

POST-ELECTION QUESTIONS & ANSWERS FOR IMMIGRANT FAMILIES

January 3, 2017*

Pages 1 - 2 include summary responses to common questions with links to more extended explanations below.

CAN PRESIDENT TRUMP TAKE AWAY MY CITIZENSHIP? No. Citizenship is protected by the U.S. Constitution and can only be eliminated in special, rare situations.

CAN PRESIDENT TRUMP TAKE AWAY THE CITIZENSHIP OF MY CHILDREN IF I AM UNDOCUMENTED? No, for the same reason.

CAN PRESIDENT TRUMP TAKE AWAY MY GREEN CARD? Not unless one of the reasons agreed to by Congress applies and only after you have a chance to fight deportation in immigration court.

CAN PRESIDENT TRUMP TAKE AWAY MY REFUGEE OR ASYLUM STATUS? Not unless one of the reasons agreed to by Congress applies and only after you have a chance to fight deportation in immigration court.

WILL MUSLIMS HAVE TO REGISTER WITH IMMIGRATION OFFICIALS UNDER PRESIDENT TRUMP? In the past, this policy was limited to men from certain countries with temporary status (not refugees, asylees, lawful permanent residents, citizens). President Obama eliminated the program. It would be difficult for President Trump to recreate it.

COULD PRESIDENT TRUMP KEEP MY MUSLIM RELATIVES FROM JOINING ME BECAUSE OF OUR RELIGION? The U.S. Constitution prohibits discrimination based on religion, but it is possible that security measures could complicate these applications.

WILL PRESIDENT TRUMP ELIMINATE THINGS LIKE U VISAS OR PETITIONS FOR RELATIVES TO JOIN ME IN THE U.S.? Not unless Congress agrees.

IF I THINK I AM ELIGIBLE FOR A VISA, A GREEN CARD, OR CITIZENSHIP, SHOULD I APPLY NOW? Maybe. These benefits provide important protections but you should talk to an immigration attorney about any risks you might face.

WHAT ARE THE CONSEQUENCES OF STAYING PAST THE DATE MY VISA EXPIRES? It depends. If you are facing this situation it is important to speak to an Immigration attorney about your risks and options.

WHAT COULD PRESIDENT TRUMP CHANGE ON HIS OWN? Policies related to DACA. Priorities for who to try to deport. Policies on where to enforce immigration laws, among other things.

* This resource was prepared by Kate Evans, director of the Immigration Clinic at the University of Idaho College of Law, and Courtney LaFranchi, UCD Public Interest Law Fellow at Andrade Legal.

WILL THE POLICE GIVE MY INFORMATION TO IMMIGRATION AGENTS? It is possible. They should not contact Immigration based on race or language, but providing a foreign ID is reason enough. ICE also receives information from the FBI if you are fingerprinted after an arrest.

CAN SCHOOLS SHARE INFORMATION ABOUT ME OR MY FAMILY WITH IMMIGRATION AGENTS? They cannot share information about immigration status collected in a formal record. Other information could be shared unless you contact the school and restrict it.

CAN PRESIDENT TRUMP REALLY DEPORT EVERYONE WITHOUT IMMIGRATION STATUS IN THE U.S.? Not without significantly more money and people, which Congress would have to provide.

WHAT CAN I DO TO PREPARE FOR CONTACT WITH IMMIGRATION AGENTS? Update your emergency contact information. Gather important documents. Memorize important phone numbers. Grant family or friends power to care for your children and to access your money to get you help.

WHAT DO I DO IF I COME IN CONTACT WITH POLICE OR ICE? KNOW YOUR RIGHTS: You can remain silent in response to questions. You can require a warrant signed by a judge before letting immigration agents in your house. You can contact a Lawyer if you are arrested. You can refuse to sign documents without speaking to a lawyer.

POST-ELECTION QUESTIONS & ANSWERS FOR IMMIGRANT FAMILIES

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The election of Mr. Trump as president has created uncertainty and fear about what will happen to many immigrant families. It is important to be prepared, but not to panic. The U.S. Constitution provides certain rights to immigrant families that no president can take away and hundreds of existing federal and state laws also protect the rights of all non-citizens. Immigrant communities and advocates have already successfully challenged changes President-elect Trump discussed during the campaign. People from thousands of faith-based, community, educational, and legal organizations in every state of the United States understand that fair treatment of immigrants, refugees and their families is a core American value and they are coming together now to support you and your family wherever you live.

