FOREWORD

Dear Friends,

Can you imagine being abruptly ejected from the United States — and leaving behind your home, your children, your job, your bank account, and everything else you’ve spent years to build? Can you imagine what your children would feel when they arrived home and you’re gone?

Deportation can be a cataclysm for families and communities, destroying decades of hard-earned assets and rupturing family development. But with advanced planning, immigrant families can prevent an enormous amount of this damage.

That’s why Appleseed is proud to present an updated version of its 2012 Manual, “Protecting Assets and Child Custody in the Face of Deportation.” This one-of-a-kind resource is designed for immigrants and those who work with them; the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times.

Appleseed’s Manual will help families develop plans in advance to deal with critical financial and family issues in the event of deportation, arrest, and other family emergencies. It will help immigrant families deal with child custody and related children’s issues, personal finances, assets and personal property, remittance payments, wages and benefits, business issues, and taxes. And it includes special guidance for family and children’s issues, including professional advice for parents to help their families deal with painful psychological issues, and for immigrant survivors of domestic violence and sexual assault.

Make no mistake: for vulnerable immigrant families, advance planning can make all the difference. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, or even impossible, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

We are grateful to our pro bono law firms, volunteer psychologists, translation companies, and more than 20 nonprofit partners across the country who wrote, researched, proofread, and translated this manual into Spanish. We could simply not have done it without you. Thank you so much to Adams and Reese LLP, the Asian Pacific Institute on Gender-based Violence, ASISTA, Ballard Spahr LLP, BGBG Abogados, Cooley LLP, Directum Translations, Hogan Lovells LLP, Mexico Appleseed, the Mexico
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Immigrants come to the United States to build a better future and to unite with family members. Most have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses and build personal assets. When they build better lives, they make our country stronger.

That’s why this Manual is a labor of love for all who worked on it. We are committed to fairness and compassion for the millions of immigrants living in our country. Our hope is that you can use this resource to help them build better lives.

Sincerely,

Annette LoVoi, Director, Financial Access and Asset Building, Appleseed
Disclaimers

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Appleseed recognizes and understands the legal term “alien,” used to describe any person born in another country to parents who are not American and who has not become a naturalized citizen, but is living or staying in the United States. However, throughout this Manual, we will primarily use the term “immigrant” in place of the term “alien” based on AP Stylebook guidance and the recommendations of our partners. The exception will be when citing laws, codes, or regulations that specifically use the term “alien.”
15. Handling Valuables

This section describes how to approach issues related to an immigrant’s valuable personal property in the event of detention or deportation, including potential confiscation or destruction, options for handling property still in possession, factors to consider when choosing a path, and how to plan ahead. This chapter addresses the following issues:

- What is Valuable Personal Property?
- Planning in Advance – What Are the Options?
- Other Factors to Consider
- What Should You Do if Your Property is Taken Away?
- Avoiding or Mitigating the Risk
- How Can an Immigrant Get Their Possessions Back?
- Checklist: Handling Valuables

What Is Valuable Personal Property?

Any of an immigrant’s possessions that are worth money or that the immigrant would be disappointed to lose can be considered valuable personal property. If an immigrant has valuables of any kind, it is important to decide how those valuables will be handled in the event that they are detained or deported. The first step in this process is to determine what types of valuable personal property the immigrant or their family has.

Common Kinds of Valuable Personal Property

- Electronics, machinery and appliances;
- Jewelry and clothing;
- Furniture and art;
- Identification (license, ID card, passport, birth certificate); or
- Family heirlooms or sentimental items

Keep in mind that each type of property is different, and the factors to consider and the strategy for handling the valuable may differ as well.
Planning in Advance – What Are the Options?

Once the immigrant has a grasp on what valuable personal property they own, help them devise a plan to handle a detention or deportation scenario. Generally, the immigrant has four main options: (1) sell the property, (2) transfer the property to another person, either temporarily or permanently as a gift, (3) ship the property to their home country, or (4) store the property in the U.S., either in a storage unit or safety deposit box. Keep in mind that depending on the type and size of the property, one or more of these options may not be available.

Sale

If the immigrant decides to sell the property, the first step is to determine the appropriate price for the property. If the immigrant knows the original price of the property, they can use that as a starting point and discount for any damage to the property or time that has passed. Otherwise, if the immigrant has access to the internet, they should search for similar items (perhaps on a second-hand website like ebay.com or craigslist.com; business shown as examples only with no endorsement) to determine how much to charge.

Once settled on a price, the immigrant should consider documenting the sale. A simple document containing the following will be handy in case of future disputes regarding the sale: (1) a description of the item, (2) the date, (3) the agreed upon price, (4) the printed names and signatures of buyer and seller, and (5) a quick statement that the buyer has had a chance to inspect the property and is satisfied with the condition, and/or that the property is being sold “as is” and with no warranties by the seller.

