

# Immigration 101:

A Webinar for Domestic Violence Victim Advocates

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Grace Huang, Policy Director  
Asian Pacific Institute on Gender-Based Violence

## Agenda: What Will Be Covered

- ▶ Basic Overview of Immigration System
- ▶ Removal (Deportation) Proceedings and Detention
- ▶ Protections for Domestic Violence Survivors
- ▶ Recent Updates Under the New Administration
- Q&A at the end

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# Basic Overview of the Immigration System



## Definitions (Citizens & Non-Citizens)

- ▶ U.S. Citizens (USC):
    - Born, Naturalized, Acquired/Derived
  - ▶ Non-Citizens: three general categories:
    1. Law allows them to live here indefinitely:
      - Lawful Permanent Residents (LPR) = Green Card Holders
      - Protected under international treaties: Asylees / Refugees/ Withholding of Removal
    2. Temporary:
      - Non Immigrants: Students, Temporary Workers, Visitors/Tourists, U visas
      - Administrative Decisions
        - TPS, Parole
        - “Deferred Action”, ie for victims, and for “Childhood Arrivals”
    3. Undocumented: Visa Overstays/Entered w/o permission
- Why “Undocumented Immigrant”?

## Agencies Responsible for Implementing Immigration Law

- ▶ Department of Homeland Security (DHS)
  - U.S. Citizenship and Immigration Services (USCIS)
  - Immigration and Customs Enforcement (ICE)
  - Customs and Border Protection (CBP)
- ▶ Department of Justice:
  - Immigration Court, Board of Immigration Appeals:  
Executive Office for Immigration Review (EOIR)
- ▶ Department of State:
  - Embassies / Consulates
- ▶ INS no longer with us !!!

## True or False?

1. The spouse of a U.S. citizen (USC) **may not** be deported
2. The parent of a USC **may not** be deported
3. A legal permanent resident (LPR) **may not** be deported
4. A person born outside the U.S. **may** be a U.S. citizen
5. A person **may** qualify for legal status based on being a crime-victim
6. A person falsely claiming USC **may** be permanently barred from gaining legal status

## Immigration Protections

- ▶ The following is an overview: important for individuals to get individualized advice about their situation
  
- ▶ **Red Flags (Everyone Should Get Legal Assistance, But Particularly Those With These Issues):**
  - Prior Contact With Immigration Authorities
  - Prior Deportation / Removal Orders
  - Criminal History

## How to Get a Green Card (Permanent Residence?)



## How to Get a Green Card?

- ▶ Main avenues of obtaining Lawful Permanent Residence (LPR) or “Green Card” Status:
  - Through a Family Member (around 65%)
  - Through Employment Visa (around 15%)
  - Asylum / Refugee Status (13%)
  - Others (Humanitarian, ie crime victim, SIJS, Diversity Visa)
- ▶ **There must be LEGISLATION AUTHORIZING IT** (ie DACA is not a path)

## Green Card (LPR) through Family Member

- ▶ “Immediate” Category:
  - USC Spouse → Non-Citizen Spouse
  - USC Parent → Non-Citizen Minor Child
  - USC Son or Daughter (>21) → Non-Citizen Parent
- ▶ “Waitlist” Categories (Preferences):
  - Spouse, unmarried children of Green-Card holders
  - Adult Children, Married Children, Siblings of USCs
- ▶ **Note: No Uncles/Aunts, Grandparents**
  - Same-Sex Marriages now recognized by immigration law

## Process:

- File Family Based or Petition (I-130)
- Wait Until It is “Current” - Visa Bulletin
- Person does not have status while they are in waitlist (even if petition has been “approved”)

## Sample Visa Bulletin

**First:** (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.  
**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

- A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;
- B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

**Third:** (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth:** (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

### A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is earlier than the final action date listed below.)

Family-Sponsored	All Charge- ability Areas Except Those	CHINA-mainland born			
	Listed		INDIA	MEXICO	PHILIPPINES
F1	22DEC10	22DEC10	22DEC10	01SEP95	22APR06
F2A	15AUG15	15AUG15	15AUG15	22JUL15	15AUG15
F2B	22OCT10	22OCT10	22OCT10	08APR96	22SEP06
F3	01JUL05	01JUL05	01JUL05	22FEB95	08OCT94
F4	08MAY04	08MAY04	15SEP03	15JUL97	22NOV93

