



# SHOULD I STAY OR SHOULD I GO?

## *Best Practices for Advising Noncitizens Who Want to Leave the United States*

By ILRC Attorneys

### I. Introduction

For most immigration attorneys and advocates, our primary objective has always been to screen current and potential clients for possible paths to relief that would allow them to stay in the United States on a temporary or permanent basis. In the current landscape of increased immigration enforcement, however, many noncitizens are considering the option of “self-deporting,” or leaving the United States in order to return to their home country or to seek opportunities in a different country.

**NOTE: There is no “self-deportation” process.** The Department of Homeland Security (DHS) under the Trump administration has launched a campaign to encourage what the agency refers to as “self-deportation.”<sup>1</sup> It has been billed as a process that allows a noncitizen to voluntarily leave the United States and avoid detention and forced removal.<sup>2</sup> However, the use of the phrase is misleading. There is no new legal option called “self-deportation.” The use of the phrase does not reflect a change in immigration law regarding what constitutes a removal (or deportation) order, nor does it change the legal implications of leaving the United States.

In this environment, noncitizens and their families are turning to immigration attorneys and advocates for advice. For many individuals, this is a difficult decision they are being forced to make due to increased ICE enforcement; but for some, choosing to leave on their terms can help them have some autonomy in an otherwise challenging environment. Advising individuals and families in this situation requires a two-fold approach that considers how to best protect clients in the present, as they prepare to leave the country, and in the future, if they want to return to the United States at some point.

This practice advisory is intended for immigration attorneys and advocates who are now being asked to provide such advice and walks through common issues for the client to consider before deciding to leave the United States. It also includes a checklist of helpful questions and information to review with the client before they depart.

<sup>1</sup> See, e.g., Department of Homeland Security (DHS). 2025. CBP Home, <https://www.dhs.gov/cbphome>.

<sup>2</sup> *Id.*

## II. DHS Incentives for Departure

Early in the second Trump administration, DHS and other government officials began encouraging noncitizens to “self-deport” or to return to their countries of origin. In March 2025, DHS announced the launch of CBP Home, a repurposed mobile app that noncitizens could use to “voluntarily” leave the United States.<sup>3</sup> On May 9, 2025, President Trump signed a proclamation announcing the initiation of Project Homecoming, which formalized and expanded the administration’s self-deportation campaign.<sup>4</sup> Project Homecoming promises incentives for noncitizens willing to depart and who use the CBP Home app, including travel assistance and a \$2,600 “exit bonus.”<sup>5</sup> These alleged incentives to depart were paired with the administration’s focus on increased enforcement, prosecution, and the imposition of significant penalties—such as civil fines<sup>6</sup>—for those who chose not to leave.

Since the launch of Project Homecoming, details about who is eligible to receive the incentives have changed. Initially, DHS made incentives available only to certain noncitizens, including those who were paroled into the United States, who held Temporary Protective Status (TPS), and noncitizens without a criminal record who were previously apprehended by DHS. However, current guidance from DHS indicates that all non-citizens without a criminal history are eligible to use the CBP Home app.<sup>7</sup> Of course, registering through the CBP Home app does not guarantee eligibility, nor does it guarantee that the individual will receive the promised benefits after they depart. Much is still unknown about the CBP Home app and what happens to those who register.<sup>8</sup> While DHS has reported that tens of thousands of noncitizens have used the app, attorneys and advocates around the country have reported few clients who have successfully registered, completed the vetting process, and received the incentives promised under Project Homecoming.<sup>9</sup>

Noncitizens who are in DHS custody are eligible for departure under Project Homecoming, although it may be referred to by different names.<sup>10</sup> In fact, data released by DHS confirmed

<sup>3</sup> *Id.* The CBP Home mobile app was modified in 2025 from the CBP One app which was first initiated in October 2020 by the Biden administration to facilitate various parole programs. Department of Homeland Security, *DHS Launches CBP Home App with Self-Deport Reporting Feature* (Mar. 10, 2025), <https://www.dhs.gov/news/2025/03/10/dhs-launches-cbp-home-app-self-deport-reporting-feature>.

<sup>4</sup> Presidential Proclamation 10935, May 9, 2025, available at: <https://www.whitehouse.gov/presidential-actions/2025/05/establishing-project-homecoming/>.

<sup>5</sup> *Id.*; White House, *Fact Sheet: President Donald J. Trump Establishes Project Homecoming*, May 9, 2025, available at: <https://www.whitehouse.gov/fact-sheets/2025/05/fact-sheet-president-donald-j-trump-establishes-project-homecoming/>.

<sup>6</sup> For more information about possible imposition of civil fines and penalties, see ILRC, *Civil Penalties and Fines Part 1: How to appeal a civil penalty* (Mar. 2026), <https://www.ilrc.org/sites/default/files/2026-03/Civil-Fines-Part-I-Final.pdf>.

<sup>7</sup> Department of Homeland Security, CBPHome, <https://www.dhs.gov/cbphome>.

<sup>8</sup> National Immigration Law Center, *Know Your Rights: CBPHome*, available at: <https://www.nilc.org/resources/know-your-rights-cbp-home/>.

