

<Introduction>

Immigration detention facilities are places where aliens are held separately from society and are often referred to as 'Immigration Detention Centers'. Aliens staying in these detention facilities have limited access to physical freedom. As of 2017, the number of aliens staying in the Republic of Korea is more than 2 million. However, as the number of aliens staying in the Republic of Korea increases, the number of aliens being detained at immigration detention centers is increasing as well. Despite this, most aliens do not receive proper guidance on procedures related to immigration (from crackdown procedures to deportation). Therefore, even if human rights violations occur these aliens often do not know how to handle the situation and accordingly cannot act appropriately.

This manual contains information on legal procedures related to immigration, in the hopes that such information can be useful for both aliens (especially those who are detained) and activists of immigrant support groups. Particularly focusing on crackdowns as well as deportation and detention measures, this manual will help aliens better understand their situations and understand the procedures in several steps. The following points explain the core principles of this manual.

Firstly, pursuant to the Immigration Act, this manual describes some cases that aliens may encounter in crackdown, detention and deportation process respectively.

Secondly, this manual also introduces and outlines the documents that aliens can receive from each procedure and what kind of rights they can claim in each situation accordingly.

Thirdly, Korean version of this manual uses the term specified in the Immigration Act. For example, this manual uses the term 'protection' to describe the situation of detention as defined under the Immigration Act. (As the Korea Legislation Research Institute has also translated the word 'protection' to 'immigration detention' in the English version of the Immigration Act, the English version of this manual uses the term 'immigration detention' instead of 'protection'.).

Fourth, though this manual was made for the purpose of serving as a guideline for legal proceedings, this manual is not for matters related to the treatment of detained aliens.

Fifth, Annex 1 includes actual copies of the relevant immigration documents so that aliens can check the format of the documents of which they can or will receive in each stage.

Sixth, contact numbers of organizations that assist aliens in regard to immigration administrative processes as well as remedy procedures for violations of alien rights are also attached in Annex 2 for the reader's convenience.

Seventh, this manual was written using simple language so that anyone can easily

understand the terms even if they do not have any legal backgrounds or expertise.

Meanwhile, as immigration detention facilities have no maximum limit on the period of detention under current law, some detainees can be detained for more than 5 years. Furthermore, because these facilities are not categorized as detention centers or correctional facilities like prisons, the treatment of detainees at the immigration detention facilities tend to often be worse than detention centers or prisons.

By publishing this manual, we also hope to raise awareness about immigration detention facilities so that we can soon bring both systematic and practical improvements both for the treatment of detainees as well as the relevant legal procedures.

2017, Immigrants' Advocacy Center Gamdong

※ This manual is distributed free of charge to anyone who is interested in immigration detention facilities. You can download the manual file from the archives on our homepage (www.gamdonglove.org).



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【Encountering Crackdown Personnel】

1. When crackdown public officials check you for inspection, ask for an identity card or a certificate indicating his/her authority.

When you are being inspected, you can ask the crackdown public official to produce his/her identity card or certificate indicating his/her authority over you. Until he/she shows it to you, you are not obligated to present either your alien registration card or identity card.

IMMIGRATION ACT

Article 82 (Carrying and Production of Certificates)

An immigration control official or duly authorized public official shall carry a certificate indicating his/her authority, and produce it to relevant persons when performing the following duties:

1. Inspecting a residence or articles, or requesting submission of documents or other articles, under Article 50;
2. Conducting a search and an examination under Article 69 (including cases to which the aforementioned Article shall apply mutatis mutandis pursuant to Article 70 (1) and (2));
3. Making an inquiry or requesting submission of other necessary materials under Articles 80 and 81;
4. Performing duties equivalent to those referred to in subparagraphs 1 through 3.

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWNS

Article 7 (Uniform and Certificate)

②When carrying out the duties set forth in Paragraph (1), an immigration control official or duly authorized public official shall carry and present his/her certificate indicating his/her authority.

2. You can ask the crackdown public official for the reason of the crackdown.

When you are being subjected to a crackdown, you can ask the personnel for the reason of the

crackdown. Ask for the purpose of the crackdown and be sure to keep that in mind.

IMMIGRATION ACT

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1. Inspecting a residence or articles, or requesting submission of documents or other articles, under Article 50;
2. Conducting a search and an examination under Article 69 (including cases to which the aforementioned Article shall apply mutatis mutandis pursuant to Article 70 (1) and (2));
3. Making an inquiry or requesting submission of other necessary materials under Articles 80 and 81;
4. Performing duties equivalent to those referred to in subparagraphs 1 through 3.

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWNS

Article 7 (Uniform and Certificate)

②When carrying out the duties set forth in Paragraph (1), an immigration control official or duly authorized public official shall carry and present his/her certificate indicating his/her authority.

Article 10 (Carrying out an inspection on aliens by visits)

②When the Crackdown Personnel conduct an inspection under the provisions of Paragraph (1), the chief of the Crackdown Personnel shall present his/her certificate indicating his/her authority, notify the resident or the person concerned of his/her name, the office he/she belongs to, and the purpose of the inspection.

