



## Self-Help Guide for a Prosecutorial Discretion Request

In June 2011, Immigration and Customs Enforcement (“ICE”) announced it would not use its resources to deport people it considers “low priority” and would review existing deportation cases to determine which cases could be closed. Since its announcement, ICE has been using its “prosecutorial discretion” power to decide which cases to pursue for deportation and to stop some deportation cases.

This packet provides information about how you can request that ICE stop trying to deport you because your case is a “low priority.”

In this packet you will find an explanation of how prosecutorial discretion works, a detailed list of factors ICE considers, a sample request letter, and a list of documents to include with your letter.

**IMPORTANT NOTICE:** Prosecutorial discretion will NOT change your immigration status. This guide should be used **ONLY** if the government is currently trying to deport you. You should NOT turn yourself in to immigration authorities or risk deportation in order to ask for prosecutorial discretion. Do not share any information with ICE that you do not want the government to know. This guide is not meant to be legal advice. Every case is different. Do **NOT** take advice from a Notary Public or immigration consultant. Contact **ONLY** a qualified immigration lawyer or an accredited representative for legal advice on your case.

## **Prosecutorial Discretion: Questions and Answers**

### ***What is prosecutorial discretion?***

ICE has the power to choose who to deport. This power is called “prosecutorial discretion.” This gives ICE flexibility to decide which cases to pursue for deportation and the power to stop the deportation process.

Although ICE officials have used this power for many years, in June 2011, ICE announced a change in the way they will use this power. ICE is now exercising prosecutorial discretion in deportation cases that it considers “low priority.” If ICE believes an immigrant’s case is “low priority” it can decide to close your case. When ICE decides to close your case, this does not make you “legal.” Instead, they are simply closing the active case against you so that you can go on leading your life as you were doing before the immigration case started.

This June announcement is not a change in immigration law. However, it can be useful for many immigrants who have an immigration case and are facing deportation.

ICE may use its discretion in two ways. First, ICE announced that they are reviewing all cases of people with cases in Immigration Court to determine whether the cases are “low priority” and should be closed. If you are currently facing deportation and have an immigration court date, ICE may review your case and use prosecutorial discretion to close your case. Second, anyone, including people who have a final order of removal, can ask ICE to use prosecutorial discretion to stop their deportation. This guide will help you decide if you should ask for prosecutorial discretion in your case.

### ***Am I eligible for prosecutorial discretion?***

ICE decides whether your case is “low priority.” If your case is “low priority,” then ICE may be willing to use prosecutorial discretion to close your case or stop your deportation. ICE says that it looks at positive and negative factors to determine whether your case is “low priority.”

If you have one negative factor, you could still be considered “low priority.” However, you would need to show many positive factors. Additionally, even if you have one or two positive factors, and no negative factors, ICE can still determine that you are not “low priority.” ICE can consider any positive or negative factors, even those not listed here or in its memos.

Positive factors include:

- Living in the United States for a long time
  - Have you lived here for many years? Do you have a strong connection to your community here in the U.S.?
- Family ties in the U.S.

- Do you have children here? A spouse, partner, or other family? Are any of them U.S. citizens or have other legal status?
- Medical and other humanitarian concerns
  - Do you have a medical condition that would be hard to treat in your home country? Do you need special medicine for an illness? Are there other things that make you really need to stay in the United States?

Negative factors can include:

- Serious criminal convictions
  - Have you been convicted of a felony or several misdemeanors?
- Gang affiliation or other threats to public safety
  - Are you a member of a gang?

These factors are spelled out in ICE’s memo on prosecutorial discretion, which can be found at: <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>. These factors are also attached to this packet.

### ***Should I ask for prosecutorial discretion?***

As we said before, ICE can exercise discretion on its own, or you can ask for it. Before you ask ICE for prosecutorial discretion, you should think about whether there is any other kind of way for you to win your immigration case. If you ask ICE to use their prosecutorial discretion to close your case, that is ALL that happens. Your case is closed and you get no change in your immigration status (i.e. you remain unauthorized to be in the United States). Certain types of applications – for example, cancellation of removal, adjustment of status or asylum – will give you lawful immigration status if you win your immigration case.

If you are granted prosecutorial discretion, you may not have the opportunity to apply for a legal way to stay in the U.S. Therefore, asking for prosecutorial discretion may not be in your best interest if you have a strong immigration case. To determine whether you have a strong immigration case, you should consult with an immigration attorney or accredited representative or, if you are detained, consult the materials available in the detention center’s law library.