<sup>9</sup> CNN, *Exclusive: Here’s how many immigrants have signed on to DHS’s nearly billion-dollar ‘self-deportation’ plan*, Mar. 18, 2026, <https://www.cnn.com/2026/03/18/us/dhs-self-deport-project-homecoming-invs>.

<sup>10</sup> Advocates have reported the use of different names for the alleged incentives under Project Homecoming, including the Incentivized Voluntary Departure (IVD) program. However, voluntary departure is a specific

that the majority of noncitizens who departed under Project Homecoming were those individuals who were already in ICE detention.<sup>11</sup>

Individuals who do register with CBP Home are required to provide extensive biographical information. DHS may require noncitizens using the app to complete the new registration form, Form G-325R, and to submit biometrics.<sup>12</sup> Providing all of this information to DHS comes with risks. The information an individual provides may be used for enforcement action against the person while they are still in the United States, including possible detention, removal, prosecution, civil penalties, or fines. This information may also be used against them in future immigration applications or processes.

DHS has indicated that noncitizens who register with the CBP Home app and who pass DHS' vetting process, will be a lower priority for enforcement action, including detention and removal. However, being a lower priority does not mean that DHS will not detain or remove noncitizens who have used the app.

Advocates and attorneys should inform noncitizens considering leaving the United States about the potential incentives promised under Project Homecoming, along with the risks of using the CBP Home app.<sup>13</sup> However, it is important to note that noncitizens who want to leave the United States are not required to use the CBP Home app to do so.

### III. Advising Noncitizens about the Immigration Consequences of Departure

Practitioners should be careful to ensure that noncitizens understand the consequences their departure will have on their current status, as well as any pending or future immigration applications. While noncitizens may continue with some applications from abroad, often with additional steps or procedures required, other applications will be considered abandoned upon leaving the United States. Similarly, a departure from the United States may also impact a noncitizen's ability to return lawfully to the United States even far in the future.

**WARNING: Noncitizens who currently have legal status, whether temporary or indefinite, may lose that status if they leave the country.** However, the right to depart and return to the

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program authorized under section 240B of the INA that may only be granted by DHS, the immigration judge, or the Board of Immigration Appeals (BIA) and not all noncitizens qualify. See Subsection B for more discussion about voluntary departure.

<sup>11</sup> CNN, *Exclusive: Here's how many immigrants have signed on to DHS's nearly billion-dollar 'self-deportation' plan*, Mar. 18, 2026, <https://www.cnn.com/2026/03/18/us/dhs-self-deport-project-homecoming-invs>.

<sup>12</sup> U.S. Citizenship & Immigration Services, *USCIS Supports "Project Homecoming" Self-Deportation*, available at: <https://www.uscis.gov/projecthomecoming>.

<sup>13</sup> For an updated list of the alleged incentives, visit the CBP Home website at: <https://www.dhs.gov/cbphome>. For more information on the possible risks and benefits of using the CBP Home App, see National Immigration Law Center, *Know Your Rights: CBP Home*, available at <https://www.nilc.org/resources/know-your-rights-cbp-home/>; and CLINIC, *Practice Pointer: The "Project Homecoming" Proclamation and the CBP Home App's "Self-Deportation" Program*, available at <https://www.cliniclegal.org/resources/practice-pointer-project-homecoming-proclamation-and-cbp-home-apps-self-deportation>.

United States is not created equal. A person's legal status will determine whether or not they can return to the United States in the same status in the future. For some individuals, any departure will result in the loss of that status. For example, individuals granted parole will lose that status upon their departure. Other noncitizens may have status that allows them to seek permission to travel abroad and return to that status, but only on a temporary basis or only if they receive permission to travel abroad beforehand (i.e., advance parole, TPS travel authorization) or complete the process to return in that status from abroad (i.e., holders of U nonimmigrant status). Before advising a noncitizen regarding the consequences of a departure from the United States, it is critical to understand whether or not their current status will allow them to travel abroad and return in that status, whether they must take any steps before or after their departure to protect their status (such as seeking advance parole), and what limitations, if any, they may have on their travel. (i.e., limits on how long they may remain outside the United States).

**Example:** Anya came to the United States with her parents when she was a child and has not left the country since then. She was later granted DACA, which she has continued to renew. Although Anya has DACA, she is fearful of losing her status and being detained. She is considering returning to live in her home country and comes to you for advice.

You advise Anya that she may be eligible to seek advance parole to allow her to travel abroad temporarily and maintain her DACA status. However, advance parole will not allow her to remain outside the United States long term. If she departs the United States without advance parole or stays abroad longer than permitted under her grant of advance parole, she will lose her DACA status and will not be able to return to that status in the future. Unfortunately, there is no way for Anya to preserve her DACA status if she intends to move back to her home country. You explain this risk to Anya and also screen her for possible paths to return to the United States lawfully in the future to help her make an informed decision about what options are best for her.

