting for a response.

The judge will give you a chance to speak and will give the attorney for DHS (the "trial attorney") the chance to ask you questions. The judge may also ask you questions. You should speak clearly so that the interpreter and judge can hear every word you say. Give the interpreter enough time to translate one or two sentences before continuing your answer or the judge will only hear part of what you want to tell him or her. In addition, you should look at the judge directly when you speak, and not look at the ground or the interpreter, so that the judge does not think you are lying or that you are not confident in what you are saying.
When you answer questions, you can call the judge's attention to facts in the letters or other documents that you submitted. That way, you can make sure that the judge pays attention to them.

VI. IF I AM GRANTED VOLUNTARY DEPARTURE, DO I NEED PROOF THAT I LEFT VOLUNTARILY?

If you are granted voluntary departure, when you do leave, even if you are taken back to your country by an Immigration officer, you should get some kind of proof that you left on time. Some examples of proof are:

- Get your passport stamped
- Ask for a copy of the paper you give to the officers at the border and ask them to stamp it;
- Go to the nearest U.S. consulate and fill out an affidavit (sworn statement) that you left voluntarily and on time.

You may need this to prove that you left voluntarily and were not removed. This could be important in terms of whether you can return to the United States right away or in ten years or more.

VII. WHAT IF DHS OR I DISAGREE WITH THE JUDGE'S DECISION?

If the judge denies you voluntary departure at **Stage Two**, you cannot appeal the judge's decision. If the judge grants you voluntary departure at Stage Two and DHS does not agree with the judge's decision, it can appeal the judge's decision to a higher court called the Board of Immigration Appeals.

If the judge decides whether to grant you voluntary departure at **Stage Three** of proceedings, after the judge makes his or her decision, both you and DHS have the right to keep fighting the case by appealing the decision to the Board of Immigration Appeals.

The Board of Immigration Appeals (or "BIA") is a group of judges in Virginia who look at all the papers filed in the case and everything that was said in court, and decide if the judge was right. In most cases, unless the judge made a mistake about the law or the facts in your case, the Board will not change the decision.

At Stage Three, as soon as the judge tells you the decision, he or she will ask both you and the trial attorney whether you want to "reserve appeal," that is, whether you want to hold on to your right to appeal. You can also "waive appeal," which means to give up your right to appeal. If both sides "waive appeal," that is the end of the case.

If you or DHS "reserve appeal," you have 30 days to file a paper called a "Notice of Appeal" with the Board in Virginia. If DHS appeals, it has to send you a copy of this Notice and if you appeal, you have to send DHS a copy.

What if DHS appeals my case?

The trial attorney may say he or she wants to "reserve appeal," but that does not mean DHS will actually appeal. You may not know for sure until 30 days from the judge's decision, and if DHS has not filed a Notice of Appeal by then, it cannot appeal. You should know if DHS appeals because you should get a copy of the Notice. If DHS does file a Notice of Appeal and, on the form, says that it will file a "brief" (or written statement) later, the Board of Immigration Appeals will send you and DHS a paper saying when DHS must file its brief or statement and when you should mail to the Board any response you want to write to DHS's arguments. Try to get a lawyer to help you with this if you can.

If I lose at Stage Three and want to appeal, how do I appeal?

If you lose and you "reserve appeal," the **Board of Immigration Appeals must receive your notice of appeal by the 30th day or you will lose your right to appeal.**

The forms you must fill out in order to appeal the judge's decision are:

1. a white "Notice of Appeal" form (EOIR-26), and
2. a brown "Appeal Fee Waiver Request" form (EOIR-26A) (unless you can pay a $110 fee, in which case, follow the instructions on the "Notice of Appeal" and pay the fee)

There are instructions in the forms about how to fill them out and where to send them. If after 30 days the appeal papers have not been <u>received</u> in Virginia, you will not be allowed to appeal and the judge's decision will become final. For this reason, if you are going to appeal, we recommend mailing the papers as soon as possible and mailing them by express mail or "certified mail" (with proof of receipt).

If the Board has received your forms, it will give DHS a chance to file some papers also. DHS will give you a copy of whatever papers it files.

If you are detained during the appeal process, it usually takes from six to nine months for the Board to decide the appeal. If you are out of custody during the appeal process, it may take much longer. There is no set time frame, and it is impossible to determine how long the appeal will take.