3. You can request for the written document outlining the Detention Order and explanation of its content.

You can ask the crackdown personnel to show you the written document outlining the detention order [Appendix 1] and ask him/her to explain its content.

IMMIGRATION ACT

Article 51 (Immigration Detention)

- (1) If there are reasonable grounds to suspect that an alien falls under any subparagraph of Article 46 (1) and the alien has fled or might flee, an Immigration Control Official may detain the alien upon obtaining a detention order issued by the head of a Regional Immigration Service.
- (2) An application for a detention order filed by an Immigration Control Official under Paragraph (1) shall be accompanied by materials attesting the necessity for detention.
- (3) If there are reasonable grounds to suspect that an alien falls under any subparagraph of Article 46 (1) and the alien has fled or might flee, leaving insufficient time for the head of a Regional Immigration Service to issue a detention order, an Immigration Control Official may detain such alien for emergency reasons after informing the head of a Regional Immigration Service of the ground therefor.
- (4) If an Immigration Control Official has detained an alien for emergency reasons under Paragraph (3), he/she shall immediately prepare an emergency detention note and produce it to the alien in question.
- (5) If an Immigration Control Official has detained an alien under Paragraph (3), he/she shall obtain a detention order within 48 hours and produce it to the alien in question, and the official shall immediately release the alien from detention when failing to obtain such a detention order.

Article 53 (Enforcement of Detention Order)

When an Immigration Control Official enforces a detention order, he/she shall present a written document of a detention order to the suspect.

A Detention Order is a document issued to detain aliens. The document of a detention order states the period and reason of detention. In principle, a detention order should be issued before the enforcement. However, it is required to issue the Immediate Detention Order [Appendix 2] within 48 hours after the crackdown followed by the detention, if there are reasonable grounds to suspect that an alien falls under the grounds for deportation and the alien has fled or might flee.

After this period, the Detention Order for Deportation [Appendix 1] may be issued. You may need this document when you are going to file litigation in the future, so please ask for it.

4. The arrested alien has the right to remain silent and the right to receive the assistance of a lawyer.

When you are being investigated at the immigration office after the crackdown, you have the right to refuse making any statement that may be unfavorable to you and you have the right to appoint a lawyer.

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWN

Article 11 (Immediate Detention of the suspect)

② When the suspect is immediately detained for as pursuant to Paragraph (1), the suspect shall be notified of his/her right to remain silent and to have the right to assistance of a lawyer and to file an objection against the detention, by verbally or by presenting the notice form known as the Miranda Rights, etc., (Hereinafter referred to as "notice") attached in Appendix 2.

A lawyer can be appointed at the expense of the arrested alien. To appoint a lawyer, you can tell an Immigration Control Official that you would like to appoint a lawyer. Please contact the nearest Immigration Assistance Center and ask about the procedure.

5. If you have been subjected to physical violence, such as assault by a member of the crackdown personnel during your inspection, you can report this to the police and file a petition to the National Human Rights Commission of Korea.

If you have been subjected to physical violence, such as assault, you may file a complaint to the police (file a criminal complaint) and lodge a complaint to the NHRCK. Even after being detained at the detention center, you still have the right to file a complaint or petition. (Please find the relevant part of this manual for further information about filing a petition).

If you have taken pictures of the situation at the time of the violence with a camera phone, you can use the data as evidence later on. If you were injured during the crackdown, immediately ask the immigration control official in charge to send you to the hospital. If there are injuries that occurred during the crackdown due to mistakes made by the official, the immigration office will have to pay the medical expenses for the related injuries.



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【Being Investigated】

After the crackdown, an immigration control official will take the arrested person to the Immigration Detention Unit in the Immigration Office.

1. The “Right to Remain Silent”: You do not have to make any statement that is unfavorable to you.

An immigration control official will investigate whether the arrested alien has violated the Immigration Act and prepare the interrogation record of relevant suspects. The interrogation record of suspects is a piece of paper with questions and answers exchanged during the investigation.

Before the investigation begins, the immigration control official will inform you either by way of an oral or written statement about your "right to remain silent", that is, you do not have to say something that is unfavorable to you. If you are not informed, ask an immigration control official about "the right to refuse a statement.”

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWN

Article 16 (Notification of the Right to remain silent) An immigration control official shall notify the suspect the right to refuse to make statements either verbally or in writing before beginning the interrogation record of suspects and write on the paper of the fact that it has been notified.

2. You can request for a participation of a lawyer.

If you have a lawyer (in particular, a lawyer who will deal with your case), you can let an officer know that you will make a statement when you are with a lawyer during investigation. When you are investigated at the Immigration Detention Unit, an immigration control official will give you guidance on your right to receive the assistance of a lawyer.

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWN

Article 17 (Participation of a lawyer)

①An immigration control official shall inform the suspect in advance that he/she can bring a lawyer into his/her interrogation session. ②An immigration control official should allow the participation of the lawyer in case the suspect or the lawyer requests for it. ③Participation pursuant to Article 2 shall not be prohibited or the lawyer should not be asked to leave unless the lawyer interferes with the interrogation session, reveals any confidential information, or if there are justifiable grounds for cause of dismissal.