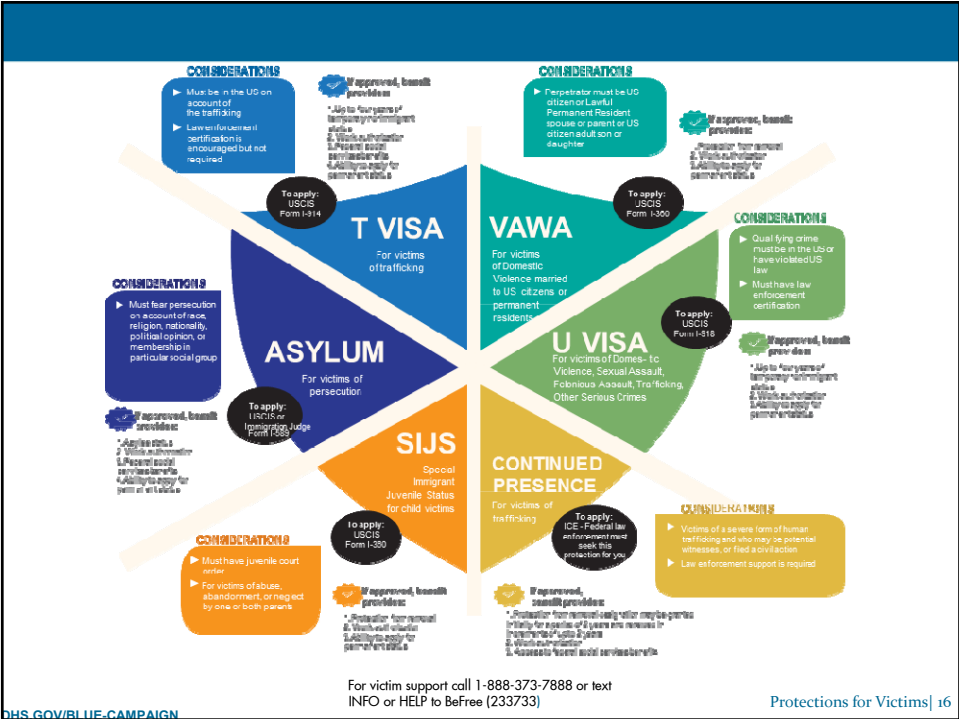
## Green Cards Through Employment

- ▶ In practical terms, available only to holders of advanced degrees, certain professionals, persons of extraordinary ability, investors:
  - Most require employer to obtain “labor certification” showing no minimally qualified U.S. workers available
- ▶ As a practical matter, many individuals who are undocumented in the U.S. and without family ties are not going to be able to secure green cards through employment (depending on skills and length of time in U.S. without authorization, among other things)

## Asylum / Refugee Status

- ▶ Refugees: Obtain “refugee” status outside U.S.
- ▶ Asylee: Obtain “asylum” inside the U.S.
- ▶ After one year in the U.S. can apply for green card
- ▶ Both refugees and asylees must show “well-founded fear” of persecution in home country AND that persecution will be because of their:
  - Race, Religion, Nationality, Political Opinion, Membership in Particular Social Group
- ▶ **Note: General Strife / Economics Not Sufficient**

# Immigration Protections for Victims of Abuse





## Violence Against Women Act (VAWA)

- ▶ Based on the family-based preference system
- ▶ Protection for Spouses and Children of Abusive U.S. Citizens and Lawful Permanent Residents (Green Card Holders)
- ▶ Must be married or divorced within past two years
- ▶ Abuser must be USC or LPR
- ▶ Does not require police to have been called
- ▶ If approved, can obtain green card status
- ▶ “Any credible evidence” must be accepted

## U Visas

- ▶ Protection for victims of certain crimes, including domestic violence and sexual assault
- ▶ Must have:
  - Suffered substantial physical or mental abuse
  - Been helpful or be willing to be helpful in investigation or prosecution of the crime
  - Occurred in the U.S. (or violated U.S. law)
- ▶ No relationship with perpetrator necessary
- ▶ Application must include Law Enforcement/Prosecutor/Judge/CPS Certification of Helpfulness
- ▶ 10,000 visa annual cap
- ▶ After 3 years with visa, can apply to adjust status

## Asylum / Withholding of Removal

- ▶ Protection for individuals who fear being persecuted in home country b/c of their race, religion, nationality, political opinion or membership in a particular social group.
- ▶ To qualify for asylum: Must apply within 1 year of arrival; after, eligible for withholding, but much tougher;
- ▶ Also Convention Against Torture: if likely to be tortured.

