

# YOUR IMMIGRATION CASE WHILE IN PRISON:

**Know Your Rights and What to Expect**



**Is the government trying to deport you?**

**This guide can help you know what  
your options are and what to expect in  
your immigration case.**

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This guide was created by the Immigrants' Rights Clinic at Stanford Law School on behalf of Centro Legal de la Raza in Oakland, California, and the Justice & Diversity Center of The Bar Association of San Francisco.

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MillsLegalClinic  
Stanford Law School

Immigrants' Rights Clinic

## IS THIS GUIDE FOR ME?

If you answer **YES** to any of the questions below, this guide is **PROBABLY** for you.

- Are you a **citizen** of a country other than the United States (including if you have a green card or are undocumented)?
- Did your **criminal defense lawyer** tell you that you might have immigration consequences because of your criminal case?
- Did the **criminal court judge** tell you that you might have immigration consequences because of your criminal case?
- Have you spoken to an **immigration officer** about going to immigration court or possibly being deported after your prison sentence? This might have included filling out a form with personal information or having a conversation with an immigration official.
- Have you spoken to an **immigration judge** about possibly being deported after your prison sentence?
- Are you **worried you might be deported** for any other reason?



This guide can help you through the immigration court process (called the Institutional Hearing Program) which may take place while you are still in prison.

\*The information in this guide focuses on people with immigration cases before the San Francisco Immigration Court who are currently serving federal prison sentences at the Federal Correctional Institution, Dublin or the Correctional Institution Taft. If you are serving a federal or state prison sentence and have an immigration case in another city or state, your experiences may be different.

# Starting Your Immigration Process In Prison

Meet Elena, Adrian, and Daniel. They are each serving a criminal sentence in federal prison and have been placed in removal (deportation) proceedings. Elena, Adrian, and Daniel’s stories are just examples. Your stories do not have to be the same as theirs. Every case is different.



## ELENA

Elena was caught carrying drugs across the border. She has some family in the United States and some family in Mexico. She is now afraid that the drug traffickers in her home country will hurt or kill her if she returns because they will think she gave information about them to the United States government. She is also afraid of her ex-partner who is back in Mexico. She is still deciding whether she wants to accept deportation or try to find a way to stay in the United States.



## DANIEL

Daniel was convicted of re-entering the United States after being deported in the past. His family still lives in his home country. He wants to get back to them as quickly as possible, so he has decided that he will accept his deportation.

## ADRIAN

Adrian has lived in the United States for a long time. He has a green card. He has a wife, children, and many other family members in the United States. He is in prison serving time for a criminal conviction. He wants to fight his case so that he can stay with his family.



The most important thing to remember is to SLOW DOWN and know that you can ask for more time when you first see the immigration judge to make sure you understand what all your options are, even if that means agreeing to be deported.

## Inside this Guide

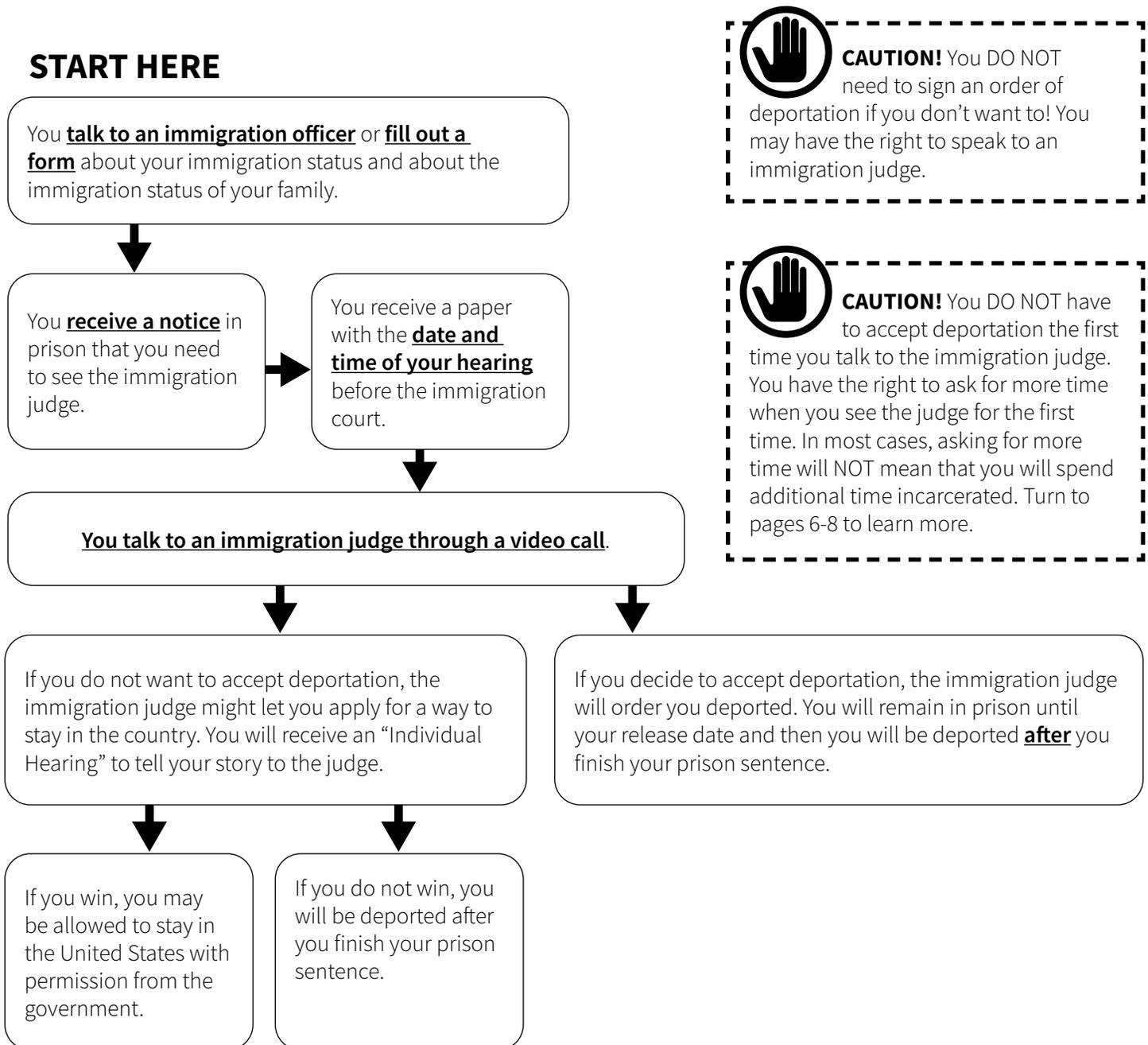
Follow Elena, Adrian, and Daniel through their immigration process.

