

Overview of U.S. Immigration Law & Recent Policy Changes

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HISCOCK LEGAL AID SOCIETY



Department of State
Office for New Americans

New Americans Hotline:



1-800-566-7636

Monday – Friday, 9 AM–8 PM EST
MULTILINGUAL AND CONFIDENTIAL

Disclaimer

- ▶ This presentation is not legal advice.
- ▶ This presentation is for informational and educational purposes only.
- ▶ If you have a question, you should contact an attorney for advice.

Hiscock Legal Aid Society

- Non-profit legal service provider
- Free legal services:
 - Naturalization/citizenship
 - Adjustment of status
 - Special Immigrant Juvenile Status
 - VAWA, T, or U visa
 - Asylum
 - Deportation/removal defense
 - Work authorization
- Free interpreters
- Areas served:
 - Mohawk Valley
 - Central New York
 - North Country



HISCOCK LEGAL AID SOCIETY

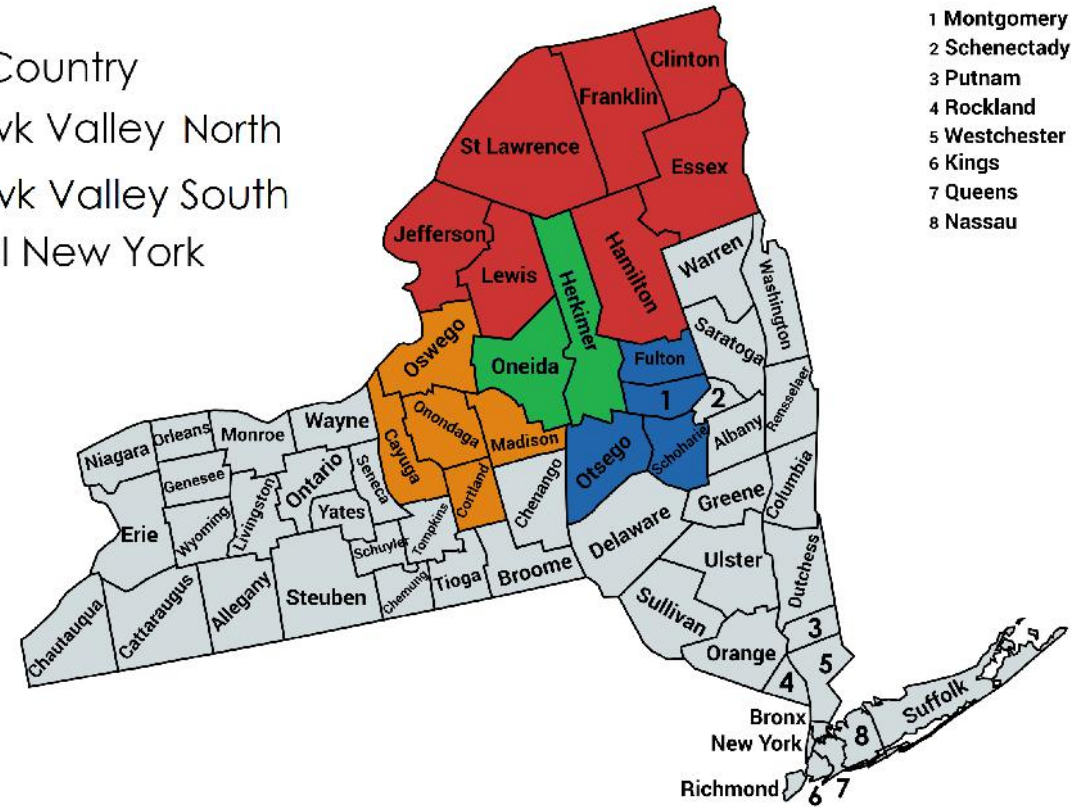
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Areas Served:

- Central New York
- North Country
- Mohawk Valley North
- Mohawk Valley South

Legend

- North Country
- Mohawk Valley North
- Mohawk Valley South
- Central New York





Department of State

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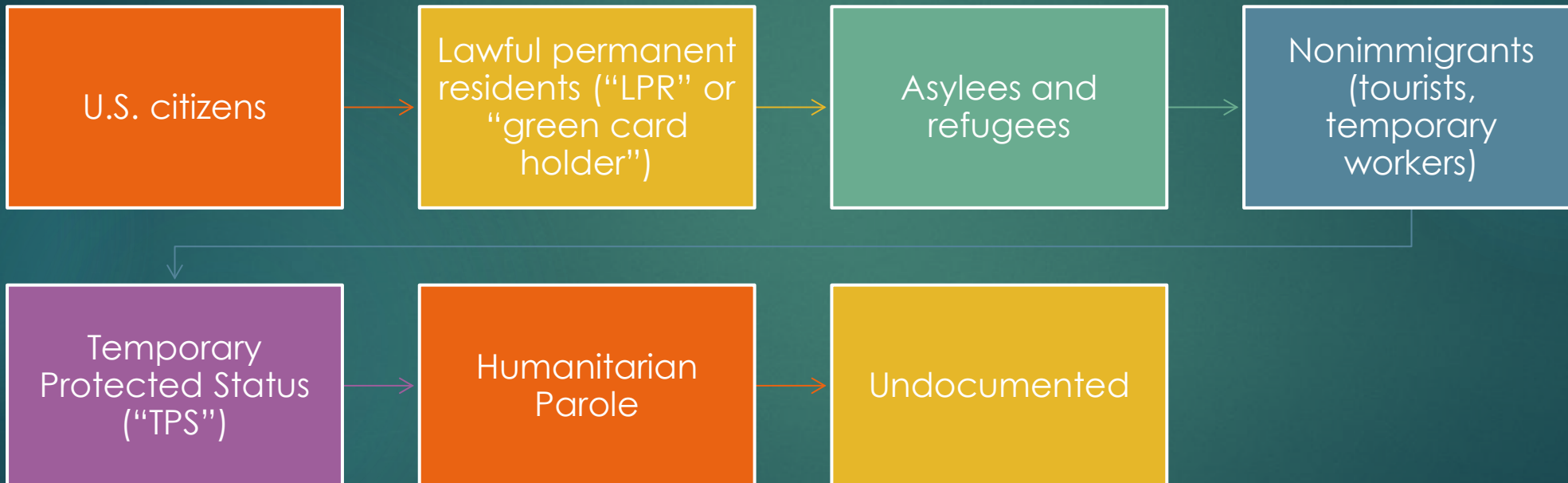
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Overview of U.S. Immigration Law

Immigration Status in the U.S.





How to become a U.S. citizen

- Must meet residence requirement
 - Three (3) or five (5) years as LPR
- Good moral character
- English language proficiency
- Knowledge of U.S. civics and history

How to become a U.S. LPR

➤ Must fall into one of four categories:

1. Family-sponsored
2. Employment-based
3. Diversity visa lottery
4. Refugee/asylee



How to become a U.S. LPR (continued)

- Immigrant visa process at U.S. Consulate overseas
- Apply for adjustment of status within the U.S.
 - Must have made a lawful entry and (unless immediate relative of a U.S. citizen) maintained lawful status continuously since entering the U.S.



Asylum

- Based upon fear of persecution in home country
- Must apply within one (1) year of entering the U.S.



Temporary Status

- Individuals in temporary status must depart the U.S. before their status expires
- Expiration date determined by U.S. government
- Failure to depart: unlawful presence; removal (deportation) from the U.S.

Recent and Potential Changes to Temporary Statuses in the U.S.

- TPS is based upon the discretion of the Secretary of Department of Homeland Security and their determination that conditions in that country temporarily prevent people from returning safely
- Currently, 17 countries have been designated for TPS
- The current administration has indicated intentions to review TPS designations
 - DHS Sec. has already partially vacated TPS for Haiti
 - TPS designation for Venezuela terminated

Recent and Potential Changes to Temporary Statuses in the U.S. (continued)

- Parole is temporary and discretionary, decided on a case-by-case basis.
- Categorical parole programs: U4U, OAW, CHNV parole, etc.
- Categorical parole programs are being re-evaluated by current administration
 - CNVH parole program has ended
 - U4U is “on pause”



How to Prepare for Changes to U.S. Immigration Law and Policy?

