

# Migrant Legal Action Program, Inc.

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## **U.S. Immigration Policy - Today and Tomorrow:**

### What's Needed to Serve Patients

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#### Immigration Policy 101 - Today

- I. Background/Overview of the Issues
- II. ABCs of U.S. Immigration
- III. Family-Sponsored Immigration
- IV. "Adjustment of Status" for Undocumented Persons – old §245(i) program
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# The A,B,Cs of U.S. Immigration

**What is an Immigrant?** An immigrant is a foreign-born individual who has been admitted to reside permanently in the United States as a Lawful Permanent Resident (LPR).

**How Do Immigrants Get Admitted to Permanently Reside Here?** Typically a foreign-born individual seeking to become an LPR can attain legal status in one of two ways:

- Through **family-sponsored immigration**, a U.S. citizen can sponsor her spouse, foreign-born parent (if the sponsor is over the age of 21), minor and adult children, and brothers and sisters. A lawful permanent resident can sponsor her spouse, minor children, and adult unmarried children.
- Through **employment-based immigration**, a U.S. employer can sponsor someone for a specific position where there is a demonstrated absence of U.S. workers.

A small number of **diversity visas** are also awarded through a special lottery to individuals from specifically-designated countries.

**What is a refugee?** A person *outside* of the United States who seeks protection on the grounds that he or she fears persecution in his or her homeland is a **refugee**. To attain refugee status, the person must prove that he or she has a "well-founded fear of persecution" on the basis of at least one of five specifically-enumerated and internationally-recognized grounds. Those grounds include the person's ① *race*, ② *religion*, ③ *membership in a social group*, ④ *political opinion*, or ⑤ *national origin*.

A person who has *already entered* the United States, and who fears persecution if sent back to his country, may apply for **asylum** here. Once granted asylum, the person is called an "**asylee**." Like a refugee, an asylum applicant must also prove that he has a "well-founded fear of persecution" based on the same enumerated grounds.

Both refugees and asylees may apply to become LPR's after one year.

**What is an Undocumented Immigrant?** An undocumented immigrant is a person who is present in the United States without the permission of the U.S. government. Undocumented immigrants enter the U.S. either:

- Illegally, without being inspected by an immigration officer, or by using false documents; or
- Legally, with a temporary visa, and then remain in the U.S. beyond the expiration date of the visa.

**What are Non-Immigrants?** Non-immigrants are individuals who are permitted to enter the U.S. for a period of limited duration, and are given only temporary visas. Some non-immigrant (temporary) visas are given to: students, tourists, temporary workers, business executives, and diplomats.

**What is a Naturalized Citizen?** Lawful permanent residents are eligible to apply for U.S. citizenship through a process called **naturalization**. To qualify to naturalize, applicants must reside in the U.S. for 5 years (3 if they are married to a U.S. citizen) demonstrate a knowledge of U.S. history and government, show they have committed no serious crimes, have paid their taxes, are of "good moral character," and demonstrate that they understand, speak, and write ordinary English.



## El ABC de la Inmigración Estadounidense

¿**Qué es un Inmigrante?** Un inmigrante es un individuo nacido en el extranjero que ha sido admitido para vivir permanentemente en los Estados Unidos como Residente Legal Permanente (LPR) por sus siglas en inglés.

¿**Cómo los Inmigrantes son admitidos para residir permanentemente aquí?** Típicamente una persona nacida en el extranjero que busca ser Residente Legal Permanente puede aplicar al status legal en una o dos formas:

- ❖ A través de la Inmigración familiar. Un ciudadano americano puede apadrinar a su esposa, o padres nacidos en el extranjero (si es mayor de 21 años) hijos adultos o menores y hermanos y hermanas. Un residente legal puede apadrinar a su esposa, hijos menores e hijos mayores que no hayan contraído matrimonio.
- ❖ A través de inmigración por trabajo, un empleador estadounidense puede apadrinar a alguien para una posición específica la cual carece de trabajadores estadounidenses.

Un pequeño número de visas diversas son también otorgadas a través de una lotería especial a individuos de países escogidos específicamente.

¿**Qué es un refugiado?** Una persona que vive fuera de los Estados Unidos que busca protección en el país por miedo de persecución en su tierra natal es un **refugiado**. Para obtener el estatus de refugiado la persona tiene que probar que esta en una situación real de persecución bien fundamentada en al menos una de las premisas enumeradas específicamente e internacionalmente reconocidas. Esas premisas incluyen 1. raza, 2. religión, 3. pertenencia a un grupo social, 4. opinión política o 5. origen nacional.

Una persona que ya ha entrado a los Estados Unidos, y teme persecución si es enviado de nuevo a su país, debe aplicar por **asilo** aquí. Una vez otorgado el asilo, la persona es llamada **“asilado.”** Como el refugiado un aplicante para asilo también debe probar que tiene una situación real de persecución basadas en las mismas premisas antes enumeradas.

Ambos el refugiado y el asilado pueden aplicar para ser residentes legales permanentes después de un año.

¿**Qué es un inmigrante indocumentado?** Un inmigrante indocumentado es la persona que se encuentra en los Estados Unidos sin permiso del gobierno de los Estados Unidos.

Los inmigrantes indocumentados entran a los Estados Unidos de dos maneras:

- Ilegalmente, sin ser inspeccionado por un oficial de inmigración, utilizando documentos falsos o
- Legalmente con visa temporal y luego quedarse en los Estados Unidos después del día de expiración de la visa. Cuatro de diez inmigrantes indocumentados entran a los Estados Unidos legalmente.

¿**Qué son no inmigrantes?** No inmigrantes son personas a las cuales se les permite entrar a los Estados Unidos por un periodo determinado de tiempo, y les son otorgadas solo visas temporales. Algunas visas de no inmigrantes (temporales) son dadas a: estudiantes, turistas, trabajadores temporales, ejecutivos de negocios y diplomáticos.

¿**Qué es un ciudadano naturalizado?** Residentes legales permanentes son elegibles para aplicar para la ciudadanía americana a través de un proceso llamado **naturalización**. Para calificar para la naturalización, los aplicantes deben residir en los Estados Unidos por 5 años (3 si están casados con un ciudadano estadounidense) demostrar conocimiento de la historia norteamericana y su gobierno, demostrar que no han incurrido en crímenes serios, han pagado sus impuestos, han tenido una conducta legal y aceptable y demostrar que entienden, hablan y escriben el inglés ordinario.



# Facts on Family-Sponsored Immigration

**Family-Sponsored Immigration** is how U.S. citizens and lawful permanent residents bring family members from other countries to live permanently in the U.S. Citizens may only bring their spouses, unmarried children, parents (if the citizen is over 21 years), married children, and brothers and sisters (if the citizen is over 21 years). Lawful Permanent Residents (LPRs) may bring only their spouses and unmarried minor and adult children. Neither citizens nor LPRs may bring in more distant family members, such as aunts, uncles, and cousins.