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# Overview of the Process:

## Find yourself on this chart

Elena, Adrian, and Daniel have already spoken to an immigration officer about the possibility of being deported and they filled out forms with information about themselves and their family members. They also each received a notice to see an immigration judge and later they received a paper with the date and time of their hearing. They are about to talk to the immigration judge for the first time. You might be in a different part of the process. Can you find where you are in the process in the chart below?



## UNDERSTANDING YOUR RIGHTS

1. You have the right to consult with and/or hire a **lawyer**, BUT you must find the lawyer on your own because the government will not provide one.
2. You have the right to **tell your story to the judge**.
3. If you are confused about the process or why the government is trying to deport you, you have the right to **ask the judge questions**.
4. You have the right to **have an interpreter** so that you can speak to the judge in the language you feel most comfortable speaking.

## See how Elena, Adrian, and Daniel exercise their rights



**ELENA** wants a lawyer so that she can ask what her options are to stay in the U.S. Everyone with an immigration court case has the right to be represented by a lawyer. You must find the lawyer on your own. The government will not find or pay for one for you.

See what happens at Elena's hearings on pages 9-11.



**DANIEL** speaks only Spanish. The judge must use an interpreter so that Daniel understands what the judge says and so that he can answer the judge's questions.

See what happens at Daniel's hearing on pages 12-13.



**ADRIAN** knows he wants to fight his case. The judge will schedule him for additional hearings so he can file his application and then, at his "individual hearing," Adrian and his family members will talk to the judge and tell their story about why Adrian should be able to stay in the U.S.

See what happens at Adrian's hearing on pages 14-16.



## **SLOW DOWN AND CONSIDER YOUR OPTIONS** **BEFORE YOU TALK TO THE IMMIGRATION JUDGE**

Remember to ask for more time if you need it. You can ask the judge for more time to figure out whether you have a way to fight your case and stay in the U.S. In most cases, asking for more time will not mean that you spend any extra time incarcerated.

## Do I Have a Way to Stay in the U.S.?

**You may be wondering if there is any way for you to stay in the U.S.** The judge will ultimately decide, but these questions can help you figure out what options you might have. Elena, Adrian, and Daniel each have their own answers to these questions, and so do you! **If any of the examples below apply to you, let the judge know at your next hearing:**

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TELL THE JUDGE:  
**“I am afraid”** if...

- You are afraid to go back to your home country,  
OR
- Someone seriously harmed or threatened you or your family members in your home country.

---

TELL THE JUDGE:  
**“I might be a citizen”** if...

- One of your parents or grandparents is a U.S. citizen.

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TELL THE JUDGE:  
**“I have been a victim of a crime”** if...

- You or a close family member has been the victim of a crime in the U.S.

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TELL THE JUDGE:  
**“I have been a victim of trafficking”** if...

- You have been forced to work without pay,  
OR
- You have been forced to have sex, including forced to have sex for money,  
OR
- Someone harmed or threatened you on your way into the U.S.

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TELL THE JUDGE:  
**“I was a victim of domestic violence and my family member had papers”** if...

- You have been the victim of domestic violence or abuse in the U.S. by a spouse or a parent who is a U.S. citizen or has a green card,  
OR
- Your child was abused by their other parent who is a U.S. citizen or has a green card.

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**YOUR ELIGIBILITY FOR THESE THREE OPTIONS TO STAY MAY BE AFFECTED BY YOUR CRIMINAL CONVICTION. PLEASE CONSULT A LAWYER OR OTHER GUIDE FOR ADVICE.**

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TELL THE JUDGE:  
**“I think I might qualify for cancellation”** if...

- You are undocumented (no green card),  
AND
  - You have lived in the U.S. for more than 10 years,  
AND
  - You have a U.S. citizen or Lawful Permanent Resident parent, spouse, or child (who is under 21 and not married),  
AND
  - Your parent, spouse, or child would suffer very serious harm if you were deported.
- 

TELL THE JUDGE:  
**“I think I might qualify for cancellation for legal permanent residents”** if...