3. You can request to have the investigation together with your family members.

During your investigation, the arrested person may ask for the presence of your family members or a "Trusted Individual". A "Trusted Individual" usually means a spouse, sibling, partner, employer, or someone who can help you to communicate comfortably.

An immigration control official shall then check whether the person being investigated is a person who lacks ability to distinguish or make decisions, or if bringing a "Trusted Individual" is necessary for the psychological stability and communication of the person being investigated. If so, the presence of family members or a "Trusted Individual" shall be allowed.

If you do not want to be with your family member or a "Trusted Individual," you should inform an immigration control official accordingly. If you do so, an immigration control official should not allow those family members or "Trusted Individuals" to be present in the interview.

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWN

Article 18 (Observation by family members)

When a suspect falls under any of the following subparagraphs, an immigration control official shall allow a family member or a Trusted Individual to be present in the interrogation session unless the suspect is against it.

1. When a suspect lacks ability to distinguish or make decisions

2. When a suspect needs psychological stability and smooth communication

4. The investigation process can be recorded.

An immigration control official can record the investigation process with a video camera or other device. However, in these cases, an immigration control official must inform the person being investigated about the recording in advance.

When the recording begins, an immigration control official must record the entire proceedings starting from the beginning of the investigation all the way to the end. In addition, the officer is required to seal the original file after the recording is completed. Therefore, please make sure that either an immigration control official has sealed the original or that you personally have recorded the entire investigation process (not just a part of the investigation). If the official asks you to sign the original, you must sign the entire recording, but sign it only if there were no problems with the investigation itself.

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWN

Article 19 (Video Recording of the Interrogation session)

- ① An immigration control official shall video record the interrogation session when investigating brokers for illegal entry, illegal passport holders, smugglers, and suspects for other serious crimes.
- ② When recording the suspect under Paragraph (1), the suspect or the lawyer should be notified of the fact in advance. However, if you intend to record a video about a referenced person, you must obtain the consent of the referenced person in advance.
- ③ When the video recording under Paragraphs (1) and (2) is completed, the original recording must be sealed in front of the suspect or lawyer without delay and the suspect must seal or sign.

5. You can request for an interpreter.

If you are not proficient in Korean, you can request for an interpreter during the investigation. Also, if you are a person with a hearing or language impairment, you can answer questions in writing.

IMMIGRATION ACT

Article 48 (Requests to Appear and Interrogation of Suspects)

⑥ Any statement made by a person who is unable to make himself/herself understood in the Korean language or a person with hearing impairment or language impairment shall be interpreted by an interpreter: provided, that the person with the hearing impairment or language impairment may be interrogated or make a statement in writing.

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWN

Article 21 (Provision of Interpretation, etc.)

① Any statement made by a person who is unable to communicate in Korean language, or has hearing impairment or language impairment shall be interpreted by an interpreter with a help from an immigration control official. This is the case so long as that person with a hearing impairment or language impairment may be interrogated or make a statement in writing. ② If there is a non-national character or code in the suspect's statement, it shall be translated.

6. Double-check the interrogation record of the suspect.

An immigration control official will write all of the information gathered during the investigation into your interrogation record as a suspect. After the investigation is completed, you should verify whether the information written your suspect interrogation record is true.

You should check your suspect interrogation record clearly and request to change the content if there is any part that is different with your statement. An immigration control official will ask for your signature after reviewing. If you sign the record without double-checking, it may adversely affect you in the later procedures so please review the record carefully.

IMMIGRATION ACT

Article 48 (Requests to Appear and Interrogation of Suspects)

- ③ In conducting an interrogation under Paragraph (1), any statement made by a suspect shall be entered into the interrogatory.
- ④ An immigration control official shall read the interrogatory prepared under Paragraph (3) to the suspect or allow the suspect to inspect it and inquire of the suspect where any clerical error exists in the interrogatory, and if the suspect requests any addition to, deletion or change of the content thereof, an immigration control official shall enter such statement in the interrogatory.
- ⑤ A suspect shall affix his/her seal across the folds of each page, and sign or affix his/her name and seal to the interrogatory, and if the suspect is unable or refuses to affix his/her name and seal, such fact shall be entered in the interrogatory.

GUIDELINE ON ENFORCEMENT, DUE PROCESS, AND HUMAN RIGHTS PROTECTION IN CRACKDOWN

Article 15 (Interrogation of suspects)

- ① An immigration control official may record the allegations of suspects under Article 48 of the Act. (2) When the suspect is being interrogated pursuant to Paragraph (1), the statement made by the suspect shall be stated in the interrogation record of suspects.

7. Notice of Written Decision on Examination: Please be informed of the decision.

When the investigations are finished, the Chief of the immigration office, the Head of an immigration branch office, or the Chief of an immigration processing center must immediately decide whether the detained person is in violation of the Immigration Act. At this time, the Written Decision on Examination [Appendix 3] or the Written Decision on Examining the Immigration Offender [Appendix 4] shall be produced.



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An Immigration Control Official will show you after completing documents. If these documents are written in Korean and you do not understand them, you can ask an officer to read them to you in a language you understand.

