How to Get a Voluntary Departure



The Florence Immigrant & Refugee Rights Project is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepare and update this guide for immigrant detainees who represent themselves in their removal proceedings. We do not charge for our services. To see our guides, go to: **www.firrp.org**.

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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Important Words to Know

Immigration law has a lot of technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

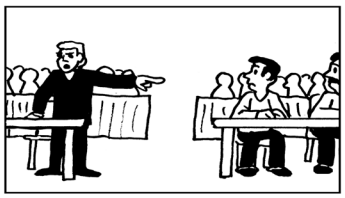
- **Deportation:** ICE has put you in *deportation proceedings*, which are also called *removal proceedings*. If the judge orders you deported or "removed" from the United States, officials will send you back to the country where you are a citizen. You will not be able to legally return to the U.S. for at least 10 years.



- **Florence Project:** A group of lawyers and legal assistants who provide free legal help to people who do not have lawyers. The Florence Project wrote this guide to help you understand your case.



- **Government Attorney**: The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and also talks to the judge. Government attorneys should see that justice is done. Usually they ask the judge to order to deport you.



- **Immigration and Customs Enforcement (ICE):** The agency that has put you in deportation proceedings and detained you. ICE is part of the Department of Homeland Security, or *DHS*.



- **Immigration Judge (*judge*):** The person who will decide your case. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.



Who Should Read this Guide?

If you are an immigrant who is trying to decide between taking deportation or voluntary departure, this guide from The Florence Project will help you understand your options.

Instead of ordering that you are deported from the United States, the judge may give you an order for voluntary departure if you meet certain requirements. (It is usually better to get voluntary departure instead of deportation, so it is important to know if you may be eligible for it.) If you are granted voluntary departure, you may be able to come back after waiting a certain amount of time only if you have a lawful way to enter the country.

For information about other guides that may help you, go to: www.firrp.org.

Is Voluntary Departure Right for You?

Not everyone will be able to ask for voluntary departure. Before you ask for voluntary departure, you should learn the rules. You must:



- **Ask the judge for voluntary departure before or during one of your master calendar hearings.** Early in your court case you must tell the judge you want a voluntary departure.
- **Agree that you will not apply for any other immigration benefit or relief from deportation**.
- **Admit that you are deportable**.
- **Agree to accept the judge's decision.** You agree that you will not file an appeal.
- **Pay for your own travel**. Make sure to ask whether you must pay for either a bus ticket price or a plane ticket. If you are from Mexico, you will travel by bus.
- Unless you are going to Mexico by bus, **have travel documents ready** (for example, you have a passport) or you have one that has been issued within no more than 60 days.
- If the judge tells you to, **post a voluntary departure bond of $500**.



You CANNOT have voluntary departure if:

- You have committed an *aggravated felony* (For example, murder, rape, or sexual abuse of a minor),
- You are charged as an *arriving alien* (Someone who tried to enter the U.S. at a port of entry but was not admitted or someone who is interdicted at sea),
- You received voluntary departure before from an immigration judge after the judge decided that you had entered the U.S. unlawfully, or
- You came to the U.S. on the Visa Waiver Program.

What Will Happen in Court?

The first few hearings that you go to will be ***master calendar*** **hearings**. At a master calendar hearing, you will be in court with a group of other detainees.

When you ask for voluntary departure at your master calendar hearing, the judge may decide your case right away. If the government attorney does not object, the judge will probably grant your request right there. But, if the government attorney objects, the judge may think more about your case but could still deny or grant your request right then, too.

Remember, even if you have not committed an aggravated felony but you have a criminal record, the judge may still deny your request.

If the government attorney objects to your request for voluntary departure, the judge will probably ask you to choose:

- Do you want to accept your deportation that day? OR
- Do you want a *contested hearing* so you can bring evidence to show why you deserve this chance for voluntary departure? **If you choose to have a contested hearing, understand that you will spend more time in detention until this hearing.**

When the judge gives you these choices you can accept deportation instead of having a hearing, but you will not be able to ask for voluntary departure again. Your case will be over.

The rest of this guide tells you how to prepare for this contested hearing.

The judge considers many factors

If you have a contested hearing, the judge will consider these things in deciding to grant you voluntary departure:

- Your immigration history
- Your criminal record
- How long you lived in the U.S.
- Your ties to the U.S.
- Family members who are U.S. citizens or permanent residents
- Humanitarian factors



To build your case, gather your documents

As you prepare for your contested hearing, **gather any document that shows that you are a good person and have a life in the United States.** Your evidence will help your request for voluntary departure.

Look at the following checklist for ideas about which documents you should give the judge. As you prepare, do not feel discouraged if you do not have a lot of them or if you do not have family and friends to support you. Just do as much as you can.

