

# How to Get Your Client Out from Detention After an ICE Enforcement Action

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# Goals

1. To present strategies to release immigrant survivors from immigration detention
2. To increase practitioners safety and action planning skills

# Avoiding a Crisis

1. Explore red flags

2. File skeletal applications if mandatory detention

3. Team work

- With your client
- With her advocate
- ICE-OCC

# Red Flags

1. Review your intake!!!

2. Build your intake:

- a. Stopped at the border
- b. Asked to sign papers at the border
- c. Scheduled for hearing in front of immigration judge
  - In absentia removal order, final orders etc.
- d. Any encounter with criminal system: arrested, charged, convicted, on probation
- e. Warrant
- f. Under Department of Transportation investigation



# One-on-One Advocacy

1. Avoid a crisis, identify issues on day one
2. Your work with her around safety planning must also include how to address situations where she is arrested and:
  - Her children are alone at home or daycare
  - She did not pick up her last paycheck
  - The perpetrator has her passport and access to her money
  - There is a question regarding her ability to pay her bond (criminal or immigration)
  - The abuser may be neglecting children
  - Medical concerns, trauma issues, memory gaps
3. These may be some of her immediate concerns but it is helpful to have her think about all other potential issues and address them in advance. This will avoid her signing her removal without first defending her rights.

# Where is My Client?

1. Any encounter with the criminal system may place your client in removal proceedings
  - Traffic ticket & going to court
  - Reporting to probation
  - Arrest
  - False documents with DOT
  - Any court proceeding
2. Prior immigration violations heightens potential encounters with ICE
  - In absentia orders & prior removals, denied petitions by CIS

287(g) Jail Enforcement Teams target arrestees for interviews re: immigration status

Under CAP, ICE gets place of birth and other booking biographic info, which they use to ID noncitizens to interview

Using info from Secure Communities database check or jail interview, ICE or 287(g) officer issues detainer

While in custody, ICE or 287(g) officer conducts initial/ additional interview of noncitizen

During or shortly subsequent to interview, ICE or 287(g) officer initiates paperwork for removal process (e.g., stipulated removal, NTA, expedited removal, referral for illegal reentry prosecution).

Checks in FBI & Secure Communities databases to ID noncitizens in system

Detainer triggers judge to deny bail, OR

Judge grants bail (usually higher due to detainer). If bail is posted, detainer is triggered and noncitizen goes into immigration custody/ detention and removal proceedings are initiated.

Referral to US attorney for illegal reentry prosecution

**START:**  
**Police Stop/Arrest**

Police informally question detained people re immigration status, report to ICE

287(g) task force officers target noncitizens for civil immigration enforcement

Police check National Crime Information Center (NCIC) database for immigration law violators

Completion of sentence and release triggers immigration detainer; noncitizen goes into ICE custody/detention OR



## S Comm: How it Works

1. ICE then evaluates each case to determine what, if any, enforcement action will be taken:
  - Generally, ICE will issue detainer against person
2. ICE claims, on average, the process from submission of fingerprints to issuance of ICE detainer takes approximately 4 hours.
3. Undocumented persons with no immigration history will not be identified through S-Comm

# What is an Immigration Detainer?

1. Notifies the jail or police that ICE is interested in this person
  - ICE files Form I-247 with jail
2. Requests jail to inform ICE when person is released from criminal custody

# INA Section 287(d)(3)

- (d) Temporary detention at Department request. Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period **not to exceed 48 hours**, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.
- Requests jail to hold person for additional 48 hours (excluding weekend & holidays) after release from criminal custody for ICE to take custody.

File No:
Date:

TO: (Name and title of Institution)	FROM: (Office Address)
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Name of Alien: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Nationality: \_\_\_\_\_ Sex: \_\_\_\_\_

**You are advised that the action noted below has been taken by the U.S. Department of Homeland Security concerning the above-named inmate of your institution:**

- Investigation has been initiated to determine whether this person is subject to removal from the United States.
- A Notice to Appear or other charging document initiating removal proceedings, a copy of which is attached, was served on \_\_\_\_\_ (Date)
- A warrant of arrest in removal proceedings, a copy of which is attached, was served on \_\_\_\_\_ (Date)
- Deportation or removal from the United States has been ordered.

**It is requested that you:**

Please accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the offender's classification, work, and quarters assignments, or other treatment which he or she would otherwise receive.

- Under Federal regulation 8 CFR § 287.7, DHS requests that you maintain custody of this individual for a period not to exceed 48 hours (excluding Saturdays, Sundays, and Federal holidays) to provide adequate time for DHS to assume custody of the alien. Please notify this Office at least 30 days prior to this inmate's release by calling \_\_\_\_\_ during business hours or \_\_\_\_\_ after hours in an emergency. (Area code and phone number)
- Please complete and sign the bottom block of the duplicate of this form and return it to this office.
  - A self-addressed stamped envelope is enclosed for your convenience.
  - Please return a signed copy via facsimile to \_\_\_\_\_ (Area code and facsimile number)
- Return fax to the attention of \_\_\_\_\_, at \_\_\_\_\_ (Name of officer handling case) (Area code and phone number)
- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of the inmate's death or transfer to another institution.
- Please cancel the detainer previously placed by this Office on \_\_\_\_\_

\_\_\_\_\_  
 (Signature of DHS Officer) (Title of DHS Officer)

**Receipt acknowledged:**

Date of last conviction: \_\_\_\_\_ Latest conviction charge: \_\_\_\_\_  
 Estimated release date: \_\_\_\_\_  
 Signature and title of official: \_\_\_\_\_



# How is the Detainer Triggered?

1. Pre-trial release on own recognizance or posting bail
2. Case against defendant is dismissed
3. Defendant completes sentence (after conviction).
4. In practice, detainer prevents the person's release from criminal custody while their criminal charges are pending.