Form of payment is another important consideration. To protect against fraud, advise the immigrant against accepting personal checks. Personal checks may be written from a bank account that does not have enough money to cover the amount of the check. It is best to receive payment in cash, via wire transfer, a certified check, cashier’s check or money order.

Transfer

If the immigrant wants to transfer the property to another person, they have two options – they can give the property to another person on a permanent basis, as a gift; or, they can transfer the property to another person temporarily, with the expectation that it will be returned upon request in the future.

If the immigrant seeks to transfer the property to a minor child, they should consider transferring the property to another adult or setting up a formal
transfer pursuant to certain statutes that allow assets and property to be held in an adult custodian’s name for the benefit of a minor. This is discussed in more detail in Chapter 2 of this guide.

If participating in a temporary transfer, it is best to create a document reflecting the agreement between the parties (transferring only physical possession, not ownership, and only temporarily), signed and dated by the participants.

Storage
For small items like jewelry and identification, the immigrant may want to store them in a safety deposit box at a local bank. The cost for a safety deposit box varies depending on size, and rent for such a space is charged annually. For larger items like furniture, art, or machinery, the immigrant should consider obtaining a storage unit.

Storage options make the most sense for immigrants who plan to return to the U.S. or who have family members or relatives who will use the items in short order. It does not make sense to store items for long periods of time given the associated cost.

Outsource
Appoint an individual with “limited” or “special” power of attorney to take any of the actions described above.

Other Factors to Consider

Deciding how to handle valuable personal property in the event of detention or deportation is a decision that cannot be made without careful consideration of an immigrant’s personal circumstance. Below are the sorts of things that every immigrant should consider:

Value vs. Cost
An immigrant should consider the value of the item in comparison to the cost of shipment or storage. For example, it would not be economical to store or ship a large item of little value, because cost of storage or shipment depends on size and weight of the item.

Availability
Consider shipping only items not available in the immigrant’s home country, rather than incurring the additional cost of shipment for items they could purchase again following deportation. Similarly, if the item is widely available in the U.S., it may make more sense to sell and then repurchase
rather than incur the interim cost of storage.

**Financing**

If an immigrant still owes money on an item of personal property, the immigrant should review all documents relating to the loan to be sure they understand the consequences of non-payment and their options for sale of the item or termination of the arrangement.

It may be necessary to repay the amount owed on the item of property prior to sale, or there may be a requirement associated with returning the property to the lender. If the immigrant is confused or has questions you can’t answer, advise them to contact the company that provided the financing.

**Tax Considerations**

It is possible that the sale, purchase, or transfer of an item of personal property can result in tax liability or benefit. If the immigrant is dealing with a high-value item, counsel them to contact a tax professional.

**Impact on Others**

Immigrants should consider the impact on other individuals using the item of personal property when deciding whether to sell, store, transfer, or ship the property. For instance, if a relative or dependent lives in the home and uses the furniture or appliances, it may be most cost efficient to transfer the items to them rather than sell and replace them.

Similarly, an immigrant should consider whether failure to pay money owed on an item of personal property could cause harm to family members that remain in the U.S. Careful review of the terms of any loans and conversations with any lenders or landlords should provide clarity on consequences of this nature.

**Impact on Immigration Status**

If removal proceedings are pending or anticipated, an immigrant should consider how their handling of property will affect such proceedings. Likewise, if the immigrant plans to return to the U.S., this weighs in favor of complying strictly with all regulations and acting fairly in the context of a sale.

**What Should You Do If Your Property Is Taken Away?**

Confiscation or destruction of personal property is a risk. A detainee’s belongings are often lost, destroyed, or stolen.
Even in the event that belongings are managed in accordance with proper protocols, these agencies (U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the U.S. Marshals Service, and the Bureau of Prisons) all have different regulations regarding what belongings can follow a detainee along the chain of custody and how long personal possessions will be held for safekeeping.47 As well, immigrants are often transferred between agencies, which increases potential for lost or destroyed items.48

If the immigrant is carrying cash at the time that they are apprehended, that cash will be taken from them. Often, the cash is eventually returned in a form that is unusable to the immigrant – either in the form of checks or money orders that cannot be cashed in their home country, or in the form of prepaid debit cards that may be difficult, confusing, expensive, or impossible to activate.49

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Avoiding or Mitigating the Risk

The best way for an immigrant to manage this risk is to know their rights and plan ahead.

Avoid Carrying a Lot of Cash

Aside from the obvious risk of loss, if you are deported with more than $10,000 in cash you are required to file a declaration on CBP form 4790.50 Failure to report currency can result in a civil and even criminal charge and forfeiture of money in an amount to be determined by CBP or ICE officials.

