

# Finding Safety From Domestic Violence: Your Guide to VAWA Cancellation



This guide was prepared and updated by the staff of the Florence Immigrant & Refugee Rights Project and was written for immigrant detainees in Arizona who are representing themselves pro se in their removal proceedings. This guide is not intended to provide legal advice or serve as a substitute for legal counsel. The Florence Project is a nonprofit legal services organization and does not charge for its services to immigrant detainees in Arizona. This guide is copyright protected but can be shared and distributed widely to assist indigent immigrants around the country. All of our guides are available to download on our website: [www.firrp.org](http://www.firrp.org). We kindly ask that you give credit to the Florence Project if you are adapting the information in this guide into your own publication.

## Important Words to Know

Immigration Law has a lot of technical words. Here's a list of some of the words you'll see a lot in this guide and an short explanation of what they mean.

- **Immigration Judge (“Judge”)**: this is the person who will make a decision about your case. He or she holds hearings in the courtroom and wears a black robe. This person doesn't work for ICE. It's her job to look at the facts of your case and apply the law fairly.
- **Immigration and Customs Enforcement (“ICE”)**: this is the agency that has put you in deportation proceedings and is in charge of detaining you. ICE is part of the Department of Homeland Security, or “DHS.”
- **Government Attorney**: this is the lawyer who represents ICE when you go to your court hearings. He or she sits at the table next to you and also talks to the Judge. It's usually this attorney's job to ask the Judge to order you deported.
- **Deportation**: ICE has put you in deportation proceedings, which are also called “removal proceedings.” If the Judge orders you deported or “removed” from the United States, you will be sent back to the country where you are a citizen and will not be able to return legally to the U.S. for at least ten years.
- **The Florence Project**: this is a group of lawyers and legal assistants who provide free legal help to people without lawyers. The Florence Project wrote this guide to help you understand your case.

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## 1. Introduction

There is a law in the United States called the “Violence Against Women Act,” or “VAWA” for short. This law offers legal protection for people who have been victims of “domestic violence.”

“Domestic violence” means abuse between people who have a romantic or parental relationship, like parents, husbands, girlfriends, or ex-husbands.

Don’t be fooled by “VAWA’s” name—this law protects ALL people who have been hurt by “domestic violence,” men included!



In fact, VAWA allows people who have been hurt by their U.S. citizen or Permanent Resident romantic partners, or who are the parents of children who have been hurt by those people, to ask the Judge to cancel their deportation if they meet certain requirements. This application is called “VAWA Cancellation of Removal.”

“VAWA Cancellation of Removal” can be a very powerful tool if you have been the victim of domestic violence. For example, sometimes the person hurting you knows that you don’t have immigration status and says that she’ll turn you in if you leave or call the police.



By applying for “VAWA Cancellation,” you could get permission to live in the United States legally so you can leave the person who is hurting you.

This guide will help you understand if “VAWA Cancellation” might be a tool to help you. We’ll walk you through who is eligible for “VAWA Cancellation,” your first court hearings, filling out your application, preparing your testimony, and appealing your case if necessary. Let’s get started!

## 2. Can I Apply for VAWA Cancellation?

There are five requirements to be eligible to apply for VAWA Cancellation. You must meet ALL FIVE in order to be able to apply.

**1. Three years of continuous residence in the United States.** Living in the U.S. “continuously” means that you haven’t left the U.S. for more than three months at one time or for more than six months total during the last three years.



But, if you left the country because of the abuse that you or your child suffered, you may still be eligible for “VAWA Cancellation.” For example, if you can show that you left to escape an abusive partner, the time you spent outside the country might not count against you.

**2. Good moral character for the last three years.**

“Good moral character” is a legal term that means that you’ve been a good member of the community without any problems like alcoholism, gambling, or prostitution. If you’ve had problems like these in the past that were caused by the abuse you suffered, you may be able to ask the Judge for an exception.

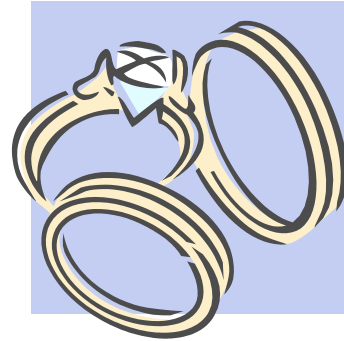
**3. No serious criminal convictions.** You cannot apply for VAWA if you have been convicted of a serious crime. Whether or not a conviction will stop you from applying for VAWA depends on your case. In most cases, a drug conviction or a sentence of more than six months may create a problem.