This FAQ provides information about what might change under the new Trump administration and what immigrant communities and advocates can do to prepare. *However, every person's situation is different and the information in this FAQ is NOT legal advice.* To get legal advice about your specific risks and options, you should speak to a qualified immigration lawyer or Board of Immigration Appeals (BIA) accredited representative.

CAN PRESIDENT TRUMP TAKE AWAY MY CITIZENSHIP?

No. A person either is a citizen or is not, there are no levels to citizenship. People who were born in the United States or who naturalized in the United States are citizens according to the U.S. Constitution. A president cannot change this law by himself, and because this right is part of the Constitution, Congress cannot change it either. The U.S. Constitution itself would have to be changed, which is a very difficult, long, and unlikely process. Crimes are never enough to lead to the loss of citizenship, because as a citizen, if you commit a crime you simply go to jail. The only possible way to lose citizenship and be deported (though it is incredibly rare) is if the United States Citizenship and Immigration Services (USCIS) believed that the information on which your citizenship was based was fundamentally false. For example, if you lied about something in order to get a visa to enter the U.S., that could be grounds to revoke your citizenship.

CAN PRESIDENT TRUMP TAKE AWAY THE CITIZENSHIP OF MY CHILDREN IF I AM UNDOCUMENTED?

No. It does not matter if you do not have official immigration status. If your children were born in the U.S., they are citizens under the U.S. Constitution, and neither the President nor Congress can take that away. The U.S. government cannot deport children who are U.S. citizens, even if the government can deport their parents. For this reason, it is important to make a plan for your family if one or both parents could be deported. (See questions below for recommendations and resources.)

* This resource was prepared by Kate Evans, director of the Immigration Clinic at the University of Idaho College of Law, and Courtney LaFranchi, UCD Public Interest Law Fellow at Andrade Legal.

CAN PRESIDENT TRUMP TAKE AWAY MY GREEN CARD?

If you have a green card (also known as lawful permanent residence), this status can be removed and you can be deported for certain reasons that are established by Congress and approved by the President. These reasons include, among others, certain types of criminal convictions. President Trump cannot change these reasons on his own. Congress must also act. Changing the immigration laws so that a lawful permanent resident could be deported for new reasons could happen, but it cannot happen right away and many people would fight to limit these changes.

If you are a lawful permanent resident and the government tries to deport you, you have the right to fight deportation before an immigration judge. This includes the right to hire a lawyer, to submit evidence, and to bring witnesses to court to support your case. This process can take many years.

CAN PRESIDENT TRUMP TAKE AWAY MY REFUGEE OR ASYLUM STATUS?

The U.S. immigration law has protected people fleeing persecution in their birth countries for many decades. The United States agreed to provide these protections through an international treaty nearly 50 years ago, and Congress created laws to implement those and additional protections.

Immigration officials have been able to deport people with refugee or asylum status based on certain criminal convictions and other reasons established by Congress. But without some reason for deportation like a criminal conviction, asylum or refugee status can only be terminated if the circumstances leading to the grant of refugee status or asylum fundamentally change or the application was fraudulent in the first place. President Trump cannot change the reasons for deportation without action by Congress and the President and Congress cannot eliminate refugee and asylum protection without withdrawing from or violating long-standing international agreements.

If the government *does* try to deport you, you have the right to fight deportation before an immigration judge. This includes the right to hire a lawyer, to submit evidence, and to bring witnesses to court to support your case. This process can take many years.

WILL MUSLIMS HAVE TO REGISTER WITH IMMIGRATION OFFICIALS UNDER PRESIDENT TRUMP?

Mr. Trump talked about a “Muslim registry” during the campaign and has not stated what he will do once he takes office. After the terrorist attacks on September 11, 2001, the Bush administration created a series of regulations that required men over the age of 16 from 25 different countries—nearly all of which had Muslim majorities—to show up at immigration offices to register or face immigration and even criminal penalties. The program known as the National Security Entry-Exit System or “NSEERS” applied to men from the 25 named countries who came to the U.S. on temporary visas. It did not apply to refugees, lawful permanent residents, or citizens.