Our immigration system divides the family members eligible for sponsorship into two tiers. "Immediate relatives" of U.S. citizens (excluding brothers and sisters, unmarried and married adult children) receive an unlimited number of visas each year. All others fall into the "family preference system" which has an annual maximum limit of 226,000 visas issued per year.

## IMMIGRATION BASED ON FAMILY RELATIONSHIPS

<u>CATEGORY</u>	<u>U.S. SPONSOR</u>	<u>RELATIONSHIP</u>	<u>VISAS ALLOCATED</u>
<b>Immediate Relative</b>	U.S. Citizen	spouses, unmarried minor children and parents (if the U.S. citizen is 21 years or older)	not numerically limited (approximately 250,000 have been issued annually in recent years)
<b>1st Preference</b>	U.S. Citizen	unmarried adult children (21 years or older)	23,400 visas/year, plus any visas left from the 4 <sup>th</sup> Preference
<b>2nd A Preference</b>	LPR	spouses and minor children	87,900 visas/year
<b>2nd B Preference</b>	LPR	unmarried adult children (21 years or older)	26,300 visas/year
<b>3rd Preference</b>	U.S. Citizen	married adult children	23,400 visas/year, plus any left over from the 1 <sup>st</sup> and 2 <sup>nd</sup> Preferences
<b>4th Preference</b>	U.S. Citizen (21 years or older)	brothers and sisters	65,000 visas/year, plus any left over from the previous Preferences

## Limits on Immigrants from One Country

In addition to the limits on the number of visas allocated to the different categories, U.S. law also limits the number of visas that may be issued to any one country in a year. This "per-country ceiling" (about 25,600 visas) represents the total number of family preference *and* employment-based visas that may be issued to nationals of a given country.

## Income Requirements

To begin the process, the citizen or LPR must file a petition with the Immigration and Naturalization Service, seeking an "immigrant visa" for the family member. All citizens or LPRs wishing to petition for a family member must also earn at least 125% of the federal poverty level and sign a legally enforceable *affidavit of support* promising to support the immigrant financially. Petitioners are allowed to get another person to co-sign the affidavit of support on behalf of the immigrant to satisfy this financial requirement. (In this case the co-signer also assumes unlimited liability to support the immigrant.)

While this requirement was recently added to the law to ensure that immigrants will be provided for by family members and will not become a "public charge," for some hardworking but low paid Americans, it closes off an opportunity to reunite with close family members. For example, a domestic worker earning the *median income* for her occupation earns less than 125% of the federal poverty level for a family of two. Farm workers and bank tellers earning the *median income* for their occupations earn less than 125% of the federal poverty level for a family of three. A kindergarten teacher earning the *median income* for her occupation would not make the required income if she provided for a family of four. Though they may be hard working, these Americans are the ones who will most likely have trouble meeting the new income requirement.

## WHEN VISAS ARE NOT AVAILABLE

The law requires that family preference visas be issued to eligible immigrants in the order the petitions are filed. When there are more applicants applying for visas in a preference category than there are visas available, the preference category is considered "over-subscribed." Applicants must then wait until a visa becomes available before they can immigrate to the United States. Currently, waits can be up to 20 years depending on the preference category and country. In most cases, family members must wait outside the United States until a visa is available, and thus remain separated from their families. Control over the order and numbers of visas granted in each preference category remains in effect despite the existence of a waiting list.

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### Sources:

*Immigration and Nationality Act*, 102d Cong., 2d sess., April 1992.

U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin*, no. 93, vol. VII (November, 1998).

Median income statistics for 1996 from the Bureau of Labor Statistics. 1998 Poverty level figures from the Department of Health and Human Services.



## Datos sobre el Inmigración Familiar por Patrocinio

**Inmigración Familiar por Patrocinio** es como los ciudadanos estadounidenses y residentes permanentes legales traen a los miembros de sus familias de otros países a vivir permanentemente en los Estados Unidos. Los ciudadanos pueden traer solamente a sus esposas, hijos no-casados, padres (si el ciudadano es mayor de 21 años). Residentes permanentes legales pueden solamente traer a sus esposas, menores no-casados e hijo adulto. Ni los ciudadanos o residentes legales permanentes pueden traer familiares tales como tías, tíos y primos.

Nuestro sistema de inmigración divide a los miembros de las familias elegibles para el patrocinio en dos niveles. "Parientes Cercanos" de los ciudadanos norteamericanos (excluyendo hermanos, hermanas e hijos adultos casados o no-casados) reciben un numero ilimitado de visas cada año. Todos los demás caen en la categoría "Sistema Familiar Preferencial" quien tiene un límite máximo de 226,000 visas entregadas cada año.

### **Inmigración basada en el Parentesco Familiar**

<u>Categoría</u>	<u>Patrocinador Americano</u>	<u>Parentesco</u>	<u>Visas Asignadas</u>
<b>Pariente Cercano</b>	Ciudadano Americano	esposa, menor soltero y padres ( si el ciudadano es mayor de 21 años)	sin limite (aprox.250,000 han sido asignada en años recientes)
<b>1era Preferencia</b>	Ciudadano Americano	hijo adulto soltero (21 años o mayor)	23,400 visas/año mas cualquier visa que sobro de la 4ta Preferencia
<b>2da Preferencia A</b>	LPR	esposas e hijos menores	87,900 visas/año
<b>2da Preferencia B</b>	LPR	hijo adulto soltero (21 años o mayor)	26,300 visas/año
<b>3ra Preferencia</b>	Ciudadano Americano	hijo mayor casado	23,400 visas/año mas cualquier que sobro de la 1ra y 2da Preferencias
<b>4ta Preferencia</b>	Ciudadano Americano (21 años o mayor)	hermanos y hermanas	65,000 visas/año mas cualquiera que haya sobrado de las preferencias anteriores

## **Limites de Visas para Inmigrantes de un País Especifico**

En suma a los límites en el número de visas otorgadas a las diferentes categorías, la ley de los Estados Unidos también limita la cantidad de visas que le serán otorgadas a un país determinado cada año. Este límite superior por país (aproximadamente 25,600 visas) representa el número total de las de Preferencia Familiar y las de Trabajo que son otorgadas al ciudadano de un país determinado.

## **Requerimientos de Ingresos Económicos**

Para comenzar el proceso, el ciudadano americano o Residente Permanente Legal debe efectuar una petición de visa de inmigrante al Departamento de Servicios de Inmigración y Naturalización para el miembro de familia. Todos los ciudadanos americanos y residentes legales permanentes deben tener un ingreso de por lo menos el 125 por ciento del índice de pobreza federal y firmar una declaración jurada de apoyo económico a fin de apoyar al inmigrante económicamente. Los peticionarios pueden tener otra persona que firme el affidavit de promesa de apoyo al inmigrante para satisfacer los requerimientos financieros. (En este caso el patrocinador solidario asume también responsabilidad ilimitada para apoyar al inmigrante.)

