

# ESTATE PLANNING IN THE ERA OF DEPORTATION

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## *ABSTRACT*

The election of Donald Trump in 2024 ushered in a new wave of fears for non-citizens and their families residing in the United States. Fears of death, loss of property, and loss of parents for minor children brought on by deportation efforts are issues that are finding their way into the estate planner's office. This Article considers the practical, ethical, and legal issues that estate planners may encounter as deportation efforts continue. Part II describes the different types of aliens and their legal classification. Part III offers techniques and guidelines for planning for minor children, particularly those who are U.S. citizens and may remain in the United States after the deportation of a parent. Part IV offers techniques and guidelines for planning the management of the property of a deported person. Part V considers the applicability of some of the immigration-related crimes to the estate planning attorney as well as related ethical concerns. Part VI concludes.

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## Table of Contents

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>3</b>
<b>II.</b>	<b>TYPES OF IMMIGRANTS AND NONIMMIGRANTS</b> .....	<b>4</b>
	<b>A. Non-Immigrants</b> .....	<b>4</b>
	<b>B. Authorized Immigrants</b> .....	<b>7</b>
	<b>C. Unauthorized Immigrants</b> .....	<b>8</b>
<b>III.</b>	<b>PLANNING FOR MINOR CHILDREN</b> .....	<b>9</b>
	<b>A. Information Gathering</b> .....	<b>10</b>
	<b>B. Decide Where Children Will Go in the Event of the Parents' Deportation</b> .....	<b>11</b>
	<b>C. Children Who Remain in the United States</b> .....	<b>12</b>
	1. Delegation of Parental Authority by Power of Attorney .....	12
	2. Judicial Appointment of a Guardian with Parental Consent. .	14
	3. Judicial Appointment of a Guardian Due to the Inability of a Parent to Exercise Parental Rights.....	16
<b>IV.</b>	<b>FINANCIAL PLANNING AND ASSET PROTECTION PLANNING</b> <b>16</b>	
	<b>A. Information Gathering</b> .....	<b>17</b>
	<b>B. Power of Attorney</b> .....	<b>18</b>
	<b>C. Transferring or Re-Titling Property</b> .....	<b>18</b>
	<b>D. Pets</b> .....	<b>19</b>
<b>V.</b>	<b>ETHICAL CONSIDERATIONS AND LIABILITY CONCERNS</b> .....	<b>19</b>
	<b>A. Immigration Crimes</b> .....	<b>20</b>
	<b>B. Concealment and Obstruction Crimes</b> .....	<b>22</b>
	<b>C. Legal Advice and Criminal Conduct—MRPC 1.2(d)</b> .....	<b>23</b>
	<b>D. Confidentiality and Criminal Conduct—MRPC 1.6(b)</b> ..	<b>23</b>
<b>VI.</b>	<b>CONCLUSION</b> .....	<b>24</b>

## INTRODUCTION

The election of Donald Trump in 2024 ushered in a new wave of fears for non-U.S. citizens residing in the United States. After taking office in 2025, the Trump administration began sweeping and wide-ranging deportation efforts. Many deportees were in the United States legally. Between late March and mid-April of 2025, more than 1,000 students at 160 U.S. colleges and universities had their visas revoked or were otherwise told to leave the country.<sup>2</sup> Other deportees held legal permanent resident status and had been in the country for many years.<sup>3</sup> Even U.S. citizens were not free from deportation fears.<sup>4</sup> Non-citizen parents of U.S. citizen minor children have been forced to choose between being deported as a family or leaving their U.S. citizen children behind.<sup>5</sup>

Many deportees or potential deportees have spent years living and working in the United States. They have U.S. citizen spouses, children, or other family members. They have acquired bank accounts and other financial assets in the United States. Moreover, deportation is sometimes accompanied by a serious risk to the life of the deported individual. Conditions within U.S. ICE facilities are notoriously dangerous, a problem that predates the Trump administration.<sup>6</sup> President Trump has enthusiastically supported the imprisonment of deportees in foreign prisons known for torture and denial of basic necessities.<sup>7</sup> One family

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2. Annie Ma, *More Than 1,000 International Students Have Had Visas or Legal Status Revoked*, ASSOCIATED PRESS (Apr. 18, 2025 at 23:29 MT), <https://apnews.com/article/f1-visa-international-college-student-trump-9d4d900d328a0c205503c1178e70f1d5>.

3. See Zolan Kanno-Youngs, Tyler Pager & Hamed Alzeaziz, *As Trump Broadens Crackdown, Focus Expands to Legal Immigrants and Tourists*, N.Y. TIMES (Mar. 21, 2025), <https://www.nytimes.com/2025/03/21/us/politics/trump-immigration-visa-crackdown.html>.

4. See e.g. Achy Obejas, *We Are U.S. Citizens. My Children Are Still Terrified of Being Deported*, POLITICO (Apr. 19, 2025), <https://www.politico.com/news/magazine/2025/04/19/deportation-child-trump-ice-00299403>.

5. See Alison Detzel, *Trum Admin Deports 10-year-old U.S. Citizen Recovering From Brain Cancer to Mexico*, MSNBC (Mar. 13, 2025), <https://www.msnbc.com/top-stories/latest/child-brain-cancer-deported-mexico-rcna196295>.

6. See Gisela Salomon, *Migrants Face Dire Conditions and Prolonged Waits in U.S. Detention Centers*, PBS (Feb. 9, 2026) <https://www.pbs.org/newshour/nation/migrants-face-dire-conditions-and-prolonged-waits-in-u-s-detention-centers>; Jasmine Garsd, *In Recorded Calls, Reports of Overcrowding and Lack of Food at Ice Detention Centers*, NPR (June 6, 2025, at 10:33 ET) <https://www.npr.org/2025/06/05/nx-s1-5413364/concerns-over-conditions-in-u-s-immigration-detention-were-hearing-the-word-starving>.

7. See e.g. Annie Correal, *Inside the 'Tropical Gulag' in El Salvador Where U.S. Detainees Are Being Held*, N.Y. TIMES (Apr. 18, 2025), <https://www.nytimes.com/2025/04/18/world/americas/bukele-abrego-garcia-elsalvador-prison.html>; Nicholas Riccardi, *Trump Says He Wants to Imprison U.S. Citizens in El Salvador. That's Likely Illegal*, ASSOCIATED PRESS (Apr. 15, 2025, at 14:23 ET) <https://apnews.com/article/trump-citizens-prison-el-salvador-illegal-79113d0ccefedf1f7d8e51c3a4c3defd>.

deported to Mexico (along with their U.S. citizen children) was even left in an area of the country where U.S. citizens are often kidnapped.<sup>8</sup>

Many estate planners do not deal with immigration or citizenship matters in any significant manner outside of potential tax and inheritance law consequences. However, the legitimate fears of death, loss of property, and loss of parents for minor children brought on by the Trump administration are issues that are finding their way into the estate planner's office. This Article considers the practical, ethical, and legal issues that estate planners may encounter as deportation efforts continue. Part II describes the different types of aliens and their legal classification. Part III offers techniques and guidelines for planning for minor children, particularly those who are U.S. citizens and may remain in the United States after the deportation of a parent. Part IV offers techniques and guidelines for planning the management of the property of a deported person. Part V considers the applicability of some of the immigration-related crimes to the estate planning attorney as well as related ethical concerns. Part VI concludes.

## I. TYPES OF IMMIGRANTS AND NONIMMIGRANTS

Federal immigration law describes all non-U.S. citizens as “aliens.”<sup>9</sup> Aliens are classified as either “immigrants” or “non-immigrants.”<sup>10</sup> Immigrants can be further classified as either “authorized immigrants” or “unauthorized immigrants.”<sup>11</sup> This section provides a basic overview of these three categories of aliens.

