



Special Considerations for LGBTQ Immigrants

LGBTQ immigrants enjoy the same rights under immigration law as all other non-citizens. However, there are some areas where LGBTQ immigrants might face unique challenges. Below is an outline of some special considerations for LGBTQ immigrants.

Immigration Status Through a Same-Sex Spouse

Currently, same-sex marriage is legal in every state in the country. This means that U.S. citizens and legal permanent residents (green card holders) can petition for their foreign-born, same-sex spouses to get immigration status like a visa or a green card, and some visa holders can get a visa for their same-sex spouses as well.

President-elect Trump has stated that he opposes same-sex marriage and would appoint judges who would overturn the current law that recognizes marriage equality. If same-sex marriage ceased to be legal at the federal level, this could cause problems for any pending or future immigration applications that are based on a same-sex marriage.

It's important to emphasize that though it is possible that marriage equality could be eliminated, it is unlikely and would not happen overnight. Because same-sex marriage was recognized by a U.S. Supreme Court decision, the President-elect could not change the law himself. It is difficult to overturn a U.S. Supreme Court decision and a case to dismantle marriage equality would have to make its way through the court system, which would take years.

How to Best Prepare

If you have a same-sex partner or spouse who is a U.S. citizen, green card holder or visa holder,

- get an immigration screening by a qualified legal services provider to understand all of your potential immigration options and risks;
- be careful to avoid fraud by *notarios* or unqualified legal service providers (links to **Resources** below); and
- know your rights in case you or your spouse or partner ever come in contact with immigration authorities.

Visas for Victims of Crime, Trafficking and Domestic Violence

Immigration law includes some special options for immigrant victims of crime. U visas are available for victims of certain crimes, T visas are available for victims of human trafficking, including sex trafficking and forced labor, and the Violence Against Women Act (VAWA) provides protections for victims of domestic violence. These options provide protection from deportation, the ability to work legally, and an option to apply for a green card. They are in the federal law which means that the Trump Presidential Administration cannot eliminate them quickly; it would take a new law by Congress to change them.

While there is much fear in the community, if you have been a victim of harm or serious crime, you have the right to protection from the police and can help in the investigation or prosecution of the crime. Please seek the help of a qualified legal service provider as there may be an immigration benefit available to you.

Asylum for Those Who Fear Returning to Their Home Country

Protections for those fleeing their home countries due to persecution (abuse, threats or other serious harm) are rooted in federal law and international treaties. Given this, it will be difficult for the Trump Presidential Administration to change this area of the law. People with refugee and asylum status are eligible to apply for a green card in the United States and eventually U.S. citizenship. Asylum claims based on sexual orientation and gender identify from countries where LGBTQ individuals are targeted for abuse or lack legal protections have been successful.

Those who have fled persecution or fear being persecuted if they return to their home country but have not yet applied for protection should consult with a qualified legal service provider. Asylum applications should be submitted within one year of arriving in the United States, although there are some exceptions to that requirement. Even if you decide together with a legal representative to not apply for asylum, if you are ever detained by immigration authorities or required to appear before an immigration judge, you should express any fear you have of returning to your country of origin.

It's imperative that those affected by this category seek qualified legal help at the earliest opportunity.

Immigration Detention

Immigrants who are in removal proceedings (facing deportation from the country) can be placed into immigration detention centers, which are publicly- or privately-run facilities (similar to prisons) across the United States. Anyone detained by the immigration authorities should ask to be released on bond and ask to have a hearing before an immigration judge.

LGBTQ immigrants, and transgender immigrants in particular, are at greater risk of harassment and abuse in immigration detention, and are frequently not housed in the section of their preferred gender identity. Under the Trump Presidential Administration, it is possible that these bad conditions would continue or potentially worsen. See **Resources** below for a list of organizations advocating for the rights of transgender and LGBTQ immigrants in detention.

How to Best Prepare

If you or a loved one are not a U.S. citizen (even if you are a legal permanent resident), take the time now to create a preparedness plan for your family in case one of you is detained and/or deported. This plan should include ensuring important government and health documents are accessible by another family member, emergency contacts are shared with those you trust, and instructions for care and an affidavit designating a care giver for any children you have are documented. Always have on hand the contact information of a legal service provider in case of emergency.

In case of contact with immigration authorities, do not answer any questions or provide personal information. If immigration authorities come to your home, keep your door closed and do not open it at all unless the authorities can show you a warrant with your name on it that is signed by a judge. They almost never have a warrant like that. If you are detained, do not sign anything you don't understand. Ask to speak with a lawyer and for a hearing before an immigration judge. Be sure to keep materials explaining your rights, like ILRC's red cards, easily accessible to read aloud or to pass to immigration authorities or police if immigration authorities were to attempt to enter your home or approach you on the street.

Resources

- National immigration legal services directory: <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>
- Know Your Rights information: <https://www.ilrc.org/know-your-rights-and-what-immigrant-families-should-do-now> (for families - in English, Spanish and Chinese)
- Know Your Rights card: <https://www.ilrc.org/red-cards>
- Family preparedness plan: <https://www.ilrc.org/family-preparedness-plan>
- Q&A for victims' advocates: <https://www.ilrc.org/post-election-qa-advocates-and-attorneys-serving-immigrant-survivors-gender-based-violence> (share this with your attorney)
- Resources for immigrants with DACA: <https://www.ilrc.org/daca-talking-points>
- Resources for schools: <https://www.ilrc.org/post-election-resource-schools>
- How to avoid fraud: flyer in English & Spanish - <https://www.ilrc.org/anti-fraud-flyers> Video: <https://www.ilrc.org/choosing-immigration-representative-how-avoid-fraud>
- Transgender Law Center - <http://transgenderlawcenter.org/>
- TransLatin@ Coalition - <https://www.translatinacoalition.org/>
- Community Initiatives for Visiting Immigrants in Confinement (CIVIC) - <http://www.endisolation.org/>
- Immigration Equality - <https://www.immigrationequality.org/>
- Southerners on New Ground - <http://southernersonnewground.org/>
- Queer Undocumented Immigrant Project (QUIP) - <http://unitedwedream.org/about/projects/quip/>
- National Center for Lesbian Rights - <http://www.nclrights.org/>