# What Happens When Detainer is Triggered by Release?

1. Jail calls ICE to alert them of imminent release;
2. Jail holds person additional 48 hrs. for ICE to pick them up and take into ICE custody

NOTE: Many jails violate the 48 hr. rule and hold people much longer (months in some cases) awaiting ICE pick up

# Tip When Representing Survivors

1. FILE SKELETAL APPLICATION UPON ARREST
2. REQUEST EXPEDITED ACTION WHEN NEEDED
3. PREPARE I-246 & FILE. CONTACT ICE DIRECTOR AND SUPPLEMENT WHEN NOTICE OF ACTION RECEIVED
4. PAY CRIMINAL BOND IF ANY IMMEDIATELY FOR THE 48 HRS TO START RUNNING
5. CONTACT JAIL TO PROVIDE COUNSELING SERVICES, SAFETY PLANING FOR THE CHILDREN

# What Happens Next?

1. Prior order is reinstated
2. Stipulated order of removal
3. Administrative order of removal
4. Credible fear/reasonable fear interview
5. Removal proceedings commence in Immigration Court by filing the “NTA”

# NOTICE TO APPEAR- “NTA”

- Proceedings commence with filing of NTA with immigration court
- NTA is charging document that sets out factual allegations to support stated legal charge of deportability or inadmissibility

U.S. Department of Justice  
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A 8888

In Matter of: \_\_\_\_\_

Respondent: [REDACTED] currently residing  
[REDACTED]  
(Number, street, city, state, and ZIP code) (Area code and phone number)

1. You are an arriving alien.

2. You are an alien present in the United States who has not been admitted or paroled.

3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

- 1) You are not a citizen or national of the United States;
- 2) You are a native of ALBANIA and a citizen of ALBANIA;
- 3) You entered the United States at or near DETROIT, MI(MAY-OCT) on or about January 14, 2001;
- 4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:  
Section 212 (a) (6) (A)(i) of the Immigration and Nationality Act (Act), as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

Section 235(b)(1) order was vacated pursuant to:  8 CFR 208.30(f)(2)  8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:  
55 EAST MONROE ST., SUITE 1900, CHICAGO, IL 60603-0000  
(Complete Address of Immigration Court, Including Room Number, if any)

on April 2, 2002 at 10:00 A.M to show why you should not be removed from the United States based on  
(Date) (Time)  
charge(s) set forth above.

*Richard A. Dea*  
(Signature and Title of Issuing Officer)

Date: MAR 12 2002 CHICAGO, IL  
(City and State)

See reverse for important information

Form I-862( 4

# NTA

- Describes category:
  - a. arriving alien
  - b. present without admission
  - c. admitted but deportable
- Factual Allegations
- Underlying legal charge
- Hearing date, time, place

# Careful Considerations

1. Review factual allegations with client
2. Get entire I-213 and review for accuracy
  - ✓ FOIA to EOIR
  - ✓ Request OCC to provide copy
  - ✓ “put a pin on it”
    - File motion to suppress, terminate etc if appropriate

# Custody Determination

- A. Initial bond set by ICE may be reviewed by an Immigration Judge.
- B. Bond Redetermination (before proceedings)
  - a. No bond: Mandatory Detention INA §236©
  - b. Eligible for Bond and Bond Redetermination (Average \$7,500 if no crimes-\$10,000)
    - Danger to the community
    - Flight risk

# Mandatory Detention

- UNDER INA SECTION 236 C, certain convictions may render your client ineligible for bond
- These crimes include:
  - Drug crimes
  - Crimes involving moral turpitude
  - Firearms offenses
  - Aggravated felonies for immigration purposes

# Bond Hearing

- Hearing to review bond amount initially set
- Factors considered:
  - flight risk &/or danger to community
- Goal:
  - to assure alien's appearance in court. Amount must be paid in full & recover after termination of proceeding

# Motion for Bond Redetermination

- Matter of Joseph
- Equities
- Rehabilitation
- Likelihood that OCC-ICE will succeed
- Remedies
- Review bond - following weeks

# HYPOTHETICAL

- Petra is calling you from jail. She was brought by her husband 9 years ago. She has 5 children ages 1-9. She has been working with the local DV advocate. 2 weeks ago, her husband assaulted her and she had to go to the hospital.
- Petra tell you that ICE has already “talked to her” and there is no bond set. She wants out and is ready to sign her “deportation order.” ICE has told her that with two DUIs she is better off signing the order.

# Filing Procedures

1. EOIR Manual
2. Certificate of service requirement
3. Copy to OCC-ICE
4. Paginated, hole punch, table of contents, motion cover page, exhibits

# During the Hearing

1. IJ will/may ask questions to respondent
2. Opportunity to summarize key points of equities & case
3. OCC-ICE argument
4. Opportunity to counter
5. IJ ruling
  - Appeal- 30 days

# Resources

[www.usdoj.gov/eoir](http://www.usdoj.gov/eoir)

Resource for:

- a. BIA decisions
- b. Practice rules
- c. Local court rules
- d. Immigration court directory
- e. Immigration court forms
- f. Directory of recognized agencies, accredited representatives

# Thank You!



More information is available at [www.asistahelp.org](http://www.asistahelp.org)

OR, contact us at [questions@asistahelp.org](mailto:questions@asistahelp.org)