### A. Non-Immigrants

Non-immigrants are persons who are in the United States with legal authority, but who do not intend to remain in the United States permanently.<sup>12</sup> Non-immigrants include ambassadors, tourists, business travelers, certain foreign workers, students, and academics.<sup>13</sup> With limited exceptions, non-immigrants must obtain a visa to enter the country.<sup>14</sup> Non-immigrant visas are generally referred to by a letter and number that are derived from their location in the federal immigration laws.<sup>15</sup> The largest category of non-immigrant visa holders is visitors for business or pleasure

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8. Alison Detzel, *Trump Admin Departs 10-year-old U.S. Citizen Recovering From Brain Cancer to Mexico*, MSNBC (Mar. 13, 2025); available at <https://www.msnbc.com/top-stories/latest/child-brain-cancer-deported-mexico-rcna196295>.

9. 8 U.S.C. §1101(a)(3).

10. *Id.* §1101 (a)(15).

11. *Id.* §1101(a)(3) (defining “alien”); 8 U.S.C. § 1324a(h)(3) (defining “unauthorized alien”).

12. *Id.* § 1101(a)(3).

13. *See Id.* §1101 (a)(15); 1 IMMIGRATION LAW AND DEFENSE § 3:1 (2026).

14. *See* 1 IMMIGRATION LAW AND DEFENSE §3:1 (2026).

15. *See* 22 C.F.R. §41:12 (2026).

who hold B1/B2 visas.<sup>16</sup> The United States issued about 5.9 million B1/B2 visas in 2023.<sup>17</sup> The next largest category of visa holders is students and individuals on cultural exchanges (such as Fulbright scholars, professors, and researchers). These are the “F” and “J” visas. F1 visas are available for aliens seeking to study in the United States.<sup>18</sup> F2 visas are available to the alien spouses and children of F1 visa holders.<sup>19</sup> J1 visas are available to cultural exchange visitors.<sup>20</sup> J2 visas are available to the alien spouses and children of J1 visa holders.<sup>21</sup> The United States issued 445,428 F1 visas and 26,844 F2 visas in 2023.<sup>22</sup> Similarly, the United States issued 316,693 J1 visas and 32,028 J2 visas in 2023.<sup>23</sup> These visas are often intended to span a multi-year period of study or cultural exchange. During the 2023–2024 academic year, for example, there were more than 1.1 million international students present in the United States.<sup>24</sup> Finally, temporary agricultural workers (H-2A visa holders) and temporary non-agricultural workers (H-2B visa holders) accounted for a sizable number of 2023 visas (310,676 and 131,704, respectively).<sup>25</sup> The alien spouses and children of various H visa holders (H-4 visa holders) accounted for another 186,748 visas in 2023.<sup>26</sup>

Some non-immigrant visa holders have established families and careers in the United States and are in the process of pursuing legal resident status. Non-immigrant visa holders can have a change of intent while present in the United States and can legally seek to change their status from non-immigrant to immigrant. In early 2025, the Trump administration aggressively targeted non-immigrant visa holders—particularly F1 and J1 visa holders.<sup>27</sup> By mid-April 2025, the Trump administration had abruptly cancelled more than 1,500 student visas.<sup>28</sup> By the end of 2025, the number of cancelled student visas exceeded 8,000.<sup>29</sup>

Aditya Harsono is one of many examples of people caught up in the Trump administration’s deportation efforts. Mr. Harsono came to the

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16. *Id.*

17. See JILL WILSON, CONG. RSCH. SERV. R45938, *Nonimmigrant and Immigrant Visa Categories: Data Brief* (2024).

18. See 8 U.S.C. § 1101 (a)(15)(F)(i) (2026); 22 C.F.R. § 41:12 (2026).

19. See 8 U.S.C. § 1101 (a)(15)(F)(ii) (2026); 22 C.F.R. § 41:12 (2026).

20. See 8 U.S.C. § 1101 (a)(15)(J) (2026); 22 C.F.R. § 41:12 (2026).

21. See 8 U.S.C. § 1101 (a)(15)(J) (2026); 22 C.F.R. § 41:12 (2026).

22. See Wilson, *supra* note **Error! Bookmark not defined.**

23. See *Id.*

24. Stephanie Saul & Troy Closson, *Losing International Students Could Devastate Many Colleges*, N.Y. TIMES (Apr. 19, 2025), <https://www.nytimes.com/2025/04/19/us/losing-international-students-could-devastate-many-colleges.html>.

25. Wilson, *supra* note **Error! Bookmark not defined.**

26. *Id.*

27. Stephanie Saul & Troy Closson, *supra* note 24.

28. *Id.*

29. Jennifer Hansler, *Trump Administration has Revoked 85,000 Visas since January, State Department Official says*, CNN (Dec. 8, 2025), <https://www.cnn.com/2025/12/08/politics/visa-revocations-state-department>.

United States from Indonesia in 2015 to study environmental science.<sup>30</sup> He enrolled in an M.B.A. program in 2022 and met his wife, a U.S. citizen and native of Minnesota, the same year.<sup>31</sup> Mr. Harsono's non-immigrant visa allowed him to stay and work for a year following completion of his master's degree.<sup>32</sup> While working as a supply chain manager at a hospital, Mr. Harsono was seeking legal permanent resident status (colloquially called a "green card"), presumably on the basis of familial relationship to Ms. Harsono and the couple's child.<sup>33</sup> In March 2025, when his daughter was 8 months old, Mr. Harsono's visa status was unexpectedly revoked and he was arrested at work.<sup>34</sup> The basis for Mr. Harsono's visa revocation and ensuing deportation proceeding was a 2022 misdemeanor charge for drawing graffiti on some trailers.<sup>35</sup> Mr. Harsono had agreed to pay to repair the damage he caused—which was less than \$500.<sup>36</sup> Historically, immigration officials ignored minor offenses like Mr. Harsono's offense.<sup>37</sup> In 2025, however, the U.S. State Department revoked Ms. Harsono's visa claiming the prior incident showed that Mr. Harsono "now poses a threat to U.S. public safety."<sup>38</sup> Mr. Harsono, however, believed his arrest was in retaliation for his lawful participation in protests and political activism.<sup>39</sup> After spending nearly two months in the county jail, a federal judge ordered Mr. Harsono's immediate release on bond.<sup>40</sup> The judge apparently agreed that Mr. Harsono's detention was likely in retaliation for his support for Black Lives Matter and Palestinian rights and, therefore, violated his First Amendment rights.<sup>41</sup> In the meantime, Ms. Harsono and the couple's young daughter lost a wage earner and their health insurance (which was through Mr. Harsono's employment).<sup>42</sup> The couple also faced mounting legal bills.<sup>43</sup>

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30. Ernesto Londoño, *Minnesota Man Whose Student Visa Was Revoked Says It 'Shattered' His Life*, N.Y. TIMES (Apr. 23, 2025), <https://www.nytimes.com/2025/04/23/us/minnesota-student-aditya-harsono-visa.html>.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Miriam Jordan, *'Where's Alex?' A Beloved Caregiver is Swept Up in Trump's Green Card Crackdown*, N.Y. TIMES (Apr. 9, 2025), <https://www.nytimes.com/2025/04/09/us/immigration-green-card-crackdown-trump.html>.

38. Ernesto Londoño, *supra* note **Error! Bookmark not defined.**

39. Hannah Yang, *Marshall Man Released After Nearly Two Months in ICE Custody*, MPR NEWS (May 15, 2025), <https://www.mprnews.org/story/2025/05/15/aditya-harsono-released-after-nearly-two-months-in-ice-custody>.