## A. Noncitizens with pending applications for relief before USCIS

Much like noncitizens with current status, individuals who have pending petitions or applications for relief before U.S. Citizenship and Immigration Services (USCIS) must be advised about what, if anything, will happen to those applications if they depart the United States. Some applications are deemed abandoned upon the noncitizen's departure from the United States, with some limited exceptions for individuals who receive advance parole or travel authorization prior to that departure. This includes more common applications such as the application for asylum (Form I-589) and the application for adjustment of status (Form I-485). To continue processing those applications, the noncitizen must timely return to the United States with that approved advance parole or travel document.

**Example:** Ruben came to the United States fleeing persecution in his native Venezuela due to his political activism. He filed a timely application for asylum with USCIS and has been awaiting his asylum interview for over seven years. Ruben is concerned that recent policy changes will mean he can no longer support himself and his family. He is looking at options for work visas in other countries, but he wants to know if he can return to the United States in a few years.

You advise Ruben that if he leaves the United States without obtaining advance parole, he will abandon his asylum application and there is no way to pursue asylum from outside the country. You also explain that advance parole is not available for asylum applicants who want to move outside of the country, even if for a temporary period. Instead, you screen Ruben for alternative ways to return lawfully in the future.

However, there are other USCIS applications that allow the noncitizen to continue the process from outside the country. It is important to note that while these noncitizens can continue with the same or a similar process from abroad, a departure may require additional steps that would otherwise not be required if the individual continued the process from the United States.

**Example:** Xiu, originally from China, is currently living in the United States. She just filed a VAWA self-petition (Form I-360) based on abuse by her Legal Permanent Resident (LPR) spouse. The temporary nonimmigrant status that she has is set to expire and she wants to return to China. Xiu asks you if she can continue to process her case from outside the United States.

You advise Xiu that USCIS will continue to process her VAWA self-petition even if she leaves the United States. However, she will need to file an Application for Action on an Approved Application or Petition (Form I-824) to request that USCIS transfer the approved I-360 to the U.S. consulate so she can apply for an immigrant visa to return. You warn her that this visa process will take longer and will require her to stay outside the United States for several years until her case is approved.

There are other applications that cannot be processed abroad. Many of these applications require that the applicant reside in the United States and may also require some period of physical presence in the United States for eligibility. Practitioners should warn individuals who are seeking these forms of relief that they cannot be pursued from outside the country.

The table below provides a summary of common applications or petitions and how they are impacted by the noncitizen’s departure from the United States.

**Effect of client’s departure from the United States on processing of common USCIS applications**

Can process abroad with no effect on application processing	Can process application abroad if otherwise eligible for relief, but will require additional processing steps	Cannot process application abroad
<ul style="list-style-type: none"> <li>• I-130</li> <li>• VAWA I-360</li> <li>• I-601A<sup>14</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Family-based I-485</li> <li>• VAWA-based I-485</li> <li>• I-730</li> <li>• I-918, I-918B (U visa)</li> </ul>	<ul style="list-style-type: none"> <li>• SIJS-based I-360</li> <li>• I-485 based on asylee, refugee, SIJS, or U nonimmigrant status</li> <li>• I-589 (Asylum)</li> <li>• I-821 (TPS)</li> <li>• I-821D (DACA)</li> <li>• I-914 (T visa)</li> </ul>

<sup>14</sup> 8 CFR 212.7(e)(3)(i). The regulations require that the applicant is present in the United States at the time the application is filed. However, it is important to note that if the applicant’s departure from the United States triggers any other inadmissibility besides the 3-year or 10-year unlawful presence bars, the I-601A may be denied by USCIS or revoked by the consular officer at the immigrant visa interview.

## B. Inadmissibility and future relief

Apart from eligibility for potential relief, noncitizens who depart the United States may trigger certain grounds of inadmissibility. These inadmissibility issues may make it more difficult, if not impossible, for a client to continue the application process from abroad. For this reason, practitioners should screen carefully for inadmissibility grounds, including inadmissibility issues that could arise after the client departs the country.

Below is a summary of some common inadmissibility grounds that could be triggered by a noncitizen's departure:

- **Unlawful presence bars.** Noncitizens who have accrued more than 180 days but less than one year of unlawful presence in the United States and then depart the country are inadmissible for a period of three years (three-year unlawful presence bar).<sup>15</sup> Similarly, noncitizens who have accrued a year or more of unlawful presence in the United States and then depart will be inadmissible for a period of ten years (ten-year unlawful presence bar).<sup>16</sup> In the case of the three- and ten-year bars, there are exceptions<sup>17</sup> and waivers that may be available.<sup>18</sup> Practitioners should carefully screen for any unlawful presence issues (including any that may be accrued prior to their client's departure), as well as eligibility for any possible exceptions or waivers, before advising clients about the consequences of leaving the United States.

**Example:** Alicia came from Mexico without inspection in 2004 and has lived in the United States since then. She was the victim of a violent crime and recently filed a Petition for U Nonimmigrant Status (Form I-918) with USCIS. Alicia is considering moving back to Mexico because she does not want to risk being detained and deported. She asks how she can continue the U visa process from Mexico.