Immigrant advocates won a significant victory on December 23, 2016 when the Obama Administration got rid of the rule and explained that the registration program was outdated and ineffective.¹

¹ The official notice of the regulation’s elimination and the explanation is located at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-30885.pdf>

President Trump could try to recreate this program, but it would be more difficult now that the regulation creating the registry program has been eliminated.

COULD PRESIDENT TRUMP KEEP MY MUSLIM RELATIVES FROM JOINING ME BECAUSE OF OUR RELIGION?

It depends on how they plan to join you. If they are coming temporarily, restrictions in the wake of the Paris attacks might make it harder for people with dual-citizenship in Muslim countries to visit the United States. However, if you are trying to bring in close family members based on your refugee or asylum status in the U.S., a so-called “Muslim Ban” is unconstitutional, violating the First (freedom of religion, establishment clause) and Fifth (due process of law) Amendments.

President-elect Trump has also promised to impose “extreme vetting” for Muslims entering the U.S. It is not yet clear what this means, but could include extensive review of all social media accounts and controversial procedures similar to those applied to certain applications from Arab, Middle Eastern, Muslim, and South Asian individuals through the Controlled Application Review and Resolution Program (CARRP).

WILL PRESIDENT TRUMP ELIMINATE THINGS LIKE U VISAS OR PETITIONS FOR RELATIVES TO JOIN ME IN THE U.S.?

These immigration benefits—along with many others like student visas, work visas, status for certain victims of domestic violence or labor trafficking—were created by Congress and would have to be eliminated by Congress. It is possible that members of Congress and President Trump will try to change some of these laws, but there is a lot of support for these benefits in Congress and by voters across the country. If you have a petition pending (other than DACA), it should be processed normally under the current laws.

IF I THINK I AM ELIGIBLE FOR A VISA, A GREEN CARD, OR CITIZENSHIP, SHOULD I APPLY NOW?

Applying for an immigration benefit, especially naturalization, could be very important to protecting you and your family in the future. But you could be at risk of denial and deportation, especially if you have had contact with law enforcement officials in the past. If possible, you should speak to an immigration attorney or BIA accredited representative before applying. Avoid *notarios*. Lists of qualified attorneys and accredited representatives can be found at:

- <https://www.immigrationlawhelp.org/>
- www.nwirp.org/resources/community-information/,
- www.ailalawyer.com,
- www.immigrationadvocates.org/nonprofit/legaldirectory/
- <https://www.nationalimmigrationproject.org/find.html>.

WHAT ARE THE CONSEQUENCES OF STAYING PAST THE DATE MY VISA EXPIRES?

If you have overstayed a visa, it is important to speak with an immigration attorney. The consequences for staying past the time your visa expires might be different from the consequences and options that

someone else faces. But there are some general concepts to help guide those who are running out of time on their visas. Depending on the length of time you stayed in the United States without authorization and your specific situation, you may face a 3-year bar to returning to the U.S. or a 10-year bar to returning to the U.S.

WHAT COULD PRESIDENT TRUMP CHANGE ON HIS OWN?

President Obama created several policies for immigration officials that President Trump could change without approval by Congress. However, President Obama's policies remain in effect unless and until President Trump changes them.

Change or Eliminate DACA: Deferred Action for Childhood Arrivals (DACA) was created by President Obama in 2012 to provide certain individuals, who were brought to the U.S. as children and had gone to school here, with the ability to remain in the country and work for a limited period of time.² During the campaign, Mr. Trump promised to eliminate the program. Since the election, members of Congress have proposed a law that would keep DACA running for several more years and protect applicants' information from being used by immigration enforcement agents. Mr. Trump has also recently suggested that he may continue the policy in some form.

Even if the program is eliminated, it is not clear if President Trump would try to immediately recall the work authorization cards of the 750,000 people who have received them under DACA or simply let DACA recipients work until their cards expire. National immigration organizations are closely tracking what is happening with DACA and providing recommendations. For updated information, go to:

- <https://www.nilc.org/issues/daca/>
- https://www.ilrc.org/sites/default/files/resources/post-election_talking_points.pdf
- http://maldef.org/assets/pdf/MALDEF_Immigrants_Rights_Under_a_Trump_Presidency.pdf

Change Enforcement Priorities: President Obama recognized that he could not deport all 11 – 12 million people in the U.S. without authorization and instead created a detailed list of who should be prioritized for deportation.³ Generally, this policy prioritizes individuals with certain criminal convictions or those who arrived in the U.S. in 2014 or later. President Obama also announced a policy to not deport crime victims, witnesses, and individuals formally seeking to enforce their civil rights.⁴ President Trump could eliminate or change these priorities as soon as he takes office so that different individuals are targeted by immigration agents.

