

A New Home: Recommendations for Increasing Housing Access and Limiting Risks for Immigrant Clients Involved With the Criminal Legal System

Introduction

Both the criminal legal and immigration systems are designed to regulate human behavior and movement. Unfortunately, both systems also share a history of biased policies that disproportionately harm people of color.³ These dynamics often converge in devastating ways upon people with low incomes, including those who experience homelessness and housing instability. Part of building an equitable homelessness response system is taking action to address these impacts.

Contact with law enforcement and the broader criminal legal system can lead to many consequences, including arrest, prosecution, incarceration, and criminal records that increase barriers to obtaining and maintaining housing.

However, noncitizen immigrants can face additional consequences, including deportation and losing the lives and families they have built in the United States.

Because these risks are so devastating, housing and homeless service providers must be aware of the issues that can arise when they are working with noncitizens who have been involved with the criminal legal system.

This resource provides information about how immigration and criminal legal systems overlap, the housing barriers facing noncitizens impacted by the criminal legal system,

Special Note for Housing Providers:

Verifying Immigration Status

Nonprofit charitable organizations are not required to verify immigration status before providing Continuum of Care (CoC) and Emergency Solutions Grant (ESG) program-funded assistance.¹

However, certain **government-operated** CoC and ESG-funded programs (other than emergency shelters) may need to verify immigration status.²

¹ The PRWORA and HUD's Homeless Assistance Programs; HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services. Please note that programs also receive other forms of funding that impose restrictions on who they may serve.

² Programs operated by state and local governments that are not emergency shelters should contact HUD or consult with legal counsel to determine their obligations with regard to verifying immigration status. See footnote 1.

³ <https://www.hrw.org/report/2022/08/08/racial-discrimination-united-states/human-rights-watch/aclu-joint-submission>

and how to increase housing access for this population without putting them at heightened risk for deportation.⁴

Immigration Status and Deportation

Immigrants come to the United States in many ways. Some have the government's permission to come here, and some do not. How immigrants arrive and what actions they take while here determines their immigration status. In turn, immigration status governs what a noncitizen is allowed to do in the U.S. (whether they can work, for example) and how long they can stay.⁵

A person who is documented possesses a valid visa or other active immigration documentation of their immigration status. People who immigrate without formal permission or stay longer than they are allowed are considered "undocumented."

Immigrants who are eligible can apply for different types of temporary or permanent status in the United States, but they can also lose their immigration status for numerous reasons. **Contact with the criminal legal system can also complicate or lead to changes in a person's immigration status.**

Most importantly, **anyone who is not a U.S. citizen⁶ can be placed in removal proceedings if the government shows cause**, including green card holders and people with visas or other formal permission to be here. While circumstances are different in every case, and some people may be eligible for different ways to remain in the U.S., all noncitizens remain at risk of deportation if they are undocumented or violate terms of their immigration status.

How Criminal and Immigration Systems Overlap

Immigration authorities generally look unfavorably upon people with criminal legal system involvement, regardless of the nature of their actions or the extent of their rehabilitation.

As a result, **any level of involvement with the criminal legal system can increase a noncitizen's chances of being deported.** Brief arrests, misdemeanor convictions, and *even criminal cases that end up being dismissed* can put someone at risk.

Issues can arise when noncitizens with criminal legal system involvement have any contact with immigration authorities that triggers a re-examination of that person's

⁴ Special thanks to immigration attorneys Genia Blaser and Courtney McCausland for contributing their expertise to this resource.

⁵ For information about common types of immigration status, click [this link](#).

⁶ U.S. citizens are persons who were born in the United States (including the territories of the U.S., Puerto Rico, Guam, and the U.S. Virgin Islands); persons who became U.S. citizens through their U.S. citizen parent; or persons who went through the naturalization process.

background, including their criminal history. Two common reasons for contact with immigration include:

- When a local law enforcement agency notifies Immigration and Customs Enforcement (ICE) that they have a noncitizen in their custody; and
- When a noncitizen applies for a visa, tries to change their immigration status, or even asks for a replacement green card.

When these events happen, immigration authorities may learn about new arrests or other issues that can lead them to initiate removal proceedings – even when the noncitizen has already been in the U.S. for many years.

Immigration Detention and Housing Instability

When ICE seeks to deport someone, they sometimes arrest them and place them into immigration detention pending the decision on their immigration case.

These cases can take years to resolve. As a result, people may lose their jobs, homes, and families, even if they eventually win the right to remain in the U.S. This can lead to difficulty reentering society with stable housing, similar to what people experience when they are released from criminal legal system jails and prisons.

Additionally, lack of housing can also prevent someone from being released from immigration detention.

- Immigrants applying for bond to be released from immigration detention must demonstrate that they are neither a “flight risk” nor a danger to the community. Having stable housing and an address to provide immigration authorities is critical to meeting these threshold requirements.
- Immigrants who may be released from immigration detention for a “humanitarian” (e.g., medical, mental health) reason must demonstrate a treatment plan including where they will live and receive services prior to release.

For these reasons and many more, it is imperative to connect criminalized immigrant clients with safe, stable housing. For more information about considerations for custodial discharge planning, click [here](#).

How Providers Can Help

Housing and homeless services providers are uniquely situated to support noncitizens impacted by the criminal legal system. Noncitizens may be reluctant to seek help for

fear of being “discovered” or otherwise penalized for receiving financial assistance.⁷ Therefore the housing and homeless service provider may be one of the first professional “helpers” a noncitizen encounters. This section provides concrete ways that your program can make a difference for these individuals.

