A Marriage Used to Prevent Deportation. Not Anymore.

By Vivian Yee

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They had shown the immigration officer their proof — the eight years of Facebook photos, their 5-year-old son's birth certificate, the letters from relatives and friends affirming their commitment — and now they were so close, Karah de Oliveira thought, so nearly a normal couple.

Thirteen years after her husband was ordered deported back to his native Brazil, the official recognition of their marriage would bring him within a few signatures of being able to call himself an American. With legal papers, they could buy a house and get a bank loan. He could board a plane. They could take their son to Disney World.

Then the officer reappeared.

“I’ve got some good news and some bad news,” he said. “The good news is, I’m going to approve your application. Clearly, your marriage is real. The bad news is, ICE is here, and they want to speak with you.”

ICE was Immigration and Customs Enforcement, the federal agency charged with arresting and deporting unauthorized immigrants — including, for the moment, Fabiano de Oliveira. In a back room of the immigration office in Lawrence, Mass., two agents were waiting with handcuffs. Her husband was apologizing, saying he was sorry for putting her through all of this.

Ms. de Oliveira kissed him goodbye. “I’ll do whatever I can to get you out,” she said.

For decades, marriage to a United States citizen has been a virtual guarantee of legal residency, the main hurdle being proof that the relationship is legitimate. But with the Trump administration in fierce pursuit of unauthorized immigrants across the country, many who were ordered deported years ago are finding that jobs, home and family are no longer a defense — not even for those who have married Americans.

As the Trump administration arrests thousands of immigrants with no criminal history and reshapes the prospects of even legal immigrants — an overdue corrective, officials say, to the lenient policies of the past — many who have lived without papers for years are urgently seeking legal status by way of a parent, adult child or spouse who is already a citizen or permanent resident.
In a growing number of cases, however, immigrants with old deportation orders that were never enforced are getting the go-ahead after an interview by United States Citizenship and Immigration Services, the agency that handles residency and citizenship, only to be arrested by ICE.

“It’s like playing dice in Las Vegas or something,” said William Joyce, a former immigration judge who now practices immigration law in Boston. “It’s not 100 percent, but you’re playing with fire if you go to that interview. You can walk in, but you won’t be walking out.”

Mr. de Oliveira and his wife had been dating for eight years, ever since Ms. de Oliveira’s sister introduced them and they started working next door to each other — he at a pizza place, she at a Dunkin’ Donuts. They had a son three years later, but he waited until 2016 to marry Ms. de Oliveira, a Massachusetts native, partly because he did not want her family to think he was angling for a green card.

[Would you pass the green card marriage interview? Take the test.]

After the wedding, all the things they could not do while he lacked legal status became obvious: Not being able to go on their honeymoon, because he could not fly. Not being able to get a joint credit card. Not being able to get car insurance.

“He got caught because he was trying to do the right thing,” Ms. de Oliveira said of her husband’s arrest on Jan. 9. “It was like a setup.”

It took a month for her husband to be released. Because she did not know what else to say when their son asked, Ms. de Oliveira told him that his father was working out of town.

Like many of the immigrants detained this way, Mr. de Oliveira, a house painter, had no criminal history. To the Trump administration, the other thing they had in common was more germane: a legal but, until now, unenforced obligation to leave the country that had stuck to them for years, even as they pieced together lives and families in the United States.

In the later years of the Obama administration, the government mostly left people without criminal records alone, focusing instead on immigrants who had only recently arrived or had been convicted of serious crimes.

But the Trump administration emphasizes that everyone living here illegally is fair game for deportation, a policy that has bumped up immigration arrests by more than 40 percent since the beginning of 2017. Those who were ordered out of the country years ago are especially easy marks for an agency with limited resources for enforcement — especially if they walk straight into an immigration office.

ICE agents who once allowed many unauthorized immigrants to stay in the country as long as they checked in regularly have, over the past year, begun arresting many of those same immigrants at their once-routine ICE appointments. Unlike people who have had no prior contact
with the immigration system, those who have already received orders of deportation have few, if any, protections against swift deportation.

Most who have been arrested under the Trump administration’s policies had scant prospects of ever achieving legal status, whether through marriage to a citizen or another route.

People like Mr. de Oliveira, on the other hand, were well on their way.

Getting a green card through spouses and relatives had become far easier in recent years for those who were living in the country illegally. Until 2013, undocumented applicants had to leave the country and wait out the application process from abroad, in some cases for as long as a decade, before returning with green cards.