40. *Id.*

41. JP Lawrence, *Immigrant Released on Bond After Judge Says ICE Arrest Was Based on George Floyd Protest*, MINN. STAR TRIB. (May 15, 2025, at 11:24 AM CDT), <https://www.startribune.com/judge-orders-immigrants-release-after-ice-arrest-based-on-george-floyd-protest-palestinian-support/601353761>.

42. Londoño, *supra* note **Error! Bookmark not defined.**

43. *Id.*

### B. Authorized Immigrants

The term “authorized immigrants” refers to aliens who have the requisite legal authority to reside in the United States on a more permanent basis than non-immigrants. Authorized immigrants can enter the United States through a variety of methods. Some will enter the country with an immigrant visa with the intent to remain permanently.<sup>44</sup> Others enter the country on non-immigrant visas and then seek to change their visa status while in the country.<sup>45</sup> Persons intending to remain in the United States legally on a permanent basis will seek permanent resident alien status, also known as a “green card” or “legal permanent resident” status.<sup>46</sup> Obtaining permanent resident alien status is also part of the process for obtaining U.S. citizenship.<sup>47</sup> Some unauthorized immigrants (discussed below) can also successfully seek permanent resident alien status.<sup>48</sup>

The authorized immigrant system is complex. Broadly, immigrant visas (including adjustment of status from a non-immigrant to an immigrant visa) may be sought by individuals (1) who have “very close relatives who are United States citizens or permanent residents;” (2) who “have a job skill in short supply in the United States;” or (3) who are refugees.<sup>49</sup> Some categories of immigrant visas are subject to annual numerical caps; others are not.<sup>50</sup> Of the more than 1.17 million immigrant visas issued in 2023, the majority were issued on the basis of family relationship.<sup>51</sup> In 2023, more than 550,000 immigrant visas were issued to the spouses, children (provided they were unmarried and under age 21), and parents of U.S. citizens.<sup>52</sup> Another 204,250 immigrant visas were issued to other relatives of U.S. citizens and to various relatives of permanent residents.<sup>53</sup> There were 13 million green card holders in the United States in 2023.<sup>54</sup> Of those, about 9 million were eligible to seek U.S. citizenship.<sup>55</sup> Not surprisingly, most authorized immigrants will have significant family and financial connections to the United States.

The Trump administration has also targeted holders of immigrant visas and green cards.<sup>56</sup> Authorized immigrants can be deported for

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44. See 1 IMMIGRATION LAW AND DEFENSE § 4:2 (2025).

45. See *id.*

46. See 1 HEALTH L. PRAC. GUIDE § 6B:18 (2026).

47. See IMMIGRATION LAW AND DEFENSE, *supra* note 44.

48. See *id.*

49. See *id.* at §4:7.

50. See *id.*

51. Wilson, *supra* note **Error! Bookmark not defined.**, at 7.

52. *Id.*

53. *Id.*

54. Jordan, *supra* note **Error! Bookmark not defined.**

55. *Id.*

56. See Michael Williams & Priscilla Alvarez, *Trump is Intensifying His Crackdown on Every Form of Immigration to the US*, CNN (Dec. 3, 2025),

relatively minor offenses that have historically been ignored by immigration officials.<sup>57</sup> Alfredo Orellana, a 31-year-old who has lived in the United States since he was 4 years old, is one of many examples.<sup>58</sup> Mr. Orellana worked full time as a caretaker for a man with severe autism.<sup>59</sup> Eight years ago, Mr. Orellana tried to “swindle a store out of \$200 when...he was struggling with substance abuse.”<sup>60</sup> Mr. Orellana was taken into custody in February and transported from his home in Virginia to Pennsylvania, then to Louisiana, and then to Texas.<sup>61</sup> Back home, Mr. Orellana’s pregnant wife was working to make payments on the couple’s car and mortgage.<sup>62</sup> The family and the autistic man that relied on him for caregiving were also devastated.<sup>63</sup>

### C. Unauthorized Immigrants

Unauthorized immigrants are individuals who are in the United States without proper legal authority. Unauthorized immigrants generally arrive in the United States in one of two ways. Some unauthorized immigrants enter the country legally but then lose that legal status and fail to leave the country. A common example of this scenario is an individual who remains in the United States after the expiration or revocation of a student visa.<sup>64</sup> Other unauthorized immigrants enter the country without any legal authority to do so.<sup>65</sup> Unauthorized immigrants are sometimes referred to as “undocumented” immigrants. Various paths exist to allow unauthorized immigrants to become authorized immigrants. Unauthorized immigrants may also obtain temporary permission to remain in the country while they pursue more permanent legal status.<sup>66</sup>

The Trump administration is likewise targeting unauthorized immigrants. While the targeting of unauthorized immigrants by the Trump administration is hardly surprising, the manner in which some unauthorized immigrants and their U.S. citizen minor children have been targeted for deportation has drawn criticism.<sup>67</sup> For example, in late April 2025, three young children belonging to two different unauthorized

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<https://www.cnn.com/2025/12/03/politics/trump-immigration-crackdown-asylum-green-cards/>

Jordan, *supra* note 37.

57. Jordan, *supra* note 37.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. See 1 IMMIGRATION LAW AND DEFENSE §4:3 (2025).

65. See 1 IMMIGRATION LAW AND DEFENSE §4:3 (2025).

66. See Mohomad Moslimani & Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.*, PEW RSCH. CTR. (Sept. 27, 2024), <https://www.pewresearch.org/short-reads/2024/09/27/key-findings-about-us-immigrants/>.

67. Rachel Nostrant, *2 American Children Were Sent to Honduras With Their Undocumented Mother*, N.Y. TIMES (Apr. 27, 2025), <https://www.nytimes.com/2025/04/27/us/politics/us-citizen-children-deported-honduras-trump.html>.

immigrant mothers were deported alongside their mothers when the mothers appeared for routine check-ins with immigration officials.<sup>68</sup> The mother of a 2-year-old U.S. citizen had appeared for immigration check-ins for years without incident.<sup>69</sup> In April of 2025, however, the mother and the child were detained and deported to Honduras over the apparent objections of the child's father.<sup>70</sup> The child's mother may have also objected to the deportation.<sup>71</sup> A few days later, another mother was deported to Honduras after appearing for a routine check-in along with her two U.S. citizen children, ages 4 and 7.<sup>72</sup> The 4-year-old has cancer, and the mother apparently wanted both children to remain in the United States to continue cancer treatment.<sup>73</sup>

## II. PLANNING FOR MINOR CHILDREN

The potential deportation of a parent who has minor children in the United States is a serious concern. Mixed-status families are quite common.<sup>74</sup> Minor children may have a different legal status than one or both parents. The deportation of a parent does not necessarily require the deportation of the child. For example, an alien of any type may have a child who is a U.S. citizen due to either the child's birth within the United States or the U.S. citizenship of the other parent.<sup>75</sup>

Even if a child is not a U.S. citizen, the deportation of the parents might not result in the deportation of the child. A two-year-old girl called "Antonella" illustrates this phenomenon.<sup>76</sup> Antonella, who was born in Peru, entered the United States illegally with her Venezuelan parents during the Biden administration.<sup>77</sup> The parents were separated from their daughter—who was sent to foster care.<sup>78</sup> The Trump administration deported the parents, claiming they had gang affiliation.<sup>79</sup> The father was

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68. Hamed Aleaziz, *What to Know About the 3 U.S. Citizen Children Removed to Honduras*, N.Y. TIMES (Apr. 28, 2025), <https://www.nytimes.com/2025/04/28/us/politics/us-citizen-children-deported.html>.