**4. Proof of domestic violence by a U.S. Citizen or legal permanent resident spouse, ex-spouse, or intended spouse. You can also show that you are the parent of a child hurt by one of those people. If you are senior citizen abused by your U.S. Citizen child over 21 years of age, VAWA is also an option.** There are three things you must show for this requirement.

**A. Domestic violence.** You must show that you or your child were abused. “Abuse” means “battery or extreme cruelty.” In general, if the person hit you, that is enough to show that you were abused.

You can also show abuse if the person hurt you very badly with his words.

B. You must show that you were hurt by your **husband, wife, ex-husband, ex-wife, or your adult child over 21**. If you have not been harmed, then you can still apply if **your child** was hurt by his or her other parent.



C. You must show that the person who hurt you is a **U.S. citizen or Permanent Resident**

## 5. Proof that you, your parent, or your child would suffer extreme hardship if you were deported from the United States.

What does extreme hardship mean? We know that every family suffers a lot when someone is in detention and deported. Here are some reasons why a family might suffer extremely when a person is deported:



- Someone in the family is sick and depends on you to help pay the medical bills.
- Someone in the family has to stay in the United States to receive medical treatment and couldn't come back to your country with you
  - Your kids have special needs or disabilities that they receive help for in school or at the doctor, and that help isn't available in your country
- Your kids don't speak your country's language and would have a hard time adjusting to life there.

Remember, these are just some examples of why your family would suffer a lot of hardship. Think about your own life and try to come up with ideas from your own experience. Then, complete the worksheet at the end of this packet.

### 3. How Do I Apply for VAWA Cancellation?

#### a. Your first court hearings

First, let's talk about the basics of immigration court. If you feel confused about court, you're not alone! Immigration law is complicated, even for lawyers. Let's figure out who is going to in court and what's going to happen in your first hearings.



- The Judge will be at the front of the room and will ask you questions. He will be dressed like the man on the left. The Judge will be making the decision about your case so it's important to be respectful, polite, and prepared.
- A government attorney. When you go to court, a lawyer representing ICE will be there. His job is to represent ICE and try to get an order of deportation against you.
- An interpreter. Don't worry if you don't speak English—an interpreter will be there in person or over the phone. Just make sure you speak up and tell the Judge that you don't speak or understand English well and need an interpreter.

The first few hearings that you'll go to will be "master calendar" hearings. At those hearings, you'll be in court with a group of other detainees. At "master calendar" hearings, the Judge will check in with you and see what you want to do. It isn't time yet to show her all your evidence of the reasons why you should stay in the country and the abuse you've suffered.

If you want more time to talk to an attorney or the Florence Project, the Judge will give you a few weeks to do so. You'll then come back for another master calendar hearing.



When you come back to court, the Judge will ask you if you want to admit or deny the charges against you. That means that the Judge wants to know if you want to force the government attorney to prove the charges against you. If the government attorney says that you should be deported because of your criminal convictions, making him prove the charges against you can be an important step. To learn more about how to do that, read the Florence Project's guide on denying the charges against you. Certain types of criminal convictions, even for pretty minor crimes, can make you ineligible for "VAWA Cancellation of Removal".

### **b. Eligibility for "VAWA Cancellation"**

If the Judge decides that at least some of the charges against you are correct, she'll then ask you questions to figure out if you are eligible for "VAWA Cancellation of Removal." **"VAWA Cancellation" is not as common as other types of Cancellation of Removal, so please remember to tell the Judge that you'd like to apply for "VAWA Cancellation." You can also tell her that you were the victim of domestic violence.**

If the Judge agrees that you are eligible to present your case for "VAWA Cancellation" to her, she'll give you a copy of the application. Remember, just because the Judge says you're eligible for "VAWA Cancellation" does not mean that you've won your case! It means that the Judge thinks that you've met the basic requirements and is giving you a chance to show her that you meet the requirements that we talked about on Pages 6-7.