IMMIGRATION ACT

Article 58 (Examinations and Decisions)

When an immigration control official has finished an investigation of a suspect, the head of the Regional Immigration Service shall promptly examine and determine as to whether the suspect falls under any subparagraph of Article 46 (1).

Article 59 (Procedures after Examinations)

① If the head of a Regional Immigration Service determines after an examination that a suspect does not fall under any subparagraph of Article 46 (1), he/she shall promptly inform the suspect of the determination and immediately release the suspect if he/she is detained.

If the head of a Regional Immigration Service finds that there is insufficient evidence as to whether the arrested individual has violated the law after the investigation, he/she may conduct further investigations for a maximum period of 10 days. If there is no additional or new evidence after 10 days of investigation, the head of the immigration office will immediately release the arrested individual from detention.

IMMIGRATION ACT

Article 52 (Period and Place of Detention)

① A period for which an alien can be detained under Article 51 to examine and decide on whether the alien is subject to deportation, shall not exceed ten days: Provided, that the period may be extended only once, by up to ten days with permission from the head of a Regional Immigration Service in extenuating circumstances.

8. Procedure after the investigation.

If the investigation result shows that you have violated the Immigration Act, you may be ordered to leave the country or be forced to leave. If a departure order is issued to you, you will be issued with an official document entitled a Departure Order [Appendix 5]. This document states the date you have to leave the Republic of Korea, and if you have not left the country before this date, you will be issued with a Deportation Order [Appendix 6]. In some cases, however, a Deportation Order is directly issued without a Departure Order.

IMMIGRATION ACT

Article 59 (Procedures after Examinations)

- ② If the head of a Regional Immigration Service determines after an examination that a suspect falls under any subparagraph of Article 46 (1), he/she may make a deportation order.
- ③ When making a deportation order under Paragraph (2), the head of a Regional Immigration Service shall issue a written order of deportation to the suspect in question.

Article 68 (Departure Orders)

- ① The head of a Regional Immigration Service may order an alien to depart from the Republic of Korea if:
 - 1. The alien is deemed to fall under any subparagraph of Article 46 (1), but intends to depart voluntarily at his/her own expense;
- ② In making a departure order under Paragraph (1), the head of a Regional Immigration Service shall issue a written order of departure.
- ③ In issuing a written order of departure under Paragraph (2), the head of a Regional Immigration Service may determine the deadline for departure, and impose restrictions on residence or other necessary conditions, as prescribed by Ordinance of the Ministry of Justice.
- ④ The head of a Regional Immigration Service shall promptly issue a written order of deportation to a person subject to a departure order who has failed to depart from the Republic of Korea by the designated deadline, or who has violated any of the conditions imposed under Paragraph (3).

When a Deportation Order is issued, the person who receives the order will be sent to his/her origin of nationality or the country of his/her citizenship. However, if there are reasons you cannot immediately leave the Republic of Korea, you will be detained until the day you can actually leave the Republic of Korea.

You can file an appeal within 7 days after the issued date of a Deportation Order. When the head of

immigration office, branch office, or immigration detention center make an order, you will be informed about the filing of an objection. If not, ask an Immigration Control Official about the procedures for 'Filing an objection' and ask for the 'Written Objection against Deportation Order' Form [Appendix 7].

IMMIGRATION ACT

Article 60 (Filing Objections)

- ① If a suspect intends to protest a deportation order, the suspect shall file a written objection with the Minister of Justice through the head of a Regional Immigration Service within seven days after receipt of the written order of deportation.
- ② Upon receipt of the written objection under filed Paragraph (1), the head of the Regional Immigration Service shall transfer the written objection accompanied by the written decision on examination and the record of investigation to the Minister of Justice.

Article 63 (Detention of Persons Subject to Deportation Orders, or Release from Detention)

- ① If it is impossible to immediately repatriate a person subject to a deportation order out of the Republic of Korea as the person has no passport or no means of transportation is available, or for any other reason, the head of a Regional Immigration Service may detain the person in any detention facility until he/she can repatriate the person.

If you believe that the departure order or the deportation order issued on you is unjustifiable, you may file an administrative appeal or request for administrative litigation at your own expense. Administrative appeals and requests for administrative litigation can only be filed within 90 days after the date of receipt of the Order. 'The date when the Order holder is notified' is usually the day you actually receive the disposal document of a Departure Order or a Deportation Order. Therefore, be sure to keep the date in mind when you receive a document.

ADMINISTRATIVE LITIGATION

Article 20. (Period of Bringing Litigation)

- (1) A revocation litigation shall be instituted within 90 days from the date a disposition is known: Provided, That, in case where the provision of Article 18 (1) is provided, or a request for an administrative adjudication is permitted, or an administrative agency informs mistakenly that requests for an administrative adjudication is made shall be reckoned from the date the exemplification of a written adjudication is served.



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※ATTENTION!

If the Deportation Order or Departure Order is deemed unreasonable, written objections, administrative appeals, as well as requests for administrative litigation can be filed against a Deportation Order. Similarly, administrative appeals and requests for administrative litigation can be filed against a Departure Order. Please make sure to check the deadline for filing the appropriate appeal. After the deadline, you will not be able to apply or appeal.