- Know your rights
- Physical/digital documents to carry
- Create an emergency/safety plan
- What to do in the event of an encounter with the Department of Homeland Security (“DHS”)



Know Your Rights

EVERYONE in the United States has
guaranteed rights under the Constitution,
regardless of immigration status!



Know Your Rights

- Right to remain silent
- Right to an attorney
- Right against unreasonable searches and seizures
- Right to due process

Right to Remain Silent

- ▶ Applies when questioned or arrested by immigration officers, police, or other officials
- ▶ Anything you tell an officer can later be used against you in immigration court



Right to an Attorney

- ▶ If arrested by the police, you have the right to a government-appointed lawyer.
- ▶ If arrested or detained by ICE, you have the right to a lawyer, but not at the government's expense.
- ▶ If put into removal proceedings, you have the right to a lawyer, but one will not be appointed to you.
- ▶ Ask ICE/EOIR for list of free or low-cost legal service providers.



Right Against Unreasonable Search & Seizure

- Do not have to let law enforcement into your home unless it is the police and they have a warrant signed by a judge.
- ICE warrants of removal (Form I-205) do NOT allow officers to enter a home without consent.
- Remember that you have the right to remain silent, even if the police have a warrant.

SAMPLE OF JUDICIAL WARRANT ICE CAN ENTER YOUR HOME

JD-115 (Rev. 10-11) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Case No.

A search warrant is needed to
search and enter premises; an
administrative warrant
doesn't allow entry

Check that the warrant has
your correct name and address

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search
of the following person or property located in the District of _____
identify the person or describe the property to be searched and give its location:

Officers typically can only
search the specified person or
property described.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property
described above, and that such search will reveal (identify the person or describe the property to be seized).

The search is only allowed at
the stated time and date.

YOU ARE COMMANDED to execute this warrant on or before _____ not to exceed 14 days
☐ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the
person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the
property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory
as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C.
§ 3703 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose
property, will be searched or seized (check the appropriate box)

☐ for _____ days not to exceed 10; ☐ until, the facts justifying, the later specific date of _____

Date and time issued: _____

Judge's signature

City and state: _____

A warrant is only valid with a judge's signature.
Without it, you can refuse the search.

Printed name and title

SAMPLE OF ADMINISTRATIVE WARRANT ICE CANNOT ENTER YOUR HOME

U.S. Department of Justice

Immigration and Customs Enforcement

Warrant of Removal/Deportation

Important: An administrative warrant allows for the arrest of the
person named, NOT a search of private property. You can refuse
if an officer tries to search your home with this warrant.

File No. _____

Date: _____

This warrant is valid
only for the arrest of
the person named.

To any officer of the United States Immigration and Customs Enforcement

(Full name of alien)

Who entered the United States at _____ on _____

(Place of entry)

(Date of entry)

Is subject to removal/deportation from the United States, based upon a final order by:

- ☐ An immigration judge in exclusion, deportation, or removal proceedings
- ☐ A district director or district director's designated official
- ☐ The Board of Immigration Appeals
- ☐ A United States District or Magistrate Court Judge

And pursuant to the following provisions of the Immigration and Nationality Act:
Section 241 (a) (5) of the Immigration and Nationality Act (Act), as amended.

I, the undersigned officer of the United States, by virtue of the power and authority vested in
the Attorney General under the laws of the United States and by his or her direction com-
mand you to take into custody and remove from the United States the above-named alien,
pursuant to law at the expense of the appropriation, "Salaries and Expenses Immigration
and Customs Enforcement" including the expense of an attendant if necessary.

(Signature of ICE Official)

(Title of ICE Official)

(Date and Office Location)

It must be signed by an
immigration officer to be valid

Right to Due Process

- Due process = fair procedures
- Everyone in immigration court is entitled to a full and fair hearing before removal from the U.S.
- Rights include:
 - The right to be informed of the charges;
 - The right to an attorney (not appointed or free); and
 - The right to present evidence in one's defense.





Create an Emergency / Safety Plan

Things that everyone can do now to prepare for the worst case scenario.

Who is at risk?