Then the Obama administration created a waiver to abbreviate the process. Hurdles remained: Applicants still had to undergo vetting and security checks, for example, and prove that being deported would cause an American citizen — a spouse, for example — significant hardship. But once an immigration officer certified that their marriages were real, those with old deportation orders could ask an immigration judge to lift them so they could move on with their applications.

Now, however, it is risky simply to show up for an interview.

“For many individuals, it’s sort of this Sophie’s choice of remaining in the shadows, without formal immigration status,” or hazarding arrest, said Genia Blaser, a staff attorney at the Immigrant Defense Project, a New York-based group that has been fielding calls from immigrants concerned about the new policies.

One such case made national headlines in the fall, when a Mexican man from the Denver area who had tried to obtain a green card through his daughter, a senior at Yale, was arrested at his residency interview. Despite a national campaign to get him released, the man, Melecio Andazola Morales, was deported in December.

On Feb. 8, immigration agents in San Francisco went a step further, arresting a Sudanese man at his interview for asylum, where he was supposed to be given a chance to explain why he feared returning to his home country. He had overstayed his visa, according to his lawyer, but had no criminal history or deportation order.

Immigration lawyers in New England, in particular, say there has been an unmistakable swell in the number of clients arrested at marriage interviews over the past few months. In the past, they said, U.S.C.I.S. officers had routinely alerted their counterparts at ICE to marriage applicants with old deportation orders, but only since President Trump took office had immigration agents begun to arrest those people at interviews. (A few such cases had occurred under the Bush administration as well, they said.)
Several lawyers said that they could no longer in good conscience encourage their clients to go to their marriage interviews, even if staying away would mean throttling a process that had already swallowed up months, if not years, and perhaps thousands of dollars in legal and application fees.

“So you end up with a situation where, all right, you don’t go to the interview, you don’t get the petition approved, so there’s no way forward,” said Mr. Joyce, who said at least five clients of his firm had been arrested in the middle of applying for a marriage-based green card over the last year, including two who were later deported.

An ICE spokesman, John Mohan, said that ICE has always worked with other government agencies to gather information for enforcement purposes.

“ICE does not exempt classes or categories of removable aliens from potential enforcement,” he said. “Any individual determined to be in violation of U.S. immigration laws may be subject to arrest, detention and removal from the United States.”

Some remain undeterred. Leandro Arriaga, 43, had been warned by his lawyer that he might be detained at his marriage interview because he had been ordered deported years ago. But he decided to go anyway, determined to get legal papers. Without them, “You can’t do nothing, you can’t go to college, you can’t do things in your own name,” Mr. Arriaga said. “I said, ‘I don’t want to be illegal anymore. I’ve got to do something.’”

Mr. Arriaga had arrived illegally from the Dominican Republic in 2001, settling in the Boston area. He married a citizen, had three children, divorced, married another citizen and had another child, building a good business buying and fixing up old properties along the way.

After talking it over with his wife, Katherine, he decided to take a chance on the marriage interview, which was scheduled for March 2017 at the immigration office in Lawrence, Mass. An immigration officer certified his marriage, clearing him to move to the next step toward legalization. But before he could leave the office, he was detained, along with four other marriage applicants who were interviewing that morning, at least two of whom also had their petitions approved that morning.

It took until the end of May for him to get out of detention — more than two months of legal motions, court hearings and negotiations. The government ultimately released him with an ankle monitor, leaving Mr. Arriaga free to continue pursuing his application for a green card.

Nearly a year later, though he was still chasing paperwork, he did not regret having walked into the immigration office. “I really think that I did the right thing,” he said.

Many people, though, are heeding their lawyers’ advice and postponing any application for legalization — even those who are likely to be deemed eligible. The risks are too great.
Natalia and Junior Roveda, who have been together seven years, managed to make it through their marriage interview last year in Massachusetts without incident. Mr. Roveda had come to the United States illegally from Brazil in 2005 and evaded a subsequent deportation order. He was moving into the next stage of the legalization process when he was arrested outside their apartment in the town of Framingham. In November, he was deported to Brazil, where he is now living with his parents.

Since then, his marble and granite business has gone dormant. Ms. Roveda, 25, gave up their apartment, sold the furniture and started working 20 extra hours a week at her job as an aesthetician and makeup artist to help support him in Brazil. When she can, she makes the long journey to visit him.

Still, Mr. Roveda is pursuing his green card from abroad. Their lawyers have told them it could take up to a year, and Mr. Roveda fears being stuck there, away from his wife and his faltering business, for much longer.

“It is not fair,” he said. “I was already approved and everything.”

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Sandra Garcia contributed reporting.

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