



ALL ABOUT BONDS

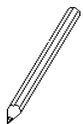
NOTE: As of March 1, 2003, the Immigration and Naturalization Service (“INS”) is now part of the Department of Homeland Security (DHS). Immigration enforcement functions, including immigration detention and removal cases, are handled by the **Bureau of Immigration and Customs Enforcement (BICE)** within the Department’s Border and Transportation Security Directorate. The **Bureau of Citizenship and Immigration Services (BCIS)** will handle other immigration matters, including citizenship, asylum and refugee services.

This booklet is for individuals in the custody of the Department of Homeland Security (DHS) who want to ask the Immigration Judge to lower their bonds or to let them leave the detention center without paying bonds before their immigration cases are finished. **IT DOES NOT APPLY TO YOU IF –**

- You already lost your immigration case in front of the immigration judge and did not appeal that decision to a higher court (called the “Board of Immigration Appeals”), or your case was appealed to the Board of Immigration Appeals and that court ruled against you; or
- You were apprehended by U.S. officers at the airport, a border crossing station (a “port of entry”), on a boat or at sea and taken into custody at that time.

If you are in one of these situations, you should read another booklet that talks about how to get out of custody. It is called, “**How to Apply to the Department of Homeland Security for Release from Immigration Custody.**”

Who wrote this?

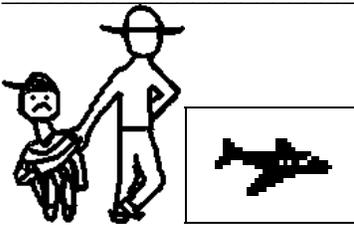


This booklet was written by the Florence Immigrant and Refugee Rights Project, a non-profit legal service agency that supports human and civil rights. We do not work for the Immigration Court or DHS. The money to pay for this booklet came from the Marshall Fund of Arizona and the Ford Foundation.

WARNING! It is not possible for us in this booklet to talk about every possible case. If your case is out of the ordinary, you may need more information. Also, immigration law changes often, and some parts of the law are unclear. We can only tell you what we understand the law to mean. The Immigration Service and the judges may disagree with us! For these reasons, it is always best, if possible, to get advice from a lawyer who knows the facts in your particular case and who can tell you what the law is at the time your case is being decided.

What is a bond?

A bond is not a fine. Instead, it is a guarantee to the government that, if you are let out of detention, you will go to all of your hearings and will obey the judge's order at the end of the case. To be let out of the detention center "on bond," you or a friend or relative must pay the bond money to DHS. If you go to all your immigration hearings or interviews, whoever paid your bond will get the money back when your case is over. If you lose your case, you must report to DHS for departure when required or you will not get the bond money back.



Paying your bond does not buy you absolute freedom.

If you get out on bond, it is not the end of your case. You still have to attend all your hearings outside of detention.

If you miss even one immigration hearing, you can be ordered removed (or “deported”) without the chance to give evidence to the judge or apply for permission to stay in the U.S. If that happens, you will not be allowed to return to the U.S. for at least 5 years, in some cases 20 years, and in some cases, forever! Also, whoever paid your bond will lose his or her money.

Can I ask the judge to lower my bond? (In other words, do I qualify for a bond?)

The answer to this question is maybe. Not everyone qualifies for a bond.

1. First, on the first page of this booklet, we say people in certain situations, such as those who were stopped by U.S. officers at the time they were trying to enter the U.S., should see another booklet, called “**How the Apply to DHS for Release from Custody.**” That is because, if you are in one of those situations we described on page 1, you may not qualify to ask the immigration judge for a bond, but you may still be able to ask DHS to release you.

2. Second, you do not qualify for a bond if the judge finds that you may be removed from the U.S. because of **terrorist activities**. If you are a lawful permanent resident, you may have a good argument that this is against the U.S. Constitution, but that argument can only be considered by a federal court and not by an immigration judge. Certain lawful permanent residents whose cases are filed with a special "alien terrorist removal court," may be able to get out of detention while their cases are going on, but we do not discuss that situation in this pamphlet.

3. In the case of people with certain criminal convictions, the judge cannot set a bond.

As of October 9, 1998, certain individuals detained in the custody of the Immigration and Naturalization Service are subject to **MANDATORY DETENTION**. This means that if you have certain criminal convictions, you are **not** eligible to ask the Immigration Judge

or DHS to lower your bond or to let you out of the DHS detention center any time before your immigration case is finished.

Note that you are only subject to mandatory detention if you were convicted of certain crimes and **could be charged with the crime by the DHS**. In a moment, we will list the crimes. Which criminal offenses subject you to mandatory detention depends upon what type of proceeding you are in. Check the written charges against you to see if you are charged with a criminal conviction. Where to find the written charges depends on the type of proceeding you are in.

- * If you are in removal proceedings, you should have received your charges in a document called a "**Notice to Appear.**"
- * If you are in **deportation** proceedings, you should have received your charges in a document called an "**Order to Show Cause.**"
- * If you are in **exclusion** proceedings, you should have received your charges in a document that is numbered at the bottom, "**Form I-122**" and called a "**Notice to Applicant Detained for Admission.**"

What crimes subject me to mandatory detention?

There are two different rules depending on how you entered the country. Please read both rules to see if they apply to you.

What if I am a U.S. citizen?