Written Objection Application: Submit an appeal within 7 days from the day you receive the Deportation Order.

Administrative Appeal or Administrative Litigation: File within 90 days from the day you get notified of the Deportation Order or Departure Order (the date of disposition).

【Entering the Immigration Detention Center】

When the investigation is finished and a detention order is issued, you will be sent to the Immigration Detention Center. For such circumstances, the following information will be helpful:

1. Ask the Immigration Detention Center to send a "Detention Notice" to your family member or friend in the Republic of Korea.

When an immigration control official sends a suspect to the immigration detention center, he/she should send a Detention Notice to the spouse of the suspect, his/her family member such as parents or siblings, or a lawyer or person designated by the suspect in the Republic of Korea. The Notice of Detention is a written notice alerting the designated receiver of notice of the date, time, place, and grounds for detention of the detainee[Appendix 8].

Therefore, if you have a family member or friend or a lawyer who can contact you in the Republic of Korea, you can tell the immigration control official to inform them about your detention.

IMMIGRATION ACT

Article 54 (Notice of Detention)

① When an Immigration Control Official has detained a suspect, the official shall give written notice specifying the date, time and place of and grounds for detention to the suspect's legal representative, spouse, lineal relative, sibling, family member or counsel or a person designated by the suspect (hereinafter referred to as "legal representative, etc."), who is in the Republic of Korea, within three days: Provided, That when the suspect has no legal representative, etc., an Immigration Control Official may state such fact and need not give written notice to a legal representative, etc.

2. You can file an objection to Detention.

If you think your detention at the Immigration Detention Center is unjustifiable or wrong, you can file a 'Written Objection' to the detention order. The objection will state that you are requesting for release as you believe the disposition of detention order is unjustifiable. To file an objection to detention, you must complete the Written Objection against Detention form [Appendix 9] with your full name and hand it to the head of the immigration office or the head of the immigration detention center.

IMMIGRATION ACT

Article 55 (Objections to Detention)

① A person detained under a detention order, or his/her legal representative, etc., may file an objection to his/her detention with the Minister of Justice via the head of a Regional Immigration Service.

ENFORCEMENT DECREE

Article 69.(Objection to Detention)

① As pursuant to Article 55 (1), a person who wishes to file an objection to detention shall produce documents proving his/her reasons for filing an objection to the head of the office.

3. If you have a specific reason, you can apply for permission of Temporary Release from Detention (hereinafter referred to as “Temporary Release”).

Temporary Release means you can spend a certain period of time outside of the detention center.

Even if you are detained at the immigration detention center, if you have a specific reason for temporary release, for example: ① if medical treatment is necessary, ② if your spouse or a lineal ascendant or a descendant (parents, children, etc.) dies within the Republic of Korea, ③ If the delayed payment of wages is more than ten million won (Employer has not paid you the agreed amount of your wages), you can apply for a "temporary release" with a deposit of 20 million won or less. However, note that the acceptance of the application will be determined through various examinations.

REGULATIONS RELATING TO TEMPORARY RELEASE FROM DETENTION

Article 7. (Examination procedures and checklists)

② If a reason for the request of the cancellation of the temporary release is for medical treatment, the head shall request for the medical certificate from the doctor or the proof of the medical check-up and confirm it.

③ If a reason for the request of the cancellation of the temporary release is directly related to litigation, the director shall request for a copy of complaint and certificate for filing a lawsuit and check if all of the following requirements are satisfied:

1. If the defendant is the plaintiff of the litigation and the litigation value is over ten million won.
2. If the defendant needs to go out for more than 6 days for litigation.
3. If the lawsuit or administrative trial is not filed against the Detention Order or Deportation Order.

④ When the defendant as a litigant with a litigation value of more than KRW 10 million has received a confirmation of legal aid from the Legal Aid Corporation, the head shall request for a copy of legal aid confirmation and confirm it.

⑤ If the reason for the request of cancellation of temporary release is related to the lease deposit, the head shall confirm whether all of the following requirements are satisfied:

1. If the lease agreement is authentic;
2. If the lease deposit is over 10 million won;
3. If the defendant as a detainee experiences difficulty in receiving the refund because of the refusal of refund from the landlord.

⑥ If the reason for the request of cancellation of temporary release is related to delayed payment of wage, the head shall check whether all of the following requirements are satisfied:

1. If the delayed payment of wage is over 10 million won;
2. If the defendant has one of the followings: confirmation of delayed payment of wages, written promise or agreement for payment or delayed payment of money issued by the Ministry of Labor;
3. If a defendant is in a difficult situation to request for the payment of delayed wage as a detainee.

⑦ If the spouse of a detainee or lineal ascendant and descendant has deceased in the Republic of Korea, the head shall request for the death certificate, certificate of hospitalization, or other proofs and consider temporary release for humanitarian grounds.

If you want to apply for a Temporary Release from detention, you should write and submit ① the "Temporary Release Request" form [Appendix 10], ② the proof of your grounds for the need of temporary release and explanations on how you will get your deposit ready, ③ submit them to the head of the administrative office or the head of the immigration detention center, and ④ pay the

deposit in accordance with the instructions.