### **c. Filling out and turning in the application**

Before your final hearing, you'll come back to court for one more "master calendar" hearing to turn in your application for "VAWA Cancellation of Removal." It's important that you fill out the application completely so that the Judge will accept it and schedule a final hearing for you to present all your evidence of hardship. There are three pieces to the application. The Judge will give you copies and you can also find them at the links below:



1. VAWA Cancellation Form:  
[www.justice.gov/eoir/eoirforms/eoir42b.pdf](http://www.justice.gov/eoir/eoirforms/eoir42b.pdf)

2. Biographic Information Form:  
[www.uscis.gov/files/form/g-325a.pdf](http://www.uscis.gov/files/form/g-325a.pdf)

3. Fee Waiver Form:  
[www.justice.gov/eoir/eoirforms/eoir26a.pdf](http://www.justice.gov/eoir/eoirforms/eoir26a.pdf)



A short guide on how to fill out your application is at the end of this packet.

**When you've completed the application, make two extra copies and bring them to court with you. The original will go to the Judge. Another copy will go to the government attorney and you'll keep a copy for yourself.** This is important, so don't forget!

When you've turned in your application, the Judge will give you a date for a final hearing. At this hearing, you'll appear without a group of detainees. The hearing will last a few hours. This hearing will be your opportunity to present your case to the Judge.

#### **4. What Evidence Do I Need to Win My Case?**

In order to win your case for "VAWA Cancellation," you'll need to prove to the Judge that everything in your application is true. One of the best ways to do that is to gather lots of evidence that supports your case. If you get lots of strong evidence, the Judge is much more likely to grant your case for "VAWA Cancellation."

Start gathering evidence as soon as you decide that you want to apply for "VAWA Cancellation of Removal." **You'll be looking for evidence to prove all the requirements for VAWA, listed on Pages 6-7.** Some documents that can prove that you were abused by your U.S. citizen or permanent resident domestic partner are:

- **Medical records**, if you ever had to see the doctor because of your abuse.
- **Police records**, if you had to call 911 or make a police report because of the abuse.
- Any **photos** that show the injuries you or your children suffered.
- Proof that you were at a **domestic violence shelter**
- Proof of your **abuser's immigration status**— including a copy of his or her passport or green card.
- Proof of **your relationship with the abuser**, like a marriage certificate or pictures of you together
- If you can't locate any of these, you can submit written statements by people who know about your situation.

**You'll also need to document the hardship that you and your family would suffer if you were deported.** The type of evidence that you'll gather depends on the type of hardship you are trying to prove.



For example, if your daughter has cancer and needs treatment here in the US, you'll need a letter from her doctor that explains her condition. You'll want copies of her medical records and pictures of her.



Or, if you're a single mom whose kids have never been to your country, you'll want to get letters from their teachers about how they're doing in school and whether they have any special needs. You'll want to document all the opportunities that they have here—scholarships, job trainings, camps—that they won't have in your country.

**If you have a criminal history, you'll also need to gather evidence of rehabilitation.**

That can include certificates from counseling or substance abuse programs, evidence that you

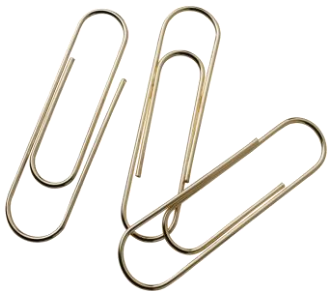


attended AA or NA meetings, or letters from family or friends explaining how you've changed for the better.

**Take a look at the list of evidence in Appendix 3 for more ideas about what to gather.**

Many of these documents take time for your family to find and to mail to you. We know it's not easy to gather all of these documents while you're detained. Ask a trusted family member or friend to help you get these documents together. Make sure that he mails you **copies, not originals**, of these documents.

Remember, all the documents you submit need to be in English. If you receive documents in another language, you can translate them. Just put your translation in with the original letter and attach a signed copy of the "Certificate of Translation" that's at the end of this packet.



Once you have all your documents together, organize them. Make a list of everything you have and then put it on top. You can divide your documents into categories like these:

1. Evidence that I have lived in the U.S. for three years or longer.
2. Evidence that I was the victim of domestic violence or that my children were victims of domestic violence by a U.S. citizen or permanent resident
3. Evidence that my family and I will suffer extreme hardship if I am deported
4. Evidence of Rehabilitation (if you have criminal history)

Attach a signed and dated copy of "Certificate of Service" at the end of this packet to the last page of all your evidence. Then make two copies of all your evidence.