- You have been a Lawful Permanent Resident (green card holder) for at least 5 years,  
AND
  - You lived in the U.S. for at least 7 years before you got your first notice from immigration that you had to see a judge.
- 

TELL THE JUDGE:  
**“I think I might qualify for a new green card and a waiver”** if...

- You are a Lawful Permanent Resident (green card holder),  
AND
  - You have a U.S. citizen spouse or child who is over 21,  
AND
  - You have a U.S. citizen or Lawful Permanent Resident parent, spouse, son, or daughter who would suffer very much if you were deported.
-

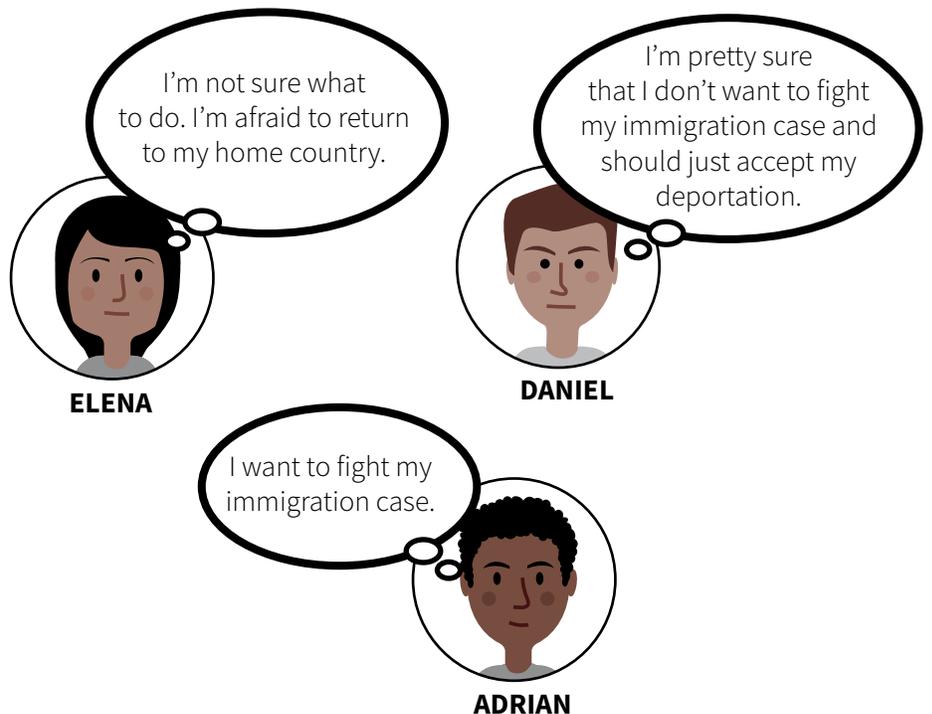
# First Time Talking to the Immigration Judge

The first time you talk to the judge is called a “**Master Calendar Hearing.**” Some people will have just one Master Calendar Hearing and some people may have three or four (or even more). During this hearing, you will talk to the judge through a video call, and she will ask you questions. You will talk to the judge from a room in prison and the judge will be in her courtroom.



**REMEMBER! SLOW DOWN. YOU CAN ASK FOR MORE TIME:** Generally, asking for more time will **not** make your incarceration longer.

If you decide to ask for more time and fight your case, **you can always change your mind later so that it goes more quickly.** But if you don't ask for more time and the judge orders you deported, you cannot change your mind.



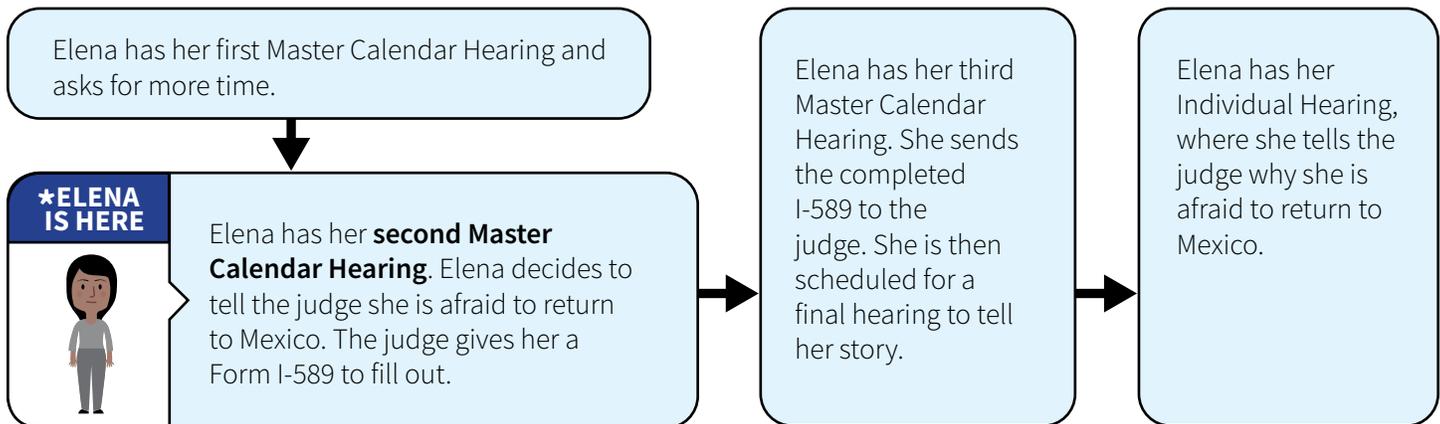
At their first hearing, Elena, Daniel, and Adrian all **ask the judge for more time** before starting their case.