References that you can use to prove your need for temporary release include medical certificates in cases involving a need for medical treatment, a certificate stating the amount of delayed wages in cases involving the delayed payment of earnings (this is a paper that states the promised amount of money that is unpaid by the employer, you can get this after filing a complaint at the Ministry of Employment and Labor), etc.

IMMIGRATION ACT

Article 65 (Temporary Release from Detention)

① A person in detention after having received a written order of detention or deportation, his/her guarantor or legal representative, etc. may make a request to the head of the competent Regional Immigration Service for a temporary release from detention, as prescribed by Presidential Decree.

You can get your deposit back upon your departure or if your temporary release from detention gets cancelled.

4. When the public official tries to tie your hands or puts you in solitary confinement, please ask for the reason.

An immigration control official can exercise coercive force or put detainees into solitary confinement only if detainees attempt to perform self-injurious activities (such as inflicting self-harm or attempting to commit suicide), to escape, or to attack others, etc. "Exercise of Coercive Force" refers to forcefully tying or holding people tight so that they cannot move.

However, coercive force shall only be exercised at a minimum and only when it is necessary. Therefore, public officials are restricted from exercising force if the detainees were not trying to escape or attack others. If an officer breaks this rule, please remember who the public official is (If possible, please check all faces and names), and file a complaint or petition to the National Human Rights Commission of Korea in accordance with Paragraphs 6 and 7 below. In some cases, you may be able to file for litigation.

This rule also applies for situations when the immigration control official tries to put you into solitary confinement. Make sure you ask the reason for his/her act. Also, you can also ask for a chance to talk to the immigration control official about your opinion.

IMMIGRATION ACT

Article 56-4 (Exercise of Coercive Force)

① In any of the following circumstances, an immigration control official may exercise coercive force on a detainee, and detain the detainee separately from other detainees. In such cases, it shall be limited to the minimum extent necessary for the safety of a detainee's life and body, prevention of his/her flight, and maintaining the safety and order in a detention facility:

1. When he/she intends to commit suicide or self-injury;
2. When he/she inflicts harms on other persons or intends to do so;
3. When he/she escapes or intends to do so;
4. When he/she refuses, interferes with or evades the performance of duties by an Immigration Control Official without justifiable grounds;
5. When he/she engage in conduct obviously harming the detention facility and the safety and order of detainees, or intends to do so, in any other way than those provided for in subparagraphs 1 through 4.

③ An immigration control official who intends to exercise coercive force under Paragraph (1) shall give advance warning to the detainee in question: Provided, that this shall not apply where there is no time to give advance warning to a detainee in emergency circumstances.

REGULATION ON DETENTION OF ALIENS

Article 40. (Solitary Confinement)

① The head of the immigration office shall put the detainee in solitary confinement during the period prescribed by the Ministry of Justice if he/she applies to one of the followings:

1. If the detainee has attempted or attempts to escape, cause disturbance, assault, cause damage on the facility or items, undermine safety and order of the detention facility;
2. If the detainee refuses an order, interferes with or evades the performance of duties by an immigration control official;
3. If the detainee secretly possesses or attempts to bring an item that may inflict self-injury or harm other inmates or an item that is prohibited in accordance with the Article10(1) with an objective to

undermine safety and order of the detention facility;

4. If the detainee fasts in order to cause self-injury or death, agitate the inmate or undermine order in the detention facility;

5. If the detainee is suspected to be infected or is infected with an infectious disease;

6. If the detainee shows symptoms of mental illness, alcoholism, drug addiction or such symptoms.

④ The head shall give the relevant alien a chance to state his/her opinion while enforcing solitary confinement in accordance with the Article 1.

5. You can also meet other persons, write letters or have telephone conversations with other persons in the detention center.

A detainee can visit other persons, exchange written correspondence, or have telephone conversations with other persons in the detention center at certain given times.

IMMIGRATION ACT

Article 56-6 (Visits, etc.)

① Detainees are allowed to have visitors, to exchange written correspondence, and to have telephone conversations with other persons (hereinafter referred to as "visit, etc.").

② If deemed inevitable for purposes of safety and order in detention facilities as well as for the safety, health, and hygiene of detainees therein, the head of a Regional Immigration Service may restrict visits, etc.

Visits are available from 9:30 am to 11:30 am, and from 1:30 pm to 4:30 pm. Those coming to visit from outside of the detention center should bring their ID card. Visits can be made in principle within 30 minutes at a time, but may be extended depending on the situation, if requested to do so. Visits are limited to two times a day, but this may also be extended by the head of the immigration detention center depending on the situations.