Just like the application, the original will go to the Judge, a copy will go to the government attorney and you'll keep a copy for yourself. If you want to send the documents to the court, put a cover sheet with your

name and A-number on top. Then put the packets in envelopes. One should say “To the Immigration Judge” and the other should say “To ICE Litigation.” Ask detention staff to make sure they are delivered or put them in the detention center’s mailboxes.

## 5. Practicing Your Testimony

At your final hearing, you’ll have an opportunity to tell the Judge why you think you should stay in the United States. It’s very important that you’re prepared to tell your story, even though that may be very hard. Keep these tips in mind when practicing your testimony:

- **Be prepared.** You’ll need to be able to describe, in detail, the type of abuse that you’ve suffered. Make a list of all the times you were hurt and the ways that you were hurt. These things aren’t easy to talk about, but the more that you prepare the easier it will be to share what happened.



Also, you’ll need to talk about the hardship that you and your family will face if you are deported. Make a list of the specific reasons why your family would suffer if you were deported. Don’t just say things like “they’ll miss me” or “they need me to pay the bills.” That won’t be much help—all families go through that. **Think about the reasons why your family will suffer much more than**

**normal if you’re deported**

- **Be honest.** Your job is to tell the judge about the circumstances of your life. If you have criminal convictions and the judge asks you about them, tell her what happened. Lying will just make things worse, and the Judge and the government attorney often have ways to figure out if you are lying.
- **Turn negatives into positives.** If you had a problem with drugs and alcohol in the past, explain how you’ve overcome those

problems—did you go to AA meetings or complete a rehabilitation program? Tell the Judge about those things, too.

- **Don't be defensive.** Admitting that you made mistakes, even if that mistake was just coming to the U.S. without the proper documentation, can show the Judge that you are sorry. It can also show the Judge that you won't repeat those mistakes in the future.



**Speak from the heart.** Judges see a lot of people every day. You can make your testimony stand out by speaking sincerely. Think of a funny story about your family to share. Think about a story that will show the Judge how much your family needs you. Explain to the Judge why your deportation would hurt your family very much.

Write all of these down on a piece of paper so you won't forget. Don't worry if you become nervous or emotional in court—it happens to almost everyone.

- **Ask your family members to testify in court.** Your family can come and tell the Judge about the abuse you suffered and the reasons why you should stay in the United States. Help your family member prepare by asking her to list all the reasons why she would suffer if you were in another country. Make sure she practices and writes the reasons down to have with her in court. Your family members can also come and watch your final hearing to show the judge that they support you. Remember, some of the detention centers won't let small children come to court. Make sure they call the detention center first to figure out what the rules are.
- **Answer the Judge's questions.** The Judge may want to ask you some specific questions. Remember, be respectful when the judge speaks. Refer to the Judge as "Your Honor," "Ma'am," or "Sir."

## 6. Weighing the Evidence: The Judge's Decision

In most cases, the Judge will give you her decision at the end of your final hearing. She'll tell you whether or not she'll approve your application for "VAWA Cancellation of Removal." There are a few possibilities for the Judge's decision:



- If the Judge approves your application and the government attorney does not want to appeal that decision, you'll likely be released the same day.
- If the Judge approves your application and the government attorney appeals that decision, you'll likely have to wait until the Board of Immigration Appeals gives you a final decision.
- If the Judge denies your application, you have the option of appealing that decision and saying that the judge was wrong. You'll need to tell the Judge at your final hearing that you want to appeal. She'll give you some paperwork that needs to be mailed within 30 days of her decision. Take a look at the Florence Project's guide to appealing your case or schedule an appointment to talk with an attorney about your appeal.

### Final Thoughts

As you've seen, VAWA can be a powerful tool to protect you from domestic violence, but winning a case for "VAWA Cancellation" is not easy. It takes planning, lots of work gathering evidence, and really practicing your testimony. We wish you the best of luck with your case!