Checklist of Your Documents

- ❑ Letters of support from as many family members as possible (including drawings from children) AND a copy of the identification of the person who wrote the letter
- ❑ Letters of support from friends AND a copy of their identification
- ❑ Letters from people who know you (for example, neighbors, landlord)
- ❑ Letters showing that you are involved in the community (church, volunteering)
- ❑ Letters from religious organizations you belong to
- ❑ Photos of family (for example, from birthdays, holidays, pets, or of babies)
- ❑ Certificates from rehabilitation programs
- ❑ Informational pamphlets on rehabilitation programs in your area (domestic violence, alcohol or drug abuse, anger management)
- ❑ Proof of English Language training, GED, college, etc.
- ❑ Any certificates or diplomas that you have earned
- ❑ Copies of your medical records and your close relatives if you have any medical issues

- ❑ Copy of your marriage certificate
- ❑ Copies of your children's birth certificates
- ❑ Copies of your children's school records, including letters from teachers about your children's classroom performance
- ❑ Copies of green cards, birth certificates, naturalization certificates of your relatives, including your parents and spouse
- ❑ Proof that someone in your family has applied for a green card for you or that you are eligible for some other kind of status
- ❑ Copy of your passport

Organize your documents

Once you have all your documents together, organize them.



- **Make a list of everything that you are giving to the judge**. Put that list on top of your pile. You can divide your documents into categories like these:
  - Family ties in the U.S. (birth certificates, marriage certificates)
  - Evidence of long residence in the U.S.
  - Evidence of hardship if I am deported
  - Evidence that I have good moral character and am valuable to the community (volunteering, going to church, helping the community, etc.)
  - Evidence of my employment history and property in the U.S.
  - (If you have criminal history), evidence of rehabilitation

  All the documents you submit must be in English. If you have documents in another language, you can translate them. Just put your translation in with the original letter and attach a signed copy of the *Certificate of Translation* below.

- Below you will find a *Certificate of Service*. The *Certificate of Service* proves that you also gave a copy of all your documents to the government attorney. (You will find one certificate for delivery in person and another for delivery by mail.) Sign it and attach it to your papers.

- When your packet is complete, **make 2 copies of all original documents:**
  - The original is for the judge.
  - 1 copy is for the government attorney.
  - 1 copy for you.

- Either **mail your packet to the government attorney and the judge or bring it with you** to your hearing.



Use this certificate if you give your packet to the government attorney and the judge in court:

Certificate of Service: Delivered in person

I, _____

(Write your name)

certify that I hand-delivered a copy of this document to a representative of ICE Litigation on the date below.

Signed:	→

Date:	/ /

Day / Month / Year

Use this certificate if you mail your packet to the government attorney and judge before the hearing:

Certificate of Service: Delivered by mail

I, _____

(Write your name)

certify that on the date below I placed a copy of this document in the mail to ICE Litigation at:

_____

(Write the address for the ICE office at the detention center where you are staying)

Signed:	→

Date:	/ /

Day / Month / Year

Use this certificate if you someone translates your documents:

Certificate of Translation

I, _____

(Write your name)

certify that I am competent to translate this document from its original language into English and that the translation is true and accurate to the best of my abilities.

Signed by translator:	→

Date:	/ /

Day / Month / Year

How Can You Prepare for Your Testimony at Your Contested Hearing?

Preparing your testimony for your hearing will help make your case even stronger. At your hearing, you will have the chance to explain to the judge why you deserve voluntary departure.

Keep these tips in mind when you practice your testimony:

Be prepared

- **Write your reasons on a piece of paper**. Practice explaining your reasons to a friend or a family member.

Be honest

- **Your job is to tell the judge about your life.** If you have criminal convictions and the judge asks you about them, tell the judge what happened. Do not lie. Lying will just make things worse. The judge and government attorney often have ways to figure out if you are lying.



Turn negatives into positives

- **If you had a problem with drugs and alcohol in the past, explain how you have overcome those problems.** For example, did you go to AA meetings? Did you complete a rehabilitation program? Tell the judge about all of those things.

Do not be defensive

- **Admitting that you made mistakes**, even if that mistake was just coming to the U.S. without the proper documentation, **can show the judge that you are sorry**. It can also show the judge that you will not repeat those mistakes in the future.

Speak from the heart

- Judges see a lot of people every day. You can make your testimony stand out if you **speak sincerely**.
- **Think of a funny story about your family to share**. This is an opportunity for the judge to get to know you as a person. Think about a story that will show the judge how much your family needs you. Tell the judge about your plans for the future. Remember to write all of these reasons on a piece of paper so you will not forget.
- Do not worry if you become nervous or emotional in court. This is normal. Just ask for a minute if you need to look at your notes or take a break.



Ask your family members to testify in court

- **Your family can come and tell the judge about you.** Help your family members prepare.
- **Make sure your family members practice and write the reasons down to have with them in court.** Your family members can also watch your hearing to show the judge that they support you. Remember, some detention centers will not let small children come to court.

Answer the judge's questions

- **The judge may want to ask you some specific questions**. Remember, be respectful when the judge speaks. Refer to the judge as, "Your Honor," "Ma'am," or "Sir."

What Happens if You Do Not Leave?

If the judge grants you voluntary departure, the judge will give you a date by which you must leave.

Remember that with voluntary departure YOU must pay for your bus or plane ticket and getting your travel documents, even if you are still in detention.

The consequences are serious

If you are still in the United States after the date the judge orders — even if it is not your fault — there are serious consequences.

- The judge's order will automatically convert into a deportation.
- You might have to pay a penalty up to $5,000.
- For 10 years, you cannot have immigration benefits such as voluntary departure, cancellation of removal for certain permanent residents, cancellation of removal for nonpermanent residents, and adjustment of status.