Mientras este requerimiento fue agregado a la ley para asegurarse de que inmigrante iba a ser mantenido por la familia y no se convertiría en una carga publica, para muchos americanos trabajadores que son mal pagados les cierra las oportunidades de poder reunir a los miembros cercanos de sus familias. Por ejemplo, un empleado domestico que gana el ingreso mediano de su trabajo, gana menos del 125 % del índice de pobreza federal para una familia de dos. Trabajadores del Campo y Cajeros bancarios que ganan el ingreso medio por su ocupación lo cual es menos del 125 % del índice de pobreza federal para una familia de tres. Una maestra de preescolar ganando el ingreso medio por su ocupación no completaría el ingreso necesario si ella mantiene una familia de cuatro. Aun ellos siendo trabajadores incansables tendrían problemas en completado el nuevo ingreso necesario.

## **Cuando las Visas no están disponibles**

La ley requiere que las Visas de Preferencia Familiar les sean otorgadas a los inmigrantes elegibles en el orden que sean hechas las peticiones. Cuando en esta categoría hay mas aplicantes que visas, la categoría de preferencia se considera sobre demandada. Los aplicantes tendrán entonces que esperar hasta que la visa este disponible antes de emigren hacia los Estados Unidos. Actualmente la espera puede ser de hasta 20 años dependiendo de la categoría de preferencia y el país. En la mayoría de los casos los miembros de la familia deben esperar fuera de los Estados Unidos hasta que la visa este disponible y de tal suerte que se mantienen separados de sus familiares. El control con las solicitudes de visas y las otorgadas en cada categoría de preferencia se mantiene en efecto a pesar de la existencia de una lista de espera.

## IMMIGRATION ENFORCEMENT

# Know Your Rights at Home and at Work

REVISED: January 2017

### When may Immigration enter my home?

Immigration officers *may NOT* enter your home unless they have a “warrant.” A warrant is a document issued by a court or government agency. There are two types of warrant — one for when they are coming to *arrest* you, and another for when they have permission



from a judge to *search* your home. U.S. Immigration and Customs Enforcement (ICE) can issue arrest warrants, but only a court can issue a search warrant.

If an officer knocks on your door, do not open it. Ask the officer through the closed door to identify himself. You can say, “Who are you with?” or “What agency are you with?”

The officer might say that he is with “Department of Homeland Security” or “U.S. Immigration and Customs Enforcement.” The officer might name another agency. No matter what, keep the door closed. Through the closed door, ask the officer if he has a warrant.

If he says “yes,” still do not open the door. Ask him to show you the warrant by slipping it under the door.

When examining the warrant, look for your name, your address, and a signature. This can

help you decide whether or not the warrant is valid (true). The warrant will be in English. If you have trouble reading it or understanding it, get someone else in your house to help you read it or translate it, if possible.

If the warrant does not look valid, you should return it under the door and say it is incorrect.

If the warrant the officer shows you looks valid, look to see if it was issued by a court or by U.S. Immigration and Customs Enforcement (ICE).

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- ☑ If the valid warrant was issued by a *court* and authorizes a search of your house, you should let the officer in the house.
- ☑ If the valid warrant looks like it was issued by *Immigration and Customs Enforcement (ICE)* but not a court, you have the right not to let the officer enter your house. If the warrant authorizes your arrest but not a search of your house, you may want to go outside to meet the officers but not let them in the house. This is especially important if you live with other people who might have immigration problems, because once you allow the officer into your house, he can ask questions of anyone else who is there, too.
- ☑ If you do talk to the officer (again, outside your house — do not let him in), do not answer any questions. Do not sign any papers. Tell the officer you want to talk to a lawyer before you say anything. Do not provide any kind of identification documents that say what country you are from. Make sure not to carry any false documents with you at any time.



ANOTHER WAY AN immigration officer can enter your home legally (besides if he has a valid warrant) is if you give the officer permission to enter. This is called giving the officer your “*consent*” to enter your home.

- ☑ If you open your door, or if the officer asks if he can come in and you say “yes,” you are probably consenting to his entering your home.
- ☑ The best thing to do is to keep the door closed and ask the officer to identify himself. Then ask to see a warrant. **DO NOT OPEN THE DOOR IF HE CANNOT SHOW YOU A WARRANT.**
- ☑ An officer *is NOT ALLOWED to force you* to consent to his entering your home. For example, if your house is surrounded by Border Patrol or Immigration cars with their lights flashing, and the officer is holding his gun as he asks for permission (your consent) to enter your home, and you say “yes” because you’re afraid, a court would probably not consider this to be valid consent.

### **How can I protect myself if Immigration comes to my house?**

If you hear that Immigration has been asking questions about you at your job or if you learn that Immigration is conducting an investigation at your job, it is possible that officers may show up at your house.

- ☑ Make sure that someone you trust knows where you are, and that you know how to reach them in case of an emergency (if you have been detained by Immigration).
- ☑ You and your family or close friends should have the names and phone numbers of good immigration attorneys posted near the telephone at home so that they can call the attorney in case you are detained.

- In general, it is also a good idea to keep a copy of your important papers (birth certificate, any immigration papers, etc.) at the home of a friend or relative whom you trust and can call in case you are detained.

### **What should I do if Immigration comes to my workplace?**

Immigration officers are not allowed to enter your workplace — whether it is a factory, store, high rise, farm, or orchard — without permission from the owner or manager. If an officer does get permission, the officer is free to ask you questions about your immigration status.

- You have a right to keep silent. In most states, you don't even have to tell the agent your name. Although you may want to provide your name only so your family or attorney can locate you.
- You also have the right to talk to a lawyer before you answer any questions. You can tell the officer, "I wish to talk to a lawyer," in response to any question the officer asks you.
- You do *not* need tell the immigration officer where you were born or what your immigration status is.
- You do not have to show the officer your papers or any immigration documents. If the officer asks you for your papers, tell the officer, "I wish to talk to a lawyer."

### **What can my union do?**

If you belong to a labor union, there are ways it can help you. You should talk to your union representative about your concerns. If it would make you feel more comfortable, ask some of your co-workers to go with you to talk to your representative. Your union contract might have language that protects union members, such as an agreement with the employer that has one or more of the following provisions:

- The employer will not allow any Immigration officers to enter the workplace without a valid warrant signed by a federal judge or magistrate.
- The employer will immediately notify the union if the Immigration authorities contact the employer for any purpose so that the union can take steps to inform its members about their legal rights or to help them obtain legal assistance.
- The employer will allow lawyers or community advocates brought by the union to interview employees in as private a setting as possible in the workplace. The union might also have a legal plan, which provides workers with immigration attorneys.
- The employer agrees not to reveal the names, addresses, or immigration status of any employees to Immigration, unless required by law.
- The employer will not participate in any computer verification of employees' immigration or work authorization status.