United States citizens should not be detained in DHS custody at all, regardless of their criminal history. To find out more about whether you might be a U.S. citizen, read the booklet called "Are You a U.S. Citizen." There are a variety of ways someone can be a citizen, particularly if one or both of his or her parents are U.S. citizens. After reading the booklet, if you think you are a U.S. citizen, ask the Immigration Judge for a bond hearing. If you have any criminal problems discussed in the next two rules, you could argue that you should still be released because you are not an "alien" and should not be subject to mandatory detention.

**RULE 1: YOU ARE NOT ELIGIBLE TO ASK THE IMMIGRATION JUDGE TO
RELEASE YOU FROM DETENTION IF:**

1. You entered the United States illegally and never got any legal status in the United States; and
2. You have committed or been convicted of any of the following crimes and you have been charged with the crime in your immigration proceedings:
 - A crime involving moral turpitude (explained on page 21 of this pamphlet) (see discussion of petty offense exception below);
 - An offense related to controlled substances (drugs);
 - Two or more offenses, for which together you received a sentence of 5 years or more;
 - Drug trafficking offense;
 - Prostitution or hiring a prostitute; or
 - Terrorist activities.

PETTY OFFENSE EXCEPTION: If you only have a crime of moral turpitude, you may qualify for the “Petty Offense Exception,” and for release from detention. You qualify for the exception if either of the following is true:

1. You committed the crime when you were under 18 years of age and more than 5 years ago; **OR**
2. You could not have been sentenced to more than one year in custody and you were actually sentenced to 6 months or less in custody. To see if you qualify for this exception, you should ask the attorney who represented you in your criminal proceedings what the maximum sentence was that you could have received for your crime of moral turpitude.

RULE 2: YOU ARE NOT ELIGIBLE FOR RELEASE FROM DETENTION IF:

1. You have some type of legal status in the United States or entered the United States lawfully and you were not arrested at a border checkpoint or the airport while trying to enter the United States; and
2. You have been convicted of any of the following crimes and you have been charged with the crime in your immigration proceedings:
 - Two or more crimes of moral turpitude, which were not part of the same misconduct (crimes of moral turpitude explained on page 21 of this pamphlet);
 - Aggravated felony (explained on pages 19 and 20 of this pamphlet);
 - Offense related to a controlled substance (drugs) (see exception below);
 - Firearms offense;
 - Certain federal crimes such as spying; OR
 - One crime of moral turpitude (explained on page 21 of attached pamphlet) for which you received a sentence of 1 year or more and which you committed within five years of being “admitted” into the U.S. or given legal immigration status.

DRUG OFFENSE EXCEPTION:

One conviction for possession of less than 30 grams of marijuana is not a deportable offense. If this is your only crime, you should ask the Judge for a bond hearing.

IMPORTANT: Some federal courts have decided that the law of mandatory detention violates the constitution, particularly when applied to lawful permanent residents. If you are in doubt about the law in your area, you can ask for a bond hearing and the judge will tell you if you are eligible when you go to court.

If you have a criminal conviction but you have never been charged with it by DHS or the INS, ask the Immigration Judge for a bond hearing to see if you are eligible for release from detention. In other words, check the document you received from DHS that has the charges against you, if it does not include any of the above crimes, you might be eligible for a bond.

Also, please keep in mind that just because DHS charges you with a certain type of crime does not mean that your crime is that kind of crime. There are different legal arguments a lawyer or someone like you can make. These arguments are complicated and we advise you to get help from a lawyer or legal agency if you can. To give you an idea of the kinds of arguments we are talking about:

- Solicitation to possess drugs in some areas of the country is not a controlled substances offense under immigration law.
- Possession of stolen property with a one-year sentence is not necessarily an aggravated felony under immigration law.

- Possession of burglary tools with a one-year sentence is not necessarily an aggravated felony under immigration law.
- **Is it constitutional to deprive me of my liberty without the opportunity for a court hearing?**

Some federal courts have decided that the law of mandatory detention violates the constitution, particularly when applied to lawful permanent residents. If you are in doubt about the law in your area, you can ask for a bond hearing and the judge will tell you if you are eligible when you go to court.

There is a very good argument that mandatory detention violates the Constitution of the United States. If you are not currently eligible to ask for a bond under the law in your area and you want to challenge your detention, you must file a petition for a writ of habeas corpus in the federal district court nearest the facility where you are being held. We advise you to consult with an attorney or a legal organization if you are interested in making this kind of argument.

- **What if the charges against me are incorrect?**

If DHS has charged you with a crime that you did not commit, tell DHS and the Immigration Judge about the error. If the charges against you are incorrect, you might be eligible for release from detention.

- **Those who completed their criminal sentences prior to October 9, 1998 might be eligible for bond.**

If you have any of the criminal convictions we discussed on pages 4 and 5 but prior to October 9, 1998, you served all of your time in jail or prison for the crime you are charged with, you should be eligible for release from detention. If you violated probation and you received probation in connection with the crime you are charged with by DHS, you must have completed any time in jail or prison that you received for the probation violation prior to October 9. If you qualify for this exception, ask the judge for a bond hearing and explain to the judge when you completed your jail or prison term.