### **You should request prosecutorial discretion if you want to stop your deportation case.**

Prosecutorial discretion is a good option if you are not eligible to stay in the U.S. or are unlikely to win any type of immigration case that will give you lawful immigration status.

### ***When can I ask for prosecutorial discretion?***

You should ask ICE to use its prosecutorial discretion **ONLY IF**:

You are already facing deportation **AND**

You have NO other way to stay in the U.S. under immigration law.

Asking ICE to use prosecutorial discretion is a last resort. You should NEVER turn yourself in to local law enforcement or immigration officials so that they will use prosecutorial discretion. You should only ask ICE to use this power if you are already facing deportation. In addition, remember that you should only request prosecutorial discretion if you have NO OTHER WAY to stay in the U.S. under immigration law.

If you have asked ICE to use prosecutorial discretion in your case in the past, and they denied your request, you can re-apply for prosecutorial discretion. For example, if your circumstances have changed and there are things that make you more sympathetic to ICE -- like a family member becoming ill -- you can ask ICE to review your case again based on your new circumstances. In addition, if ICE has already given you a deportation order, you can still request prosecutorial discretion.

### ***What exactly do I request?***

The type of prosecutorial discretion you can request depends on where your case is at:

1. If your case is currently before an immigration judge or the Board of Immigration Appeals (BIA), and you have not received a final order of deportation, you can request that your case be administratively closed. **Administrative closure** means that ICE will stop prosecuting your case and is not trying to deport you at this time. ICE can still try to deport you in the future, but if they do they will give you notice and the opportunity to fight your deportation.
2. If you have completed your removal proceedings (including an appeal to the BIA) and you were ordered deported but you are on appeal to the 9<sup>th</sup> Circuit Court of Appeals or waiting for your physical removal from the country, you can request a stay of deportation. A **stay of removal** means ICE will temporarily not deport you for a period of time, typically 1 year. You may renew your stay for another year. To request a stay, you should file a Form I-246, Stay of Removal and include the filing fee. See <http://www.ice.gov/doclib/news/library/forms/pdf/i246.pdf> for the form and more information.
3. You can request **deferred action** at any point in the deportation process, whether you are currently before an immigration judge, on appeal, or have already been ordered deported. Similar to administrative closure, “deferred action” means that ICE temporarily stops trying to deport you, but does not prevent them from trying to do so again in the future. The key benefit of deferred action is that you will be eligible for a “work permit.” ICE rarely grants deferred action. However, if you have a strong case for

prosecutorial discretion, you should request both deferred action and administrative closure in your case.

### ***How do I ask ICE to use prosecutorial discretion?***

To ask for ICE to use prosecutorial discretion, you should send a letter to ICE. This letter should include all the reasons why ICE should not deport you. In addition, you should attach documents that will support what you say in your letter. For example, if you have U.S. citizen children, you should include their birth certificates. This packet contains a detailed list of what documents are important to attach to the letter. It is extremely important to be truthful, honest and forthcoming in your letter and all supporting documents, especially in regards to your criminal history. NEVER lie or make up any facts. If you lie, you might be prosecuted for a crime.

If you are currently in removal proceedings and do not have a final order of removal, send your administrative closure request by mail or email to ICE's Office of Chief Counsel in the location where you live. For the Los Angeles area:

Chief Counsel  
Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
606 South Olive Street, 8th Floor  
Los Angeles, California 90014  
OPLA-PD-LOS-OCC@ice.dhs.gov

If you already have a final order of removal, send your request for a stay of removal to the local ICE Field Office Director and attach the form I-246 to your request. For the Los Angeles area:

Timothy Robbins  
Field Office Director, Los Angeles Field Office  
Enforcement and Removal Operations  
Immigration and Customs Enforcement  
Department of Homeland Security  
300 N. Los Angeles. St., Room 7631A  
Los Angeles, CA 90012

You can also send your request for deferred action to the local ICE Field Office Director listed above.