Immigrants with criminal convictions
and/or orders of removal



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graph TD; A[Immigrants with criminal convictions and/or orders of removal] --> B[No status]; B --> C[TPS and parole];
```

No status

TPS and parole

How to Prepare Creating an Emergency/Safety Plan

- Always carry evidence of status, if available
- Organize important documents
- Designate an emergency contact
- Prepare for immigration bond
- Choose caretaker for children

- UNIDENTIFIED SUBJECT
RECEIVED
- Name IV IMM
DATE GENERAL IV LN
- Gender F
- Race/Ethnicity National GRBR
- IV Issue Date 24JUN2004
- EVIDENCING PERMANENT RESIDENCE FOR PYPERSON<<<<<<
56F04122361FLN



✓ Carry a Know Your Rights card

THESE ARE MY RIGHTS.

- ✦ I have the right to remain silent.
- ✦ I do not wish to speak with you or answer your questions.
- ✦ I do not give you permission to enter my home without a warrant signed by a judge.
- ✦ I do not consent to searches of my person, belongings, vehicle, or home.
- ✦ If I am detained, I want to contact my attorney immediately.
- ✦ I refuse to sign anything without advice from an attorney.



New York Immigration Coalition
nyic.org

USTED TIENE DERECHO A LO SIGUIENTE:



Permanecer en silencio y no responder ninguna pregunta.



Negarse a que lo registren o ingresen a su hogar sin una orden firmada por un juez.



Saber si lo detendrán o arrestarán, y por qué.



Negarse a firmar cualquier documento y solicitar hablar con un abogado.



Grabar lo que les está pasando a usted y a otras personas.

Si tiene contacto con un agente, puede mostrarle esta tarjeta.

VOUS AVEZ LE DROIT DE :



Garder le silence et de ne pas répondre aux questions



Refuser les fouilles ou l'entrée dans votre domicile sans mandat signé par un juge



Savoir si et pourquoi vous êtes détenu ou arrêté



Refuser de signer quoi que ce soit et demander à parler à un avocat



Enregistrer ce qui vous arrive et qui arrive à d'autres

Si vous êtes en contact avec un agent, vous pouvez leur donner ou leur montrer cette carte.

لديك الحق في:

التزام الصمت وعدم الإجابة على أي أسئلة.



رفض التفتيش أو الدخول بدون مذكرة موقعة من قاضٍ.