## EJECUCIÓN DE LAS LEYES DE INMIGRACIÓN

# Conozca sus derechos en su hogar y su trabajo respecto a Inmigración

MODIFICADO enero de 2017

### ¿Cuándo puede Inmigración entrar a mi hogar?

Los oficiales de inmigración *no* pueden entrar a su hogar a menos que tengan una orden oficial (“warrant”). La orden es un documento expedido por una agencia de gobierno o por una corte judicial. Hay dos clases de ordenes: una orden es para cuando vienen a *arrestarlo* (“orden de



detención”) y la otra para cuando el oficial tiene el permiso de un juez para entrar y registrar su hogar (“orden de cateo” u “orden de allanamiento”). El Servicio de Control de Inmigración y Aduanas (“ICE” por sus siglas en inglés) puede expedir órdenes de detención, pero sólo una corte judicial puede expedir una orden de allanamiento.

- Si un oficial toca su puerta, no la abra. Pregúntele al oficial, a través de la puerta cerrada, que se identifique. Usted le puede preguntar, “¿Para quién trabaja usted?” o “¿En cuál agencia trabaja usted?”
- Es posible que el oficial le conteste diciendo que él trabaja con el “Department of Homeland Security” (Departamento de Seguridad Nacional) o con el “U.S. Immigration and Customs Enforcement” (Servicio de Control de Inmigración y Aduanas, o “ICE”). El oficial pudiera nombrar otra agencia. De todas formas, mantenga su puerta cerrada. A través de la puerta cerrada, pregúntele al oficial si tiene una orden oficial (en inglés, “warrant”).
- Si el oficial le contesta que sí, no abra la puerta todavía. Pídale al oficial que le muestre la orden y que se la pase por debajo de la puerta.
- Cuando revise la orden, busque su nombre, su dirección, y una firma. Esto le puede ayudar a decidir si la orden es válida o no. La orden estará escrita en inglés. Si usted tiene problemas en

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Se actualizaron los elementos gráficos y la información de contacto.*

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leerla o entenderla, pregúntele a otra persona en su hogar que lo ayude a leerla o a traducirla si es posible.

- ☑ Si la orden no parece ser válida, usted debe devolverla por debajo de la puerta y decir que es incorrecto.
- ☑ Si la orden que el oficial le enseña parece ser válida, busque en ella a ver si fue expedida por una corte judicial o por el Servicio de Control de Inmigración y Aduanas (ICE).
- ☑ Si la orden válida fue expedida por el *Servicio de Control de Inmigración y Aduanas (ICE)* pero no por una corte, usted tiene el derecho de prohibirle al oficial que entre a su hogar. Si la orden es una orden de detención y no una orden de allanamiento, se aconseja que, si usted decide hablar con el oficial, usted salga de su casa para hablar con el sin dejar que entre a su hogar. Esto es



muy importante si usted vive con otras personas que tengan problemas de inmigración, pues una vez le haya permitido al oficial que entre a su hogar, el oficial tendrá derecho de hacerle preguntas a cualquier otra persona que esté presente.

- ☑ Si usted habla con el oficial (recuerde, fuera de su hogar — no lo deje entrar), no conteste ninguna pregunta. No firme ningún papel. Dígale al oficial que usted desea hablar con un abogado antes de decir cualquier cosa. No le provea al oficial ninguna clase de documentación que indique de qué país es usted.

*Asegúrese de nunca cargar con usted ningún documento falso.*

OTRA MANERA EN la cual un oficial de inmigración puede entrar a su hogar legalmente (además de tener una orden judicial válida) es si usted le da al oficial el permiso de entrar. Esto se llama “consentir” a que entren a su hogar.

- ☑ Si usted abre la puerta, o si el oficial le pregunta si puede entrar y usted le dice que “sí”, usted probablemente ha consentido a que el oficial entre a su hogar.
- ☑ Lo mejor que puede hacer es mantener su puerta cerrada y preguntarle al oficial que se identifique. Entonces pida ver la orden. **NO ABRA LA PUERTA SI EL OFICIAL NO LE MUESTRA UNA ORDEN JUDICIAL.**
- ☑ *No le es permitido* a un oficial que lo fuerce a consentir a que entre a su hogar. Por ejemplo, si su hogar está rodeado de automóviles pertenecientes a la patrulla fronteriza o Inmigración, y el oficial tiene en sus manos una arma de fuego cuando le pide permiso para entrar a su hogar (cuando le pide su consentimiento), y usted le dice que “sí” porque tiene miedo, es probable que la corte no considere que su consentimiento haya sido válido.



### ¿Cómo me puedo proteger si llegara Inmigración a mi hogar?

Si usted se entera que la Inmigración ha estado haciendo preguntas en su trabajo o que Inmigración esta conduciendo una investigación en su lugar de trabajo, es posible que los oficiales se aparezcan en su hogar.

- Asegúrese de que alguien en quien usted confía sepa donde usted está, y que usted le pueda contactar en caso de una emergencia (si usted es detenido por Inmigración).
- Usted y los miembros de su familia deben de tener los números de teléfono de abogados que se especializan en asuntos de inmigración cerca de su teléfono en su casa para que los pueda llamar en caso de que sea detenido.
- Generalmente, es una buena idea tener una copia de sus documentos importantes (certificado de nacimiento, papeles de inmigración, etc.) en la casa de un amigo o familiar en quien usted confía y a quien pueda llamar en caso de que sea detenido.

### ¿Qué debo hacer si Inmigración visita mi lugar de trabajo?

Los oficiales de inmigración no están autorizados a entrar a su lugar de empleo — no importa si es una fábrica, una tienda, un edificio, una finca o un huerto — si no tienen la autorización del dueño o del gerente, o una orden judicial. Si el oficial obtiene autorización, entonces puede hacerle preguntas relacionadas a su situación de inmigración.

- Usted tiene el derecho de quedarse callado. En muchos estados, usted no tiene ni que decirle su nombre al oficial. Aunque quizás quiera dar su nombre solamente para que su familia u abogada pueda localizarlo.
- Usted también tiene el derecho de hablar con un abogado antes de contestar cualquier pregunta. Su respuesta a toda pregunta que el oficial le haga puede ser, “Yo deseo hablar con un abogado.”
- No es necesario decirle al oficial de inmigración donde usted nació o cual es su estatus de inmigración.
- No es necesario mostrarle al oficial sus documentos de inmigración ni ningún otro documento. Si el oficial le pide ver sus documentos, usted tiene el derecho de contestar que usted “desea hablar con un abogado.”