## Appendix 1. Hardship Worksheet

### Family Member 1

Think about your parents, husband or wife, and children. Who is a permanent resident of the US or a US citizen? \_\_\_\_\_

What documents will you gather to prove that person's citizenship or permanent residency? \_\_\_\_\_

Why would this person suffer if I were deported? \_\_\_\_\_

How is that hardship much more serious than what most people would experience?

\_\_\_\_\_

\_\_\_\_\_

Does this person have any medical conditions or disabilities? If so, what are they?

\_\_\_\_\_

\_\_\_\_\_

Is there any reason why this person could not care for himself or herself if I were deported? \_\_\_\_\_

If your relative is a child, why would it be impossible for him or her to with you to your country?

\_\_\_\_\_

\_\_\_\_\_

Does your child have any special needs in school? What are they? \_\_\_\_\_

\_\_\_\_\_

## Family Member 2

Think about your parents, husband or wife, and children. Who is a permanent resident of the US or a US citizen? \_\_\_\_\_

What documents will you gather to prove that person's citizenship or permanent residency? \_\_\_\_\_

Why would this person suffer if I were deported? \_\_\_\_\_

How is that hardship much more serious than what most people would experience?

\_\_\_\_\_  
\_\_\_\_\_

Does this person have any medical conditions or disabilities? If so, what are they?

\_\_\_\_\_  
\_\_\_\_\_

Is there any reason why this person could not care for himself or herself if I were deported? \_\_\_\_\_

If your relative is a child, why would it be impossible for him or her to with you to your country?

\_\_\_\_\_  
\_\_\_\_\_

Does your child have any special needs in school? What are they? \_\_\_\_\_

\_\_\_\_\_



## **Appendix 2. Filling Out Your Application**

The Immigration Judge can provide you with a copy of the application for “VAWA Cancellation of Removal” (Also called 42B), the “G-325” and the “Fee Waiver” or you can also ask the Florence Project for a copy.

You must use a *pen or typewriter* to fill out the form. Do not use a pencil. If you are unsure about the answer to a question, that’s okay. For example, if you can’t remember all of your past addresses, write down as much as you know and indicate that you are guessing or might have missing or incorrect information. If a question does not apply to you, just put “N/A” in the box.

If there is not enough room on the form for you to answer a question completely, just continue your answer on another piece of paper.

The notes below will give you some tips for filling out each part of the application.

### **42B Application**

#### **Part 1**

- If you are detained, use the address for the detention center.

#### **Part 2**

- If you’re applying for “VAWA Cancellation,” you’ll want to check the second box in Part 2 that says that you were battered or abused by a U.S. Citizen or legal permanent resident. You do not need to check the first box that asks about hardship to your family.

#### **Part 3**

- If you used a different name when you entered the U.S. include that information here.

- One question asks for the date that you *first* arrived in the U.S. This may be different than your answer to the question of when you began to live in the US continuously if you came to the US before you moved here.
- List the place where you first arrived in the U.S.
- If you crossed into the United States illegally or without documentation, mark “entered without inspection” when it asks how you came to the US.
- The application asks you to list all of your entries and departures from the U.S. even if it was for less than one day. If you left and came back many times for the same reason (for example, if you went to Mexico several times just for the day to go shopping or to visit family) then you can indicate something to the effect of “day trip once a month to Mexico for shopping.” If you’ve traveled outside the US a lot, you may need to use another piece of paper to answer this question. Watch out, because if you left the U.S. for more than 90 days at a time, that trip will break your “continuous residence” in the U.S. such that you will have to start the 10-year clock over once you returned from that trip.

#### **Part 4**

- If you have *never* married, please mark “I am not married” and skip to question the questions about your spouse.
- When listing your work history, begin with the job you had just before coming to detention and work backwards. If you cannot remember all of the details of your work history, use your best guess. Try to include as much information as you can remember, such as the city and state name in the address section.

#### **Part 5**

- Fill in if you have received any government benefits programs in the U.S. Those could include food stamps, unemployment, TANF, etc.