معرفة ما إذا كنت معتقلاً أو موقوفاً، ولماذا.



رفض التوقيع على أي شيء وطلب التحدث إلى محامٍ.



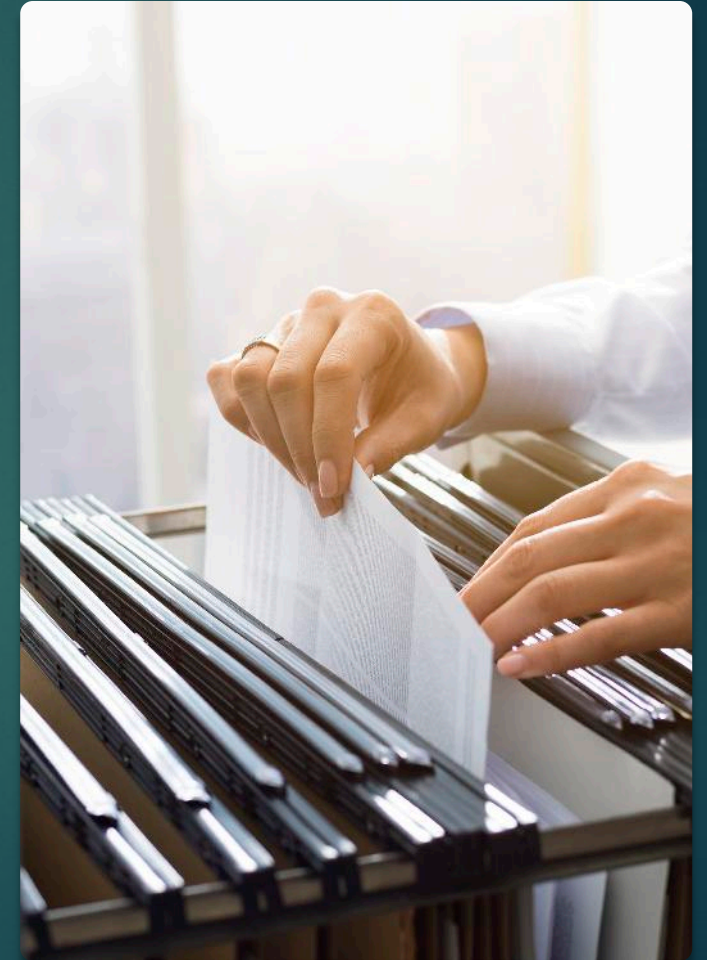
تسجيل ما يحدث لك وللآخرين.



إذا تواصلت مع أي عميل، يمكنك إعطاؤه أو إظهار هذه البطاقة.

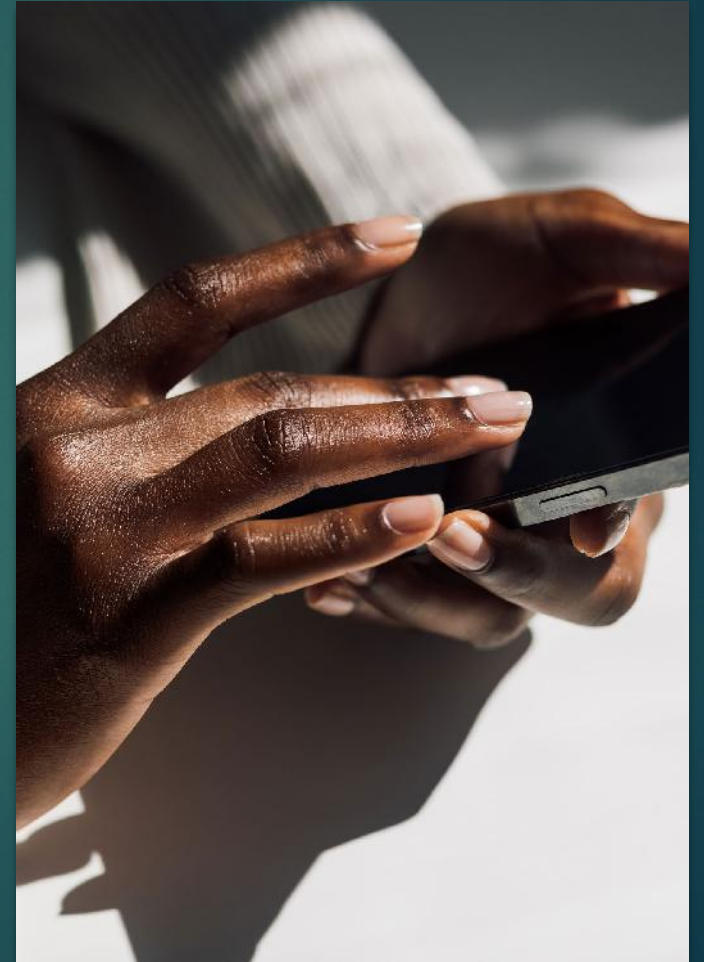
Documents to organize and keep in a safe place

- Passports for all family members
- Birth certificates
- Marriage certificate
- Medical records
- Proof of physical presence in the U.S.
- School records
- Emergency contact list
- Guardianship /designation of person in parental relationship



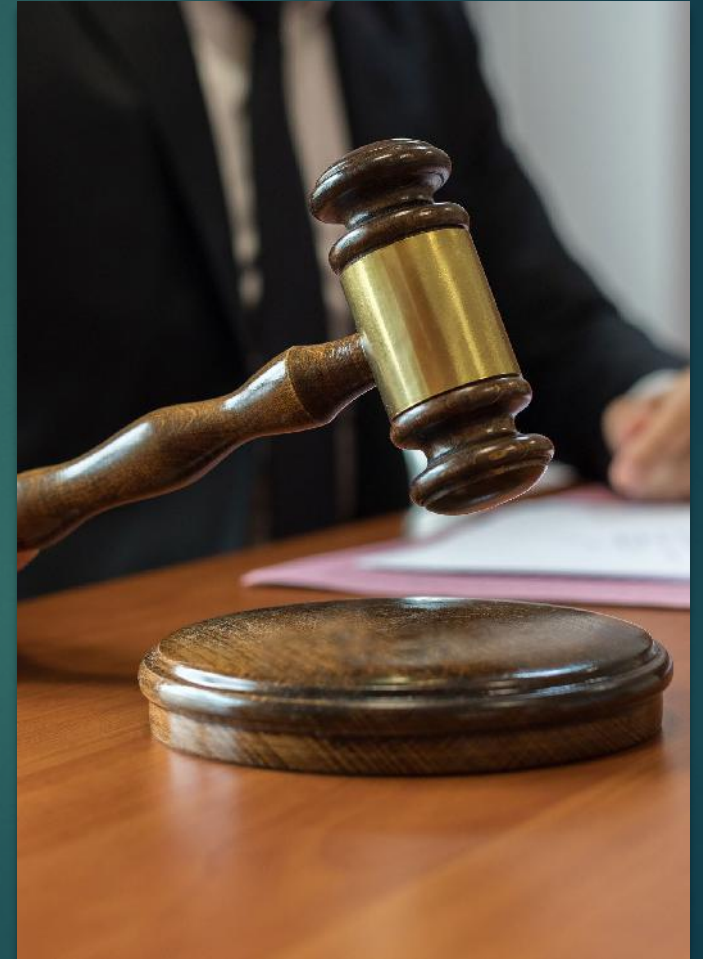
Designate an Emergency Contact

- ▶ If possible, someone with lawful status in the U.S.
- ▶ Memorize phone #
- ▶ Inform them where you keep important documents



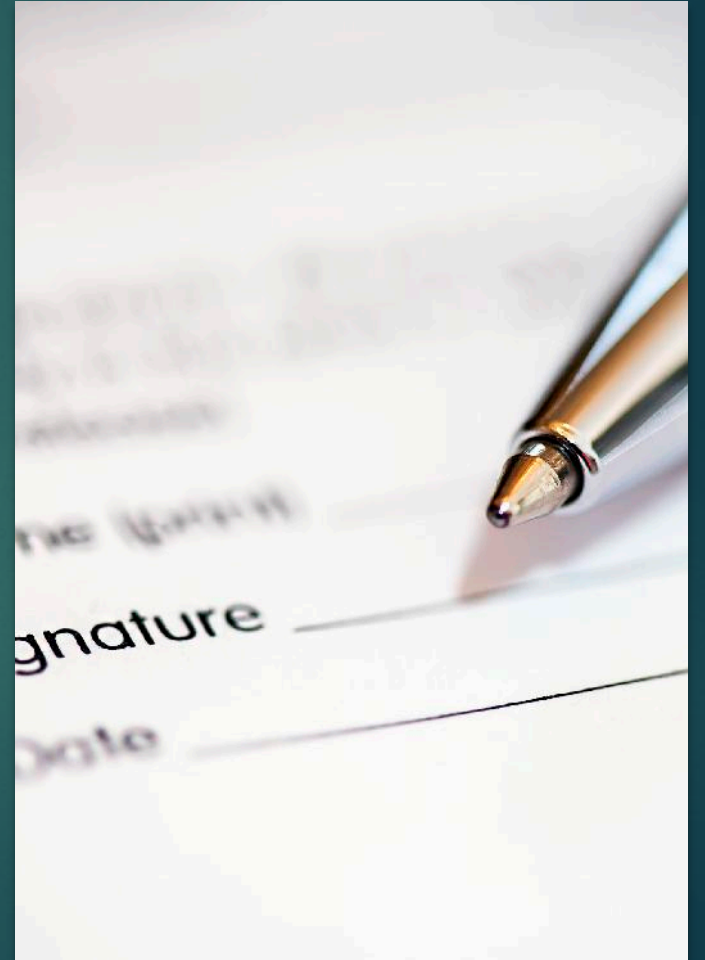
Prepare for Immigration Bond

- ▶ Immigration bond: amount of money set by the government that if paid will allow a person to be released from detention while immigration court case is pending.
- ▶ May want to start saving ahead of time.
- ▶ Not everyone is eligible for bond.
- ▶ Ask ICE deportation officer and the Immigration Judge if you are eligible for a bond.
- ▶ Factors considered determining bond:
 - ▶ Criminal history
 - ▶ Length of time in the U.S.
 - ▶ Eligibility for immigration relief
 - ▶ Family and community ties
 - ▶ Good moral character



Choose Caretaker for Children

- ▶ In New York State, there are several options to legally designate who you want to care for your children if you are detained. The two (2) most common are:
 - ▶ Designation of Person in Parental Relationship
 - ▶ Standby Guardianship



Designation of Person in Parental Relationship

- Form OCFS-4940, available online:
<https://ocfs.ny.gov/forms/?find=4940>
- Benefits:
 - Simple process of signing in front of two (2) witnesses, no need to go to court
- Drawbacks:
 - Temporary (12mos); limited authority; no public assistance

Standby Guardianship

- <https://www.nycourts.gov/courthelp/guardianship/standbyguardian.shtml>
- <https://www.nycourts.gov/LegacyPDFS/FORMS/surrogates/pdfs/FillableSG-10.pdf>
- Benefits:
 - Can say it only goes into effect when a certain thing happens (“administrative separation”); guardian can make all major decisions, including medical and travel; public assistance possible
- Drawbacks:
 - More complicated for the guardian – must go to court within 60 days and provide proof of the administrative separation; requires many court appearances, background check, home inspection



What to do in the event of an encounter with the Department of Homeland Security

- Stay calm. Don't run, argue, resist, or fight the officer, even if your rights are being violated.
- Do not lie about your status or provide false documents.

Traffic Stop

- ▶ Ask if the officer is from the police department or DHS (ICE, CBP, BP). If DHS, follow these guidelines:
 - ▶ **If US citizen or have lawful immigration status:** show your passport, green card, work permit, or other documentation of status.
 - ▶ **If undocumented:** you have the right to remain silent and do not have to discuss your immigration or citizenship status with the police, DHS, or other officials.
 - ▶ **Request to speak with your attorney before you speak with the officer**





What if an officer knocks on your door?

- Do NOT open the door
- Officers must have a warrant signed by a judge in order to enter your home
- Ask to see the warrant
- Form I-205, Warrant of Removal, is not signed by a judge! Does not allow DHS to enter your home!

Judicial Warrants

- A judicial warrant is issued by a court and signed by a judge.
- A judicial warrant does give law enforcement permission to enter “private areas” such as your home, or conduct searches.
- Read the warrant carefully to make sure that it is valid.
- Examples: Arrest Warrant, Search Warrant

AO 93 (Rev. 12/09) Search and Seizure Warrant **This is a judicial search warrant. It DOES authorize agents to enter your home.**

UNITED STATES DISTRICT COURT Issued by a COURT.

for the
Eastern District of California

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
540 Oak Avenue
Davis, California 95616

Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer **2:11-SW-0161EFB**

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the EASTERN District of CALIFORNIA
(Identify the person or describe the property to be searched and give its location.)
SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE

Read attachments to make sure they are regarding YOU and YOUR address, not someone else's.
The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be searched.)
SEE ATTACHMENT B, ATTACHED HERETO AND INCORPORATED BY REFERENCE

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property. **Date for warrant, not to exceed 14 days**
YOU ARE COMMANDED to execute this warrant on or before 5-9-2011 (not to exceed 14 days)

☒ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge

(Name)

☒ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) ☐ for _____ day(s) (not to exceed 30).

Until, the facts justifying the later specific date of _____

Date and time issued: 4-25-2011
9:10:00 AM

City and state: SACRAMENTO, CALIFORNIA

Signed by a JUDGE,
EDMUND E. BRENNAN, U.S. MAGISTRATE JUDGE
Printed name and title

Administrative Warrants

- An administrative warrant is signed by an DHS officer, not a judge.
- It does not give ICE or CBP any authority to demand entry to the private areas of a workplace or home.
- Examples: Warrant for Arrest of Alien, Warrant of Removal/Deportation

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____
Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)
on _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ (Language) language.

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-204 (Rev. 09/16)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No: _____
Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings;
- ☐ a designated official;
- ☐ the Board of Immigration Appeals;
- ☐ a United States District or Magistrate Court Judge;

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, pursuant to the power and authority vested in the Secretary of Homeland Security under the laws of the United States and, higher law direction, command you to take into custody and remove from the United States the above-named alien pursuant to law, at the expense of _____

(Signature of Immigration officer)

(Title of Immigration officer)

(Date and office location)

ICE Form I-205 (5/07)

Page 1 of 2

QUESTIONS?

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