69. *Id.*

70. Alan Feuer, *2-Year-Old U.S. Citizen Deported 'With No Meaningful Process,' Judge Suspects*, N.Y. TIMES (Apr. 25, 2025), <https://www.nytimes.com/2025/04/25/us/politics/us-citizen-deported.html>.

71. Aleaziz, *supra* note **Error! Bookmark not defined.**

72. *Id.*

73. *Id.*

74. RANDY CAPPS, JULIA GELATT, ARIEL G. RUIZ SOTO, & JENNIFER VAN HOOK, MIGRATION POL'Y INSTITUTE, *UNAUTHORIZED IMMIGRANTS IN THE UNITED STATES: STABLE NUMBERS, CHANGING ORIGINS* 2, (Dec. 2020), [https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-immigrants-stablenumbers-changingorigins\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-immigrants-stablenumbers-changingorigins_final.pdf).

75. See U.S. CONST. amend. XIV, §1; 8 U.S.C. §1401.

76. Julie Turkewitz & Isayen Herrera, *A Mother and Father Were Deported. What Happened to Their Toddler?*, N.Y. TIMES (Apr. 29, 2025), <https://www.nytimes.com/2025/04/29/world/americas/family-deported-trump-venezuela-el-salvador.html>.

77. *Id.*

78. *Id.*

79. *Id.*

deported to a prison in El Salvador; the mother was deported to her home in Venezuela.<sup>80</sup> The child was separated from her parents and held in the United States for nearly a year before finally being returned to Venezuela and reunited with her mother and grandmother.<sup>81</sup>

This section offers techniques and ideas for attorneys representing potential deportees with minor children, particularly children who are U.S. citizens. First, this section summarizes the key pieces of information the attorney should help the client gather and the decisions the client should make. Next, this section explains how to utilize powers of attorney to delegate parental authority and guardianship proceedings to ensure the continued care of minor children who remain in the United States without their parents.

#### *A. Information Gathering*

The attorney should advise the parents to gather important information regarding their children and to ensure that appropriate parties have access to these documents. Because of the unpredictable and sometimes chaotic nature of deportation arrests, parents should ensure that multiple parties have access to important documents to increase the availability of the documents when and if they are needed. At a minimum, each parent and any other adult with a close connection to the child (such as a close family member or friend) should have copies of these documents. The attorney could also retain copies of important documents. If the child is old enough, then the child might also be entrusted with these documents.

Documents relating to the citizenship or immigration status of minor children are critical. If the child is a U.S. citizen, then the attorney should advise the clients to gather documents that demonstrate that citizenship. For example, birth certificates of persons born within the United States are generally considered proof of U.S. citizenship<sup>82</sup>, and certified copies are usually readily available for nominal fees from the state where the child was born. The U.S. government does not issue official copies of passports and Social Security cards. However, unofficial copies in hard or digital format may be useful. Copies of U.S. passports may be particularly helpful because they also include a photo of the passport holder. If the child is not a U.S. citizen, then the attorney should advise the clients to gather documents that establish the child's citizenship in any other countries and

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80. *Id.*

81. Michael Rios, Osmar Hernández & Ana Melgar, *Toddler Held in US After Parents' Deportation has been Returned to Venezuela*, CNN (May 15, 2025), <https://www.cnn.com/2025/05/14/americas/venezuela-mikaelys-deportation-intl-latam>.

82. *See e.g.* 22 C.F.R. § 51.42 (2026) (U.S. birth certificate is primary evidence needed for obtaining U.S. passport); ARIZ. REV. STAT. ANN. § 16-166 (2026) (copy of U.S. birth certificate is evidence of citizenship for voter registration).

that relate to the child's immigration status within the United States. If the child is not a U.S. citizen, then documents demonstrating the child's immigration status and citizenship records from the child's home country are likewise critical. Documents relating to the custody and parentage of minor children are also important. Other useful documents include those relating to school records, immunizations, and other health records.

*B. Decide Where Children Will Go in the Event of the Parents' Deportation*

If a parent is planning for potential deportation, then the parent should decide whether the child will join the parent or remain in the United States. Of course, the parent may not always be able to decide this in advance. People subject to deportation may be detained at almost any time, and they may not be given the option of bringing their children with them. Even if a parent elects to bring children along, the family may later be separated. Given the uptick in parents who have been arrested when appearing for scheduled meetings with immigration officials and court appearances, attorneys should advise their clients that bringing their children with them to these appointments may limit their options.<sup>83</sup> If the parent intends for the child to remain in the country, then it is probably not advisable to bring the child along to these appointments.

If the parent intends for the child to remain in the United States, then appropriate plans should be made for the care and custody of the child. The attorney should determine who the parent wants to care for the child following the deportation of the parent. In the absence of a caretaker in the United States then the minor child is likely to end up in the foster care system—an outcome most parents probably want to avoid. Ideally, the proposed caretaker will be an adult who is not likely to be subject to deportation. The attorney should also advise the parent to discuss the potential for deportation with the caretaker to ensure the caretaker is willing to take on the responsibility. If the children are old enough, it is probably helpful to include them in these conversations so that they are more emotionally prepared if the deportation of a parent occurs. The attorney should also inquire as to the plan to provide financial support for the child. Is the proposed caretaker willing and able to assist in the child's financial support even if they are not legally required to do so?<sup>84</sup> Are there other friends or family members that can help support the child and

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83. See Joshua Goodman & Tim Sullivan, *They Thought They Were in Court for a Routine Immigration Hearing But Walked into a Deportation Trap*, PBS (Nov. 19, 2025 at 10:42 ET), <https://www.pbs.org/newshour/nation/they-thought-they-were-in-court-for-a-routine-immigration-hearing-but-walked-into-a-deportation-trap>.

84. Guardians and agents acting under a power of attorney are not typically required to use their own resources to support the child. See e.g. MICH. COMP. LAWS § 700.5215 (2026) (“...a guardian is not legally obligated to provide for the ward from the guardian's own money and is not liable to third persons because of the parental relationship for the ward's acts”).

caretaker financially? What resources will the parent have to support the child if the parent is deported? Finally, the attorney should advise the parent to notify friends and family of the plan so that arrangements can be made quickly if the parent is detained unexpectedly. The legal requirements for care and custody of the children are considered in more detail in the next section.

#### *D. Children Who Remain in the United States*

If the plan is for the child to remain in the United States without one or both parents, then the attorney should help implement a plan ensuring the child's U.S. caregiver has the needed legal authority. Estate planners routinely help parents plan for the care of their young children in the event of the parent's death. Estate planners also routinely help appoint temporary caregivers when parents are going to be out of town for business, pleasure, or even military deployment. Some estate planners also have experience planning for the imprisonment of a parent. Planning for the minor children of potential deportees draws on these same basic skills and tools. Three primary tools are available for parents facing deportation: (1) delegation of parental authority by power of attorney; (2) judicial appointment of a guardian with parental consent; and (3) judicial appointment of a guardian due to the inability of the parents to exercise their parental rights and responsibilities because of detention or deportation. Each is considered below.

##### 1. Delegation of Parental Authority by Power of Attorney

Parents fearing deportation should first consider executing a power of attorney that delegates their parental authority to another person who is not at risk (or less at risk) for deportation in states where such delegations are permitted. Fortunately, most states, by statute, allow parents to delegate much of their parental authority to a third person via a power of attorney.<sup>85</sup> The scope and nuances of the state statutes vary. Generally, powers relating to the minor's health, education, person, and property can be delegated.<sup>86</sup> Parental rights related to the marriage of minor children or adoption of minor children cannot typically be delegated.<sup>87</sup> Restrictions

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85. See e.g. Tianna N. Gibbs, *Paper Courts and Parental Rights: Balancing Access, Agency, and Due Process*, 54 HARV. C.R.-C.L.L. REV. 549, 581 (2019) (the author's survey counted more than 20 states with such laws). See also UNIF. GUARDIANSHIP, CONSERVATORSHIP, & OTHER PROTECTIVE PROCEEDINGS ACT § 128 Legislative Note (UNIF. LAW COMM'N 2017) (noting that more than 40 states have laws allowing for the delegation of parental authority by power of attorney). Louisiana calls this a "provisional custody by mandate." LA. REV. STAT. § 9:951 (2026).