## Special Immigrant Juvenile Status (SIJS)

- ▶ Protection available to youth if:
  - Juvenile court declares youth to be court dependent or legally commits child to state/private agency OR private person;
  - Youth cannot be reunified with one or both parents because of abuse, neglect or abandonment;
  - Juvenile court finds it is not in the youth's best interest to return to his/her home country; and
  - Youth is under 21 and unmarried (but in WA, youth currently must be under 18)

## Other Protections

- ▶ T Visa – Victims of Trafficking:
  - Protection for victims of human trafficking (sex or labor trafficking)
- ▶ Temporary Protected Status (TPS):
  - For citizens of certain Countries who have been present since a specific time AND registered for TPS (or can sometimes file late);
  - El Salvador (2001); Haiti (2011); Honduras (1999); Nicaragua (1999); Somalia (2012); Sudan (2013); South Sudan (2011); Syria (2016); Nepal (2015); Yemen (2015); Guinea, Liberia, Sierra Leone (2014)
  - Note-TPS is based on decision of DHS to not remove individuals, various countries' designations due to expire very soon

## Deferred Action for Childhood Arrivals (DACA) -- Background

- ▶ Program created by Obama Administration in 2012 to defer deportation and provide work permits to undocumented individuals who:
  - Entered the U.S. before the age of 16
  - Have lived in the U.S. since June 15, 2007
  - Were born on or after June 16, 1981
  - Were in school, completed H.S., obtained G.E.D.
  - Did not have disqualifying criminal offenses
  - Meet other requirements
- ▶ Received 2-year work permit, SSN; could be renewed
- ▶ NOT a law; executive action

## What Will Happen to DACA?

- ▶ Numbers (as of September 2016):
  - National: 752,000+ DACA recipients
- ▶ Possible scenarios:
  - DACA and all work permits eliminated immediately (unlikely)
  - DACA ended people allowed to keep work permits until they expire (probable)
  - No new DACAs but those who have it can keep and continue to renew (possible)
  - DACA continues as before (very unlikely)

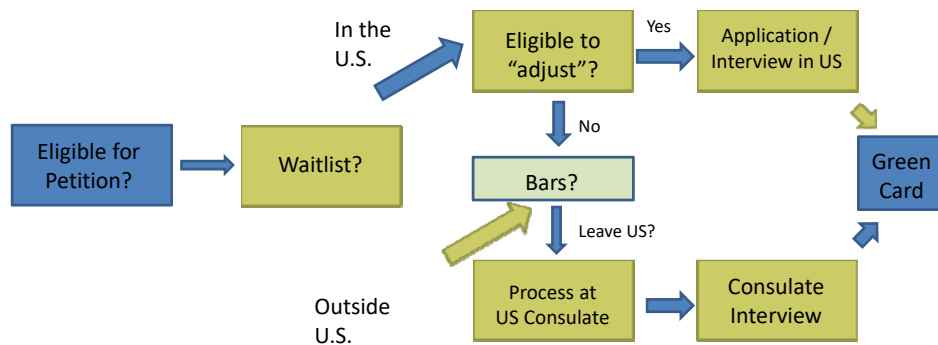
## Employment Authorization

- ▶ Green-Card Holders authorized to work (green card is enough)
- ▶ Certain temporary status (Asylee, U visa, Approved VAWA Self-Petition, DACA, etc...) generally come with a “work permit” card (“Employment Authorization Document” (EAD))
  - Valid for a certain period of time
- ▶ Sometimes can get EAD while application pending (generally an administrative policy)
- ▶ If you have EAD, can get Social Security Number
- ▶ If no legal status and no application pending, then usually no EAD.

## Obtaining Permanent Residency

- ▶ **Entry on an immigrant visa or “Adjustment of Status”:**  
Key Point: If individual is in the U.S. and wants to obtain permanent residence, he/she must be **eligible** to “adjust status”
- ▶ People who crossed the border without permission generally cannot adjust status via family or work;
  - Exceptions: petition filed prior to 4/30/2001, some victim-based cases
- ▶ If person entered on a visa (with permission), then may be eligible if “immediate relative”
- ▶ If not eligible, can leave U.S., BUT may be barred from returning . . .