### ***What happens if ICE agrees to use its discretion in my case?***

If ICE agrees to use discretion in your case, it will notify you in writing. **Prosecutorial discretion does not change your immigration status or give you lawful immigration status.** Prosecutorial

discretion gives you a break from your current immigration case, but there is nothing to prevent ICE from restarting your case in the future. You **will not** be able to travel outside the U.S., you are not protected from future deportation proceedings, and you will not receive any immigration benefits. It is important to know what decision was made in your case and what the consequences are so you can take the appropriate steps.

### ***What happens if ICE refuses to use its discretion in my case?***

ICE may not notify you if it denies your request for prosecutorial discretion. Therefore, if you have not received a letter within one month of your request, contact your local ICE office. Remind them of your letter requesting prosecutorial discretion and ask them if they made a decision. If they did give you prosecutorial discretion, ask for a confirmation letter.

If ICE did NOT use its discretion then there are no changes in your situation. If you are currently in deportation proceedings, your case will move forward and you can continue to fight your case. There is no way to appeal the denial of prosecutorial discretion but, as discussed above, you may want to consider re-applying if there have been any changed circumstances.

### ***Can I get a work permit?***

When ICE uses prosecutorial discretion, it does not affect your ability to get a work permit. If you could not get a work permit before, then you cannot get one after ICE uses discretion. There is one exception. Individuals granted “deferred action” are currently eligible for a work permit. You can consult an immigration attorney or accredited representative to determine whether you qualify for a work permit.

## **Prosecutorial Discretion: Positive and Negative Factors**

### **Positive factors can include, but are not limited to:**

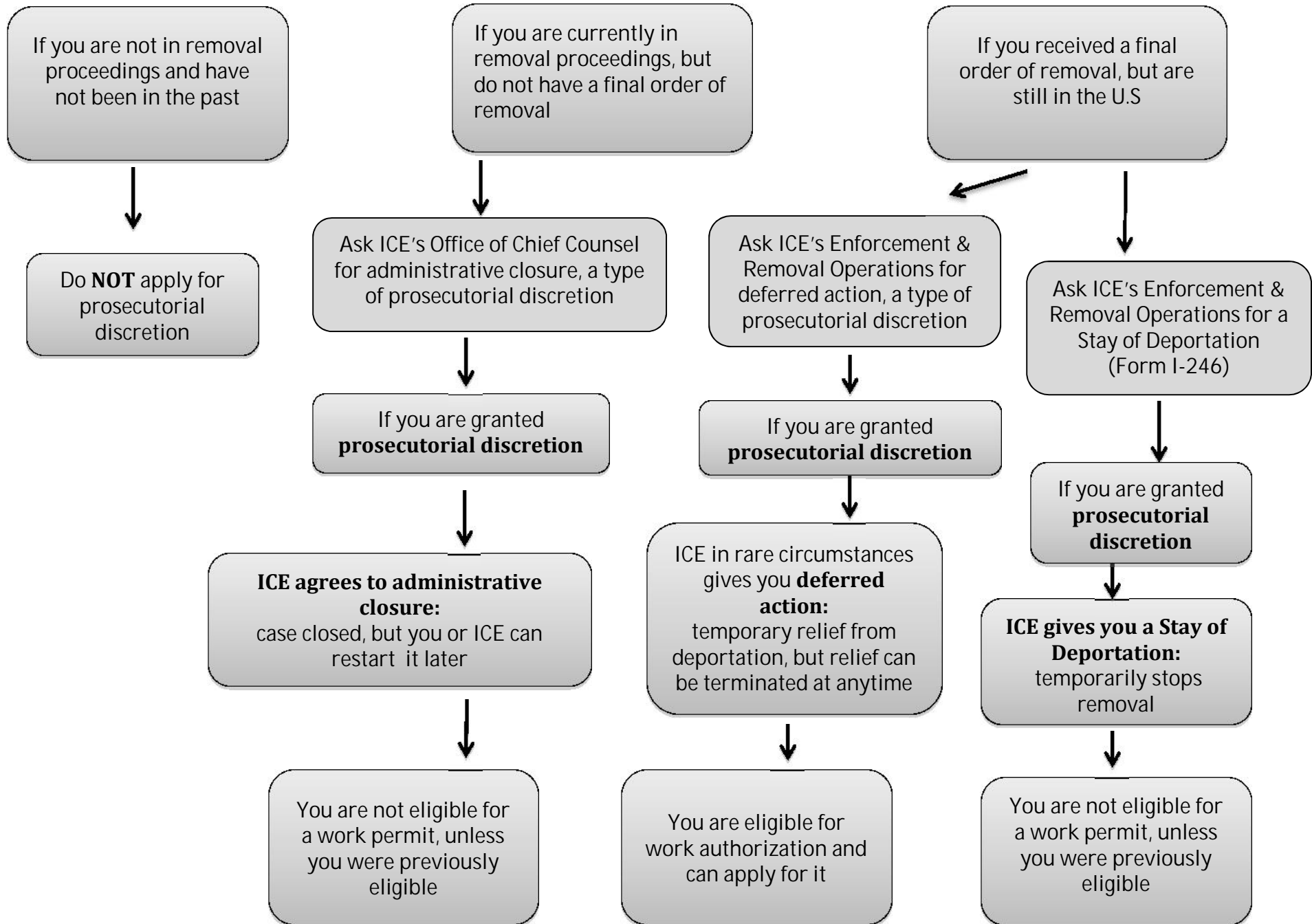
- How long you have been in the United States, with particular consideration given to the time you have been here lawfully
- The circumstances of your arrival in the United States and the way you entered, particularly if you came to the United States as a young child
- Your age, with particular consideration given to minors and the elderly
- Your pursuit of education in the United States, with particular consideration given to people who have graduated from a U.S. high school or had higher education in the U.S.
- Whether you, or your immediate relative, has served in the U.S. military, reserves, or national guard
- Your ties and contributions to the community, including successful work history and involvement with religious groups or community groups, or other charitable work
- Your family ties, with a particular consideration given to a U.S. citizen or permanent resident spouse, child or parent
- Whether you or your spouse is pregnant or nursing
- Whether you are the primary caretaker of a person with a mental or physical disability, a minor, or a seriously ill relative
- Whether you or your spouse suffer from severe mental or physical illness
- Whether you lack ties to your home country
- Whether the conditions in your home country are unsafe, and whether you have any conditions (e.g., a medical issue) that cannot be properly cared for in your home country
- Whether you are likely to be granted temporary or permanent status or other relief from removal, including as a relative of U.S. citizen or permanent resident, asylum seeker, victim of domestic violence, human trafficking, or other crime
- Whether you are a victim of domestic violence, human trafficking, or other serious crime
- Whether you are currently cooperating or have cooperated with federal, state or local law enforcement authorities, including ICE, the U.S. Attorneys, Department of Justice, Department of Labor, National Labor Relations Board, etc.
- Whether you are a witness in pending criminal investigations or prosecutions
- Whether you are a plaintiff in a lawsuit regarding civil rights or liberties violations or have a civil rights related complaint pending with an administrative agency
- Whether you are engaged in activity related to civil or other rights and are in a dispute with a landlord, employer, or contractor (for example, union organizing or complaining to authorities about employment discrimination or housing conditions)

