A Guide to Getting a Bond Hearing if You Have Been Detained for a Long Time



The Florence Immigrant & Refugee Rights Project is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. We do not charge for our services. To see our guides, go to: www.firrp.org.

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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Important Words to Know

Immigration law has a lot of technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

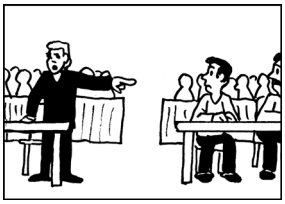
- **Deportation:** ICE has put you in deportation proceedings, which are also called removal proceedings. If the judge orders you deported or "removed" from the United States, officials will send you back to the country where you are a citizen. You will not be able to legally return to the U.S. for at least 10 years.



- **Florence Project:** A group of lawyers and legal assistants who provide free legal help to people who do not have lawyers. The Florence Project wrote this guide to help you understand your case.



- **Government Attorney:** The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and talks to the judge. Government attorneys should see that justice is done. Usually, they ask the judge to order to deport you.



- **Immigration and Customs Enforcement (ICE):** The agency that has put you in deportation proceedings and detained you. ICE is part of the Department of Homeland Security, or DHS.



- **Immigration Judge (judge):** The person who will decide your case. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.



Who Should Read this Guide?

If you have been detained for more than 6 months and have not yet had a bond hearing, this guide from the Florence Project will help you. Although we cannot determine if you will be granted a bond hearing, this guide explains the process.

If you do eventually have a hearing, tell the Florence Project about it so that we can update this document to help others.

What Is a Prolonged Detention Bond Hearing and Who Can Have One?

If you have been detained for more than 6 months and have not had a bond hearing, you may be able to ask for one. In some situations, the Ninth Circuit Court of Appeals and Federal District Courts have ordered that people who have been in detention for a prolonged time — for more than 6 months — should get a bond hearing, even if they were originally not allowed to have one. This is called a *prolonged detention bond hearing.*



In 2022, these situations include:

- People who have a case pending at the Ninth Circuit can qualify for a bond hearing under *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).
- People who have a final order of removal can ask for a bond hearing under *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011).
- People who have been identified as class members of the *Franco-Gonzalez v. Holder* class action.
- People in withholding-only proceedings can qualify for a bond hearing under *Aleman-Gonzalez v. Sessions*, No.18-cv-01869-JSC (N.D. Cal, June 5, 2018).

But these are only examples. The laws about who may have a prolonged detention bond hearing may change.

If you believe you should have a prolonged detention bond hearing, submit a written request to the immigration judge asking for one.

- **If the judge DENIES your request for a bond hearing and you still want one**, within 30 days of the date on denial notice, send a *Notice of Appeal* on the colorful forms to the Board of Immigration Appeals.
- **If the judge GRANTS your request,** you should receive a notice in the mail telling you of the date of your bond hearing. Start to prepare for that hearing.



How Can You Ask for a Prolonged Detention Bond Hearing?

Some courts may automatically give you a date for a prolonged detention bond hearing.

If you are eligible for a prolonged detention hearing but do not automatically get a date, when you are ready submit a motion asking the court to give you a hearing.

Below is a sample motion that you can use to ask for a custody redetermination hearing. Also included is a *Certificate of Service* that shows you have delivered the motion.

Fill in the blanks in this motion and the certificate and file them with the court. You will then get a hearing date.



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
ELOY, ARIZONA

In the Matter of:	)	
	)	In Bond Proceedings
A#	)	
	)	
Respondent	)	

REQUEST FOR CUSTODY HEARING

I respectfully request that the Immigration Court schedule a custody redetermination hearing for me. My case is presently or has at one time reached the Ninth Circuit Court of Appeals, and I was initially detained based on: _____.

I believe that I am now eligible for a bond hearing pursuant to *Casas-Castrillon v. Dep't of Homeland Sec*., 535 F.3d 942 (9th Cir. Cal. 2008) and/or *Diouf v. Napolitano*, 634 F.3d 1081, 85 (9th Cir. Cal. 2011).