Change Enforcement Locations: President Obama also created a policy to limit the places where Immigration and Customs Enforcement (ICE) agents go to arrest people for immigration violations.⁵

² The specific requirements of this policy are available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

³ Details on these priorities can be found at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

⁴ This policy is available at <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>

⁵ The "Sensitive Locations" policy is available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

This policy required special approval or special circumstances before ICE could go to schools, hospitals, churches, synagogues, mosques, other places of worship, weddings, funerals, or public demonstrations to arrest and detain immigrants. This policy could be changed so that immigration agents do not have to get special approval before going to these locations.

WILL THE POLICE GIVE MY INFORMATION TO IMMIGRATION AGENTS?

Possibly. The answer depends on the local law enforcement agency you're interacting with. Unless you are in a sanctuary city (there are no official sanctuary cities in Idaho), police officers likely will give your information to ICE if they have reason to suspect that you were born in a foreign country. They shouldn't give your info to ICE based only on race, or language, or name. However, something like giving an officer your Mexican Consulate ID card would be sufficient to justify contacting ICE. If ICE asks a local law enforcement agency for information, the officers may provide information about you, unless there is a local policy limiting the information they collect and share with ICE. (See information about sanctuary cities).

It is important to know that even if police officers do not contact ICE, if you are arrested and fingerprinted, your information, including the reason for your arrest, goes to an FBI database that is shared with ICE. If ICE can link the fingerprint information to your immigration information and believes that you have violated the immigration laws, agents may try to deport you.

CAN PRESIDENT TRUMP REALLY DEPORT EVERYONE WITHOUT STATUS IN THE U.S.?

This would be very difficult without major changes. There are an estimated 11-12 million people in the United States without immigration authorization. ICE has fewer than 6000 agents across the country. President Obama has deported the most people of any president in U.S. history (between approximately 350,000 – 440,000 people per year) but still only reached a portion of the individuals without status.

President-elect Trump has said that he will deport 2 – 3 million "criminal" immigrants. It is not clear which crimes he means or how he would increase the number of current deportations so much. However, being arrested or convicted of a crime significantly increased the chance of deportation under President Obama, and a conviction will likely do the same under President Trump. People who have arrived in the United States recently are also at greater risk of being targeted by ICE and having fewer protections against deportation.

CAN SCHOOLS SHARE INFORMATION ABOUT ME OR MY FAMILY WITH IMMIGRATION AGENTS?

There are special laws that protect the information that schools collect and prevent school officials from sharing that information with others. But there are some exceptions to these laws and there are things you can do to try to protect your immigration information.

Under the Family Education Rights and Privacy Act (FERPA), schools are not allowed to share student's immigration information with ICE agents unless they have the student's or parents' consent or ICE provides the school with a judicial order or proper subpoena. Also, schools are not permitted to

require proof of immigration status to establish residency within the school district. Nor can they require birth certificates or social security numbers for enrollment.⁶ But this law only protects information that is officially collected and kept in an educational record. So if a student tells a teacher in class or outside of school that she or her family members do not have immigration status, that information may not be protected.

Schools can share “directory information” with ICE without consent or a court order. This information can include the student’s name, address, and place of birth. But schools must provide an opportunity for parents or students to request that schools do not share even this information with any outside official.

What you can do at school: Ask school officials to restrict directory information so that it cannot be shared without consent. Remind school officials that your family’s information cannot be shared under federal law without a correct legal order. Consider what immigration information you want to provide to school officials and be aware that your immigration information may not be protected depending on how and why it was shared.

WHAT DOES IT MEAN TO BE A SANCTUARY CITY?

Being a sanctuary city can mean different things. Generally, the term is used to describe a city with policies that limit the coordination between ICE agents and local police officers and other city officials, like case workers and public benefits officials. These policies might limit the immigration information that police officers and other city officials are supposed to ask. These are known as “don’t ask” policies. Or a city might limit the information that police and other officials share with ICE. These are known as “don’t tell” policies. Other policies might deny requests from ICE to local law enforcement officials to hold an immigrant in a local jail for up to 48 hours while ICE investigates and ultimately takes custody of the detainee.

