



IMMIGRATION DETENTION – A PRIMER

The following provides basic information for persons who have been arrested and detained on suspicion of a criminal offense or of being in violation of the immigration laws by being in this country and working without valid non-citizen work permits. Wherever possible there are links to relevant websites where more detailed and expert information for detainees may be found.

WHAT HAPPENS WHEN SOMEONE IS DETAINED?

Step #1: Arrest for crime:

- After being arrested, you will be transported to a jail. There, a Department of Homeland Security/Immigration and Customs Enforcement (ICE) agent will likely ask you about your immigration status.
- You may be placed into removal proceedings if there is a basis under the law to do so. A removal proceeding involves going before an immigration court judge where you explain the reasons for your being in the U.S. without proof of citizenship or legal residence documents (e.g., “green card”).
- If you have been arrested on suspicion of having committed a criminal offence, and after serving your time in jail or prison, you will be transferred to a civil ICE/DHS facility. Before this, the DHS agent will first place a detainer on you.¹
- if arrested by local police, you must be charged with a crime in court within 48 hours.²
 - this time frame excludes weekends and holidays³

¹ Lonagan, Bryan and Immigration Law Unit of the Legal Aid Society. “Immigration Detention and Removal: A Guide for Detainees and Their Families.” (2006).

² “I Am in Immigration Detention...What Are My Rights?”. National Immigration Project. <http://www.nationalimmigrationproject.org/community/Detention%20-%20Know%20Your%20Rights%20-%20English.pdf>

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- **Tips during arrest:**⁴
 - o Do not volunteer information to police - - ask for a lawyer!
 - o You have a right to NOT sign documents or statements.
 - o You have a right to make a phone call.
 - o All of your personal belongings will be registered. Ask for a receipt. Also, make sure your legal documents are processed as personal property.
 - o You will be given a Notice to Appear, which contains the charges against you.
 - o Know your A Number, which is your alien registration number.

Note that U.S. ICE/DHS immigration officials must take you into custody within 2 days of your jail or prison sentence. If they do not, ask your attorney to file a writ of habeas corpus with your state court, which demands your release.⁵

Step #2: Can I be released? – if charges are dropped OR you are granted and post bail OR if you win your criminal case, you must be released.⁶

- UNLESS a detainer has been placed on you. If a detainer has been placed on you, you can be held for another 48 hours.⁷

Step #3: What if I am not released? – if you are not released, you will be moved to a civil immigration detention center, local jail, or a military base while your immigration case is open.⁸

- you will be interviewed and assigned a deportation officer.⁹

Step #4: But how can I get out of jail?

- Ask for a bond¹⁰
 - o Bond is a payment you make to the government that ensures that you will attend all future hearings. Sometimes, in special circumstances,

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you can be released on your own recognizance (which means that you do not need to post any bond).¹¹

- You will then have a bond hearing and an immigration hearing.¹²
- You can NOT get bond if you are subject to mandatory detention.¹³
 - o Mandatory detention is reserved for an immigrant who has been convicted of certain crimes (serious crimes involving firearms, drugs, or “crimes involving moral turpitude” such as theft and fraud), or aggravated felonies.¹⁴
 - o Whether or not you are subject to mandatory detention is a complex question - - you should consult with an immigration expert to determine whether mandatory detention applies to your case.¹⁵
 - o You are entitled to an individualized hearing in front of an Immigration Judge (under 8 U.S.C. 1226(c)). This is often called a “Joseph hearing”.¹⁶
 - To win at this hearing, an individual must prove:¹⁷
 - (1) they are a US citizen OR that
 - (2) they were not convicted of the crime that the government claims they were as to be subject to mandatory detention; OR that
 - (3) the crime was not a crime involving moral turpitude or was not an aggravated felony; OR
 - (4) that the only two crimes involving moral turpitude arose out of a single scheme.
 - o If you are not subject to mandatory detention, you are eligible for bond!¹⁸
 - The government sets a bond amount.

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- **If you cannot afford the bond, you have the right to request in writing from the immigration court for a bond re-determination hearing.**¹⁹
- Bond Hearing:
 - When setting a bond amount, the judge looks at:²⁰
 - 1) Are you a flight risk? Will you come to future court dates if you are released?
 - 2) Are you a danger to the community?
 - To have a favorable outcome, present as much evidence as you can to show that you are not a flight risk and are not a danger to the community. You can do this by:²¹
 - Having relatives come to your court dates
 - Have letters of support from those who can not come to your court dates
 - Present a lease or mortgage
 - Present letters from employers or pay stubs
 - Present marriage certificates or children’s birth certificates
 - Present records of your attendance in rehabilitation programs
 - Present information, if applicable, that you have attended all past court dates
 - Present educational and tax records
- Bond Amount:
 - The minimum bond allowed is \$1,500; however, the judge may also release you on your own recognizance (release you without bond).²²
 - You may pay the bond in cash or through a bail bondsman, who will pay your bond but charge you a non-refundable fee and a percentage of your bond amount.²³
- Bond Appeal:
 - If you disagree with the amount of bond set, you can file a bond appeal with the Board of Immigration

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Appeals. **You must complete and file the Notice of Appeal within 30 days of the judge's decision.**²⁴

- The government may also appeal the amount of bond set if it believes that the bond is set too low.²⁵

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Step #5: Notice to Appear

- A Notice to Appear (NTA) gives an individual the basis for why they should be removed from the U.S. **This must be given to you within 72 hours of your detention.**²⁶
- The NTA has two sections: (1) the Allegations, which gives your name, the country you are from, the date and manner you entered the U.S., and the factual basis of the allegations; and (2) the Charges, which provides the sections of the law which permit your removal from the U.S.²⁷

Step #6: Pleadings

- The judge will now ask you whether the information in the NTA is true, whether you admit that you are removable from the U.S., and whether you plan on applying for any form of relief from the removal.²⁸
- The Government's Burden: The govt must prove that you are an alien.
 - If you want to fight the case against you, do not admit to the allegations.²⁹
- If any of the facts in the NTA are not true, deny the factual basis and ask the government to prove the charges.³⁰

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