Under INA § 236(a) the Immigration Judge may release me on bond or grant conditional parole. At the solicited hearing, I am "entitled to release on bond unless the government establishes that [I am] a flight risk or will be a danger to the community." *Casas-Castrillon*, 535 F.3d at 951 (citations omitted) (emphasis added).

At the hearing, I ask the Immigration Court to faithfully apply the *Matter of Guerra,* 24 I. & N. Dec. 37 (BIA 2006) factors to determine whether the government meets its burden of proving danger and flight risk by clear and convincing evidence. *See Singh v. Holder,* 638 F.3d 1196, 1200, 1206 (9th Cir. 2011).

Finally, I request that the court grant conditional parole or set a bond amount that is reasonable because the Ninth Circuit has correctly suggested that "serious questions may arise concerning the reasonableness of the amount of the bond if it has the effect of preventing an alien's release." *Doan v. INS,* 311 F.3d 1160, 1162 (9th Cir. Cal. 2002).

Respectfully submitted this _____ day of _____, 20___,

_____
Respondent, *pro se*

Certificate of Service

I, _____

(Write your name)

swear that I provided a copy of this package to ICE Litigation for DHS District Counsel. I mailed it to this address:

_____

_____

_____

on the date below.

Signed: _____

Date: _____ /_____/_____

Day / Month / Year

Who Presents Evidence at the Hearing?

At a prolonged detention bond hearing, the government should present evidence that:

- You are a "flight risk," or
- You are a "danger to society."

Even though in theory you should not have to present evidence at the hearing, typically to get a bond, the judge will probably expect you to present some evidence, too.



What if the government argues or the immigration judge thinks that you are not eligible for a bond hearing?

In some cases, it may not be clear if you are eligible for this kind of bond hearing.

If the government attorney argues that you are not eligible or if the judge tells you that you might not be eligible, then you should ask for a continuance to prepare a response and, if possible, to seek legal advice from an attorney.

What proof should you present at the hearing?

You can present 2 kinds of evidence at the hearing:

- **Documents:** For example, a sponsor letter, criminal records, class certificates, and support letters.
- **Testimony**: What you want to tell the judge.

Make sure to practice what you want to say before the hearing.

Use the questions on the next few pages to help prepare for your hearing. Do not worry if you cannot get some of it. It is the government's responsibility to prove their case. But even though the government must present evidence, the judge will probably expect you to collect a good amount of evidence as well. Be prepared and gather as much proof as you can.

Question: Where will you live if you are released?

You must show where you are planning to live if you are released.

The judge wants to know that you will live with a responsible person in the United States. This person (or *sponsor*) must have legal immigration status and must be willing to give you a place to stay.



Best evidence:

- Signed letter from a sponsor who has legal immigration status in the United States. The sponsor must write that they will give you a place to stay. Include the specific address.
- A copy of the sponsor's identification.
- Proof of the sponsor's address, like a utility bill or rental agreement.

Question: What is your criminal history?

You must explain if you have a history of having committed any crimes.

The judge wants you to talk about any criminal convictions, arrests, warrants, and restraining orders. To prepare, you should be able to answer these questions about each incident:

- What were you doing?
- Why were you doing it?
- Have you accepted responsibility for the things on your record?
- How are you going to make sure it does not happen again?

Important Note: If you cannot remember parts of your criminal history, you might be able find them listed in documents from the government attorney. For example, the I-213 often has many mistakes, but does have information about your record. Also, the government may give you conviction documents for the offenses that they argue make you deportable.

At this point in the process, **if you want to fight your actual immigration case, it is often not a good idea to admit to your crimes or your criminal history.** It is the government's job to prove that you have a criminal history.

At the bond hearing, it is very important that you talk honestly about your criminal record and that you do your best to remember everything that is on it.