### ¿Qué puede hacer mi unión?

Si usted pertenece a una unión o sindicato, hay varias formas en cual la unión le puede asistir. Usted debe consultar con uno de los representantes de la unión con respecto a sus preocupaciones. Si lo hace sentir mas cómodo, pídale a uno de los otros trabajadores que lo acompañe cuando hable con el representante de la unión. Su contrato con la unión pudiera tener provisiones que protegen a

los trabajadores, como por ejemplo acuerdos con el patrón que establecen algunas de las siguientes cláusulas:

- El patrón no le permitirá a los oficiales de Inmigración que entren a su lugar de trabajo si no tienen una orden judicial válida firmada por un juez federal o un magistrado.
- El patrón le informará inmediatamente a la unión si las autoridades de Inmigración lo han contactado, de modo que la unión pueda tomar los pasos necesarios para informar a sus miembros sobre sus derechos y ayudarles a conseguir asistencia legal.
- El patrón le permitirá a los abogados o a líderes comunitarios proveídos por la unión a entrevistar a sus empleados en un ambiente tan privado como sea posible dentro del lugar de empleo. Es posible que la unión tenga un plan legal que le provee abogados especialistas en inmigración a sus miembros.
- El patrón promete no revelar los nombres, domicilios o estatus de inmigración de ningunos de sus empleados a Inmigración, a menos que sea requerido por ley.
- El patrón no participará en ningún sistema de verificación electrónica (por computadora) relacionada con el estatus de inmigración o el permiso de trabajo de sus empleados.

## What to Do if You Are Arrested or Detained by Immigration

August 2007

Immigrants who are arrested or detained by Immigration have certain rights. These rights change, however, if you are arrested or detained at the border or in an airport. In these cases, you may have fewer rights.

You probably have more rights if you are arrested by Immigration at work, on the street, after a traffic stop, or at home. If you are arrested and detained, it is important that you keep calm, and remember the following things:

- ✗ You have the right to remain silent. You should ask to speak to a lawyer.
- ✗ Do not sign anything without first talking to a lawyer. You may be signing away your right to see a lawyer or a judge.
- ✗ Write down the name and telephone number of the deportation officer assigned to your case.
- ✗ Do not take "voluntary departure" (that is, do not agree to leave the United States) without first talking to a lawyer. Signing a voluntary departure agreement means that you won't get a hearing, you will have to leave the U.S., and you may never be allowed to enter the U.S. again or get legal immigration status.
- ✗ Do not sign "stipulated orders of removal" without first talking to a lawyer. Signing a stipulated order means that you waive your rights to a hearing before a judge and serves as a final order of removal (deportation) signed by the judge.
- ✗ Do not expect Immigration agents or the judge to explain your options, or to give you the right information. Wait to speak with a lawyer before saying or doing anything.



Portions of this document were adapted with permission from the National Lawyers Guild's Know Your Rights! pamphlet.



National  
Immigration  
Law Center  
www.nilc.org

Los Angeles (Headquarters)  
3435 Wilshire Blvd  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
213 639-3911 fax

Washington, DC  
1101 14th Street, NW  
Suite 410  
Washington, DC 20005  
202 216-0261  
202 216-0266 fax

Oakland, CA  
405 14th Street, NW  
Suite 1400  
Oakland, CA 94612  
510 663-8282  
510 663-2028

- ☑ You have the right to call an attorney or your family if you are detained. You have the right to be visited by an attorney in detention (Immigration jail).
  - ✗ You have the right to a lawyer, but the government will not pay for or provide that lawyer. You must hire one or find someone who will represent you for free. (Immigration should give you a list of groups you can call that may provide free or low-cost legal advice or representation.) If you see a judge before you can get legal advice, you should ask the judge for more time to find a lawyer.
  - ✗ You have the right to contact your consulate. Telephone numbers to your consulate are posted in the jail or you can ask the deportation officer for a list. Your Consul may help you obtain a lawyer.
- ☑ When you get a lawyer, you should tell the lawyer everything you think is important about your immigration case, including whether you have ever been arrested for a crime. It is important that anyone giving you legal advice knows everything about your case so that she or he can give you the best advice. It does not pay to lie or keep information from your lawyer.
- ☑ If you think that your boss reported you to Immigration because you complained about your working conditions, make sure to tell the lawyer this fact. If your boss did report you for this reason, you might be able to bring an official complaint against him or her.
- ☑ In most cases, Immigration must decide within 48 hours whether to put you into immigration proceedings (in front of a judge), and whether to keep you in custody or to release you on bond. After 72 hours, Immigration must give you a Notice to Appear (NTA). This is the notice that provides you with the information about your hearing before an Immigration Judge.
- ☑ In most cases, you have the right to ask to be released from detention by paying a bond, or to ask for a bond hearing in front of a judge. (Bond is an amount of money paid to the government to guarantee that you will attend future court hearings.) The judge, though, may order that you stay in detention if the judge decides that you might not show up for your court hearing or that you are dangerous to others.
  - ✗ If you have to leave the U.S., try to speak with an immigration lawyer before leaving. If you leave, you may not be allowed to come back into the country for a certain number of years. It is important you know this before you leave, because if you come back earlier than you're allowed to, you can be arrested for having committed a serious crime.
  - ✗ If you are afraid to return to your home country, notify your deportation officer and the court immediately. You may be eligible to file a claim for asylum or other relief.



- ✘ If you have been convicted of any criminal offenses, it is extremely important to contact an immigration lawyer that is experienced in matters involving immigration consequences of criminal convictions. If you have a criminal record/conviction, get a copy of your certified transcript from the criminal court.
- ✘ If you are not given a hearing before an immigration judge, find out why and let your lawyer know immediately.



## ¿Qué puede hacer si usted es arrestado o detenido por Inmigración?

Agosto 2007

Los inmigrantes arrestados o detenidos por Inmigración tienen ciertos derechos. Sin embargo, estos derechos cambian si son arrestados o detenidos en la frontera o en un aeropuerto. En estos casos, los inmigrantes podrán tener menos derechos.

