

Reinstatement of Removal

What is Reinstatement of Removal?

- The Department of Homeland Security, or DHS, which is part of the U.S. Federal government, also known as “Immigration,” uses Reinstatement of Removal to quickly remove people from the U.S. who:
 - have been deported or removed in the past or have left the U.S. on their own under an order of deportation or removal and
 - have re-entered the U.S. without permission.
- **In general, you will not be able to speak with a judge.** DHS has the power to remove you from the U.S. based on your previous deportation or removal order except in limited circumstances.

How Do You Know if You Are in Reinstatement of Removal?

- **If you received a Form I-871, "Notice of Intent/Decision to Reinstate Prior Order,"** and DHS says that you entered the U.S. illegally after having been deported or removed, then you are in Reinstatement of Removal.
 - If you received a document called a Form I-862, "Notice to Appear," then you are in removal proceedings. You are not in Reinstatement of Removal.
 - If DHS says that you were arrested trying to enter the U.S. at a border checkpoint, an international airport, sea, or while in the U.S. close to the border and you cannot show that you were in the U.S. for more than 14 days, and you received “Form I-860” or “Form I-867A/B,” then you are in Expedited Removal. You are not in Reinstatement of Removal.

Can You Challenge DHS’ Decision to Place You in Reinstatement of Removal?

- **You may have a right to have a judge decide your case in limited circumstances** if you challenge DHS’ decision to place you in Reinstatement of Removal proceedings.
 - You can dispute DHS’ decision by writing down your argument or by talking to an immigration officer.
- **You may challenge DHS’ decision** to place you in Reinstatement of Removal in the following circumstances:
 1. **If you fear you will be harmed or tortured if you return to your country** or if you have suffered harm there in the past.
 - If you tell an immigration officer that you are afraid to return to your country, you will be given a “Form M-488, Information about Reasonable Fear Interview,” and an interview with an asylum officer to determine whether you have a “reasonable fear” of persecution or torture in your country.
 - **If the asylum officer decides that you do have a “reasonable fear”** of persecution or torture in your country, you will be issued a “Form I-863, Notice of Referral to Immigration Judge,” and placed in proceedings before a judge.
 - **But, if the asylum officer decides that you do not have a “reasonable fear”** of persecution or torture in your country, you have the right to ask that a judge review the asylum officer’s decision using a “Form I-898, Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge.”
 - If the judge also decides that you do not have a “reasonable fear,” your case will go back to DHS for removal from the U.S. You cannot appeal the judge’s decision in this situation.
 - But, if the judge decides that you do have a “reasonable fear,” you will be allowed to have a hearing before a judge for withholding of removal

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under 241(b)(3) of the Immigration and Nationality Act or deferral of removal under the Convention Against Torture.

2. **If you believe you are a U.S. citizen.**
3. **If you believe that DHS has mistakenly put you into Reinstatement of Removal based on incorrect information.** For example, DHS may have mistaken you for someone else with the same name.
4. **If you believe you re-entered the U.S. legally.**
5. **If you last left the U.S. under an order of Voluntary Departure.**
6. **If you have a visa ready for you.**
 - If one of your family members has already applied for a visa for you and the visa is (a) approved *and* (b) immediately available, you may argue that you should be able to apply for your legal permanent residency (“green card”) and a pardon of your prior deportation.
7. **If you believe you are eligible to apply for relief under NACARA or HRIFA.**
 - If you are from Nicaragua, Cuba, Guatemala, El Salvador, Haiti, or certain countries in Eastern Europe, you may be eligible to apply for relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or under the Haitian Refugee Immigration Fairness Act (HRIFA) even though you have a prior deportation order.

What Should You Do Next?

If any of the above applies to you, you should:

1. **Tell an immigration officer immediately.** Give as much detailed information and proof about your case as possible.
2. **Speak with an immigration lawyer** or legal services organization about getting help.
3. **Do not delay** because Reinstatement of Removal proceedings take place very quickly.