You advise Alicia that she can continue to process her U visa if she leaves the country. However, she will need to notify USCIS that she has left the country and request that her petition be forwarded to the U.S. consulate for processing once it is approved. You also let Alicia know that when she leaves the United States, she will trigger the 10-year unlawful presence bar and will need to seek a waiver of that inadmissibility ground before she can receive a U visa. If she has not already filed a waiver application (Form I-192), she will need to do so. If she has already filed the I-192, she will need to amend that application to include the new inadmissibility ground. You explain that this will require her to remain outside the United States for several years as she completes the U visa process from abroad.

<sup>15</sup> INA § 212(a)(9)(B)(i)(I).

<sup>16</sup> INA § 212(a)(9)(B)(i)(II).

<sup>17</sup> INA § 212(a)(9)(B)(iii).

<sup>18</sup> INA § 212(a)(9)(B)(iv). For more information about the unlawful presence bars and available waivers, see ILRC, *Understanding Unlawful Presence under INA § 212(a)(9)(B) and Waivers of Unlawful Presence, I-601 and I-601A*, at

[https://www.ilrc.org/sites/default/files/resources/understanding\\_unlawful\\_presence\\_march\\_2019.pdf](https://www.ilrc.org/sites/default/files/resources/understanding_unlawful_presence_march_2019.pdf)

- **Bars related to prior removal orders.** Noncitizens who leave the United States with a final removal order may trigger inadmissibility related to the execution of that order.<sup>19</sup> Upon triggering the period of inadmissibility, the noncitizen must either wait for the required period of time to expire or seek an approved Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) before they are eligible to receive a visa or other status.<sup>20</sup> The period of inadmissibility varies depending on several factors which are summarized below:

### Periods of inadmissibility triggered by departure with a removal order

Conditions triggering inadmissibility	Period of inadmissibility triggered by departure from the United States with a final removal order
Expedited removal order + Departure	5 years
Final removal order + Removal proceedings initiated at time of arrival in the U.S. + Departure	5 years
Final removal order + Departure	10 years
Aggravated felony conviction + Final removal order + Departure	20 years
Final removal order + Prior removal(s) under that order + Departure	20 years

Practitioners should screen all individuals to determine if there are any prior final orders of removal, including expedited removal orders, that will trigger inadmissibility under INA § 212(a)(9)(A). This includes anyone who received an order of voluntary departure who failed to leave by the required date or otherwise failed to comply with any conditions and is now subject to a final removal order. Practitioners should also advise clients of the possible period(s) of inadmissibility that will be triggered when they depart.

**WARNING: Beware of the permanent bar!** Individuals who are considering departure from the United States should be advised about the so-called permanent bar. The permanent bar applies to two groups of noncitizens:

1. Those who have accrued a total of more than a year of unlawful presence in the United States in the past and then re-enter or attempt to re-enter the United States without inspection,<sup>21</sup> or
2. Those who left the United States under a final removal order and then re-enter or attempt to re-enter the United States without inspection.<sup>22</sup>

Upon triggering the permanent bar, individuals will be inadmissible for a period of ten years and no waiver is available.<sup>23</sup> Practitioners should advise clients who have a year or more of unlawful presence in the cumulative of the consequences of entering (or trying to re-enter) the United States unlawfully after they depart the country. Clients who trigger the permanent bar

<sup>19</sup> INA § 212(a)(9)(A).

<sup>20</sup> INA § 212(a)(9)(A)(iii).

<sup>21</sup> INA § 212(a)(9)(C)(i)(I).

<sup>22</sup> INA § 212(a)(9)(C)(i)(II).

<sup>23</sup> Waivers of the permanent bar may be available to certain, limited categories of noncitizens, including those seeking U nonimmigrant visas and VAWA self-petitioners who can prove a connection between the abuse they suffered and their removal, departure, or re-entry to the United States. INA § 212(a)(9)(C)(iii).

must wait outside the country for at least ten years and have an approved I-212 before they are eligible to return with an immigrant or nonimmigrant visa.<sup>24</sup>

### C. Noncitizens in removal proceedings

Noncitizens in removal proceedings may seek advice from practitioners about options to depart the country on their own terms rather than face possible detention or removal. Individuals who depart the United States while currently in removal proceedings could be ordered removed in absentia (removed in their absence). Therefore, practitioners representing clients in removal proceedings should discuss potential options prior to departing.

**WARNING: In absentia removal orders.** Noncitizens who depart the United States while their removal proceedings are ongoing are at risk of receiving a removal order in their absence when they fail to attend future immigration court hearings. Individuals with in absentia removal orders may be barred from certain forms of relief, such as voluntary departure, cancellation of removal, and adjustment of status for a period of ten years.<sup>25</sup> They will also be inadmissible for a period of five years for failure to attend that hearing<sup>26</sup> and may be subject to other grounds of inadmissibility related to the removal order or any prior unlawful presence in the United States. See **Subsection B.** for a more detailed discussion of these grounds of inadmissibility. Noncitizens who depart and who were previously released from DHS custody after paying an immigration bond are at risk of forfeiting that money if they miss future immigration court hearings.