Even though Elena, Daniel, and Adrian all have different goals, for each of them it is a good idea to ask for more time. Asking for more time will give them a chance to try to find a lawyer, talk with their families, and review this guide.

*It is normal to feel nervous when you talk to the judge or to feel like everything is happening very fast. If you are confused, you can ask the judge questions to make sure you understand what is happening.*



# Elena's Second Hearing: Starting Her Case and Telling the Immigration Judge She is Afraid



★ *This is just an example. Your judge may ask different questions.*

What will the judge ask?	What does Elena say?	Why is the judge asking this?
Good morning Elena. Were you able to find an attorney?	No, I tried calling the lawyers on the list, but they didn't answer.	<i>Last time Elena said she wanted more time to find a lawyer and the judge gave her more time to look for one. Unfortunately, she wasn't able to find one. She can still represent herself and fight her case.</i>
OK, since I have already given you extra time to find a lawyer, we will have to start your case today.	OK.	<i>The judge already gave Elena one chance to find an attorney. Some judges will give people a second or even a third or fourth chance to find a lawyer, but others only give people one chance to find a lawyer before they have to begin their cases and represent themselves.</i>
Did you receive a Notice to Appear before the immigration court?	Yes.	<i>The Notice to Appear (NTA) is a document that lists the reasons why the government wants to deport you. If you don't have this document, <u>TELL THE JUDGE</u> and ask for a copy.</i>
Are you a citizen of Mexico?	Yes.	<i>The government can only deport people who are not U.S. citizens. If you think you might be a U.S. citizen (for example because one of your parents or grandparents is), <u>TELL THE JUDGE</u> that you might be a U.S. citizen.</i>
Were your parents or grandparents ever U.S. citizens?	No.	<i>The judge is trying to make sure you are not a U.S. citizen. If you know or you think that one of your parents or your grandparents is a U.S. citizen, <u>TELL THE JUDGE</u>.</i>
Were you convicted of importation of cocaine and sentenced to 37 months?	Yes.	<i>Certain criminal convictions can lead to deportation. The judge is confirming that Elena was convicted of this crime. Sometimes there is a mistake, so <u>TELL THE JUDGE</u> if you think she may be wrong about dates, the length of the sentence, or even the actual conviction.</i>

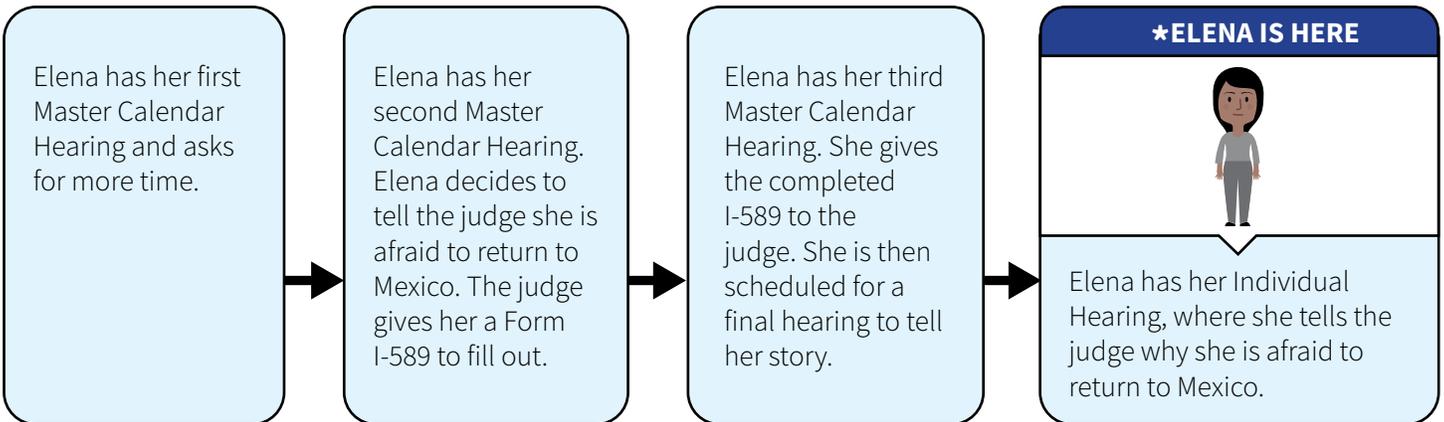
What will the judge ask?	What does Elena say?	Why is the judge asking this?
The government says you violated U.S. immigration laws. Do you want to contest (fight) the charge?	No.	The government says that, based on the fact that Elena is from Mexico and was convicted of a crime, she can be deported. Elena agrees that this is true. So she says NO, she doesn't want to fight the charge. Just because Elena agrees that her criminal conviction violated immigration laws, does not mean she is actually agreeing to be deported.
Are you afraid to return to Mexico?	Yes. I am afraid of my ex-partner who was abusive towards me and he is in Mexico. I am also afraid that the drug traffickers who I was working for will kill me if I am sent back to Mexico.	People who are afraid to return to their country may have a way to stay in the U.S. If you are afraid to go back to your country, <u>TELL THE JUDGE</u> that you are afraid.
Because you are afraid to return to Mexico, you may be eligible for Withholding of Removal or Convention against Torture relief. Would you like to apply for those?	Yes.	When somebody is afraid to return to their country, they have the right to explain their story to the judge and tell the judge why they are afraid to go back to their home country so that the judge can decide whether they qualify to stay in the U.S.
Ok. The officer will give you a Form I-589. You must fill this application out before your next hearing. It must be filled out in English. You can mail it to me or bring it with you when you are scheduled to speak to me next. Do you understand?	Yes, thank you, your Honor.	After this hearing, Elena will have to fill out the I-589 form, which is an application for asylum, withholding of removal or Convention Against Torture relief. The judge will ask her to bring it with her the next time she has to talk to the judge.
Do you have any questions for me?	No, your Honor.	These hearings can go by really fast and you might have questions or feel confused about what is happening. If you have a question or if you don't understand something, <u>ASK!</u>