- **What if I was released from my criminal sentence after October 9, 1998 but DHS did not arrest me immediately upon my release?**

The law of mandatory detention applies to you if you were released from prison after October 9, 1998, whether or not INS or DHS arrested you immediately after you were released from jail, prison, parole or probation

- **What if I have a recent criminal conviction and was brought into DHS custody after that conviction, but the conviction is not on the list on pages 4 and 5?**

If you are being charged with an old criminal conviction for which you completed your sentence before October 9, 1998 but you were brought to DHS custody after spending time in jail for another offense not listed above then you may be eligible for a bond.

- **What if I only received probation as a result of a criminal conviction and I was never given time in jail?**

If you have a criminal conviction after October 9, 1998 but never spent time in jail, or were released from jail before October 9, 1998, then you may be eligible for a bond. You must have been released from physical restraint, e.g., jail, after October 9, 1998 to be subject to mandatory detention.

- **Even if you have criminal problems listed on pages 4 or 5, you might still be eligible for bond if you are a member of the ABC class.**

What is the ABC class?

If you are a Salvadoran or Guatemalan who was in the United States as of a certain date in 1990, you may have registered for a program called “ABC.” If so, and if you filed a political asylum application with the Asylum Office by a certain date, a special rule applies in your case. You might be eligible for release from detention even if you have committed one of the crimes listed on pages 4 and 5.

The only ABC class members who can be detained are those:

- convicted of an aggravated felony (discussed on pages 19 and 20);
- a “crime of moral turpitude” for which you served more than six months
- (crimes of moral turpitude are discussed on page 21); OR
- INS (or DHS) considers the person to be a threat to public safety.

If you think you may be protected by “ABC” and that you are eligible for release, tell DHS and ask the judge for a bond hearing. Also, to find out if you are protected by ABC or to get proof, there is a legal office you can call. The office is called Morrison and Foerster and the telephone number is (415) 677-7000.

FOR THOSE PERSONS WHO ARE ELIGIBLE FOR A BOND, HOW IS THE BOND REDUCED?

If you are eligible a bond hearing, you need to ask the Immigration Court to schedule you a hearing. We discuss this process in greater detail later.

Is a bond hearing different from a regular immigration hearing?

Yes. Your bond case and your immigration (exclusion, deportation, or removal) case are totally different and separate cases. First of all, you will have one or more hearings in

your immigration case whether you ask for it or not. But, you will only have a bond hearing if you ask for one.

Second, the purpose of a bond hearing is different from the purpose of a regular immigration hearing. At a bond hearing, the judge decides whether you should be released while your immigration case is going on, whether you should have to pay money to be released, and how much money you should have to pay, if any. At your immigration hearing, the judge decides whether you can stay in the United States.

Third, the papers given to the judge and things said to the judge in your bond case may be different from what the judge considers in your immigration case. The judge is not supposed to look at papers you or DHS gave the judge for your bond hearing when the judge is deciding your immigration case, unless the papers (or copies of the papers) are given to the judge again for the immigration hearing.

Fourth, the rules in bond hearings and in immigration hearings are sometimes different. Bond hearings are usually less formal than immigration hearings. For example, the law does not require the judge to make a tape recording of what is said at the bond hearing, but a tape recording is required for immigration hearings.

Finally, it is important for you to understand that a bond hearing does not stop your immigration case. No matter what the judge decides in your bond case, and whether or not you appeal that decision, your immigration case continues. For example, if you have an immigration (or “removal”) hearing scheduled for two days from now, and at a bond hearing today, the judge sets a bond in your case, you will still have an immigration hearing two days from now, as long as your bond has not been paid by then. If you pay your bond and give the judge a paper asking to have your immigration case continued at a different location (near where you live in the United States), you will not have an immigration hearing two days from now, but you will have another immigration hearing in the near future.

When can I ask the judge to lower my bond? (How do I get a bond hearing?)

The Immigration Service may have already given you a bond when it took you into custody. If you qualify for a bond, you have the right to ask an immigration judge to lower your bond or, instead, to release you on your “own recognizance,” which means without paying any money. Even if DHS did not set a bond in your case, if you qualify for a bond, you may ask the judge to set a bond or to release you on your “own recognizance”.

The judge will let you explain why you think your bond should be lowered at a special “bond hearing.” One way to get a bond hearing is to ask the judge for one when you go to court. If you do this, the judge will give you another court date for a bond hearing.

However, you do not have to wait until you go to court to ask for a bond hearing. At any time, you may ask in writing for a bond hearing. There should be a special form for

making this request, and you can ask one of the officers for this form and for help in sending the form to the judge. The form is very simple. It does ask how much your bond is now, but if you don't know, leave that blank. If you have a problem getting the form, you may instead write to the judge to ask for a bond hearing. If you do that, make sure that your letter is in English.



But BEWARE! When you have your bond hearing, you must be well prepared, because it could be your only bond hearing.

The judge cannot give you more than ONE bond hearing unless you show things have changed since your first bond hearing.

Once a judge makes a decision about your bond, the decision is final. You do have the right to appeal, that is, to ask a higher court to look at the judge's decision. But, in most cases, that court will only change the decision if the judge made a legal mistake. The only time a person can get a second bond hearing is when circumstances have changed greatly since the first hearing and the person writes a "motion" to the judge explaining what has changed and including proof of the changes. If you write such a motion, remember you must send a copy to DHS's attorney.

Another reason you need to prepare for your bond hearing is that the judge also has the option of raising your bond or taking away the bond DHS set for you.

So, if you are in court for a bond hearing but you don't have all the letters you want the judge to consider, tell the judge you are waiting for more letters and you want to have your bond hearing another day!