For these reasons, practitioners should advise clients to take the necessary steps to finalize their removal proceedings prior to their departure, if at all possible. For clients who were in removal proceedings who have already departed the United States, practitioners can still try to protect their client's potential for future relief by proactively seeking dismissal or termination of the proceedings. Otherwise, practitioners should consider whether clients may be able to participate in their court hearing remotely via WebEx and file any necessary motions with the immigration court to do so well in advance of the hearing.

Practitioners should advise noncitizens in removal proceedings about options in immigration court, including potential alternatives to a removal order and the steps required to make these requests. Some possible options include:

- **Voluntary departure**—Voluntary departure is a benefit that may be granted to certain eligible noncitizens by the immigration judge or, in some circumstances, by DHS.<sup>27</sup> People who leave the United States under an order of voluntary departure do not have a removal order on their records and will be able to avoid the related grounds of inadmissibility. See **Subsection B.** for more discussion of these grounds.

<sup>24</sup> For more information about overcoming inadmissibility under INA § 212(a)(9)(C), see ILRC, *Understanding I-212s and Inadmissibility Related to Prior Removal Orders and the Permanent Bar*, at [https://www.ilrc.org/sites/default/files/resources/i-212\\_advisory-final.pdf](https://www.ilrc.org/sites/default/files/resources/i-212_advisory-final.pdf) [hereinafter ILRC, *Understanding I-212s*].

<sup>25</sup> INA § 240(b)(6).

<sup>26</sup> INA § 212(a)(6)(C).

<sup>27</sup> INA § 240B; 8 CFR § 1240.26.

Individuals granted voluntary departure must leave the United States prior to a date set by the immigration judge and may be required to comply with additional conditions set by the immigration judge such as the posting of a bond, continued detention pending departure, and surrendering their passport to ICE for authentication.<sup>28</sup>

It is important to note that not everyone will qualify for voluntary departure.<sup>29</sup> Nor is voluntary departure the right option for everyone. This is in large part because the penalties for non-compliance with a voluntary departure order are severe and may be worse than taking a removal order. For example, if a noncitizen fails to depart within the specified time, an alternate order of removal will go into effect. The noncitizen will also become ineligible for many forms of immigration relief for ten years and may be subject to civil penalties and fines. Practitioners should assess clients for potential eligibility for voluntary departure. For those who might be eligible, it is important to discuss both the benefits and the risks of taking a voluntary departure order. For more guidance on assessing eligibility for voluntary departure, as well as the risks and benefits that come with it, see National Immigrant Justice Center's, *Voluntary Departure: Quick Start Guide 10/20/2025*, available at: [https://immigrantjustice.org/wp-content/uploads/2025/10/NIJC-VD-Quick-Start-Guide\\_Oct2025.pdf](https://immigrantjustice.org/wp-content/uploads/2025/10/NIJC-VD-Quick-Start-Guide_Oct2025.pdf).

**Example:** Henry is from Kenya and he overstayed his student visa for several years. He is married to a U.S. citizen who filed an I-130 petition for him. He was recently detained by ICE. Henry is desperate to not be detained any longer and wants to take voluntary departure. He asks how he can continue with his I-130 petition from Kenya.

You advise Henry that he can continue to process his I-130 if he leaves the country under voluntary departure. You inform him that if he is granted voluntary departure, he will avoid a removal order, which will help him avoid certain inadmissibility grounds related to a removal order. However, if he leaves under voluntary departure, he will still trigger the 10-year unlawful presence bar and will need to seek a waiver before he can receive an immigrant visa (based on an approved I-130) at the U.S. consulate. You explain to Henry that this will require him to remain outside the United States for several years as he completes the waiver and consular processes.

- **Withdrawal of request for admission**—“Arriving” noncitizens<sup>30</sup> in removal proceedings may request that their application for admission be withdrawn, resulting in the dismissal of their proceedings.<sup>31</sup> The immigration judge may allow the withdrawal of an application for admission if the individual is able to show they are able to and intend to depart the United States immediately and if counsel for DHS agrees to such withdrawal.<sup>32</sup>

<sup>28</sup> See 8 CFR §§ 1240.26(b)(3), (c)(3).

<sup>29</sup> See INA § 240B.

<sup>30</sup> 8 CFR § 1001.1(q).

<sup>31</sup> INA § 235(a)(4). See also INA § 240B(a)(4)

<sup>32</sup> 8 CFR §§ 1235.4; 1240.1(d).

Noncitizens who are detained are also eligible for these alternatives to removal. Detained individuals who are granted voluntary departure will remain detained during the period of time for departure granted by the judge. Similarly, individuals who seek to withdraw their application for admission may be detained until their departure. In these cases, ICE typically arranges departure travel for detained individuals. This means that factors outside of the control of the client—including the status of diplomatic relations and the frequency of flights to the client’s home country—could cause further delay in their departure. Practitioners should advise detained clients that they will likely have little control over when and how they will be transported out of the country under these alternative options.