## How to Get a Green Card (LPR)?



## Inadmissibility Grounds: Possible Bars to Adjustment of Status

- ▶ Does the ground of inadmissibility apply to this person?
- ▶ Do the facts of this person's situation establish each of the elements of the ground?
- ▶ Is there an exception?
- ▶ Even if the ground applies and the elements are established, is there a waiver?

## Immigration Violations

### 212 (a)(6)

- Present without admission or parole
  - VAWA exception
- Misrepresentation including false claim to citizenship
  - Misrepresentation – VAWA waiver showing extreme hardship to self-petitioner or USC/LPR/qualified parent or child

## Immigration Violations Continued

### 212 (a)(9)

- Prior removals
  - No VAWA waiver
- Unlawful presence
  - VAWA exception – substantial connection b/w violation and abuse (after April 1, 1997)
- Unlawful presence or prior removal order AND subsequent unlawful re-entry
  - VAWA waiver - connection b/w abuse and re-entry, attempted re-entry, removal or departure

## Crimes

### 212 (a)(2)

- Admission or conviction of crime involving moral turpitude
  - Admission or conviction of controlled substance violations
  - Conviction of 2 or more crimes with aggregate sentence of 5 years or more
  - Reason to believe person is or was controlled substance trafficker
    - Conviction/admission not required
  - Prostitution and commercialized vice
- ▶ VAWA waiver under 212 (h)

## Green Card to Citizenship

- ▶ Legal Permanent Residents (LPRs) eligible to “naturalize” (become U.S. citizens):
  - Generally after 5 years of being LPR;
  - If married to US Citizen, after 3 years;
- ▶ Must meet other requirements;
- ▶ **Warning:** If applicant has criminal convictions, naturalization process can be dangerous and could lead to deportation proceedings;
- ▶ **Note:** LPRs are not required to become citizens (but many benefits to citizenship)

## What Are NOT Ways to Get Green Card?

- ▶ The following, by themselves, are **NOT** sufficient reasons for someone to be eligible for green card:
  - Having come to the U.S. at a young age
  - Having lived in the U.S. for a long time
  - Having U.S. citizen children under age 21
  - Being a very good, committed worker
  - Having a serious medical condition (or having a child with a serious medical condition)



# Removal (Deportation) Proceedings and Immigration Detention



## Removal (Deportation) Proceedings

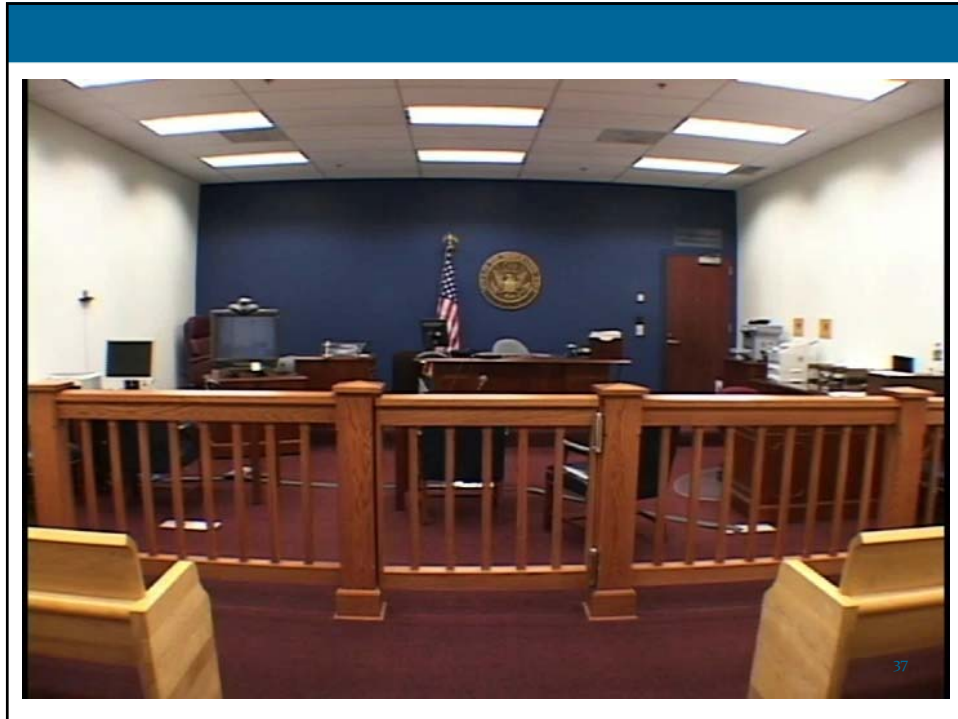
- ▶ Process to determine if an individual should be deported from the United States;
- ▶ Two questions:
  - Is the individual removable (deportable)?
  - If so, does he or she have a defense to deportation?
    - Asylum, cancellation, etc...
- ▶ Who is deportable?
  - Individuals with no status or expired status;
  - Green card holders (LPRs) or visa holders, primarily b/c of criminal conviction
- ▶ **Note:** Some people may not get hearing before immigration judge (reinstatement, or expedited removal)