What do I have to show the judge at my bond hearing?

The judge must decide whether you are a danger to persons or property and whether you can be trusted to attend all your hearings in the future. If you have had criminal problems in the past, the judge will want to know whether you are likely to commit more crimes if he or she releases you. When deciding whether to lower your bond or not, the judge will consider:



- your family ties in the United States and the immigration status of your family members
- your ties to the community where you live in the U.S., including groups you belong to (such as church or community groups or sports leagues), property you own, and how long you have lived at your present address
- other property or valuable things you own

- your work history (and whether you have a job waiting for you)
- any problems you have had with the police or INS or DHS, and whether you have ever missed any court hearings
- how you entered the country and how much time you have been in the United States,
- your criminal record, and whether you are rehabilitated or have taken steps towards rehabilitation, and
- if you have a defense or alternative to removal (such as asylum, cancellation of removal, etcetera)
- **What can I do to get ready for my bond hearing?**

1. Think about what you are going to say.

You should come to your bond hearing ready to talk to the judge about each of the things on the list above.

The Immigration Service usually has records of any time you were arrested and any time you were convicted of a crime, so it won't do you any good to try to hide things from the judge. Also, it won't do you any good to say you were not guilty if you were convicted, because the crime is on your record and there is nothing the immigration judge can do to change that. It is better to take responsibility for the mistakes you have made.

If you have any criminal problems you should explain to the judge why you will not have future criminal problems. Tell the judge about any rehabilitative programs you have attended or plan to attend if released.

To help you get ready, we have attached to the back of this pamphlet a list of questions. You should write down the answers to these questions and either give the judge a copy of the paper or tell your answers to the judge at your bond hearing. If you give a copy to the judge, your answers must be in English and you must also give a copy to DHS's attorney. The worksheet we have attached is short, and you should feel free to add to it, but remember that the judge is mainly interested in the things we just mentioned.

2. Get all of your papers together.

You should also come to your bond hearing with any proof you can that what you say is true. This means that, before you ask for your hearing, you should work with your friends and family to get together all the papers you want to show the judge.

Have your friends and family members send papers directly to you, NOT to the judge.

Anyone who is sending papers for your bond hearing must send them directly to you and not to the judge because the judge is not allowed to read papers sent by outsiders. You may bring the letters with you to your bond hearing and give them to the judge at the time of the hearing.

It will help if your family members or friends can come to speak to the judge at your bond hearing. If they can't come, bring letters from them.

 **Bring letters of support to your bond hearing.**



Get letters from people who know you well, such as family members, your employer, the pastor of your church, and your probation officer.

Each letter should be written in the person's own words and should

- start with "Dear Immigration Judge"
- say the name and immigration status of the person writing the letter
- say what relationship that person has to you (for example, your mother or employer)
- be signed by the person writing the letter

The person you plan to live with if you get out of detention should also include his or her complete street address and say that he or she is willing for you to come live there. If you do not have a work permit, the person should also say that he or she is willing to support you until you are allowed to work. If you do not have a work permit, do not submit letters from past or future employers.



If you have had problems with the law, some of the letters should talk about these problems. They should explain how you got into trouble (for example, with drugs or alcohol) and how you have changed. The judge needs to be convinced that you will not go back and make the same mistakes you made before.

If you qualify for relief from removal such as asylum or cancellation of removal, your family members should explain in the letters why they do not want you to be deported. They should tell the judge what it will mean for them, for you, and for anyone else if you are deported.

The letter from your employer should say how much time you have worked for him or her, what your job was, and what position you are now being offered.

If your parent, spouse, or child is a U.S. citizen, bring a copy of the birth certificate or naturalization certificate to the court. If one of your family members has already filed a petition for you to become a legal permanent resident, bring copies of the paper from INS or DHS showing that the petition was filed. The petition is called an "I-130." If the petition was approved, bring copies of the paper showing that, also.

If you have spent time in prison and completed any classes or programs, you should bring your certificates to show the judge.

3. Get someone to translate any letters or papers that are not in English.

The judge is not allowed to look at any papers in a foreign language unless you also give the judge an English translation of the papers. So, if your letters or papers are in another language, you must have someone translate them. If you do this, make sure you also give the judge the original letters or papers (in the foreign language) along with the translation.

Whoever translates the letters or papers must sign a "Certificate of Translation" for each letter or other paper he or she translates. Here is what a Certificate of Translation should say:

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <u>Certificate of Translation</u> | |
| I certify that I am competent to translate the foregoing document, and that the translation is true and accurate to the best of my abilities. | |
| _____ | _____ |
| Translator's Signature | Date |

4. Make sure you have the complete street address of the place where you will live.

One thing you will need before you can get out of detention is a **complete address**. Many people, especially newcomers to this country, go to court with only a telephone number of a friend or family member, or an address that is not complete. But the judge can't let you go if you don't have a complete street address. Your case will continue after you get out of detention, and the court will need to send you papers telling you when and where your next hearing will be.



Also, the judge will not accept a post office box address. The judge needs the name of the street and the number of the house or apartment where you will be living.

When you go to court, the judge will not lower your bond unless you bring the complete address of the house or apartment where you will live if you get out of detention.