Noncitizens in removal proceedings are eligible to use CBP Home and request incentives under Project Homecoming. However, participation in Project Homecoming or the use of CBP Home does not guarantee that the individual will avoid a removal order. The CBP Home website states that DHS will file motions to dismiss proceedings against those using the app.<sup>33</sup> It is not clear that this is happening in all cases. For this reason, practitioners may need to advocate with DHS to ensure a motion to dismiss is filed or otherwise negotiate for other alternatives to a removal order, including voluntary departure.

**NOTE: Stipulated removal versus voluntary departure.** In an effort to meet the administration’s mass deportation goals, DHS is aggressively encouraging individuals to voluntarily depart the country, particularly detained noncitizens. While DHS may make promises of voluntary departure, often what they are presenting is a stipulated removal.<sup>34</sup> When a noncitizen agrees to a stipulated removal, they are agreeing to their own removal. This will result in a removal order issued by the immigration judge without a hearing. A stipulated removal order is a removal order under INA § 240 and has all of the same legal consequences as any other removal order.

Practitioners should advise noncitizens of the differences between voluntary departure and a stipulated removal order and the consequences of accepting each. While stipulating to a removal order may shorten the court process, it does not guarantee that a noncitizen will be removed from the country quickly. There may be reasons why an individual may want to seek a stipulated removal, including a desire to get out of detention. However, practitioners should ensure that a client’s decision to pursue a stipulated removal is an informed one.<sup>35</sup>

## IV. Advising Noncitizens about the Practical Considerations of Departure

Beyond the legal consequences of departure, practitioners should advise clients about all of the practical considerations related to departing the United States. A good place to start is by helping your client complete a family preparedness plan. This plan can help families prepare for possible detention or removal, but it can also be a helpful guide for individuals who are

<sup>33</sup> Department of Homeland Security, CBPHome, <https://www.dhs.gov/cbphome>.

<sup>34</sup> For more information about stipulated removals, see National Immigration Project, *ICE Stipulations to Removal FAQ & Explainer* (June 2025), [https://nipnl.org/sites/default/files/2025-07/2025\\_NIPNLG-ICE-stipulations.pdf](https://nipnl.org/sites/default/files/2025-07/2025_NIPNLG-ICE-stipulations.pdf).

<sup>35</sup> *Id.*

preparing to voluntarily depart the United States. It can help noncitizens take the necessary steps to protect their family and their finances as they prepare to move. For more information about creating a family preparedness plan, see the ILRC, *Step-by-Step Family Preparedness Plan*, available at: <https://www.ilrc.org/community-resources/know-your-rights/step-step-family-preparedness-plan>.

### A. Obtaining necessary travel documents to depart the United States

Noncitizens who are planning to leave the United States must have the necessary identity or travel documents to depart the United States and to return to their home country. For most, this means having a valid, unexpired passport from their home country that will allow them to enter and live in that country. Those who do not have a valid, unexpired passport will need to contact the nearest embassy or consulate for their home country to find out what they must do to apply for a passport. Individuals who cannot obtain a passport before their departure will need to consult with the embassy or consulate to confirm what, if any, other documents are accepted in lieu of a passport.

Noncitizens who will be traveling with family will need to make sure that their family members also have the necessary travel documents. For children who were born in the United States, noncitizen parents may want to apply for U.S. passports for their children prior to leaving. Practitioners should advise parents to visit the U.S. State Department website to review the requirements to apply for a U.S. passport for a minor child as soon as possible.<sup>36</sup> However, parents of U.S. citizen children should check with their embassy or consulate to confirm if their children will need additional travel documents to enter or to reside in the parent's home country.

**NOTE: Departure to a third country.** Noncitizens who are considering immigrating to a country other than their country of citizenship will need to ensure that they meet the required entry requirements for that particular country. Individuals can confirm the passport and visa requirements for entry to other countries at the Passport Index website: <https://www.passportindex.org/>. Asylum applicants who are considering immigration to Canada may be barred from doing so under the Safe-Third Country Agreement. Individuals in this situation should consult a Canadian immigration law expert to understand if the Safe-Third Country Agreement will apply to them and whether or not they may qualify for an exception to that bar.<sup>37</sup>

<sup>36</sup> More information about those requirements and the application process can be found at: <https://travel.state.gov/content/travel/en/passports.html>.

<sup>37</sup> For more information about the Safe-Third Country Agreement in Canada, visit: <https://ccrweb.ca/en/refugee-claimants-entering-usa-practical-information>.

## B. Understanding the risks of outbound travel

An often overlooked, but nevertheless important, issue to discuss with clients is the logistics of their outbound travel. In the current landscape, clients departing the United States will need to navigate additional hurdles as they are leaving the country.

Noncitizens who are departing the United States by plane will need to make sure that they have an identity document that complies with the REAL ID Act. Acceptable documents under REAL ID include a REAL ID-compliant driver's license, state ID card, or U.S. passport.<sup>38</sup> They also include a Border Crossing Card, a valid, unexpired employment authorization document, and a foreign-government issued passport.<sup>39</sup> However, it does not include other common identity documents, such as consular identification documents or birth certificates. Individuals who do not have REAL ID-compliant documents will be required to pay a fee in order for TSA to verify their identity and allow them to travel.<sup>40</sup> Practitioners should make clients aware of the REAL ID-related requirements if they plan to depart the country by plane.