**Before Elena talks to the judge again**, she needs to answer the questions on the Form I-589. The form has to be filled out in English, so Elena may want to ask a friend inside or outside of prison for help. The judge will also ask Elena to bring any papers or letters or other documents that help show why it would be dangerous for her to go back to her country.

Turn to page 14 for more information about what resources you can use to prepare this type of case.

# Elena's FINAL Hearing: She Tells Her Longer Story to the Immigration Judge



## TELLING HER STORY THROUGH HER OWN WORDS:

Elena's last hearing is called an **"Individual Hearing."** At this hearing, Elena tells her story to the judge and answers questions from the judge or from the government attorney. It is important for Elena to tell her entire story and give as many details as possible about why she is afraid. This includes stories about things that happened to her or her family members or threats that she or her family members have received. It is important to tell the judge as much as she can during this hearing.

## SHOWING THE JUDGE HER STORY THROUGH PROOF:

She also presents proof, including letters from friends and family who know about her situation and newspaper reports about things that are happening in her home country.

### Examples of proof Elena can show the judge:



Letters from friends and family



Newspaper articles about violence in Mexico



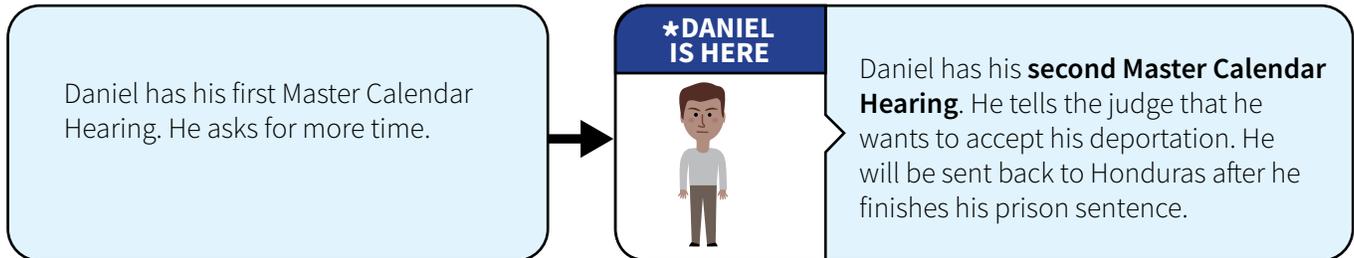
Evidence of threats, like text messages sent to Elena or her family

After hearing Elena's story and listening to the answers to all of the questions, the judge decides she qualifies for Convention against Torture relief. After Elena finishes her criminal sentence, she will be released from prison and allowed to stay in the U.S. with her family.



# Daniel's Second Hearing: He Accepts His Deportation

Remember Daniel? He does not have family in the U.S. and he is not afraid to return to his home country. He has decided that he does not want to fight his case.



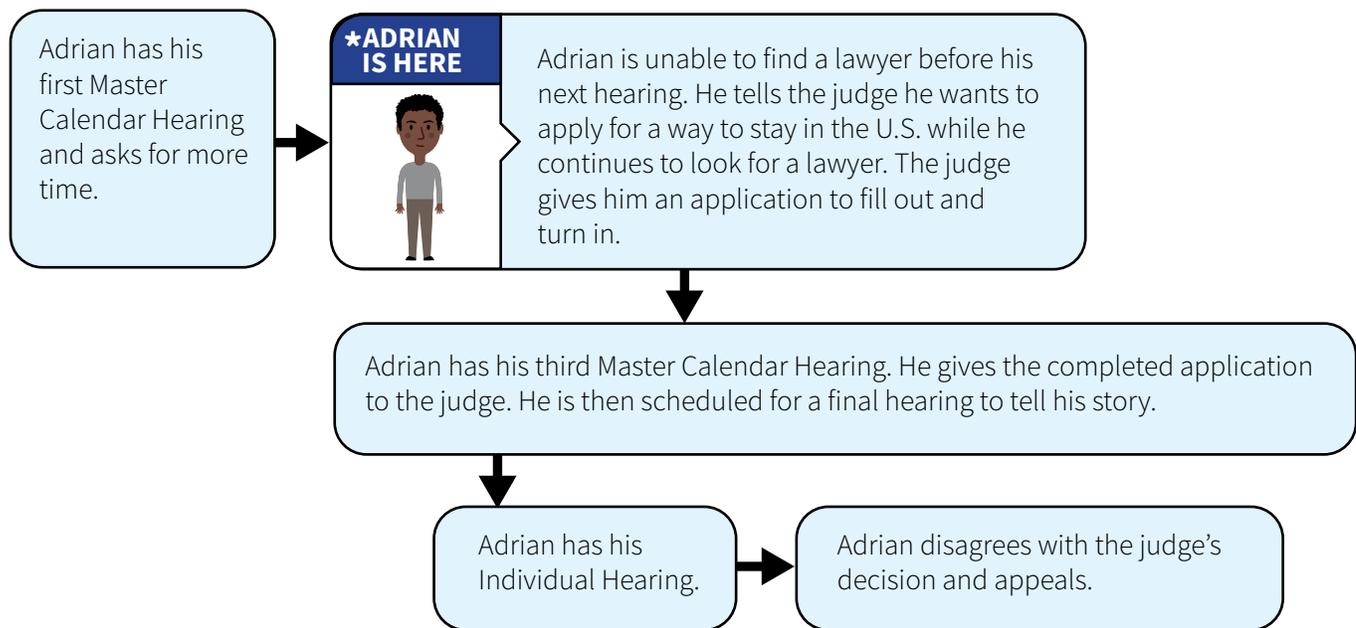
★ **The questions below are just examples: your judge may ask you different questions. You may also get asked the same questions that Elena was asked.**