**Negative factors can include, but are not limited to the following:**

- Your immigration history, including any prior deportation, outstanding deportation order, prior denial of status, or evidence of fraud
  - If you entered the country unlawfully or violated the terms of your admission within the last three years
  - If you have previously been deported from the U.S.
  - If an immigration official or immigration judge finds that you have committed immigration fraud
- Your criminal history, including arrests, prior convictions, or outstanding arrest warrants. The convictions considered most “serious” are:
  - A felony or multiple misdemeanors,
  - Illegal entry, re-entry, or immigration fraud, or
  - A misdemeanor violation involving:
    - Violence, threats, or assault
    - Sexual abuse or exploitation,
    - Driving under the influence of alcohol or drugs,
    - Flight from the scene of an accident
    - Drug distribution or trafficking, or
    - Other significant threat to public safety
- If you are a gang member, human rights violator, or other clear threat to public safety
- If you are a suspected terrorist or national security risk



# PROSECUTORIAL DISCRETION



**REQUEST FOR ADMINISTRATIVE CLOSURE**

**TODAY'S DATE:** \_\_\_\_\_

Chief Counsel  
U.S. Department of Homeland Security  
Immigration and Customs Enforcement  
606 South Olive Street, 8th Floor  
Los Angeles, California 90014  
OPLA-PD-LOS-OCC@ice.dhs.gov

RE: Request for Exercise of Prosecutorial Discretion in the matter of:

**YOUR NAME:** \_\_\_\_\_

**YOUR A-NUMBER :** \_\_\_\_\_

Dear Chief Counsel,

I respectfully request that you exercise prosecutorial discretion by agreeing to administratively close my case,

**YOUR NAME:** \_\_\_\_\_ **YOUR A-NUMBER :** \_\_\_\_\_ .

According to Immigration and Customs Enforcement Director John Morton, prosecutorial discretion should be exercised on those cases considered "low-priority" based on listed factors. See Memorandum from John Morton, Director, ICE, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

Based on the factors in the Morton memo, mine is a low-priority case and I am an ideal candidate for prosecutorial discretion.