Ensure that Your Program is Accessible and Low Barrier

As a threshold matter, providers must ensure that noncitizens are able to find their services and avail themselves of the help offered. This means:

- Working with the CoC’s **coordinated entry system** to make sure that people with limited English proficiency and access to transportation know how to get help with housing and feel safe doing so.
- Partner with **community-based organizations, faith communities, and schools** that have pre-existing relationships with immigrants and can act as outreach points or otherwise bridge clients to your services.
- Revise your program’s **policies and procedures** to ensure that people are not excluded unnecessarily based on criminal histories or because they lack certain forms of documentation.⁸
- **Staff programs** with people who come from the communities you serve, including those who are fluent in the languages spoken by your clients. Actively involve such staff in developing policies, procedures, and strategies to support clients.
- **Train staff regularly** on best practices for engaging with and supporting noncitizen clients, bringing in community partners from the immigrant communities you serve.

Build Rapport at the Client’s Pace

Noncitizens who have had contact with the criminal legal system may be reluctant to share information with providers due to past experiences where personal details were used against them. To build trusting relationships with these clients, it may help to:

- **Practice cultural humility:** don’t assume that information you receive about a place or culture from the media, news, or even your friends and family will align

⁷ In 2022, the Department of Homeland Security’s Final Rule on “public charges” clarified that receiving housing benefits will not be used to prevent a noncitizen from entering the U.S. temporarily or becoming a lawful permanent resident. For more information, click [here](#).

⁸ CoC and ESG-funded programs **operated by nonprofits** are **not** required to collect identification documents, including social security information, birth certificates, or photo IDs.

with an immigrant client's experience in that place or culture. Training in cultural sensitivity, humility, and competency may be useful for staff.

- **Provide clarity around confidentiality:** be clear about the personal information you will keep records on and why. Be clear on the nature of any relationship your agency has with law enforcement and immigration authorities.
- **Deliver for your clients:** the best way to build trust and rapport is to provide a safe place for your clients, provide services, give referrals, follow-up, and advocate for them. Proof that you are on their side will go a long way towards building your relationship.
- **Asking clients about immigration status is not recommended** for CoC and ESG-funded programs run by nonprofits.⁹ Such inquiries could make clients afraid to seek services and may also run afoul of fair housing laws. However, if a client discloses their immigration status, explain the efforts that your program will take to ensure that this information remains confidential.¹⁰
 - Providers should also make information about services and supports for noncitizens accessible to clients in ways that do not require them to disclose their status. For example, by posting flyers or creating handouts that are offered to all clients. For possible resources, see “Empower Clients with Knowledge” below.
- **Asking clients about criminal legal system involvement is recommended.** Because criminal background checks may pose housing barriers to noncitizen clients involved with the criminal legal system, providers should know these details to help clients take measures to overcome those barriers, such as seeking help with record expungement, getting documentation to show rehabilitation, or getting letters of support from other providers or agencies.
 - For more information about criminal history information and resources on how to connect clients with criminal histories to housing, click [here](#).
- **Be receptive, but don't pry.** When building rapport with anyone, it can help to ask questions about their background and experiences. Because of the punitive nature of our immigration and criminal legal systems, however, some immigrants may not want to openly share personal details. Let your clients take the lead on

⁹ These programs are able to serve clients without regard to their immigration status. Programs operated by state or local governments should [contact HUD](#) or consult legal counsel for clarification on their obligations. See [The PRWORA and HUD's Homeless Assistance Programs; HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services](#).

¹⁰ For information on how nonprofits can prepare for visits or requests for information from immigration authorities, click [here](#).

what experiences they want to discuss, how they want to discuss it, and when they feel comfortable doing so.

Empower Clients with Knowledge

- **Invite local immigrant advocates and organizations** to your program to give “know your rights” and informational presentations on issues such as:
 - Their rights when they encounter ICE.
 - Creating Family Preparedness Plans in case of separation.
 - How to access public benefits.
 - Resources available for survivors of domestic violence, sexual assault, or human trafficking – including immigration relief.
 - For more information on housing considerations for domestic violence and human trafficking survivors involved with the criminal legal system, see here.
 - Support for immigrant youth.
- **Provide clients with handouts and posters** that inform them of their rights and provide contact information for local or national organizations they can contact for legal help.
- **Offer to connect your clients to educational opportunities**, including English classes and job training programs that can help them earn certificates and increase their chances of obtaining employment.
- **Develop collaborative relationships with legal services providers** who you can refer clients to for an individualized, well-informed assessment of their situation.

Consult Immigration Experts

People applying for housing or public benefits may need to document their immigration status. It is best practice to consult with an immigration attorney before helping an immigrant client with accessing such documentation.¹¹

An immigration attorney can advise and help minimize any risks associated with applying for a new green card, requesting a copy of an immigration file, or making any contact with immigration. If the client has an immigration attorney,

¹¹ Two organizations that may provide advice or recommend local experts include the Immigrant Defense Project and the Immigrant Legal Resource Center.

obtain a signed release of information form and client consent to speak with the attorney and consult with them about your client's options and appropriate next steps.

Acknowledge and Confront Your Own Biases

We all have biases – some conscious, some unconscious. **Taking stock of your biases** can help prevent these biases from impacting your clients, including clients who have been impacted by the immigration or criminal legal systems. Immigrants add to the beauty of the United States and bring a wealth of history, perspective, and gifts along with them. Practice cultural humility and seek education about the parts of the world your immigrant clients are coming from.