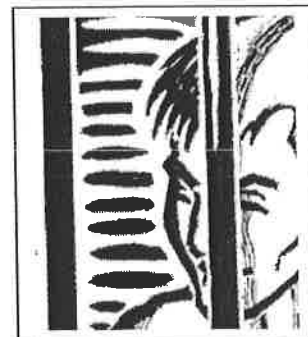
Usted probablemente tiene más derechos si es arrestado por Inmigración en el trabajo, en la calle, después de cometer una infracción de tránsito, o en casa. Si es arrestado y detenido, es importante que mantenga la calma y que recuerde las siguientes sugerencias:

- ✘ Usted tiene el derecho de permanecerse callado. Pida hablar con un abogado.
- ✘ No firme nada. Puede ser que al firmar, usted ceda su derecho de tener un abogado o de aparecer delante de un juez.
- ✘ Apunte el nombre y número de teléfono del fiscal de deportación quien es asignado a su caso.
- ✘ No acepte “salida voluntaria” (o sea que, usted no debe acceder a salir de los Estados Unidos voluntariamente) sin hablar primero con un abogado. Firmar un acuerdo de salida voluntaria significa que usted no tendrá una audiencia, tendrá que salir de los Estados Unidos, y puede ser que nunca le permitirán entrar a los Estados Unidos o lograr la legalización de su estado migratorio.
- ✘ No firme ordenes de deportación estipulada sin primero hablar con un abogado. Firmar una orden estipulada significa que usted rinde sus derechos a tener una audiencia frente a un juez de inmigración y sirve como una orden de deportación otorgado por un juez.
- ✘ No asuma que los agentes de Inmigración o el juez le explicarán sus opciones, o que le darán la información correcta. Espere a hablar con un abogado antes de decir o hacer cualquier cosa.



Porciones de este documento fueron adaptados con permiso del National Lawyers Guild de su folleto titulado "Know Your Rights!" ("¡Conozca Sus Derechos!").

- Usted tiene el derecho de llamar a un abogado o a su familia si usted es detenido. Usted tiene el derecho de recibir la visita de un abogado si ya ha sido detenido (en la prisión de Inmigración).
  - Usted tiene el derecho a un abogado, pero el gobierno no pagará ni proveerá ese abogado. Usted deberá de contratar o encontrar a alguien que le represente. (Inmigración debe darle una lista de grupos a los cuales usted puede llamar que proveen consulta legal o representación gratuita o de bajo costo). Si usted es presentado ante un juez antes de que pueda obtener un consejo legal, debe pedirle al juez más tiempo para encontrar a un abogado.
  - Usted tiene el derecho de llamar a su consulado. Los números de teléfono de su consulado están disponibles en la cárcel y se los puede pedir a su fiscal de deportación. Su Consul también podrá ayudarle contratar a un abogado.
- Cuando usted consiga a un abogado, debe decirle todo lo que usted considere importante acerca de su caso de inmigración, incluso si usted ha sido arrestado por cometer un crimen. Es importante que cualquier persona que le dé consejos legales conozca todo sobre su caso para que puedan brindarle a usted el mejor consejo. No vale la pena mentir a o guardar información de su abogado, ya que esto podría perjudicarlo.
- Si usted cree que su jefe lo reportó a Inmigración porque usted se quejó sobre las condiciones en el trabajo, asegúrese decírselo al abogado. Si su jefe sí lo reportó por esta razón, probablemente pueda hacer una demanda oficial en su contra por represalia.
- En la mayoría de los casos, Inmigración debe decidir dentro de las primeras 48 horas si se continúa o no con el procedimiento de inmigración (delante de un juez), y puede que sea (o no) mantenido bajo custodia o puesto en libertad bajo fianza. Después de 72 horas, Inmigración debe darle un aviso de audiencia. Este aviso le da información sobre la fecha de su audiencia frente a un juez de Inmigración.
- En la mayoría de los casos, usted tiene el derecho de pedir que le pongan en libertad pagando una fianza, o de pedir una audiencia ante un juez para fijar una fianza. (La fianza que se paga asegura que usted se aparecerá a todas sus audiencias frente al juez de inmigración.) Sin embargo, si el juez piensa que usted no va a presentarse para su audiencia o que es un peligro para otros, emitirá una orden para que continúe en la cárcel detenido.
- Si usted tiene que salir de los Estados Unidos, intente hablar con un abogado de Inmigración antes de salir. Si sale, puede ser que no le permitan regresar al país por cierta cantidad de años. Es importante saber esto antes de salir, porque si regresa antes





de lo permitido, puede ser arrestado por haber cometido un crimen serio al volver a entrar al país sin autorización.

- ✘ Si usted teme regresar a su país de origen, dígame a su fiscal de deportación y al tribunal de inmigración inmediatamente. Usted podría someter una solicitud de asilo u otro remedio.
- ✘ Si usted tiene antecedentes penales, es sumamente importante que se comunique con un abogado con experiencia en asuntos de las consecuencias migratorias de los antecedentes penales. Si usted tiene algún antecedente penal, obtenga una copia sellada de su expediente del tribunal criminal.
- ✘ Si no le han dado una audiencia frente al juez de inmigración, pero antes de ir frente a un juez, es importante que se comuniqué con su patrón. If you are not given a hearing before an immigration judge, find out why and let your lawyer know immediately.



## SCHOOL OPENING ALERT

The U.S. Supreme Court has ruled in *Plyler v. Doe* [457 U.S. 202 (1982)] that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age.

As a result of the *Plyler* ruling, public schools may not:

- ◆ Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status.
- ◆ Treat a student disparately to determine residency.
- ◆ Engage in any practices to "chill" the right of access to school.
- ◆ Require students or parents to disclose or document their immigration status.
- ◆ Make inquiries of students or parents that may expose their undocumented status.
- ◆ Require social security numbers from all students, as this may expose undocumented status.

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number.

## LLAMADA URGENTE

En 1982, El Tribunal Supremo de los Estados Unidos decidió en el caso titulado *Plyler v. Doe* [457 U.S. 202] que los niños y los jóvenes indocumentados tienen el mismo derecho a las escuelas públicas de primaria y secundaria que el que tienen sus contrapartes de nacionalidad estadounidense. Al igual que los demás niños, los estudiantes indocumentados están obligados a asistir a la escuela hasta que lleguen a la edad escolar requerida por la ley.

Bajo la decisión *Plyler*, las escuelas públicas no pueden:

- ◆ negarles admisión a la escuela a estudiantes indocumentados basado en su estado de ser indocumentados, ya sea al momento de la matrícula o en cualquier otro momento.
- ◆ tratar a un estudiante en forma desigual o discriminatoria para determinar su situación legal y/o de residencia.
- ◆ tomar medidas o reglamentos que pudieran atemorizar a la comunidad indocumentada, con el resultado de que ellos no acudan a su derecho de acceso a las escuelas públicas.
- ◆ requerir que un estudiante o sus padres revelen o documenten su situación legal y/o inmigratoria.
- ◆ investigar la situación legal y/o inmigratoria de un estudiante o de sus padres, aún cuando sólo sea por razones educativas, ya que esto puede poner en evidencia dicha situación.
- ◆ exigir que un estudiante obtenga un número de seguro social como pre-requisito de matrícula a un programa escolar.

La escuela debe de asignar un número de identificación a los estudiantes que no tienen tarjeta de seguro social. Los adultos sin tarjeta de seguro social aplicando para el programa de almuerzo y/o desayuno gratis para sus hijos sólo necesitan indicar en la solicitud que no tiene un número de seguro social.