**A complete address in the United States has:
a street number, a street name, an apartment number (if there is one)
city, state, zip code**

For example:



Mr. Jones
4099 E. Random Street, #101
Los Angeles, California 90057

5. Make copies of all the papers you want to give the judge.

The law says you have to give DHS a copy of any papers you give to the judge. For your bond hearing, you do this by giving the copies to the lawyer for DHS when you go to court. The reason you should make two copies of everything is so that you can keep one copy for yourself. Also, in case you want to use your papers again, you can ask the judge for your original papers back at the end of the bond hearing and you can give the judge your copies to put in his or her file.

Before your bond hearing:

 **Make two copies of any papers you want to give to the judge.**

• What will happen at my bond hearing?

The judge will first want to know how high your bond is right now. He or she will also want to know how much you are asking him or her to lower it to.

The judge will give you a chance to speak and to give him or her any papers you want the judge to look at. Remember: you must also give copies to the lawyer for DHS. If you do not speak English well or if you ask to have your hearing in another language, an interpreter will help you speak to the judge.

The judge will probably also ask you questions about the things we discussed earlier such as your ties to the United States and any criminal problems you have had.

Next, the lawyer for DHS will speak to the judge. If you have a criminal record or if you have been in deportation proceedings before, the lawyer will tell the judge about that. The lawyer will tell the judge what DHS thinks is a fair bond in your case or why it doesn't think you should be allowed out of detention at all.

The lawyer for DHS also has the right to give the judge papers to consider, as long as you also get a copy of the papers. If you think it is not fair for the judge to look at those papers, you should say that. Unless you have a good reason, the judge will consider the papers.

After the lawyer is finished talking, the judge may ask you more questions. Also, if you think something the lawyer said was wrong, you should tell the judge.

After hearing from you and DHS, the judge will decide whether you should have to pay a bond to get out of custody and how much you should have to pay. The judge will then ask both you and the lawyer for DHS whether you want to appeal the judge's decision to another court. If you say "yes," you have 30 days to file appeal forms with the appeals court in Virginia. If you say "no," that means you accept the judge's decision. This rule is the same for the lawyer for DHS. We talk later in this booklet about appealing the judge's bond decision.

- **How much will my bond be reduced? Can I get out on my own recognizance?**

The judge can set your bond as high or low as he or she thinks is fair. The judge can **raise** your bond if he or she thinks it is too low. The judge can even take your bond away.

\$ For cases that started on or after April 1, 1997, the lowest bond the judge can set is \$1,500. The judge can also let you go without a bond, that is, "on your own recognizance," but that does not happen in most cases. It probably will not happen in your case if you have a criminal record.

As we said before, there are a lot of things the judge has to think about when he or she decides how much your bond should be, and each case is different. Someone with no criminal record may get what seems like a high bond because he doesn't qualify for any relief from removal and may decide not to go back to court once he gets out of detention. On the other hand, the judge may decide to let someone who does have a criminal record

get out of detention without having to pay any bond because he has strong family ties to the United States and a good chance of being able to win his immigration case.

- **Can I still fight my case against removal if I don't get out on bond?**

Yes. If you do not get out of detention before your final immigration hearing, you have the same rights as someone who does get out. If you qualify for something such as asylum or cancellation of removal, you do not lose the right to apply for it just because you cannot get out of detention.

PAYING THE BOND AND LEAVING THE DETENTION CENTER

- **Are there bond companies that can help me if I can't pay all of my bond?**

Yes, in some places, there are bond companies. The company pays the bond and you pay a percentage of the bond to the company each year that the case continues. Generally, these companies will only help you if you have strong ties to the United States, including family members. They also usually require that you or your family have property or other things of value that the company can take and sell to get back its money if you don't go to your hearing.

- **How do I pay the bond?**

You can pay the bond at the detention center, or your family member or friend can pay it at almost any immigration office. You can pay with a money order from a U.S. post office



or a cashier's check made. In some places, you can pay with cash. You cannot pay with a personal check, with travelers' checks, or with a money order that is not

from a U.S. post office. The person who pays needs to have your file number (which begins with the letter "A") and your full name as it is listed with DHS.

- **If I get out on bond, can they detain me again while my case is still going on?**

If you do everything you are supposed to do, this should not happen. But if you do not go to one of your court hearings or to an appointment with DHS, or if you work without permission, DHS can arrest you again. If DHS arrests you, you risk losing the bond money. For this reason, if you receive a notice from DHS or the court and you are not going to be able to attend, you need to arrange in advance to reschedule your appointment.

If you have a serious problem with the police after you get out of detention, DHS can arrest you again. If that happens, they give you back your bond money.

Once in a while, a family member or friend pays the bond and then changes his or her mind and decides he or she doesn't want to be responsible for the person. In that case, DHS can arrest the person again and give the bond money back to the family member.

- **How do I get the bond money back after my case is finished?**

If you go to all your hearings with the Immigration Court and all appointments with DHS, DHS will give back the bond money. At the time your bond is paid, whoever pays it will be given some special papers. These papers must be kept in a safe place because when your case is over, the person who paid the bond will have to send the papers back to a certain office in order to get the money back. The papers also explain exactly what to do. It takes about three to six months from the time your case ends to get the money back.

YOUR RESPONSIBILITIES AFTER LEAVING THE DETENTION CENTER

- **What happens if I leave the detention center on bond or if the judge lets me go without a bond?**

If you are allowed to leave the detention center before your immigration case is over, your immigration case continues. The court will send you a letter telling you the date, time, and place of your next hearing.