VIII. <u>WHAT HAPPENS IF I GET OUT OF DETENTION BEFORE MY HEARING?</u>

If you are allowed to leave the detention center before your case is over, your case continues. You must notify the Immigration Court of your new address within five days of any change using a Form EOIR 33/IC. The court will send you a letter telling you the date, time, and place of your next hearing. For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.

 **When you leave the detention center, look for legal help for your case!**

It is also very important that you or your lawyer ask the court to transfer your case to a different court, unless you want to go to court where your case is now. You do this by filling out a form called a "**Motion for Change of Venue**" on which you write the address where you plan to live when you leave the detention center. (**This has to be a street address, not a post office box!)** At the back of this booklet is a form that you may use but some courts may want you to use a different form, so find out. At some detention centers, a DHS officer will give you the form and will give it to the court after you complete it. Find out how things are done at your detention center and make sure to file the right form with the court (with a copy to DHS's attorney). When the court gets this paper, it will send your file to the Immigration Court closest to the address you wrote down. That court will then send you a letter telling you where and when to go for your next hearing. After receiving this letter, you should then only send things to the new Court and DHS in your new location.

 **When you leave the detention center, if you do not want your next court hearing to be where you are now, file a "Motion for Change of Venue!"**

Some courts require a more complete explanation of why you want to change court locations. At the time of your bond hearing, ask the judge if you will need to do that.

Remember, if you miss a hearing, you will lose your right to depart the country voluntarily and your right to seek other forms of relief from removal. The judge can order you removed without giving you another chance to defend your case!

What should I do if I move?

 **Every time you move, it is <u>your</u> responsibility to tell both the Immigration Court and DHS!** You must tell the Immigration Court within five days of your move and you must tell DHS within 10 days of your move. There are special forms to do this and you can get one from the Immigration Court (EOIR Form 33/IC) and a different one from DHS (Form AR-11) (The officers may give you the forms when you leave.). Letting the Immigration Court and DHS know your new address will not change where you will have your hearing. Instead, the special forms used for changes of address let the Immigration Court and DHS know where to send you papers about your case.

When the Immigration Court and DHS send you papers, they will send them to the address you gave them. If the Immigration Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address, and when you don't show up to court on that date, you will receive an order of removal. This means that the next time DHS arrests you, you can be sent back to your country without a hearing.

If you move, send the Immigration Court your new address using the EOIR 33/IC form within 5 days of your move! Also you must send the DHS your new address using the AR-11 form within 10 days of your move!

It is important to remember that the Immigration Court and DHS are two different things and that the forms required are different. If you let DHS know your new address but you don't send the right form (a blue EOIR 33/IC, "Change of Address" form) to the Immigration Court, the Immigration Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you can get a removal order without seeing a judge. This is also true if you case is on appeal to the Board of Immigration Appeals. You must also notify the Board of Immigration Appeals within 5 days if your move using the Form EOIR 33/BIA.

PREPARE YOUR CASE WELL

Sometimes, the difference between winning and losing a case is how much time and energy you put into preparing it. If you follow the instructions in this booklet, you should be ready to present your case, and you will have a better chance of obtaining voluntary departure.

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Certificate of Service

Name: _____ A#: ____ -- ____ -- ____

I certify that on _____, _____, I served the Department of Homeland Security
(date) (year)

with a copy of the foregoing by placing a true and complete copy in an envelope, postage

prepaid, and mailing it, addressed as follows:

U.S. District Counsel
Department of Homeland Security

_____
(Sign your name here)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

_____
(City and state where court is)

In the Matter of	)	IN REMOVAL PROCEEDINGS
_____	)	File No. A_____
(your name)	)	
Respondent	)	

MOTION FOR CHANGE OF VENUE

The Respondent has bonded out and will be residing at:

_____

_____

_____
(your address outside of detention)

The Respondent requests that this case be transferred to the Immigration Court that covers the area of his residence.

CERTIFICATE OF SERVICE

This original document is being sent by mail to:

Executive Office for Immigration Review
Office of the Immigration Judge

_____
(address of the court that handled your case while you were in DHS custody)

I hereby certify that I have served a copy of this motion by mailing a copy to:

District Counsel
Department of Homeland Security

_____
(address of DHS office that handled your case when you were in DHS custody)

Date: _____ Signed: _____