## Public Charge

Many immigrants choose not to participate in a wide variety of public benefit programs for which they are eligible, because they think this participation will impede their ability to get a green card/permanent residency in the U.S. They fear by taking these benefits they will be deemed a “public charge” by immigration authorities considering an application for a green card.

Adoption of new public charge regulations during the Trump Administration, regulations which took effect on February 24, 2020, heightened the fears in the immigrant community about participation in benefit programs.

After the Biden Administration took office in January 2021, these Trump rules were withdrawn and the Public Charge policy reverted to that adopted by the Clinton Administration in 1999.

Regardless of which policy applied, many of the individuals who have avoided using certain benefits are mistaken in their understanding that this policy applies to them. Here are key facts:

**What is Public Charge?** Public charge is a concept in immigration law that has been around for more than 100 years. The policy, as applied to those who wish to live in the U.S. on a permanent basis, is intended to exclude those who would be a burden on society, who could not really live on their own, who are primarily dependent on the government for subsistence.

Immigration authorities look at the “totality of circumstances” to make this determination. The decision is not based solely on use of public benefits

**Who Does Public Charge apply to?** The policy applies to those who wish to get a green card for permanent residency in the U.S. either by changing their status from within the U.S. or by entering the U.S. from abroad. It does not apply to refugees or asylees. *It does not apply if you already have a green card or are a naturalized citizen.*

## Why Does Public Charge Not Apply to Many Immigrants?

There are two basic reasons why Public Charge is not a current problem for many immigrants. (1) Undocumented individuals are not eligible to apply for and cannot participate in any of the programs which could be considered as a potential problem if you are being considered for a green card. (2) If you are undocumented and entered the country without permission, there is currently almost no possibility that you can change your status to legal resident and get a green card, even if you are married to a U.S. citizen or have citizen children. There is no legalization program that applies to you. Therefore, public charge will not be relevant for you.

## What benefit programs might be relevant to a Public Charge determination?

In 1999, the Clinton Administration stated the following could create a possible Public Charge problem (and they are essentially cash assistance programs):

- Temporary Assistance for Needy Families (TANF) cash assistance programs;
- State and local cash assistance programs that provide income maintenance (often called “General Assistance”);
- Supplemental Security Income (SSI);
- Medicaid or other programs providing long-term care\*

Please note that this list does not include any federally funded program found in a public school.

Note: The government will not consider relevant non-cash programs funded *entirely* by states, localities or tribes in the determination of public charge.

Materials that might be helpful in explaining these issues to the community can be found at <https://protectingimmigrantfamilies.org/know-your-rights/>

Roger C. Rosenthal  
[rrosenthal@mlap.org](mailto:rrosenthal@mlap.org)

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\* The Trump Administration policy change added the following programs which could have created a possible Public Charge problem, but these are no longer applicable:


- Supplemental Nutrition Assistance Program (also known as SNAP, food stamps, or sometimes EBT)
- Public Housing or Section 8 housing assistance
- Federally funded Medicaid (except for emergency services, children under 21, pregnant women, and new mothers (for 60 days))




WILL USING BENEFITS HURT MY CHANCES OF GETTING A GREEN CARD OR BECOMING A U.S. CITIZEN?

## **GOOD NEWS! INS says:**

### **If you DO NOT have a green card yet**

 **It will NOT hurt your chances of getting a green card if YOU, your CHILDREN, or other FAMILY MEMBERS use:**


- ✦ **HEALTH CARE**, such as: Medicaid, Children's Health Insurance Program, WIC, prenatal care, other free or low-cost medical care
- ✦ **FOOD programs**, such as: Food Stamps, WIC, school meals, and other food assistance
- ✦ **Other programs that do not give cash**, such as: public housing, disaster relief, child care services, job training, transportation vouchers

 **You MIGHT have a problem getting your green card later ONLY IF:**

- ✦ **YOU use CASH WELFARE**, such as: Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), General Assistance (GA)
- ✦ **OR your family's only source of support is cash welfare received by your CHILDREN or other FAMILY MEMBERS**
- ✦ **OR you are in a nursing home or other LONG-TERM CARE** paid for by Medicaid or other government funds


*Call one of the phone numbers listed on the back for more information.*

### **If you are a REFUGEE or ASYLEE**


 **You can use ANY benefits, including cash welfare, health care, food programs, and non-cash programs, without hurting your chances of getting a green card.**



## If you already HAVE a green card

 You **CANNOT** lose your green card if YOU, your CHILDREN, or other FAMILY MEMBERS use:


- ✦ HEALTH CARE, FOOD programs, and other NON-CASH programs
- ✦ CASH WELFARE
- ✦ LONG-TERM CARE

 But You **MIGHT** have a problem:

- ✦ If you leave the U.S. for **more than 6 months** continuously and you have used cash welfare or long-term care.
- ✦ OR in **extremely rare cases**, if you use cash welfare or long-term care during your first 5 years in the U.S., for reasons (such as an illness or disability) that existed **before** you entered the country.

*Call one of the phone numbers below for more information.*

## If you are applying for U.S. citizenship

 You **CANNOT** be denied U.S. citizenship for lawfully receiving benefits, including cash welfare, health care, food programs, and non-cash programs.

## If you want to sponsor your relative

 Using benefits, including cash welfare, health care, food programs, and non-cash programs, should not prevent you from sponsoring your relative. But you will need to show that you or your co-sponsor earn enough income to support your relative.

<i>FOR MORE INFORMATION, CALL:</i>	<i>OR CALL:</i>
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Developed by the Asian Pacific American Legal Center for the California Immigrant Welfare Collaborative, a joint project of:  
Coalition for Humane Immigrant Rights of Los Angeles \* National Immigration Law Center \* Northern California Coalition for Immigrant Rights \* Asian Pacific American Legal Center

Translations funded and coordinated by Community Voices Project for Immigrant Health of Asian Health Services & La Clínica de la Raza - Alameda County, CA; American Immigration Lawyers Association; National Asian Pacific American Legal Consortium; National Council of La Raza; National Immigration Forum; National Immigration Law Center; National Immigration Project of the National Lawyers Guild; and the United States Catholic Conference.





¿ SI USO BENEFICIOS PÚBLICOS, me afectará la posibilidad de obtener la RESIDENCIA LEGAL (LA MICA/GREEN CARD) o la CIUDADANÍA DE LOS EE.UU. ?

## ¡BUENAS NOTICIAS!

DICE EL SERVICIO DE INMIGRACIÓN Y NATURALIZACIÓN (INS):

**Si usted todavía NO tiene una tarjeta de residencia legal (la mica/green card):**



La posibilidad de obtener una tarjeta de residencia legal (la mica/green card)

**NO** será

afectado

Si USTED, sus HIJOS, u Otros MIEMBROS DE SU FAMILIA usan:



**BENEFICIOS DE SALUD**, tales como:

Medicaid, Seguros y Programas de Salud para los Niños (CHIP), WIC, cuidado prenatal u otros beneficios de salud gratis o de bajo costo.