86. See e.g. ALA. CODE § 26-2A-7 (2026); ALASKA STAT. § 13.26.066 (2026); ARIZ. REV. STAT. § 14-5104 (2026); GA. CODE § 19-9-124 (2026); LA. REV. STAT. § 9:953 (2026); MINN. STAT. § 524.4-211 (2026).

87. See e.g. ALA. CODE § 26-2A-7 (2026); ALASKA STAT. § 13.26.066 (2026); ARIZ. REV. STAT. § 14-5104 (2026); GA. CODE § 19-9-124 (2026); MINN. STAT. § 524.4-211 (2026).

relating to abortion are also fairly common.<sup>88</sup> These restrictions are not likely to be problematic for most parents.

Most statutes contemplate that one parent, acting alone, can execute a valid delegation of parental authority by power of attorney without the concurrence of the other parent.<sup>89</sup> This can be advantageous in the deportation context. One parent may already have been detained or deported, and the other parent can proceed to execute the power of attorney without having to obtain the consent of the other parent. Similarly, sometimes only one parent is in the picture, and requiring the consent of the other parent would be burdensome. Of course, if both parents are available and in agreement, then both parents should sign the power of attorney. The delegation of authority by power of attorney is typically revocable at any time.<sup>90</sup> Further, many statutes are clear that one parent can unilaterally revoke the power of attorney made by the other parent.<sup>91</sup>

POA delegations offer a number of benefits and should be considered in most cases. POA delegations are generally quick and inexpensive to prepare—many states even provide statutory forms.<sup>92</sup> Many estate planners are familiar with these documents and are comfortable preparing them. POA delegations do not require any court proceeding. While the lack of a court proceeding has sometimes been criticized by scholars for various policy reasons, the nonjudicial nature of POA delegations is advantageous in the deportation setting.<sup>93</sup> Cost and speed are the two most obvious advantages of the nonjudicial process. Additionally, parents who fear deportation are likely hesitant to voluntarily appear in court because of reports of immigration enforcement happening at courthouses.<sup>94</sup>

However, POA delegations have a significant shortcoming in the immigration setting. Most states limit the duration of these documents to somewhere between six months<sup>95</sup> and one year.<sup>96</sup> These time restrictions reflect the original purpose of POA delegation statutes. They were designed for parents who anticipated a temporary separation from their

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88. See e.g. GA. CODE § 19-9-124 (2026) (prohibiting delegation of “performance or inducement of an abortion on or for such child”).

89. See e.g. ALA. CODE § 26-2A-7 (2026); ARIZ. REV. STAT. § 14-5104 (2026); LA. REV. STAT. § 9:951 (2026); MINN. STAT. § 524.4-211 (2026). *But see* VA. CODE ANN. § 20-166 (2026) (requiring both parents to sign if they “are exercising joint custody”).

90. See e.g. LA. REV. STAT. § 9:952 (2026); VA. CODE ANN. § 20-166(C) (2026).

91. See e.g. ALASKA STAT. § 13.26.066 (2026); LA. REV. STAT. § 9:952 (2026).

92. See e.g. LA. REV. STAT. § 9:954 (2026); VA. STAT. ANN. § 20-167 (2026).

93. See Gibbs, *supra* note **Error! Bookmark not defined.**, at 556.

94. See Goodman & Sullivan, *supra* note **Error! Bookmark not defined.**; Maayan Silver, *A Federal Jury Finds Milwaukee Judge Guilty of Obstructing Immigration Agents*, NPR (Dec. 18, 2025), <https://www.npr.org/2025/12/18/nx-s1-5648584/judge-hannah-dugan-guilty-obstruction-ice>

95. See e.g. ARIZ. REV. STAT. § 14-5104 (2026); VA. STAT. ANN. § 20-166 (2026)

96. See e.g. ALA. CODE § 26-2A-7 (2026); ALASKA STAT. § 13.26.066 (2026); GA. CODE § 19-9-130 (2026); LA. REV. STAT. § 9:952 (2026); MINN. STAT. § 524.4-211 (2026). *But see* MASS. GEN. LAW ch. 5, § 103 (2026) (limiting the duration to 60 days).

children due to travel or similar reasons. Deported parents, however, may be unable to reunite with their minor children indefinitely. The six-month to one-year term may prove inadequate in the deportation scenario. Further, POA delegation statutes usually contemplate documents that are immediately effective. In other words, “springing” powers of attorney that only take effect upon the occurrence of some event (like detention or deportation) are not typically permitted.<sup>97</sup> As a result, the clock on the POA will likely start to run as soon as it is executed. For that reason, parents fearing deportation may need to periodically re-execute the documents to extend their shelf life.

Nonetheless, the POA delegation ought to be considered a first-line planning option. At a minimum, it might buy some time for the affected parties to pursue more permanent solutions, such as guardianship. Further, if the deported parent is able to be contacted following a deportation action, then the deported parent may be able to execute additional POA delegations as needed. The attorney should consider including language in the POA nominating a guardian if one is needed in the future. While many statutory regimes do not require courts to consider a parent’s nomination of a guardian in the deportation setting, as is discussed in more detail below, the courts are not prohibited from considering the parent’s nomination of a proposed guardian. Put simply, an advance nomination in the POA delegation could be persuasive to a court, and it is not likely to cause any harm.

## 2. Judicial Appointment of a Guardian with Parental Consent.

Guardianship is allowed in a broad array of circumstances, even when the parents are still living and their parental rights have not been terminated. The broad scope of guardianship laws may allow parents some say in who cares for their children if the children remain in the country after deportation of the parents. Although one reason a guardianship might be ordered by a court is that the parents’ rights have been legally terminated, termination of parental rights is not required for guardianship. Therefore, guardianship may be appropriate for children whose parents either anticipate deportation or have already been deported. Presumably, these parents are fit parents who are simply unable to care for their children in the United States because of immigration enforcement actions. Most guardianship statutory regimes contemplate two different reasons for guardianship that might be useful in the case of parents subject to deportation. The first option, guardianship with parental consent, is

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97. See e.g. LA. REV. STAT. § 9:952 (2026) (providing that “the term shall not exceed one year from the date of execution”) (emphasis added).

discussed in this section. The second option, guardianship due to the unavailability of the parent, is discussed in the section that follows.