What will the judge ask?	What does Daniel say?	Why is the judge asking this?
<b>Good morning Sir. Were you able to talk to your family or find a lawyer?</b>	Yes. I talked to my family and we all want a quick deportation.	<i>Last time Daniel said he wanted more time to talk about his options with his family. The judge is following up to see how that conversation went.</i>
<b>OK, are you ready to continue today without a lawyer?</b>	Yes.	<i>Since everybody has the right to hire a lawyer, the judge has to make sure that Daniel has had time to try to find a lawyer but has decided to represent himself.</i>
<b>Did you receive a Notice to Appear before the immigration court?</b>	Yes.	<i>The Notice to Appear (NTA) is a document that lists the reasons why the government wants to deport you. If you don't have this document, <u>TELL THE JUDGE</u> and ask for another copy.</i>
<b>Are you a citizen of Honduras?</b>	Yes.	<i>The government can only deport people who are not U.S. citizens. If you think you might be a U.S. citizen (for example because one of your parents or grandparents is), <u>TELL THE JUDGE</u> that you might be a U.S. citizen.</i>
<b>Were your parents or grandparents ever U.S. citizens?</b>	No.	<i>The judge is trying to make sure you are not a U.S. citizen. If you know or you think that one of your parents or your grandparents is a U.S. citizen, <u>TELL THE JUDGE</u>.</i>

<b>What will the judge ask?</b>	<b>What does Daniel say?</b>	<b>Why is the judge asking this?</b>
<b>Were you convicted of re-entering the country after being deported?</b>	Yes.	<i>Certain criminal convictions can lead to deportation. If judge is wrong about the details of the criminal conviction, <u>TELL THE JUDGE THE CORRECT INFORMATION.</u></i>
<b>The government says you violated U.S. immigration laws. Do you want to contest (fight) the charge?</b>	No.	<i>The government says that, based on the fact that Daniel is from Honduras and was convicted of a crime, he can be deported. Daniel is ready to accept his deportation. If you are ready to accept your deportation, <u>TELL THE JUDGE.</u></i>
<b>Are you afraid to return to Honduras?</b>	No.	<i>People who are afraid to return to their country may have a way to stay in the U.S. If you are afraid to go back to your country, <u>TELL THE JUDGE</u> that you are afraid. If you are not afraid, you can answer “No.”</i>
<b>JUDGE’S DECISION</b>		
<b>OK, I’m going to order you removed to Honduras. You will be deported after you complete your sentence.</b>	I understand, your Honor.	<i>The judge has found that Daniel can be deported. It is important to remember that you will <b>ALWAYS</b> have to wait until after you finish your prison sentence to be deported.</i>
<b>You have the right to appeal my decision within 30 days. Do you want to waive that right and accept my order to deport you as final?</b>	Yes, your Honor, I accept your decision as final.	<i>The judge must advise everyone that they have the right to appeal their deportation, which means asking a higher-up judge for a second opinion. (Turn to page 17 for more information.) Daniel wants to go back to his home country after he finishes his sentence, so he decides not to appeal. If you accept the judge’s decision and do not want to fight the deportation, <u>TELL THE JUDGE</u> that you accept the decision.</i>
<b>Do you have any questions for me?</b>	No, your Honor.	<i>These hearings can go by really fast and you might have questions or feel confused about what is happening. If you have a question or if you don’t understand something, <u>ASK!</u></i>
<b>I will mail you a copy of the final order.</b>	Ok. Thank you, your Honor.	<i>The judge must provide a copy of the written order to Daniel. The judge will mail it to Daniel’s address in prison. If you don’t have a copy of the order within 30 days, <u>REQUEST TO SPEAK TO AN ICE OFFICER</u> to get it.</i>

Daniel has accepted his deportation order. Turn to page 17 to learn what happens after you accept a deportation order.

# Adrian's Second Hearing: He Prepares to See the Immigration Judge Again



Adrian decides to move forward with his case. He keeps looking for a lawyer, but because he can't find one, he works with his wife to help get ready for his next hearing. Adrian thinks he might have a way to stay in the U.S. because he has a U.S. citizen wife and because his conviction does not prohibit him from applying for specific waiver, like a "212(h)" waiver. If the judge approves this waiver (which is like a pardon), Adrian can stay in the U.S. with a green card. This waiver is only an option for some people who have certain U.S. citizen family members and certain types of criminal convictions. The judge agrees and gives Adrian an application to complete.

## ADRIAN FILLS OUT A FORM:

The judge will ask the immigration officer at the prison to give Adrian a form. The judge will give Adrian a deadline to turn it in. The form must be filled out in English.