For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.

**When you leave the detention center,
 look for legal help for your case!**

It is also very important that you or your lawyer ask the court to transfer your case to a different court, unless you want to go to court where your case is now. You do this by filling out a form called a "Motion for Change of Venue" on which you write the address where you plan to live when you leave the detention center. Remember: your address has to be a street address, not a post office box! At some detention centers, an Immigration officer will give you the form and will give it to the court after you complete it. If that is not how it is done at the detention center where you are, make sure to find out how to get file a "Change of Venue" motion. Ask the court if it has a form you can use. Make sure to file the motion with the court and send a copy to DHS's attorney.

If for some reason you do not fill out the "Motion for a Change of Venue" before you leave, you can still write to the judge in English to tell him or her what your complete address is and to ask that your case be transferred to the nearest Immigration Court. Remember to send a copy of your letter to DHS.

When you leave the detention center, if you do not want your next court hearing to be where you are now,



file a "Motion for Change of Venue!"

- **How can I find out for certain that my case has been transferred?**

There is a number you can call for free to get certain information about your case. That number is 1-800-898-7180. When you call, a tape-recorded voice will ask you to give your immigration identification number (8 numbers with an "A" in front of them) by pressing the numbers on your telephone. By doing what the voice on the tape tells you, you can find out when and where your next hearing is.

You can use this telephone system to get information in either Spanish or English. It may take a few days from the time the court gets your "Motion for Change of Venue" to the time the telephone system has the information, so wait a few days if you can.

If you do this and find out that your case has not been transferred to a new court, but you think that you gave the court a "Motion for Change of Venue," you can call the court directly. If your English is not good, have a friend who speaks English well help you make the call.

When the court gets the motion for a change of venue, it will decide whether to move your case to the Immigration Court closest to the address you wrote down. If the court grants your motion, the new court will send you a letter telling you where and when to go for your next hearing. Most courts will grant the motion to change venue. But, if for some reason, your motion is denied, seek legal assistance! Call the immigration court where you were detained if you don't receive a notice from the court that your case has been moved to a location near you.

You must attend your court hearing wherever it is or you will be ordered removed from the United States! You can also lose your right to apply for anything else, such as asylum, cancellation or removal or any other relief from removal.

- **What should I do if I move?**



Every time you move, it is your responsibility to tell both the Immigration Court and DHS! There are special forms to do this and you can get one from the Court and a different one from DHS. The DHS officers may give you the forms when you leave. Letting the Court and DHS know your new address will not change where you will have your hearing. As we explained before, in order to do that, you need to send the Court and DHS a "Motion for a Change of Venue." Instead, the special forms used for changes of address tell the Court and DHS where to send you papers about your case.

When the Immigration Court and DHS send you papers, they will send them to the address you gave them. If the Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address. **If you don't show up to court on that date, you can receive an order of removal.** This means that the next time DHS arrests you, you can be sent back to your country without the chance to speak to a judge.

If you move,
 **send the Immigration Court your new address!**

It is important to remember that the Court and DHS are two different things. If you let DHS know your new address but you don't send the right form (a blue "Change of Address" form) to the Immigration Court, the Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you can get a deportation order without seeing a judge.

If you have any applications on file with DHS, you also need to send a special "Change of Address" form to the Immigration office that is dealing with that application, if you have moved. For this, you don't use the Court's blue form. Instead, you use a special form called an "AR-11" that you can only get from an immigration office. If you can't get one, you can send the immigration office that has your application a letter telling that office what your new address is. Make sure you put your full name and "A number" on the letter. Also, keep a copy for yourself and make sure you get proof that your change of address form or your letter was received. For example, you can send it by certified mail.

APPEALING THE JUDGE'S DECISION

- **What do I do if I think the judge's bond decision is wrong?**

You have the right to appeal, which means that a higher court will look at the judge's decision to see if the judge made a mistake.

At the end of your bond hearing, if you tell the judge you want to appeal, the judge or an officer will give you some forms and you will have 30 days to fill them out and get them to the appeals court. The appeals court, which is called the Board of Immigration Appeals, is located in the state of Virginia. The Board of Immigration Appeals must receive your papers by the 30th day or the judges there will not read them. You will also have to give copies of the forms to DHS after you have filled them out in order for your appeal to be considered.

The forms you must fill out in order to appeal the judge's decision are 1) a brown "Appeal Fee Waiver Request" form, and 2) a white "Notice of Appeal" form.

If, after 30 days, the appeal papers have not been received in Virginia, you will not be allowed to appeal and the judge's decision will become final. If the appeals court has received your forms, the court will give DHS a chance to file some papers also. The Immigration Service will give you a copy of whatever papers it files.

When the appeals court in Virginia has received the appeal papers from you and from DHS, some judges there read what happened in your case and make a decision. If they decide against you, you may be able to appeal that decision to a federal court. A law passed in 1996 appears to say you cannot, but this law may violate the Constitution of the United States, which allows a person held by the government to file a petition called a "writ of habeas corpus."

This pamphlet does not explain how to take your case to federal court.

- **What happens if DHS appeals the judge's decision on my bond?**

If this happens, DHS will send the Board of Immigration Appeals papers saying why it thinks the judge made a mistake in your case. The Immigration Service will give you (or your lawyer, if you have one) a copy of these papers, and you can then send the court papers saying why you think the judge's decision was right. You should try to get a lawyer to help you with this.