Most states allow a court to appoint a guardian for a minor child with the consent of the parents.<sup>98</sup> By requiring parental consent, the parents can essentially select the guardian to be appointed by the court. While being able to select the guardian is obviously attractive to parents, other aspects of the parental consent approach may pose challenges for parents subject to deportation. First, parental consent guardianships typically require the consent of both parents.<sup>99</sup> Obtaining and documenting the consent of both parents may be challenging if one parent has already been deported, is otherwise not present in the country, or is not in contact with the family. States will also vary as to the form and timing requirements associated with parental consent. State statutory regimes do not typically contemplate a scenario where the parents consent to the guardianship well in advance of the filing of a petition for guardianship. Therefore, parental consent probably needs to be documented close in time to the filing of a petition for guardianship. If the parents know deportation is imminent or plan to self-deport voluntarily, then it may be appropriate to go forward with guardianship by parental consent proceedings. Further, some states allow parents to proceed with “standby” guardianship proceedings where they ask the court to confirm the guardian prior to the need for a guardian. Although these statutes were generally designed for parents facing an illness or other condition that would render them incapacitated in the future<sup>100</sup>, some are written in sufficiently broad terms that they could apply to an anticipated deportation.<sup>101</sup>

Another challenge with guardianship by parental consent is the potential that the parents may be required to personally appear in court. Personal appearance by the parents is not strictly required in many states. Standing to file a guardianship petition is usually quite broad.<sup>102</sup> In most states a relative, de facto caretaker, proposed guardian, or even the child (if old enough) can file the petition.<sup>103</sup> Some jurisdictions allow parental consent to be demonstrated by affidavit or other written evidence.<sup>104</sup> But some states or individual judges may require a personal appearance by the parents. As noted above, parents subject to deportation may be unwilling to appear in court. Finally, guardianship by parental consent may pose a

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98. See e.g. COLO. REV. STAT. § 15-14-204 (2026); MASS. GEN. LAWS, § 5 § 202 (2026); W. VA. CODE ANN. § 44-10-3 (2026).

99. See e.g. CAL. PROB. CODE § 1500 (2026); COLO. REV. STAT. § 15-14-204 (2026); W. VA. CODE § 44-10-3 (2026).

100. See THOMAS A. JACOBS, CHILDREN & THE LAW: RIGHTS AND OBLIGATIONS § 7:10 (2025).

101. See e.g. ME. REV. STAT. § 5-202(2) (2026).

102. See THOMAS A. JACOBS, CHILDREN & THE LAW: RIGHTS AND OBLIGATIONS § 7:10 (2025).

103. See *id.* § 7:10 (2025). See also DE. CODE ANN. Tit 13 § 2320 (2026) (allowing “any adult person” to petition for guardianship).

104. See e.g. IOWA CODE § 232D.203; DE. CODE 13 § 2322 (2026).

timing problem. So long as the parents remain in the country, they may not want some other person to have legal rights over their child.

### 3. Judicial Appointment of a Guardian Due to the Inability of a Parent to Exercise Parental Rights

Alternatively, most states allow for the appointment of a guardian when the parent is unable to exercise parental rights for some reason. For example, West Virginia allows the appointment of a guardian where “the parents are unwilling or unable to exercise their parental rights.”<sup>105</sup> Iowa allows the appointment of a guardian if the parent is incarcerated, imprisoned, or “for some other reason constituting good cause.”<sup>106</sup> Montana allows the appointment of a guardian “if parental rights have been suspended or limited by circumstances or prior court order.”<sup>107</sup> The detention or deportation of parents seems to fall squarely within the scope of these statutes. The thornier issue is whether a parent’s written nomination of a proposed guardian would be considered by a court in this type of guardianship. In a few states, the statutory regimes are accommodating, and courts are supposed to consider nominations made by a parent in advance.<sup>108</sup> Many statutory regimes, however, do not clearly consider advance nominations made by parents outside of parental consent guardianships. Put simply, many statutory regimes fall short when applied to the deportation scenario. For example, many states give preference to a guardian named in a deceased parent’s will<sup>109</sup> or to the preference of the child (if old enough).<sup>110</sup> However, many statutory schemes do not have a clear mechanism for effectuating a parent’s advance nomination of a guardian in a deportation scenario.<sup>111</sup> Of course, a court might be willing to consider a parent’s preferences if they were documented, and the parent’s nomination might be relevant under more general best interest of the child considerations.

## IV. FINANCIAL PLANNING AND ASSET PROTECTION PLANNING

The prospect of deportation raises serious concerns regarding the security of and access to U.S.-based assets. A deported person or a person who is being held in a detention facility may be unable to access or manage U.S.-based assets. Without advance planning, the deported person’s

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105. W. VA. CODE § 44-10-3 (2026).

106. IOWA CODE § 232D.203 (2026).

107. MONT. CODE ANN. § 72-5-222 (2026).

108. *See e.g.* CAL. PROB. CODE § 1500, § 1514 (2026).

109. *See e.g.* GA. CODE ANN. § 29-2-4 (2026); MONT. CODE ANN. §§ 72-5-211, -222 (2026); W. VA. CODE § 44-10-1 (2026).

110. *See e.g.* GA. CODE § 29-2-16 (2026) (age 14); MONT. CODE ANN. § 72-5-223 (2026) (age 14); TEX. ESTATES CODE § 1104.054 (age 12); W. VIR. CODE § 44-10-4 (2026) (age 14).

111. Georgia would apparently consider the parent’s nomination in the order of priority, but that person falls behind immediate relatives and other persons in the statutory hierarchy. *See* GA. CODE § 29-2-16 (2026).

family may be unable to access or manage those assets on the deported person's behalf. Moreover, the Trump administration has made it clear that it intends to impose financial penalties and utilize seizure procedures in furtherance of its immigration agenda. In April 2025, for example, news reports revealed the administration's plans to utilize a rarely used federal law to impose monetary fines on aliens for each day they remain in the country after a deportation order.<sup>112</sup> The Trump administration further intends to apply the fines retroactively up to five years (which could easily exceed \$1 million) and to seize assets, if needed, to pay the fines.<sup>113</sup> The applicable federal statute imposes a "civil penalty of not more than \$500...for each day" that the alien fails to leave the country.<sup>114</sup> Regulations increase that penalty to \$998 per day for inflation.<sup>115</sup> In January of 2026, for example, the Trump administration sued a woman for nearly \$1 million for failing to self-deport after an adverse immigration ruling against her in 2022.<sup>116</sup>

The need for advanced financial planning, therefore, is acute. This section outlines financial planning and asset protection planning options that should be considered by attorneys and their clients. First, this section summarizes the key pieces of information the attorney should help the client gather. Next, this section considers how traditional estate planning techniques like financial powers of attorney, *inter vivos* transfers of assets, and the retitling of property can be modified to better address the needs of potential deportees. Finally, this section briefly addresses how care for pets should be addressed for potential deportees.

#### A. Information Gathering

Attorneys should assist potential deportees in gathering information relating to their assets and finances to better streamline the administration and protection of those assets in the event of detention or deportation. Estate planners are well-versed in this task because it is a routine part of estate planning, estate administration, and planning for incapacity. More specifically, attorneys should instruct clients to identify all their assets, their locations, how they are titled, and any other relevant information needed to access or manage those assets in the event the client is unable to

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112. See Ted Hesson & Christina Cooke, *Trump Plans to Fine Migrants \$998 a Day for Failing to Leave After Deportation Order*, REUTERS (Ap. 8, 2025), <https://www.reuters.com/world/us/trump-plans-fine-migrants-998-day-failing-leave-after-deportation-order-2025-04-08/>.

113. *Id.*

114. 18 U.S.C. § 1324d(a) (2026).

115. 8 C.F.R. § 280.53(b)(14) (2026).

116. Josh Gerstein, *Trump Admin Sues Woman who Failed to Self-Deport for Nearly \$1 Million*, POLITICO (Jan. 29, 2026), <https://www.politico.com/news/2026/01/29/immigration-deportation-lawsuits-00755663>.

do so themselves. As is discussed in more detail below, information gathering should also include discussions of the client's pets.

### *B. Power of Attorney*

A financial power of attorney is a first-line planning option for any potential deportee. Preparing a financial power of attorney is a routine task for most estate planners. The financial power of attorney will allow some other person to manage the property of the client in the event of detention or deportation. The attorney should help the client decide who should serve as agent under the POA. In addition to the typical considerations that are important in selecting an agent, the immigration status of the proposed agent is an important consideration. Ideally, the agent would be someone not likely to be subject to deportation.