**Programas de ALIMENTACIÓN**, tales como:

Estampillas de Comida, WIC, comidas escolares u otros programas de alimentación gratuita.



**Otros programas que no proveen dinero**, tales como: vivienda pública,

ayuda para desastres, servicios de cuidados de niños, entrenamiento de trabajo y cupones para transportación.



Usted **TENDRÁ** problemas en el futuro para obtener su tarjeta de residencia **SOLO SI:**



USTED usa **WELFER PAGADO EN EFECTIVO**, tales como: Asistencia Temporal para Familias Necesitadas (TANF), Seguro Social Suplementario (SSI), Asistencia General (GA).



O la única fuente de mantenimiento de su familia es welfer pagado en efectivo recibido por sus HIJOS ú otros MIEMBROS DE SU FAMILIA.



O usted está en un asilo de ancianos donde recibe cuidados médicos ó recibe otra atención a LARGO PLAZO pagada por el Medicaid u otros fondos gubernamentales.

*Para más información, llame a uno de los teléfonos en la lista al reverso de esta forma.*

**Si usted es un REFUGIADO o ASILADO :**



Usted puede usar **CUALQUIER** beneficio, incluyendo ayuda en efectivo, beneficios de salud, programas de alimentación y programas que no proveen dinero en efectivo, sin perjudicar sus posibilidades de obtener su tarjeta de residencia legal (la mica/green card).

## Si usted ya TIENE una tarjeta de residencia (la mica/green card) :



Usted **NO PUEDE** perder su residencia permanente, si USTED, sus HIJOS, u otros MIEMBROS DE SU FAMILIA usan:



BENEFICIOS DE SALUD, programas de ALIMENTACIÓN y otros programas que no proveen dinero.



AYUDA EN EFECTIVO (WELFER).



CUIDADO A LARGO PLAZO.



Pero Usted **PODRÍA** tener problemas:



Si sale de los EE.UU. por más de 6 meses continuos, y ha usado programas que proveen dinero en efectivo o cuidado a largo plazo.



O en casos extremadamente raros. Por ejemplo, si usted usa programas que proveen dinero o cuidado a largo plazo durante sus primeros 5 años en los EE.UU. por razones (como una enfermedad o incapacidad) que existía antes que usted entró al país.

*Llame a uno de los teléfonos escritos abajo para obtener más información.*

## Si usted está aplicando para la ciudadanía de los EE.UU. :



**NO SE LE PUEDE** negar la ciudadanía de los EE.UU.

por recibir legalmente beneficios públicos, incluyendo ayuda en efectivo, beneficios de salud, programas de alimentación y programas que no incluyen dinero en efectivo.

## Si usted quiere patrocinar a un pariente :



El usar beneficios públicos, incluyendo ayuda en efectivo, beneficios de salud, programas de alimentación y programas que no incluyen dinero en efectivo, no le impide que patrocine a su pariente. Pero usted y (si fuera necesario) su copatrocinador tendra(n) que demostrar que ganan lo suficiente para mantener a su pariente.

PARA MAS INFORMACION, LLAME AL:

O LLAME AL:

Desarrollado por Asian Pacific American Legal Center para el California Immigrant Welfare Collaborative, un proyecto conjunto de:  
Coalition for Humane Immigrant Rights of Los Angeles \* National Immigration Law Center \* Northern California Coalition for Immigrant Rights \* Asian Pacific American Legal Center


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OCT 24 2011



U.S. Immigration  
and Customs  
Enforcement

MEMORANDUM FOR: Field Office Directors  
Special Agents in Charge  
Chief Counsel

FROM: John Morton   
Director

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the "Exceptions to the General Rule" section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.<sup>1</sup>

Definitions

The enforcement actions covered by this policy are (1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include actions such as obtaining records, documents and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, or participating in official functions or community meetings.

The sensitive locations covered by this policy include, but are not limited to, the following:

<sup>1</sup> Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, "Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations" 10029.1 (July 3, 2008); Memorandum from Marcy M. Forman, Director, Office of Investigations, "Enforcement Actions at Schools" (December 26, 2007); Memorandum from James A. Puleo, Immigration and Naturalization Service (INS) Acting Associate Commissioner, "Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies" HQ 807-P (May 17, 1993). This policy does not supersede the requirements regarding arrests at sensitive locations put forth in the Violence Against Women Act, see Memorandum from John P. Torres, Director Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, "Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).

- schools (including pre-schools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.

This is not an exclusive list, and ICE officers and agents shall consult with their supervisors if the location of a planned enforcement operation could reasonably be viewed as being at or near a sensitive location. Supervisors should take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing significant disruption to the normal operations of the sensitive location. ICE employees should also exercise caution. For example, particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.

#### Agency Policy

##### *General Rule*

Any planned enforcement action at or focused on a sensitive location covered by this policy must have prior approval of one of the following officials: the Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director (EAD) of HSI; the Assistant Director for Field Operations, Enforcement and Removal Operations (ERO); or the EAD of ERO. This includes planned enforcement actions at or focused on a sensitive location which is part of a joint case led by another law enforcement agency. ICE will give special consideration to requests for enforcement actions at or near sensitive locations if the only known address of a target is at or near a sensitive location (e.g., a target's only known address is next to a church or across the street from a school).

##### *Exceptions to the General Rule*

This policy is meant to ensure that ICE officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations and make substantial efforts to avoid unnecessarily alarming local communities. The policy is not intended to categorically prohibit lawful enforcement operations when there is an immediate need for enforcement action as outlined below. ICE officers and agents may carry out an enforcement action covered by this policy without prior approval from headquarters when one of the following exigent circumstances exists:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;

- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.

When proceeding with an enforcement action under these extraordinary circumstances, officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

If, in the course of a planned or unplanned enforcement action that is not initiated at or focused on a sensitive location, ICE officers or agents are subsequently led to or near a sensitive location, barring an exigent need for an enforcement action, as provided above, such officers or agents must conduct themselves in a discrete manner, maintain surveillance if no threat to officer safety exists and immediately consult their supervisor prior to taking other enforcement action(s).

#### Dissemination

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision receive a copy of this policy and adhere to its provisions.

#### Training

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision are trained (both online and in-person/classroom) annually on enforcement actions at or focused on sensitive locations.

#### No Private Right of Action

Nothing in this memorandum is intended to and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This memorandum provides management guidance to ICE officers exercising discretionary law enforcement functions, and does not affect the statutory authority of ICE officers and agents, nor is it intended to condone violations of federal law at sensitive locations.

