

**Tales from
the Arena**

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Read this before you accept voluntary departure

IT costs \$12,500 to arrest, detain and deport a person from the US. This was apparently revealed by Immigration and Customs Enforcement (ICE) Deputy Director Kumar Kibble during a hearing on January 26, 2011 before the House Subcommittee on Immigration Policy and Enforcement. It also costs the Government valuable resources to prosecute immigration violations. The Government's resources are limited but its tasks are limitless. The Executive Office for Immigration Review's (EOIR) 2010 Statistical Year Book shows that Immigration Courts received 325,326 cases in 2010 alone. By most estimates, there are about 11 million undocumented aliens in the US. Thus, DHS faces an enormous task based on current case load and projected enforcement goals. It's impossible to see how resources could ever keep up with tasks and goals.

It is in this context that one must understand the concept of voluntary departure. Voluntary departure is a form of relief that allows an alien in removal proceedings to leave the US at his own expense and without a removal order.

From the Government's standpoint, voluntary departure saves DHS from the expense and effort of removing an alien. In *Dada v. Mukasey*, 554 US 1 (2008), the Supreme Court observed that voluntary departure expedites the departure process and avoids the expense of removal which includes procuring the necessary documents and detaining the alien pending removal. It also eliminates the costs and burdens associated with litigation.

From the alien's point of view, voluntary departure presents advantages as well. An alien who is ordered removed is barred from returning to the US for 10 years but an alien who is granted voluntary departure does not suffer such disqualification. There are also practical advantages. If an alien is detained, voluntary departure eliminates prolonged detention. If an alien is not detained, voluntary departure allows him to leave in an orderly fashion. He could sell his properties, settle his obligations and make arrangements for the care of loved ones. He could choose the time and manner of his departure. He could leave in a dignified manner.

With all these advantages for both sides, the Government considers itself benevolent for granting voluntary departure and the alien feels grateful for having received one. Immigration Judges (IJ) often appear to be mildly surprised when an alien does not seek

voluntary departure. Aliens are also excited by the possibility of voluntary departure because they are under the impression that if they leave voluntarily they could return to the US immediately.

Before you accept voluntary departure think about this first. An alien who was granted voluntary departure is not subject to the 10-year bar for removed aliens. However, if the alien had already accrued unlawful presence for at least 1 year by the time he leaves voluntarily, the alien is still subject to the 10-year bar for unlawful presence. It's like avoiding death after a successful medical procedure but you end up in a fatal car crash anyway after leaving the hospital. The manner of death is different but the outcome is the same. In this case, the basis for disqualification for the alien is different but the 10-year bar still kicks in. So before you even contemplate voluntary departure make sure that you have not accrued at least one year of unlawful presence.

The other thing you need to know about voluntary departure is that if you don't leave as promised, you would be disqualified from most forms of relief for 10 years. For example, in 2000, you were granted voluntary departure but you didn't leave. In 2005, you married a US Citizen who filed a petition for you. Even if this petition is approved, you cannot apply for a green card until 2010. This is the penalty for failure to depart. So whether you leave or not, you would face severe immigration consequences.

What happens then after the lapse of 10 years since your failure to leave the US? You would no longer be disqualified from applying for relief such as adjustment. However, you would face another challenge because when you fail to leave a removal order is entered in your case. Before you could apply for adjustment you have to reopen your removal proceedings first. However, a motion to reopen can only be filed within 90 days of the IJ's order. How can you file a motion to reopen after 10 years? Is there no happy ending to this story? Sometimes there is but you have to ask an attorney who knows how to do it.

Charles Medina practices immigration law. Visit his website at medinalawgroup.net for more details. This article provides general information only and does not provide legal advice on any specific matter or predict the outcome of any legal matter. It does not invite or create an attorney-client relationship.

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