REGULATION ON DETENTION OF ALIENS

Article 33. (Regular visits)

- ②The applicant for visits must present a document certifying his/her identity on the day of visit (In case of Korean nationality, national driver's license, driver's license, public official certificate, or passport in case of a foreign national) and shall fill in the application form for visits required by the Ministry of Justice and submit it to the public official in charge.
- ③Application or reception hours for visits and visiting hours shall be from 9:30 AM to 11:30 AM and from 1:30 PM to 4:30 PM during the working hours in accordance with the National Public Service Rules. However, this shall not apply if the head has granted permission for other time in urgent or unavoidable circumstances.
- ④It is one-to-one visit. However, the head may allow the family, siblings, and immediate relatives of the detainee to visit at the same time unless it undermines safety and order in detention facilities.
- ⑤Visits are conducted in visiting rooms. However, the head may designate other place for visits if the head deems it necessary to have it outside of the regular visiting room.
- ⑥All visits are scheduled to 30 minutes. However, the head shall allow the extension of visiting hours only if it is deemed inevitable to extend the number of visits without interfering with the visit of other visitors.
- ⑦Visitors can visit the same detainee only once a day. However, the head may increase the number of visits if it is deemed inevitable to extend the number of visits without interfering with the visit of other visitors.
- ⑧Each detainee shall receive two (2) visits per day. However, the head may increase the number of visits if it is deemed inevitable or if it does not interfere with the safety and order maintenance of the protection facilities.

However, if there is a reason that applies to Article 33, Paragraph 10 of the Aliens Protection Rule as described below, you may not be able to meet visitors.

REGULATIONS ON THE PROTECTION OF ALIENS

Article. 33 (Normal visits)

⑩ The head shall deny visits if such visits fall under any of the following requirements:

1. If there is a serious concern that a detainee in solitary confinement under special detention is likely to undermine safety and order in the detention facility;
2. If a detainee refuses to receive visitors;
3. If a visitor schedules a visit in violation of regulations under Paragraph 2 to 8, and if the visitor does not reschedule their visit so as to align with the appropriate regulations despite the request to reschedule from an agent of the detention center;
4. If the head decides to stop visits for safety and order at the detention facility due to emergency situations either occurring inside or outside of the detention facility including fire, group riots, protests of detainees, or the exercise of physical tangible power, etc.;
5. If the head finds it unavoidable to deny, for the maintenance of safety and order at the detention facility or for the safety, health and hygiene of the detainees.

If the head of immigration detention center refuses the visit even though it does not fall into the above reason, he/she can show the above clause and request the visit, and may petition under Articles 6 and 7 below.

6. Filing a petition

If you have experienced any disadvantageous treatment during your time in the detention center, you can file a petition with the Ministry of Justice or the head of the Immigration Office. 'Disadvantageous treatment' refers to acts such as not allowing religious activities, not giving meals on a regular basis, preventing visitors from visiting without a legitimate reason for doing so, etc. In addition, 'filing a petition' is an act of asking for improvements if the treatment at the detention center is deemed disadvantageous.

You can file a petition in writing and properly seal the writing so that the contents are not visible. You can then file your petition in the petition box in the hallway or submit it to the relevant public official in charge. If a petition is filed with the head of the immigration control office instead of the Minister of Justice, the petition may also be made orally.



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IMMIGRATION ACT

Article 56-8 (Petitions)

- ① Any detainee who is dissatisfied with treatment in a detention facility may file a petition with the Minister of Justice or the head of a Regional Immigration Service.
- ② A petition shall be prepared in writing and properly sealed before submission: Provided, that if the petition is filed with the head of a Regional Immigration Service, such petition may be made verbally.
- ③ No detainee shall be subject to disadvantageous treatment for filing a petition.

In addition, a detainee should not be harmed because he/she made a petition. If an immigration control official prevents the petition from being made, you may file a complaint in accordance with the Section 7.

7. Making a petition with the National Human Rights Commission of Korea.

If you feel that the treatment at the detention center violates your human rights, you can file a petition with the NHRCK. You can write a petition and either put it in a petition box in the corridor or mail it to the address written below. At this time, you can ask for a "Certificate of Acceptance" to confirm that your petition has been submitted. The "Certificate of Acceptance" is a receipt proving that the complaint has been registered within the National Human Rights Commission.

In addition, you can ask for the related documents to be delivered immediately once received. When you get to have an interview with a staff member of the Commission, you can ask the detention center staff not to participate or listen to the interview.

NATIONAL HUMAN RIGHTS COMMISSION KOREA ACT

Article 31 (Guarantee of Petition Rights of Detainees at Confinement or Caring Facilities)

- ① If an internee of any relevant confinement or caring facility intends to file a petition to the Commission, a public official or a staff member belonging to the said facility (hereinafter referred to as "public official concerned, etc.") shall immediately afford the internee a reasonable time, place and convenience necessary to prepare the written petition.
- ② Where any internee intends to file a petition in the presence of a commissioner or a staff member of the Commission, a public official concerned, etc., shall immediately notify the Commission of such intention.
- ③ A public official concerned, etc., shall immediately send the written petition which is prepared by an internee under Paragraph (1) to the Commission and deliver the certificate of the document receipt which is issued by the Commission to the internee. A document verifying the notification under Paragraph (2) and a document stating a fixed interview date, which are issued by the Commission shall be delivered immediately to the said internee who intends to file a petition.
- ④ Where the Commission is notified under Paragraph (2) or deems that there exists any reasonable ground that an internee truly intends to file a petition, it shall have a commissioner or a staff member of the Commission visit the relevant confinement or caring facility to receive an oral or written petition from the said internee. In such cases, the commissioner or staff member of the Commission who receives the petition shall immediately prepare a document verifying such receipt and deliver that document to the same internee.
- ⑤ With respect to visits to a confinement or caring facility and the receipt of petitions by commissioners or staff members of the Commission under Paragraph (4) above, Article 24 (3) and (4) of this Act shall apply mutatis mutandis.
- ⑥ No staff member of the relevant confinement or caring facility shall participate in an interview which a commissioner or staff member of the Commission holds with an internee who has filed a petition (including any internee who intends to do so), or shall hear or record the content of such interview: Provided, That the said staff may watch the internee at a distance of visibility.
- ⑦ No public official concerned, etc. shall peruse a petition or written document prepared by an internee for the purpose of presentation thereof to the Commission.