## How Do People End Up in Removal?

- ▶ Interaction with Criminal Justice System:
  - ICE detains an individual after he/she was in jail or contact with probation officer
- ▶ Filing an application that is denied:
  - USCIS refers the case to ICE
- ▶ Other interactions with ICE and Border Patrol:
  - Stopped at the border, checkpoints, etc...
- ▶ In new administration, as collateral to other enforcement activities we might see other ways (more later)
- ▶ People in removal proceedings may be detained or not detained: default now is to detain

## Immigration Court

- ▶ Removal Cases
  - Some individuals are not detained
  - Detained cases becoming more of the norm
- ▶ **Important: There is NO right to an appointed attorney in immigration court if the person cannot afford private attorney.**
- ▶ Many people are forced to represent themselves:
  - Vast majority, e.g. in WA over 92 % are unrepresented



## List of Legal Services Providers

- ▶ Immigrant Advocates Network-Non-Profit Legal Services Providers:
  - <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>
- ▶ Private Immigration Attorneys, American Immigration Lawyers Association:
  - [www.aila.org](http://www.aila.org)
  - Attorney Search: <http://www.ailalawyer.org/default.aspx>

## Detention ends with...

- ▶ Removal (Deportation)
- ▶ Voluntary Departure
- ▶ Release on Bond
- ▶ Parole
- ▶ Grant of Protection:
  - Asylum
  - Cancellation of Removal
  - Adjustment of Status
  - U Visas
  - T Visas
  - Others...



## What Can Undocumented People Do?

- ▶ Know your rights (more to come)
- ▶ Create a family safety plan (more to come)
- ▶ Keep informed of developments
- ▶ Beware of scams
- ▶ Consult with attorney or accredited rep to see if there are options to obtain status
- ▶ Save money (if possible)
- ▶ Collect/save documents that show residence in U.S.

## Know Your Rights:

### At the Door

- ▶ If agents show up at the door, find out if they are police or ICE
- ▶ If ICE agents do not have a warrant signed by a judge (not ICE), they cannot enter a home without permission from an adult
  - Ask to see warrant and have them slip it under the door. If not signed by a judge, you do not have to let them in.
- ▶ If they are asking for a household member, ask them to leave contact information. You do not have to tell them where the person is, and you should not lie.

## Know Your Rights:

### If ICE is in Your Home (or Shelter) to Make an Arrest

- ▶ Inform them if there are children or other vulnerable residents at home, if true
- ▶ Request that they exit/step outside unless they have a warrant signed by a judge. Again, an administrative warrant is not enough to enter your home (I-200, or I-205)
- ▶ If they come inside without permission, tell them **“I do not consent to you being in my home. Please leave.”**
- ▶ If they begin searching rooms or items inside home, tell them **“I do not consent to your search.”**
- ▶ If ICE is arresting you, tell them if you have medical issues or need to arrange for children, if that is the case

**Know Your Rights:**  
**What to Do if Detained**

- ▶ Same rights against self-incrimination. You don't have to share any information about where you were born, your immigration status, or any criminal history
- ▶ Ask to speak to an attorney instead of answering questions
- ▶ **Do NOT sign anything (Even if there is pressure to do so!)**
  - Doing so may waive important legal rights
  - Until you've had an opportunity to consult with attorney
  - Some people may be eligible for release on bond
- ▶ Contact attorney/legal services as soon as possible

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**What To Do If Detained by ICE**

- ▶ Have a plan in place for your family if detained
- ▶ Make sure your family members can find you if you are detained.
  - They can use the ICE detainee locator (<https://locator.ice.gov/odls/homePage.do>)
  - It is helpful for them to have your A-number, if you have been issued one by USCIS, ICE or Border Patrol.