Beyond the documentation requirements, noncitizens should be aware that ICE enforcement is happening at airports throughout the country, resulting in the detention and removal of noncitizens traveling both domestically and internationally.<sup>41</sup> Practitioners should warn noncitizens, particularly those with criminal history or prior removal orders, of the risks of traveling by plane and advise them of their rights at the airport.<sup>42</sup>

For those planning to depart the United States by car or bus, it is important to note that travel within the United States may also make a person vulnerable to enforcement. The risk of enforcement may be higher in states and localities with 287(g) agreements in place that deputize local law enforcement agencies to carry out immigration enforcement tasks.<sup>43</sup> These risks are also high in cities where ICE (or Border Patrol) have launched aggressive enforcement campaigns and have an increased presence and in areas near the U.S.-Mexico border. There have also been reports of Border Patrol and ICE agents detaining and initiating removal proceedings against noncitizens as they leave the United States.<sup>44</sup>

<sup>38</sup> For a full, up-to-date list of acceptable REAL ID-compliant identity documents, visit <https://www.tsa.gov/travel/security-screening/identification>.

<sup>39</sup> *Id.*

<sup>40</sup> If TSA is unable to verify someone's identity, they will not be able to proceed through airport security and board their flight.

<sup>41</sup> Mother Jones, *TSA Is Forwarding Names, Photos, and Flight Details to ICE*, Dec. 13, 2025, <https://www.motherjones.com/politics/2025/12/tsa-ice-deporting-traveler-flight-details/>.

<sup>42</sup> See, e.g., NILC, *Community Alert: Immigration Arrests at Airports* (Dec. 18, 2025), <https://www.nilc.org/resources/community-alert-immigration-arrests-at-airports/>; ACLU, *Know Your Rights: Enforcement at the Airport* (Dec. 18, 2025), <https://www.aclu.org/know-your-rights/what-do-when-encountering-law-enforcement-airports-and-other-ports-entry-us>.

<sup>43</sup> For more information about 287(g) agreements, visit: <https://www.ilrc.org/practitioners/national-map-287g-agreements>.

<sup>44</sup> In December 2005, an ICE memo was leaked to the press indicating the Trump administration had planned an operation to target noncitizens departing the United States with the goal of detaining them and placing them in removal proceedings. Texas Public Radio, *'Operation Irish Goodbye:' ICE to detain migrants voluntarily leaving the US as part of Trump's deportation campaign* (Dec. 16, 2025),

Due to the heightened risks of outbound travel, practitioners should ask clients about their outbound travel plans. To assist clients in making informed travel plans, practitioners should advise clients about the risks of travel by airplane, car, and bus, and advise them of their rights if they are stopped by ICE, Border Patrol, or the police.<sup>45</sup>

**WARNING: Re-entry to the United States!** It is important to remind clients before they depart the country of the consequences of returning unlawfully to the United States. In addition to the risks of apprehension and detention, noncitizens who enter the United States without inspection may be subject to criminal prosecution for illegal entry (under 8 USC § 1325) or the imposition of civil fines. Individuals who depart under an order of removal may face reinstatement of that prior order, as well as criminal prosecution for illegal re-entry (under 8 USC § 1326) and possible civil fines. Unlawful re-entry may also trigger many of the inadmissibility grounds discussed in more detail in **Section III**.

## V. Pre-Departure Checklist

**NOTE:** This checklist is intended to assist practitioners advising noncitizen clients who are considering leaving the United States. It includes questions and information that can be reviewed with the client and may be helpful in guiding the discussion. However, this checklist is not a substitute for individualized legal assessment and advice.

- Has your client registered under the CBP Home app?
  - If yes, find out more about the status of their registration and ask to see any record or documentation of submission and any follow-up communication from DHS.
  - If your client has not registered, discuss the option of using CBP Home after gathering more information about the client's immigration history, current status, and future opportunities for relief.
- Does your client currently have status in the United States?
  - If yes, answer the following questions:
    - Does their status allow for travel outside of the United States?
      - If yes, do they understand the risks and limitations of travel abroad in their status?
      - If no, advise them of the risks of losing their status if they choose to depart the United States.

<https://www.tpr.org/news/2025-12-16/operation-irish-goodbye-ice-to-detain-migrants-voluntarily-leaving-the-us-as-part-of-trumps-deportation-campaign>.

<sup>45</sup> Additional resources are available to advise noncitizens about their rights at airports and Border Patrol checkpoints at or near the border. See Asian Law Caucus, Know Your Rights at Airports: International and Domestic (Mar. 24, 2026), <https://www.asianlawcaucus.org/news-resources/guides-reports/know-your-rights-at-airports>; ACLU of Northern California, Know Your Rights: U.S. Airports and Ports of Entry (Mar. 23, 2026), <https://www.aclunorcal.org/know-your-rights/know-your-rights-us-airports-and-ports-entry/>; ACLU, Know Your Rights: Enforcement at the Airport (Dec. 18, 2025), <https://www.aclu.org/know-your-rights/what-do-when-encountering-law-enforcement-airports-and-other-ports-entry-us>.