If you want to learn more details about filing a petition, you can call the National Human Rights Commission of Korea for advice. Please refer to the appendix at the end of the manual for the Commission's phone number and address.

8. Please check the notice on procedures for making a reservation for visits and filing objections and petition.

A notice on the procedures for filing objections to detention, making a reservation for visits, or filing a petition at the detention center should be posted in an area that is clearly visible to detainees.

Therefore, if you do not know about the procedures, you can ask a staff member of the detention center for a written notice. If a posting is not available, you can request for a posting in accordance with the article below. If a posting exists but you do not understand its content, you can request for translation.

IMMIGRATION ACT

Article 56-9 (Posting Procedures, etc. for Filing Objections)

The head of a Regional Immigration Service shall post the procedures for the filing of objections to detention under Article 55 and petitions under Article 56-8, matters, including visit, etc. under Article 56-6 at a conspicuous place within the detention facility.

9. If you have problems regarding the delayed payment of wages, you can speak to a predicament counselor.

There are some occasions when a person gets detained before solving their problems of delayed payment of wages from the employer or assaults experienced with legal proceedings. If this applies to you, you can request for advice and assistance from a predicament counselor or a staff member of the detention center regarding your concern.

This information should be posted in the detention center and you can request for translation for more details.

REGULATIONS ON DETENTION OF ALIENS

Article 8. (Informing regulations in Everyday life)

- ① The head shall give notice on the regulations in everyday life at the detention facility and remedy procedures on the rights of the detainees in advance in a language that he/she understands.
- ② Notices in accordance with the Paragraph 1 shall be written in Korean, English and Chinese (hereinafter referred to as "English, etc.") and shall be posted in a place that is clearly visible for the detainees. However, if a detainee does not understand English etc., he/she shall be assisted with translation.

Article 30 (Predicament counseling)

- ① The head shall treat the difficulties experienced by the detainees in accordance with the specific details and procedures enforced by the Ministry of Justice even if they do not fall under the grounds for filing petition stated under article 56-8 Paragraph 1.

If you have already explained about your problems in regard to the delayed payment of wage and the victimization of the crime and no action is taken, please contact your family member, friend, human rights group, or lawyer outside the detention center as soon as possible and ask for assistance.

Additionally, if you have a legitimate ground for refugee recognition, you can apply for refugee status at the detention center as well. While your application for refugee status gets reviewed, you will not be deported pursuant to the 'Refugee Convention' and Immigration Act. However, this does not mean that you will be released from the detention center because of your application for refugee status. If you want to apply for refugee status, please ask the staff at the detention center for the relevant procedures.

<Annex 1: Written documents>

The following documents are the documents that you may receive from an immigration control official to fill out.

If you sign any of these documents without fully understanding their contents, you may face some disadvantages later. Therefore, be sure to ask the person in charge about the contents of the documents before signing.

If you do not know anything about the documents, get assistance from a lawyer or another legal expert.

[Appendix1] Detention Order

[Appendix 2] Immediate Detention Order

[Appendix 3] Written decision of examination

[Appendix 4] Written Decision on Examining the Immigration Offender

[Appendix 5] Departure Order

[Appendix 6] Deportation Order

[Appendix 7] Written Objection Against Deportation Order

[Appendix 8] Detention Notice

[Appendix 9] Written Objection Against Detention

[Appendix10] Application for Permission of Temporary Release



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<Annex2: Contacts>

The following are the contacts of various organizations supporting foreigners in the Republic of Korea. If you have any further questions, please contact the Immigrants' Advocacy Center Gamdong, or contact the following organizations.

Legal Counseling

Korea Legal Aid Corporation

Phone no.: (No Country Code) 132

Migrant women Counseling

Danuri Call Center: Counseling and emergency support for migrant women who are victims of violence

Phone no.: 1577-1366

Refugee counseling

United Nations High Commissioner for Refugees (UNHCR)

Phone No.: 02-773-7003

Counseling hours: Weekdays: 9:30 ~ 17:00 (Lunch hour: 12:00 ~ 13:00)

Email: info@unhcr.or.kr

Human rights violation counseling

National Human Rights Commission of Korea

Phone No.: (No Country Code) 1331

Counseling hours: Weekdays: 9:00 ~ 18:00

Other Multilingual counseling

Seoul Global Center

Phone No.: 02-2075-4180

Counseling hours: Weekdays: 9:00 ~ 18:00