## ADRIAN COLLECTS EVIDENCE:

While Adrian is waiting for his final hearing, he should ask his wife or other close family members to help him gather letters of support from as many friends and family members as he can. Adrian and his family should also try and gather as many records and documents as they can that show that he has many ties to the U.S.

### Examples of proof Adrian can show the judge:



Letters from friends and family



Marriage certificate



Tax returns



Family photos

## WAYS THAT ADRIAN CAN GATHER PROOF



### Phone calls

Normally, phone calls in prison are recorded. You have the right to be able to make a special phone call to an attorney that is not recorded. Even though these calls are not recorded, a prison guard may be in the room and may be able to hear your conversation. Of course, if you are calling your family or friends, the calls will definitely be recorded.

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### Mail

Normally, mail will be inspected by staff at the prison before you receive it. If you get mail from a lawyer, they should write “Legal Mail—Open only in the presence of the inmate”. The lawyer should include their full name and also “Attorney at Law” on the envelope. Then the mail should only be inspected if you are in the room. If it is taking a long time to get the mail, please tell the judge. If your family has sent you documents to help your case but you have not gotten them, TELL THE JUDGE.

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### Visits

If you get a lawyer, your attorney has a right to visit you in prison in a confidential and private space. Your family can also request visits with you to talk about how they can help you prepare your case.

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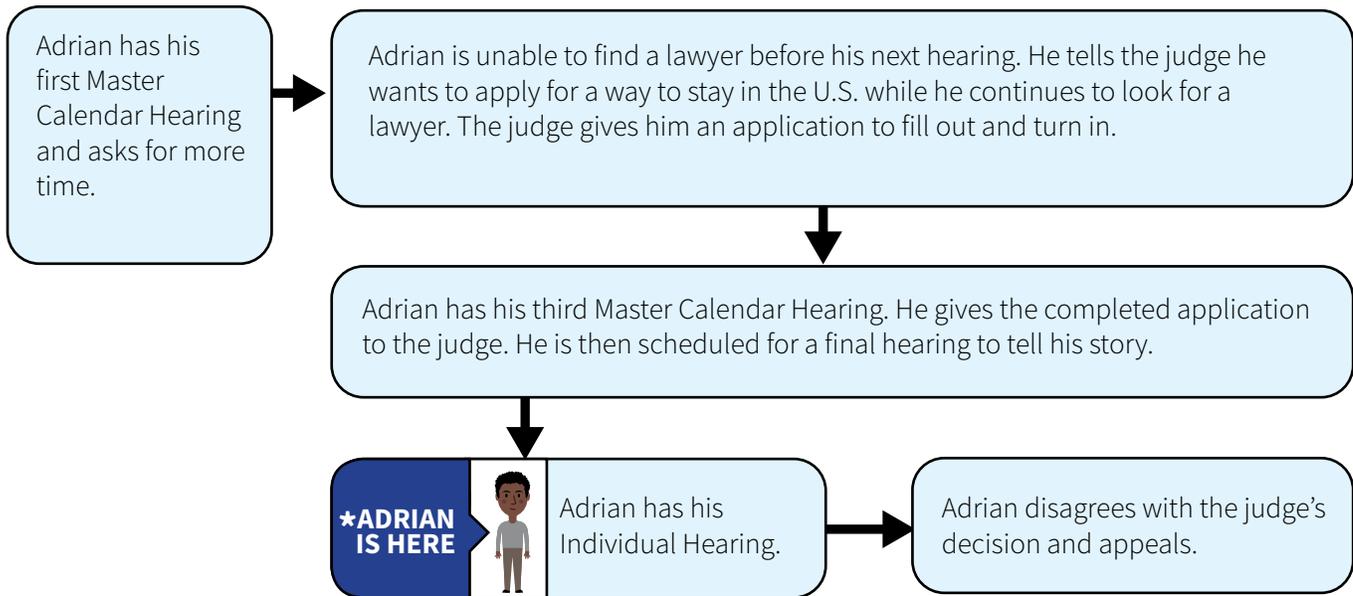


### Law library

If you want more information or don't have a lawyer, the law library might have books, legal cases, and other information about immigration law that you can use to learn more. The law library is open at certain times of the day and is available to everyone. Using the library is free; you do not have to pay.

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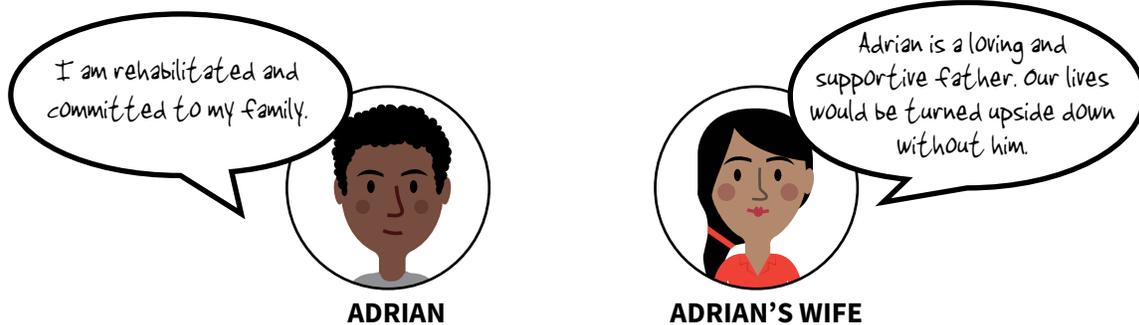
# Adrian's FINAL Hearing: He Makes His Case Before the Immigration Judge



Adrian has a final hearing, called an **“Individual Hearing,”** in front of the judge. Because Adrian was unable to find a lawyer, he speaks for himself and fights his case on his own. To help convince the judge that he should be allowed to stay in the U.S., Adrian gives the judge the documents that he collected (see page 14).