Being in a sanctuary city is important because most immigrants placed in deportation proceedings are referred to ICE custody by local law enforcement, or held until ICE can assert custody. As a result, sanctuary city policies can limit the risks immigrant families by minimizing contact with ICE when contacting local police or seeking medical care and other assistance.

WHAT CAN I DO TO PREPARE FOR CONTACT WITH IMMIGRATION AGENTS?

You may not be at any greater risk of arrest, detention, and deportation than you were under President Obama. But it can be comforting to know that if immigration agents detain you, you have planned for family or friends to take care of your children and to get you help. This link (<http://michiganimmigrant.org/sites/default/files/Familyemergency.pdf>) and the information below will help you plan for your family’s safety.

⁶ More information on these protections for immigrant children are available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerletter.pdf>

Gather important documents: Collect documents such as birth certificates, marriage certificates, immigration paperwork in a safe place for a friend or family member can get them if you are detained. Make sure you have up-to-date documents that show the identity of your children and that you are their parent. Your consulate may be able to provide missing documents. (The Mexican consulate in Boise can provide some of these by contacting 208-343-6228 x203 or x 207.)

Memorize important phone numbers: Be sure to know the phone number of a friend, family member or attorney that you can call if you are arrested and do not have access to your cell phone.

Create a plan for your children and pets: Make a plan for who will care for your children if you are detained by immigration. Be sure that the emergency contact information for your children is updated at their schools and that a friend or family member is authorized to pick them up. You can create a power of attorney so that a friend or relative can make decisions about your children in your absence by using the free forms here: <http://www.idaholegalaid.org/node/2232/parental-power-attorney>.

Ensure backup access to your bank account: Make sure a friend or family member can access your money in case you need it to pay a bond so that you can be released from detention or pay for other expenses if you are detained. A free form to give someone power of attorney over your finances is available here: <http://www.idaholegalaid.org/node/2234/durable-power-attorney-financial-affairs>.

WHAT DO I DO IF I COME IN CONTACT WITH POLICE OR IMMIGRATION AGENTS?

Know Your Rights!⁷

- Ask if you are free to go. If the answer is yes, you can walk away.
- If the answer is no, you have the right to remain silent.⁸
 - You can say that you want to remain silent and refuse to answer any questions.
 - You do not have to answer questions about where you were born or how you entered the United States.
 - Even if you have answered some questions, you can still decide not to answer any more.
- If you are detained:
 - You can say, “I need to speak to my attorney.” You have the right to an attorney in immigration cases, but the government does not have to pay for your lawyer like they do in many criminal cases.
 - You have the right to call your consulate, which may be able to help you contact family members and an attorney. For emergencies, you can contact the Mexican consulate in Boise at 208 919-1857.
- Do not sign anything without talking to an attorney.

⁷ This information is based on information provided by the ACLU of Idaho: <https://www.acluidaho.org/en/know-your-rights/your-rights-immigrant>

⁸ Nonimmigrants (people who are not U.S. citizens and are authorized to be in the country on a temporary basis) are required to provide information to immigration officers about their immigration status, but they can still ask to have a lawyer with you before answering questions.

- If you have immigration status in the U.S., you must carry a copy of those documents and show them to an immigration officer. If you do not have status in the U.S., you are not required to show documents from your home country and should not carry them on you.
- If ICE or the police come to your home, you do not have to let them in unless they have a warrant signed by a judge.
 - You can ask for the warrant to be slipped under your door to see if it is signed by a judge.
 - A “warrant of removal/deportation” does not allow ICE to enter your house.
 - You can tell them that you do not consent to a search.
 - Even if ICE has a warrant signed by a judge, you still have the right to remain silent and the right to a lawyer.
- Let ICE know if you have children and ICE may not detain you.
- Do not lie; do not provide fake documents; do not resist arrest.

More resources are available at: <https://www.acluidaho.org/en/know-your-rights/your-rights-immigrant>; <https://www.nilc.org/issues/immigration-enforcement/everyone-has-certain-basic-rights/>; and http://wearecasa.org/wp-content/uploads/2014/03/KYR-booklet_English.pdf.