The Immigration Service might ask the Board of Immigration Appeals to "stay" the Immigration Judge's decision regarding your bond while DHS appeals. If the Board agrees, this means that the Immigration Judge's decision to lower your bond or release you on your own recognizance will have no effect while DHS appeals the decision. The appeal can take from six to nine months or more. If DHS gets a stay of the Immigration Judge's decision, you might have to stay detained while you fight your case.

In some cases, if DHS files Form EOIR-43 with the Immigration Court on the same day the Immigration Judge decides your bond, the Judge's decision is **automatically** stayed while DHS appeals the Judge's bond decision. This could happen if (1) DHS originally set your bond at \$10,000 or more or at "no bond" and (2) you are subject to mandatory detention.

- **Will it do any good to appeal my (bond) case?**

Although no one can answer this question without knowing your case, we can tell you that the Board of Immigration Appeals usually does not change what the immigration judges decide in bond cases unless the judge's decision was wrong about the law.

- **What happens to me while I am waiting for the higher court to decide my bond appeal?**

Whether or not you are able to pay the bond that the judge set in your case, your immigration case continues. If you are still in detention when it is time for your next

court date in your deportation or removal case, you will be brought to court. The fact that you have appealed the bond decision does not affect your immigration case at all. It keeps going. If you are detained at the time of a bond appeal, the appeal could take three to nine months or more. If you are not detained, the appeal will take longer.

What Does It Mean? -- Some Important Words

AGGRAVATED FELONY:

In the next box are some of the most common aggravated felonies. For the complete list, see volume 8, section 1101(a)(43) of the United States Code, or section 101(a)(43) of the Immigration and Nationality Act.

If you have been convicted of an aggravated felony and can get assistance from an immigration lawyer, ask your lawyer to review your conviction carefully. Sometimes an immigration lawyer has an argument that your conviction is not an aggravated felony. Also, in some cases, a criminal defense lawyer might be able to reopen your conviction to change the sentence or the nature of your conviction. It is difficult to reopen criminal cases once you have been convicted of a crime and only certain ways of changing your conviction in criminal court will change your conviction for immigration purposes. To find out more about this, you will need to talk to an experienced immigration lawyer.

SOME CRIMES THAT ARE AGGRAVATED FELONIES

- Certain **drug crimes** or **trafficking in firearms, explosive devices or drugs**. **Drug trafficking includes:**
 - **transportation, distribution, importation;**
 - **sale and possession for sale;**
 - **possession of over 5 grams of cocaine base (not possession of cocaine – “cocaine base” is different from “cocaine”);**
 - **maybe two convictions for simple possession of drugs.** (If you have been convicted of two crimes of simple possession, try to get a lawyer’s help. There is an argument that may help you if the first drug crime was not used to give you a harsher sentence the second time.)
- **A certain crime for which you received a sentence of one year or more,** (whether you served time or not) including any of these:
 - **theft** (including receipt of stolen property)
 - **burglary**
 - **a crime of violence** (including anything with a risk that force will be used against a person or property, even if no force was used)
 - **document fraud** (including possessing, using, or making false papers) – unless it was your first crime time and you did it only to help your husband, wife, child, or parent)
 - **obstruction of justice, perjury, bribing a witness**
 - **commercial bribery, counterfeiting, forgery, trafficking in stolen vehicles with altered identification numbers**
 - **certain gambling crimes** (if you have another gambling conviction)
- **rape**
- **sexual abuse of a minor**
- **murder**
- **felony alien smuggling** (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)
- **fraud or income tax evasion**, if the victim lost over \$10,000
- **failure to appear** (if you were convicted of 1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or 2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years)
- **money laundering** (of over \$10,000)

You are also an aggravated felon if your conviction was for **attempt or conspiracy** to commit one of the crimes just listed.

CRIME INVOLVING MORAL TURPITUDE:

This includes many different types of crimes, both felonies and misdemeanors. Generally, a crime involves "moral turpitude" if it involves an intent to steal or get something by fraud, or if it was done carelessly or on purpose and someone was or could have been greatly harmed. Acts considered "lewd" or perverted are often "crimes involving moral turpitude," too.

- **What should I do about the frustration I feel about being detained?**

If you are not able to leave the detention facility while you go through immigration proceedings, do not give up if you have a case to fight! Watch the "Know Your Rights" video to learn about possibilities for avoiding removal from the United States. If you have a possibility to stay here, fight your case even if it means being detained for a few months. It is worth it. Most people who get removed from the United States have no way to come back to the United States legally. Hire a lawyer if you can to represent you in your case and with regard to your detention.

Best of luck with your case!

© **The Florence Immigrant and Refugee Rights Project, Inc, March 2002.** The Project grants permission for the copying of this document, as is, for personal use or for free distribution to DHS, to detainees in DHS custody, or to entities that assist such detainees. However, any changes to these materials or to any part thereof must be approved by the Project. Approval may be sought by writing to the following address: Director, the Florence Immigrant and Refugee Rights Project, P.O. Box 654, Florence, Arizona 85232. Sale of this document or any part thereof for profit shall constitute a copyright violation.

This pamphlet was written by Lynn Marcus and updated by Elizabeth Dallam with support from the Marshall Fund of Arizona and the Ford Foundation. Ms. Marcus is an assistant adjunct professor at the University of Arizona College of Law. Ms. Dallam is the former Director of the Florence Immigrant & Refugee Rights Project.