In addition to the provisions typically included in a financial power of attorney, the POA for a potential deportee ought to include some provisions that address some of the unique challenges faced by a deported person. More specifically, the agent should be expressly authorized to hire and pay any immigration attorneys that are needed. This grant of authority might include attorneys for the principal as well as for the principal's family members. If the principal anticipates leaving minor children or other dependents behind in the United States, the agent should be authorized to use the principal's assets to support those children or dependents. The agent might also be authorized to liquidate and transfer assets to another country in the event of deportation. As noted below, if the principal has pets that are left behind, then the agent should be authorized to expend funds for those pets.

### *C. Transferring or Re-Titling Property*

Potential deportees might also consider transferring U.S.-based assets to relatives not subject to deportation or re-titling property to add the name of a relative not subject to deportation to the title. While a durable POA can accomplish some of the same goals, transferring property or adding a name to the title can sometimes streamline asset management and access. For example, managing and preserving real estate is difficult to do from abroad or from a detention facility. A married potential deportee who owns real estate might consider transferring their interest in the real estate to their spouse if their spouse is not likely to be deported. Similarly, a potential deportee with U.S. citizen children might consider transferring their real estate to their children, perhaps in trust. Transferring property entirely to some person not subject to deportation may also provide some asset protection if immigration-related fines and seizures are levied against the potential deportee. Transferring assets into a spendthrift trust could offer further asset protection benefits.

A potential deportee may want to add names to financial accounts or simply transfer financial assets to relatives not subject to deportation. While a financial POA will allow an agent to access the principal's financial accounts in theory, financial institutions are sometimes uncooperative or difficult to work with. Adding an additional person to the title of financial accounts can streamline access to funds—which may be critical if funds are needed quickly to provide for dependents or to hire an immigration attorney. Of course, transferring assets gratuitously and adding names to assets is not without risk to the potential deportee. The attorney should discuss the risks and benefits with the client and assist the client in making informed decisions on how to proceed.

#### *D. Pets*

Pets should be considered in the asset and family planning discussions as well. Many pets have ended up left behind or in shelters because of the deportation of their owners.<sup>117</sup> Again, estate planners routinely help clients make plans for pets in the event of death or incapacity. The considerations needed in the deportation setting are similar. The attorney should advise the client of the importance of making arrangements for the care of any pets in the event of deportation. The potential deportee's POA should specifically allow the agent to find a caregiver for any pets and to expend funds for the continued care and support of the pets.

### V. ETHICAL CONSIDERATIONS AND LIABILITY CONCERNS

Representing potential deportees and their families can raise ethical and related concerns for attorneys. Routine ethical concerns faced by estate planning attorneys may be complicated by the Trump administration's decision to target attorneys and law firms that the administration perceives as hostile to the administration.<sup>118</sup> This section first considers some of the potential criminal statutes that could impact attorneys assisting potential deportees. Then this section considers some of the related ethical rules and their application in the context of the proposals made by this Article.

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117. See Jen Reeder, *Deportations are Landing Pets in Animal Shelters*, FORBES (Aug. 13, 2025), <https://www.forbes.com/sites/jenreeder/2025/08/11/deportations-are-landing-pets-in-animal-shelters-and-rescues/>.

118. Ryan Lucas, *Trump Attacks on Law Firms Begin to Chill Pro Bono Work on Causes He Doesn't Like*, NPR, (Apr. 13, 2025, at 5:00 AM ET). <https://www.npr.org/2025/04/13/g-s1-59497/trump-law-firms-pro-bono>.

### A. *Immigration Crimes*

Attorneys who represent potential deportees need to be aware of potential criminal penalties related to harboring and concealing unauthorized immigrants.<sup>119</sup> There is no general duty to inform immigration authorities that a person is residing in the United States without proper authority.<sup>120</sup> Therefore, simply providing legal assistance that anticipates the possibility of deportation should not lead to any criminal liability on the part of the attorney. Similarly, an attorney is not generally subject to any criminal liability for assisting a person who is in the country lawfully, but who is nonetheless concerned about the potential for deportation.<sup>121</sup>

On the other hand, some forms of assistance may run afoul of federal law. In particular, the first Trump administration aggressively pursued arrests and prosecutions under the federal anti-harboring statute.<sup>122</sup> Convictions continued on an upward trend under President Biden<sup>123</sup> and will presumably continue under the current Trump administration.<sup>124</sup> The federal anti-harboring statute provides that any person who

knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation

is subject to criminal penalties.<sup>125</sup> “Alien” in this context is essentially synonymous with unauthorized immigrant.<sup>126</sup> The statute also extends criminal penalties to anyone who “engages in any conspiracy” to violate the statute or who “aids or abets in the commission” of any act prohibited by the statute.<sup>127</sup> This statute could, potentially, be applied to attorneys in some instances.

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119. See 8 U.S.C. § 1321-30 (2026).

120. See 3 W. COLE DURHAM & ROBERT SMITH, *RELIGIOUS ORGANIZATIONS AND THE LAW* § 28:20 (2d ed. 2023).

121. See *id.*

122. See e.g. Annie K. Kreikemeier, *From Sheltering to Sentencing: An Examination of Immigrant Harboring Under 8 U.S.C. § 1324*, 89 MO. L. REV. 1319, 1324–25 (2024).

123. *Id.* at 1320.

124. See Joseph Gedeon, *DOJ Says it Will Prosecute Officials who Resist Trump’s Immigration Crackdown*, THE GUARDIAN (Jan. 22, 2025 at 11:24 ET) <https://www.theguardian.com/us-news/2025/jan/22/justice-department-trump-immigration>.

125. 8 U.S.C. § 1324 (2026).

126. See *id.*

127. 8 U.S.C. § 1324 (2026).

Federal circuits vary in the intent required to violate the statute.<sup>128</sup> Some circuits take an expansive view that would include simply providing shelter to an unauthorized immigrant for the purpose of helping the unauthorized immigrant to remain in the country.<sup>129</sup> Others have a narrower view that requires an additional element of intent.<sup>130</sup> In the Second Circuit, for example, “harbor” requires “conduct that is intended both to substantially help an unlawfully present alien remain in the United States—such as by providing him with shelter, money, or other material comfort—and also is intended to help prevent the detection of the alien by the authorities.”<sup>131</sup> In other words, jurisdictions employing the approach of the Second Circuit require an additional showing that providing shelter was done with the intent of concealing the presence of the unauthorized immigrant from the authorities. A wide variety of actions might violate the anti-harboring statute. Courts have explained that harboring might include “physical concealment, arranging sham marriage ceremonies, and assisting unlawfully present persons in obtaining employment.”<sup>132</sup> Violations can “also include attempts to alert undocumented immigrants to the physical approach of immigration authorities.”<sup>133</sup>

The types of legal advice and representation described in this Article should not implicate the anti-harboring statute. “Convictions under [the statute] generally involve defendants who provide illegal aliens with affirmative assistance, such as shelter, transportation, direction about how to obtain false documentation, or warnings about impending investigations.”<sup>134</sup> However, warnings that immigration officials are present have been held to fall within the scope of the concealing and shielding parts of the statute.<sup>135</sup> On the other hand, more general advice to keep a low profile and avoid locations where the potential deportee is likely to encounter immigration officials is not generally considered to fall within the scope of the statute.<sup>136</sup> This Article contemplates how to protect the families and property of potential deportees. It does not contemplate assisting potential deportees in evading detection by immigration officials. Nonetheless, attorneys should be aware of the existence and general scope of the anti-harboring statute. Some attorneys may, understandably, want to offer assistance beyond that explored in this Article. Moreover, an attorney who is targeted by immigration officials may be in a difficult

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128. See 1 IMMIGRATION LAW AND CRIMES §7:18 (2025); see also Mary L. Dohrmann, *Hemming in ‘Harboring’: The Limits of Liability Under 8 U.S.C. §1324 and State Harboring Statutes*, 115 COLUM. L. REV. 1217, 1219-20 (2015).