I am \_\_\_\_ years old. My date of birth is: \_\_\_\_\_.

I want to stay in the U.S. because:

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**I have been in the U.S. for \_\_\_\_ years. I came to the U.S. when I was \_\_\_\_ years old. I consider the U.S. my home because:**

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**I have family members who are U.S. Citizens, Lawful Permanent Residents, or have lawful status in the U.S. They include:**

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Thank you for your attention to this matter and please contact me with any questions or concerns. I look forward to hearing from you.

Sincerely,

**YOUR SIGNATURE** \_\_\_\_\_

**YOUR NAME:** \_\_\_\_\_

**YOUR A-NUMBER :** \_\_\_\_\_

**IF TRANSLATED:**

I certify that I am fluent in both English and **YOUR LANGUAGE:** \_\_\_\_\_ and that the attached translation in English of **YOUR NAME:** \_\_\_\_\_'s

Request for Prosecutorial Discretion is a true and accurate translation of the statements in **YOUR LANGUAGE:** \_\_\_\_\_.

**TRANSLATOR'S SIGNATURE** \_\_\_\_\_

**TRANSLATOR'S NAME** \_\_\_\_\_

**DATE** \_\_\_\_\_

## Supporting Documents

**Attach the following documents if you can and if they are relevant to your request:**

- Proof that you have family members with U.S. citizenship, lawful permanent residence, or other lawful status: If your spouse, domestic partner, child or parent is a U.S. citizen, lawful permanent resident, or has lawful status in the U.S., include proof of your relationship (marriage license, domestic partnership certificate or birth certificate) and your family's immigration documents. You may also include photos of yourself with these family members.
- Medical records: Include any medical records that describe your health problem or the health problem of your family members. If you or your partner is pregnant, or has had a baby recently, include medical records that show this.
- Psychological records: Include any psychological records that describe your health problem or the health problem of your family members.
- Letter from doctor or other professional: Include a letter from a doctor, or other type of health professional, that discusses the medical or mental health problem. If you or your partner is pregnant, or has had a baby recently, include a letter saying that.
- Document detailing relationship as caretaker: Include proof that you are the caretaker of another person. This could be an agreement showing that you are the caretaker of that person, a letter from that person or yourself describing the caretaking relationship, medical records, a letter from doctor or health care professional, or other proof.
- Your school transcript: You can usually request a copy of your transcript or a report card from the school. This will list the courses you took as well as the grades you received.
- School degrees, awards, honors and scholarships: If you received any degrees or won any awards, honors or scholarships as a student, be sure to include any certificates or a description of them. This could include Dean's List, honor roll, etc.
- Official Military Personnel File "DD 214": This is the file that details military service. You can request this for yourself or for a next-of-kin for free by visiting: [www.archives.gov/veterans/military-service-records](http://www.archives.gov/veterans/military-service-records)
- Letters of support: If you have a family member, teacher, friend, employer, co-worker, community organization, religious organization, or someone else who can write a letter of recommendation it would be very helpful. Ask this person to write a letter saying how long they have known you and your positive qualities.



- Long term presence in U.S.: To show long term presence in the U.S. include work, school, medical records, rent receipts, bank statements, and utility bills.
- Criminal convictions and evidence of rehabilitation: If you have records of a conviction, you may want to provide that, particularly if the crime was a non-violent, minor offense. If you have records showing completion of probation or parole or any other court-mandated rehabilitation, like a substance abuse program, community service, etc. you should provide that as well.
- Documentation that you were the victim of domestic violence, trafficking or other serious crime: Provide police reports and any documents showing you cooperated with law enforcement.
- Documentation that you have a pending civil rights complaint: If you have a pending civil rights complaint, such as a lawsuit or a complaint with a government agency for violations of any civil right, such as employment rights, religious practice, or abuse in jail or detention, provide any and all documentation of that complaint.