## TELLING HIS STORY:

During his hearing, Adrian talks to the judge about the mistakes he has made and how he is committed to making better decisions in the future. Adrian answers questions from the judge and the government attorney. His wife and other family members also talk to the judge and to the government attorney about how important Adrian is to their family.



Unfortunately, the judge does not agree that Adrian should be able to stay in the United States, and orders Adrian deported. Adrian disagrees with this decision.

See page 17 to see what he did to “appeal” the judge’s decision.

# Next Steps After Immigration Court Hearings

Depending on how your hearing goes, several things could happen next.



**IMPORTANT NOTE:** These are just examples. We can't predict how your case will end, and just because you started in a similar place to Elena, Daniel, or Adrian does not mean you will end up with the same outcome.

**Adrian** tried to fight his immigration case but lost. He wants to keep fighting. This is called an **“appeal.”** Even if you lose, you have a right to appeal. You must tell the judge that you want to appeal.

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In order to **APPEAL**, you must mail a **Form EOIR-26 (Notice of Appeal)** to the **Board of Immigration Appeals (BIA)**, not to the immigration judge. The Notice must be **received** by the BIA within 30 days of when the judge said she was ordering you deported. The BIA's address is on the form.



**Daniel** accepted an order of removal. Since he decided not to appeal the judge's decision, the decision is final and his case is over. Daniel will finish serving his criminal sentence and then the government will deport him.



**Elena** won her immigration case. That means she can stay in the U.S. with her family! She will finish serving her criminal sentence and, when her release date comes, she will be released to her family in the U.S.

If Elena's release date had occurred before her immigration case was over, she would have either gone to immigration detention or she would have been released to finish fighting her case. If she went to immigration detention, once the immigration judge granted her case, she would be released from immigration detention to her family.

# Frequently Asked Questions

**Q: If I tell the judge I want to be deported, will I go home before my criminal sentence is over?**

A: No. Even if you choose not to fight your deportation, you will still have to serve out your entire criminal sentence before you are deported.

**Q: I was given an attorney for my criminal case. Why don't I have one now?**

A: Under U.S. law, if a person with a criminal case cannot afford an attorney, the government will provide an attorney free of charge. But, in an immigration case, you need to find your own immigration attorney or represent yourself. Some attorneys work for non-profit organizations that do not charge, but most attorneys charge a fee. There might be a free attorney in court when you talk to the judge, though. This attorney, called the “pro bono Attorney of the Day,” is typically only there to help you with your Master Calendar Hearing and not to represent you for your whole case.

**Q: I can't afford a lawyer. What do I do?**

A: The government should provide you with a list of immigration attorneys that may work on your case for free. There might also be an attorney who can help you on the day of your hearing for free, but they will only help you in a limited way for that one hearing (see above).

**Q: I have a Green Card. Why am I going through deportation proceedings?**

A: The U.S. has immigration laws that allow the government to try to deport someone with a Green Card (a permanent resident) if that person has been convicted of certain crimes.

**Q: If my case takes a long time, or if I appeal my case will it extend my time in prison or immigration detention?**

A: It depends. The goal of the program you are in is to complete your immigration case BEFORE your prison sentence ends. However, if your immigration case is not over before your release date, you may be transferred to immigration detention where you will wait for your case to be decided.

**Q: If I decide to accept my deportation and go back to my home country, can I ever come back to the U.S.?**

A: Unfortunately, once you accept your deportation and go back to your home country, it will be very difficult to come back to the U.S. Most people are deported for life because of their criminal convictions. You can apply for a visa through the consulate, but it will likely be very hard to get one because of your past criminal conviction. If you try to re-enter the United States without permission, you could be prosecuted and sent to prison for many years.

## COMMONLY USED PHRASES

**EOIR-26:** The form asking a higher court, the Board of Immigration Appeals (BIA), for a second opinion (“appeal”) if you do not agree with the judge’s decision.

**Form I-589:** The application for asylum, withholding of removal, and Convention Against Torture protection.

**Institutional Hearing Program (IHP):** Having an immigration court case while still serving your prison sentence.

**Notice To Appear (NTA):** The notice from the Department of Homeland Security (DHS) or immigration containing the immigration charges against you.

**Notice of Hearing:** The notice sent by the immigration court telling you the date and time of your hearing.

**Master Calendar Hearing:** Initial or preliminary hearings with the judge where you are appearing before the judge in a group of people.

**Individual Hearing:** The longer, final hearing (not in a group) where you tell the judge specifics of your case and the judge makes a decision. See examples of Elena’s and Adrian’s Individual Hearings on pages 11 and 15.

**Waive right to appeal:** You have a right to ask for a second opinion if you disagree with the judge’s decision. If you don’t want to use that right, this is called “waiving the right to appeal.” If you waive this right, you cannot appeal your deportation order. If you reserve this right, you have 30 days to file an appeal.

**Pleading to the charges:** When the judge asks you to “plead to the charges” or “enter pleadings,” he is asking you to agree or disagree with what the government is saying about your immigration status and criminal convictions.