129. See 1 IMMIGRATION LAW AND CRIMES §7:18 (2025); See also Dohrmann, *supra* note **Error! Bookmark not defined.**, at 1227-28.

130. See *U.S. v. Vargas-Cordon*, 733 F. 3d 366, 382 (2nd Cir. 2013); see also Kreikemeier *supra* note **Error! Bookmark not defined.**, at 1329-32.

131. *U.S. v. Vargas-Cordon*, 733 at 382.

132. *Kearns v. Cuomo*, 981 F. 3d 200, 208 (2nd Cir. 2020).

133. *Id.*

134. *U.S. v. Ozcelik*, 527 F.3d 88, 99 (2nd Cir. 2008).

135. See *U.S. v. Rubio-Gonzalez*, 674 F.2d 1067, 1072 (5th Cir. 1982).

136. See *U.S. v. Ozcelik*, 527 F.3d 88, 99 (2nd Cir. 2008).

position if immigration officials arrive at the attorney's office at the same time as a planned visit from a client who is a potential deportee.

### *B. Concealment and Obstruction Crimes*

Obstruction and concealment crimes might also pose some concern for attorneys who represent potential deportees and their families. The April 2025 arrest of Wisconsin state judge Hannah C. Dugan highlighted this concern.<sup>137</sup> After being informed that federal agents were waiting to arrest a defendant who was present for a hearing on battery charges, Judge Dugan allegedly directed the defendant and his attorney out through a non-public exit from her courtroom.<sup>138</sup> The defendant was arrested by federal agents outside the courthouse.<sup>139</sup> A week later, Judge Dugan was arrested at the courthouse.<sup>140</sup> The criminal complaint against Judge Dugan charged her with violating 18 U.S.C. §1071 (concealing a person from arrest) and 18 U.S.C. §1505 (obstruction of proceedings before departments, agencies, and committees).<sup>141</sup> In December of 2025, Judge Dugan was found guilty of obstruction and acquitted of the concealment crime.<sup>142</sup> Regardless of the outcome of Judge Dugan's case, attorneys should be cognizant of both of these felonies.

The concealment statute makes it a felony to “harbor[] or conceal[] any person for whose arrest a warrant or process has been issued...so as to prevent his discovery and arrest.”<sup>143</sup> The statute requires “notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person.”<sup>144</sup> The obstruction statute makes it a felony to, among other things, “corruptly, or by threats of force, or by any threatening letter or communication influence[], obstruct[], or impede[] or endeavor[] to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States...”<sup>145</sup> The types of conduct that would be problematic under the anti-harboring statute could likewise be problematic under these federal statutes, as illustrated in Judge Dugan's case.

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137. See Isabelle Taft, *A Wisconsin Judge Was Indicted. Here's What We Know*, N.Y. TIMES (Apr. 26, 2025), <https://www.nytimes.com/2025/04/26/us/wisconsin-judge-hannah-dugan-arrest.html>.

138. *Id.*

139. *Id.*

140. *Id.*

141. Criminal Compl. at 1, United States v. Dugan, No. 2:25-mj-00397 -SCD (E.D. Wis. Apr. 24, 2025) <https://static01.nyt.com/newsgraphics/documenttools/3d022b741fb2c398/97ea7f41-full.pdf>.

142. Meredith Deliso, *Milwaukee Judge Found Guilty of Felony Obstruction in Helping Undocumented Man Evade Arrest*, ABC NEWS (Dec. 19, 2025) <https://abcnews.com/US/milwaukee-judge-found-guilty-felony-obstruction-helping-undocumented/story?id=128524404>.

143. 18 U.S.C. §1071 (2026).

144. *Id.*

145. *Id.* at §1505 (2026).

*C. Legal Advice and Criminal Conduct—MRPC 1.2(d)*

Representing an unauthorized immigrant or other potential deportee may implicate Model Rule of Professional Conduct 1.2(d) relating to criminal conduct.<sup>146</sup> That rule prohibits a lawyer from “counsel[ing] a client to engage, or assist[ing] a client, in conduct that the lawyer knows is criminal or fraudulent.”<sup>147</sup> On the other hand, the rule allows the lawyer to “discuss the legal consequences of any proposed course of conduct with a client” and further allows the lawyer to “counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”<sup>148</sup> Under MRPC 1.2(d), therefore, the estate planning attorney should be sure that the scope of the legal representation cannot be construed as facilitating an ongoing crime or fraud.<sup>149</sup> Because non-immigrants and authorized immigrants have legal authority for their presence in the country, Rule 1.2(d) is not generally implicated. As illustrated above, however, an alien’s status might quickly change, and the alien’s presence in the country may no longer be legal. Similarly, the continued presence of an unauthorized immigrant in the country is sometimes criminal in nature.<sup>150</sup> The question for the estate planning attorney, therefore, is whether the representation facilitates an ongoing crime or fraud. The types of advice contemplated by this Article are not intended to fall within the scope of conduct prohibited by Rule 1.2(d), but the issue is obviously fact specific.

*D. Confidentiality and Criminal Conduct—MRPC 1.6(b)*

Representing potential deportees may implicate Model Rule of Professional Conduct 1.6(b) relating to confidentiality.<sup>151</sup> If the attorney knows that the client is an unauthorized immigrant, then the attorney knows that the client may be violating federal immigration law by remaining in the country. While an attorney cannot facilitate the commission of a crime, that does not mean that attorneys are affirmatively obligated to notify law enforcement about violations of the law. Indeed, MRPC 1.6 imposes a duty of confidentiality on attorneys that has very limited exceptions.<sup>152</sup> Under Rule 1.6(b)(2) and (3), an attorney is permitted, but not required to

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146. MODEL RULES OF PRO. CONDUCT r. 1.2 (A.B.A. 2026).

147. *Id.*

148. *Id.*

149. *See* MODEL RULES OF PRO. CONDUCT r. 1.2 cmt. (A.B.A. 2026), comment 10; Christine N. Cimini, *Ask, Don’t Tell: Ethical Issues Surrounding Undocumented Workers’ Status in Employment Litigation*, 61 STANFORD L. REV. 355, 364–66 (2008).

150. *See* Cimini, *supra* note 149.

151. MODEL RULES OF PRO. CONDUCT r. 1.6 (A.B.A. 2026).

152. *Id.*

reveal information relating to the representation of the client to the extent the lawyer reasonably believes necessary:

...

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

It seems unlikely that these two limited exceptions would apply to the types of representations contemplated in this Article. Although a client's presence in the country might be considered a criminal act, it can hardly be considered a "crime or fraud that is reasonably certain to result in substantial injury to the financial interest or property of another" as described in Rule 1.6(b)(2). Similarly, the types of legal advice described in this Article are not likely to implicate Rule 1.6(b)(3).

## VI. CONCLUSION

The Trump administration's sweeping immigration actions have brought immigration issues into the offices of many attorneys not accustomed to thinking about immigration matters. Most estate planning attorneys have infrequently had matters touching on immigration concerns. Yet, many routine estate planning tools and techniques are adaptable and useful for the many clients impacted by a potential deportation. While deportation is not the same as death or incapacity, the practice consequences of a deportation for the family left behind may be quite similar. Estate planners are, in some ways, uniquely well equipped to assist these clients and can do so in an ethical manner.