- Does their status allow them to seek permission to travel abroad temporarily (e.g., refugee travel document, advance parole, TPS authorization to travel)?
  - If so, advise them of the option to seek permission to travel abroad *temporarily*, as well as the risks of travel in the current landscape.
- If no, advise them of the risks of losing their status if they choose to depart the U.S.
- If no, continue to the next question.
- Does your client have an application or petition pending with USCIS?
  - If so, consult the first chart in **Section III.** to determine if it is:
    - An application/petition that can continue processing after the client's departure:
      - If so, advise the client of the need to update their address with the relevant agency and to check the case status regularly.
    - An application/petition that requires additional steps or processes to continue from abroad:
      - If so, advise the client of the necessary steps required to complete the process from abroad, as well as the costs and timeline. In particular, screen clients for possible inadmissibility triggered by their departure.
    - An application/petition that cannot be processed from abroad:
      - If so, advise the client that their departure will result in the denial or abandonment of their case. Discuss steps to withdraw their application, if necessary. Screen client for other avenues to return to the United States lawfully in the future.
- Will your client trigger inadmissibility grounds by leaving the United States?
  - Complete general screening for ALL inadmissibility grounds and advise the client of possible steps to overcome any inadmissibility issues, if any. In particular, screen for the following:
    - Prior unlawful presence in the United States.
    - Any unlawful presence that will be accrued before the client departs the United States.
    - Any current or prior removal (or deportation) proceedings.
  - Warn clients about the permanent bar. Consider providing specific advice regarding the following:
    - If the client will have accrued a year or more of unlawful presence (in the cumulative) when they depart, advise the client that any re-entry (or attempted re-entry) without permission will trigger the permanent bar.
    - If client has a prior removal order (including an expedited removal order) or will obtain one prior to their departure, advise the client that any re-entry (or attempted re-entry) without permission will trigger the permanent bar.

- ❑ Does your client already have a removal order?
  - If the order is final (no BIA appeal pending), advise the client that their departure will trigger inadmissibility that can only be overcome if the client receives an approved I-212.
  - Advise client that returning to the United States without permission may trigger the permanent bar and may subject them to additional consequences (such as the reinstatement of that order and/or prosecution for illegal re-entry).
- ❑ Is your client in removal proceedings?
  - Is your client eligible for voluntary departure?
    - If yes, are they willing to do the following:
      - Waive their right to appeal the immigration judge's decision
      - Depart the United States by the date set by the immigration judge
      - Comply with any other requirements set by the immigration judge, such as paying a voluntary departure bond, surrendering their passport to ICE, etc.
    - If yes, advise the client of both the benefits of voluntary departure, as well as the penalties for failure to comply.
  - Is your client classified as an “arriving” noncitizen?
    - If yes, advise the client of the possibility to request withdrawal of their admission.
  - Is your client detained?
    - If yes, advise the client of the possibility to seek dismissal of proceedings through CBP Home (also known as Incentivized Voluntary Departure).
    - Advise your client about the difference between stipulated removal and voluntary departure.
- ❑ Has your client made a plan to protect their loved ones and their financial assets upon their departure?
  - If no, recommend that the client complete a Family Preparedness Plan. Some examples include:
    - ILRC Step-by-Step Family Preparedness Plan—<https://www.ilrc.org/community-resources/know-your-rights/step-step-family-preparedness-plan>.
    - Appleseed Network Deportation Planning Manual—<https://deportationpreparation.org/>.
- ❑ Does your client have the necessary travel documents to depart the United States?
  - Does your client have a valid, unexpired passport?
    - If no, advise the client to contact their embassy or consulate for information about obtaining a new passport or other document sufficient for re-entry to their home country.
  - Do the family members accompanying your client have the necessary identity/travel documents?

- If no, advise the client to contact their embassy or consulate for information on how to obtain passports or other travel documents for their family members.
  - Advise clients with U.S. citizen children to contact the U.S. State Department to apply for U.S. passports for their children. Visit <https://travel.state.gov/content/travel/en/passports.html> for more information.
- Does your client intend to travel to a country other than their country of citizenship?
- If yes, advise them to contact the embassy or consulate of that country for more information about the requirements to enter that country. Visit <https://www.passportindex.org/> for more information about visa entry requirements for different countries.
- Has your client made a plan for their outbound travel?
- If your client is traveling by airplane, advise them of the REAL ID Act requirements. Visit <https://www.tsa.gov/travel/security-screening/identification> for updated information about the requirements under REAL ID.
  - Advise clients of the risks of outbound travel and provide know-your-rights information for noncitizens at airports and at the border. You may also want to encourage clients to learn more about the risks of the particular route they plan to travel (including 287(g) agreements, internal Border Patrol checkpoints, ICE presence at airports, etc.).
- Advise clients to obtain proof of their departure from the United States and their arrival in their home country and to keep copies of that documentation for the future.



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### About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

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