Make Arrangements for Handling of Valuables In Advance

Be sure the immigrant knows where all their valuables are located, and advise them to keep a list of what they have (in a secure place or on your phone or computer). The immigrant should consider giving a trusted friend or family member, or someone with power of attorney, a copy of the list. A “special” or “limited” power of attorney will allow the agent to do specific acts listed; for example, to sell an immigrant’s couch or ship a box of jewelry to another country.

47 Available at: https://www.americanimmigrationcouncil.org/research/deported-no-possessions.
49 Available at: https://www.americanimmigrationcouncil.org/research/deported-no-possessions.
50 Available at: https://ilw.com/articles/2010.0706-DuPont.shtml.
If the immigrant rents their home or apartment, help them review their lease for information on what the landlord can do if personal property is abandoned in the residence. It is best to arrange for a trusted person to have keys to ensure that someone can remove the immigrant’s personal property within a reasonable amount of time if they are detained or deported.

It may make sense to keep smaller valuable items in one or two places in the home, that way they are easily accessible for anyone handling personal property in the event of detention or deportation.

**Know Your Rights**

**Property on your person**

Once in custody, immigrants generally have 30 days to get their valuables back from CBP.51 Arrangements between the U.S. and Mexico provide that “all feasible steps” should be taken to return property to its owner when they are released. Despite lapses in procedure and performance, knowledge of the rules will allow them to advocate for themselves more effectively.

**Property in your home**

In general, tenants will not lose their property by failing to remove it after the termination of a lease. Tenants have the right to enter the premises to remove their property within a reasonable time after a lease is terminated. Most often, tenants do not lose the right to their property even if they fail to remove it from the property within a reasonable time after the end of the lease; however, some locales hold that tenants may give up the right to recover their property by not removing it within a reasonable time.

**How Can Immigrants Get Their Possessions Back?**

Let the immigrant know of their options for retrieving their valuables if confiscated; that way, they can make an informed decision when confronted with a fast-moving situation.

**By Mail**

It may be advisable for an immigrant, if given the option, to mail certain personal property confiscated at the time they are taken into custody to a relative, friend, or attorney who can keep it in a safe place. Note, however,

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that the immigrant runs the risk of deportation without those items, which will be especially problematic with respect to identification and money.

**Pickup**

If deported, CBP will not mail the immigrant’s leftover personal property anywhere. Leftover belongings can only be picked up by the owner or an individual with power of attorney. It is wise to appoint a person with power of attorney in advance.

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If the immigrant is unable to arrange for pickup of property, there are certain organizations that offer assistance in specific parts of the country. No More Deaths is one such organization ([http://forms.nomoredeaths.org/en/](http://forms.nomoredeaths.org/en/)).

**Petition**

File a petition with Customs and Border Protection to get your possessions back. Recent changes require filing of the petition with CBP even if the confiscation took place through customs officials or through ICE officers.

Theoretically, it should be possible to obtain return of personal property and return of all or nearly all the funds seized by the government. Crucial to a successful petition is to show that the funds or assets were not used or obtained in the commission of a crime, and that seizure of the funds would violate the excessive fines clause of the 8th Amendment to the U.S. Constitution. Advise the immigrant to consult with an attorney regarding their petition.

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52 Id.
53 Id.
55 Id.
CHECKLIST: HANDLING VALUABLES

☐ Figure out what types of valuables you have, both in your home and on your person. This may include: electronics, jewelry, furniture, art, clothing, machinery, appliances, identification (license, ID card, passport, birth certificate), heirlooms or sentimental items.

☐ Understand that your property may be taken from you and destroyed.
  
  - Make arrangements for handling of valuables in advance to minimize this risk.
  - Know your rights regarding property on your person if you are detained.
  - If your belongings are taken, you may petition to get them back by filing with Customs and Border Protection.

☐ Avoid carrying a lot of cash.
  
  - If you plan to carry more than $10,000 out of the U.S., you are required to report it.
  - Failure to report can result in civil or criminal penalty, or you could have the money taken away.

☐ Decide how you want your valuables handled if you are detained or deported.
  
  - Explore the following paths: shipping valuables to your home country; selling your valuables; transferring valuables (either by gift or on a temporary basis); storing valuables (in a safety deposit box or storage unit, depending on size).
  - Familiarize yourself with the basic process for each, and the consequences that may result.
  - Let your family or household members know about your plan. Provide clear, written instructions.
  - Consider appointing a person with limited power of attorney to implement your plan.

☐ Know the pros and cons of each option, and how your choice will impact you and your family.
  
  - Factors to keep in mind: value of item vs. cost of storage; availability of item in home country; reliance of others remaining in the U.S. on item; sentimental value of item; tax consequences of transfer or sale; whether
you still owe money on the item; and whether you intend to return to the U.S., if deported.

- Talk to your relatives and, if possible, your attorney about these issues.
- The best strategy will depend on the type of item as well as your personal circumstances.