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## The Right to Remain Silent

- ▶ Carry the contact information of your attorney or legal representative
- ▶ Carry a know-your-rights card that you can show to ICE or the police if you are stopped. For example: <https://www.ilrc.org/red-cards>

<p>Usted tiene derechos constitucionales.</p> <ul style="list-style-type: none"> <li>• NO ABRA LA PUERTA SI UN AGENTE DEL SERVICIO DE INMIGRACION ESTA TOCANDO A LA PUERTA.</li> <li>• NO CONTESTE NINGUNA PREGUNTA DEL AGENTE DEL SERVICIO DE INMIGRACION SI EL TRATA DE HABLAR CON USTED. Usted tiene derecho a mantenerse callado. No tiene que dar su nombre al agente. Si está en el trabajo, pregunte al agente si está libre para salir y si el agente dice que sí, váyase. Usted tiene derecho de hablar con un abogado.</li> <li>• ENTREGUE ESTA TARJETA AL AGENTE. NO ABRA LA PUERTA.</li> </ul>	<p>I do not wish to speak with you, answer your questions, or sign or hand you any documents based on my 5th Amendment rights under the United States Constitution.</p> <p>I do not give you permission to enter my home based on my 4th Amendment rights under the United States Constitution unless you have a warrant to enter, signed by a judge or magistrate with my name on it that you slide under the door. I do not give you permission to search any of my belongings based on my 4th Amendment rights.</p> <p>I choose to exercise my constitutional rights.</p> <p><i>These cards are available to citizens and noncitizens alike.</i></p>
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## National Resources



## National Orgs focused on Domestic Violence/Immigration

- ▶ Asian Pacific Institute on Gender-Based Violence: <http://www.api-gbv.org>
- ▶ ASISTA Immigration Assistance: [www.asistahelp.org](http://www.asistahelp.org)
- ▶ Casa de Esperanza: National Latin@ Network for Healthy Families and Communities: [www.casadeesperanza.org](http://www.casadeesperanza.org) and [www.nationallatinonetwork.org](http://www.nationallatinonetwork.org)
- ▶ Tahirih Justice Center: [www.tahirih.org](http://www.tahirih.org)

## Additional Resources

- ▶ Immi (online resource developed by IAN and Probono Net) <https://www.immi.org>
- ▶ Informed Immigrant: <https://www.informedimmigrant.com>
- ▶ We Belong Together: [www.womenstepforward.org](http://www.womenstepforward.org)
- ▶ Immigrant Legal Resource Center: [www.ilrc.org](http://www.ilrc.org)
- ▶ Immigrant Defense Project: [www.immdefense.org](http://www.immdefense.org)
- ▶ **ACLU**: Know Your Rights If Stopped By Ice Or Law Enforcement: [https://www.aclu.org/know-your-rights/what-do-if-youre-stopped-police-immigration-agents-or-fbi?redirect=files/kyr/kyr\\_english.pdf](https://www.aclu.org/know-your-rights/what-do-if-youre-stopped-police-immigration-agents-or-fbi?redirect=files/kyr/kyr_english.pdf)
- ▶ American Immigration Lawyers Association: [www.aila.org](http://www.aila.org)
  - Attorney Search: <http://www.ailalawyer.org/default.aspx>



## Additional Resources

- ▶ Appleseed Network: Deportation Manual  
<http://www.appleseednetwork.org/deportationmanual/>
- ▶ Immigrant Legal Resource Center: [www.ilrc.org](http://www.ilrc.org)
  - Family Preparedness Plan:  
[https://www.ilrc.org/sites/default/files/resources/family\\_preparedness\\_plan.pdf](https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf)
  - Red card: <https://www.ilrc.org/red-cards>,  
[https://www.ilrc.org/sites/default/files/resources/red\\_cards-how\\_to\\_use.pdf](https://www.ilrc.org/sites/default/files/resources/red_cards-how_to_use.pdf)
- ▶ NCJFCJ  
[http://www.ncjfcj.org/sites/default/files/NCJFCJ\\_Deportation\\_Children\\_Final.pdf](http://www.ncjfcj.org/sites/default/files/NCJFCJ_Deportation_Children_Final.pdf)

## Questions?

For further questions,  
please contact us at:  
[info@api-gbv.org](mailto:info@api-gbv.org)