- List all of your children as well as their immigration status. If you have more than 3 children, you can attach additional sheets of paper. If the child does not have any income - because they are very young or for another reason - you should put N/A in the questions regarding average earnings and weekly income.
- One question asks if your spouse and children would return to your country of origin with you if you were deported. If they will not come with you, explain why they need to stay here. For example, if your wife needs special medical care here that is not available in your home country, mention that here.
- Another question asks if anyone else in your family, *not* including yourself, has ever gotten government benefits. This includes things like social security, food stamps, and unemployment. It should not harm your case to state that people in your family have received government assistance.
- One question asks you to fill in if you've ever been arrested, convicted, fined, imprisoned, or put on probation. It is **very** important to include any and all arrests, court appearances, convictions, etc. even if you think that ICE does not know about it or the charges were dismissed. Even list traffic tickets. ICE will find your "rap sheet" and other conviction documents before your hearing. If you do not reveal the charges now and they later come out at the hearing, the judge may think you trying to hide something and it *will* hurt your case. If you think that you may not remember your criminal history perfectly, then you can note that the answers provided are "to the best of your recollection" and that you "might be missing or forgetting an incident."
- Another question wants to know about all groups you've been involved with since you were 16 years old. This includes things like church groups, sports programs, and school groups.

## **G-325A**

- If you've never been married before, just list N/A
- List your addresses from the most recent to the least recent. If you're currently detained, use the detention center's address
- If you can't remember exactly when you lived someplace, use the abbreviation "apprx" or "+/-" to show that you're making an estimation
- List your previous jobs from most recent to least recent
- Check the box to indicate that the form is filed along with an application to be a Permanent Resident

## **Fee Waiver**

- If you are currently detained and not paying any bills, you can put 0's when asked about your monthly expenses and income.

### Appendix 3. Evidence Checklist

Remember, these are examples. You don't need to gather all of these documents to win your case, but try for as many as possible. Check each one off as you receive it!

Police records	
Medical records	
Proof of abuser's immigration status—copy of passport or green card, letters from friends and family	
Letters from friends and family documenting abuse	
Marriage certificates	
Proof of relationship with abuser—pictures, letters from friends and family	

Letters of support from as many family members as possible (including drawings from children). <b>These letters should specify how you and/or your permanent resident or US citizen child will suffer if you are deported.</b>	
Letters of support from friends	
Letters from people who know you (neighbors, landlord, boss)	
Letters showing community involvement and good character (church, volunteering)	
Proof of financial support your family (rent receipt, child support) and proof of financial hardship since your detention (past due notices for bills or rent)	
Photos of family (birthday parties, holidays, pets, babies, etc.)	

Certificates from any rehabilitation classes you've taken, like anger management, domestic violence, AA, substance abuse, parenting.	
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Tax Records	
Pay Stubs	
Social Security Records	
Letter showing that you have a job when you get out of detention	
Proof of English Language Training, GED, college, etc.	

Certificates and diplomas from school and training courses	
Informational packets about any plans for school programs that you'll enroll in once you're released	

Copies of your children's school records, including letters from teachers or counselors about how your kids are doing in school. Ask the writer to include how moving to your home country would cause problems for your kids.	
Copies of medical records for your parent, spouse, or child if they are sick or suffer from any kind of disability	
Copies of your children's birth certificates	
Copies of proof of legal status for your parents, husband, or wife (birth certificate, naturalization certificate, green card or Mica)	
Copy of your marriage certificate	
Proof of any debt that my family has that you were helping to pay off (mortgage, car loans, school, medical, etc.)	
Proof of insurance (car, medical, etc.)	
Articles about the situation in your home country (eg. poor medical care, war and violence, unemployment, poverty, lack of educational opportunities for your children, etc.)	

## Appendix 4. Certificate of Service

**Use the following certificate if you will give the documents to the ICE attorney and the judge in court.**

I, \_\_\_\_\_(your name here), hereby certify that I hand-delivered a copy of this document to a representative of ICE Litigation on the date below.

Signed:

Date:

**Use the following certificate if you will mail the documents to the ICE attorney and judge before the hearing.**

I, \_\_\_\_\_(your name here), hereby certify that I placed a copy of this document in the mail to ICE Litigation at

\_\_\_\_\_  
(list address for the ICE office at the detention center where you are staying) on the date below.

Signed:

Date:

## **Appendix 5. Sample Certificate of Translation**

I, \_\_\_\_\_(name of translator), certify that I am competent to translate this document from its original language into English and that the translation is true and accurate to the best of my abilities.

Signature of translator

Date