We are grateful to Dan Kesselbrenner of the National Immigration Project of the National Lawyers Guild and to Judy Rabinovitz of the Immigrants' Rights Project of the American Civil Liberties Union for their editorial assistance. Any mistakes are the author's own.

BOND WORKSHEET

Basic Information

Name: _____ A# _____ Age: _____

Where were you born? _____

Do you have legal permission to live in any other country? Yes _____ No _____

If so, what country? _____

Were either of your parents born in the U.S.? Yes _____ No _____

Were either of your grandparents born in the U.S.? Yes _____ No _____

How long have you been in the United States? _____

What is the address where you plan to stay if you are released from custody? (Note: Do not list a P.O. Box)

Who lives at that address? (Note: You are not required to name people who do not have papers in the U.S.)

Immigration Status and Immigration History

Did you ever apply for papers to live in or enter the U.S.? Yes _____ No _____ When? _____

If so, what kind of papers or legal status did you apply for? (For example, "I applied for legal permanent residency through my wife," or "I applied for amnesty through field work.")

What happened and when? (For example, "I got my permanent residency on February 12, 1976.")

Have you ever been in immigration court with an immigration judge before? Yes _____ No _____

If yes, when? _____ What happened? _____

If you ever missed a court date in immigration court, explain what happened: _____

Family Ties to the United States

Are you (circle one or more): married / single / divorced / widowed / engaged?

If married or engaged, does your spouse or fiance(e) have legal status in the U.S.? Yes _____ No _____

If so, what is your spouse's status? (for example: U.S. citizen, legal permanent resident) _____

Bond Worksheet (continued)

Do you have children? Yes _____ No _____ If yes, how many? _____

If your children live in the U.S., what is their legal status? _____

List all other relatives with legal status in the U.S. and say what status they have. List by relationship an legal status. (You do not need to put their names).

| <u>Relationship</u> (example: mother, uncle) | <u>Legal Status</u> |
|----------------------------------------------|---------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Other Ties to Your Community in the United States

Do you own a house or other property in the U.S.? Yes _____ No _____
If yes, what do you own? _____

If you belong to or participate in any clubs, groups, organizations, or activities (for example: church, volunteering at your child's school), write about that here.

Work History

List the jobs you have had and, as best as you can remember, the dates you had them.
Warning: if you worked with false papers or lied on any forms to get or keep your job, you may not want to answer this question because your answer could be used against you later by the government.

Bond Worksheet (continued)

Is there anything you would like to say to the judge about your work history? _____

If you have a job that you can start (or return to) if you are released, what is the job? (Note: answer this question only if you have legal permission to work in the U.S.)

Criminal History and Rehabilitation

| Date of conviction (If you don't know, guess) | What were you convicted of? (not what you did, but what is on your record) | What sentence were you given (how much time and/or fine)? | Did you miss any court dates for this case? If so, list them all. | How much time did you serve? | Were you given probation or parole? If yes, for how long? | Did you complete or violate your probation/parole? If you violated, did you get sentenced to more time? |
|-----------------------------------------------|----------------------------------------------------------------------------|-----------------------------------------------------------|-------------------------------------------------------------------|------------------------------|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Is there anything that you would like to tell the judge about any of these crimes? (For example, the circumstances of the crime; the reasons you missed a court date) (Remember: it does not help you to say that you were innocent of a crime that is yours and that is on your record because the judge must count it against you.)

Bond Worksheet (continued)

Have you participated in any programs or classes or done anything else to improve yourself after your crime(s)? (This includes things you did in jail or prison such as Narcotics Anonymous meetings, completing your GED, or jobs in custody.)

What are your plans for the future?

Fear of Returning to Your Country

If you are afraid to return to your country, explain why. If anyone hurt or threatened you or anyone in your family, explain what happened.

Anything Else You Think the Judge Should Know

The main things that the judge has to decide are:

- 1) whether you are a danger to people or property, and
- 2) whether you will show up for all your court hearings if you are released.

If you anything more to say about these things, say it here. (For example, if you have lived many years at the address where you plan to live now, you may be more likely to show up for your hearings.) (Other things to mention: health problems of you or your family members; child support or other obligations).

REMEMBER: AT YOUR BOND HEARING, GIVE THE JUDGE LETTERS OF SUPPORT AND ANY OTHER PAPERS YOU WANT THE JUDGE TO CONSIDER!

Make copies for yourself and the government's lawyer.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

City and state where court is

| | |
|--------------------|-----------------------------|
| _____) | IN REMOVAL PROCEEDINGS |
| In the Matter of) | |
| _____) | File No. A _____ |
| (your name)) | |
| Respondent) | MOTION FOR CHANGE OF |
| _____) | VENUE |

The Respondent has bonded out and will be residing at:

(your address outside of detention)

The Respondent requests that his case be transferred to the Immigration Court that covers the area of his residence.

CERTIFICATE OF SERVICE

This original document is being sent by mail to:

Executive Office of Immigration Review
Office of the Immigration Judge

(address of court that handled your case while you were in DHS custody)

I hereby certify that I have served a copy of this motion by mailing a copy to:

District Counsel
Department of Homeland Security

(address of the DHS office that handled your case when you were in DHS custody)

Date: _____ Signed: _____
Respondent (sign your name here)