But bond hearings are separate from your immigration case. So, an immigration judge cannot make a decision about your asylum case in a bond hearing, nor can a judge decide your bond request when you are appearing in removal proceedings.

Best evidence:

- Your testimony

Question: How have you taken responsibility?

The judge will want to know what you think about your criminal history and if you have taken responsibility.

You must show what steps you have taken to rehabilitate or change your actions and how you will follow the law after you are released on bond.

Best evidence:

- Your testimony.
- Letters from probation officers, public defenders, and social workers.
- Proof that you have reached out to programs that you could attend after you are released.
- Certificates of participation in a program.
- Any books or articles that you have read about changing your behavior.

Question: Will you continue to go to your immigration hearings and follow orders after your release?

The judge will want to know if you will go to future hearing dates (if there are any) and if you will follow a deportation order (if that is how your case ends). The judge may ask you to promise that you will do so.

Best evidence:

- Your testimony
- Letters from friends, family, teachers, and other members of the community. Include their identification to prove their legal status.
- Copies of paid bills or taxes.
- Proof that you are legally employed.
- Evidence that you cooperated with other court proceedings.
- Proof that you will join future school or training programs.
- Evidence of where you will live when released.
- Proof that shows you are part of any community organization.



Question: How have you behaved while you were detained?

The judge will probably focus on both positive and negative things that have happened while you were detained.

Negative behavior while detained

If you have any "write ups" or "incident reports," the government attorney will probably include those as evidence. You can and should object to using those as evidence. Argue that the documents were prepared by someone who is not in court and that you cannot cross-examine that person. But judges almost always overrule that objection and let the documents in.

The most important thing now is to ask for a chance to explain what happened. Be prepared to discuss exactly what happened in each incident. Explain if there is anything wrong in the write ups and disciplinary reports. If anything is wrong, it is important to correct them in front of the judge.

Best evidence:

- Your testimony.
- Letters from other detainees who witnessed the incident.

Positive **behavior while detained**

Make sure to talk about the good things that you have done while you have been detained. Some examples include explanations that you are working, going to religious services, reading books, keeping a journal, writing, exercising, helping others prepare or practice for a hearing, and repairing relationships with friends and family outside.

Important Note: If you prepared legal documents for others, that is the unauthorized practice of law. The judge will not like it.

Best evidence:

- Positive letters from detention center staff and ICE employees who have supervised you.
- Notes from religious volunteers or the chaplain.
- A list of the books that you have read.
- Explanations of the types of exercise that you have done.

Question: Do you have a strong immigration case?

The judge will probably spend some time talking with the government attorney about whether you can win your immigration case. If this happens and you feel comfortable, you can ask to say something about your case.

You can explain to the judge why you feel that you have a strong case and why you think you will win. You do not have to do this if you do not feel comfortable talking about the law.



Best evidence:

- Proof that you have an attorney at the Board of Immigration Appeals or the Ninth Circuit.
- Copies of the opening brief that the Board of Immigration Appeals or the Ninth Circuit have yet to decide.
- Copies of a court decision (from any time in your case) that helps your case.

Helpful Evidence Tip:

Support Letters

Support letters are a common and important piece of documentary evidence that you can include. Sign these letters with something like, "I swear that everything I said is true and correct."

The letters do not need to be notarized.

- **The person writing the letter should include a copy of their identification and proof of lawful status.** If someone does not feel comfortable sharing identity documents, then they should write that in the letter.
- **Letters can be from family, friends, church, former employers, landlords, and other community members.**

The letters should include:

- Their relationship to you, how they know you
- How long they have known you
- What your relationship to them means or how you are a valuable member of the community
- If they believe that you will be responsible in going to your hearings and following orders. What they will do to help make sure that you go to hearings and follow orders
- If they know your temperament or have specific stories of things that you have done that show you are generous, kind, or peaceful
- What they can offer to ensure that your return to non-detained living is smooth and comfortable (for example, they will provide a home or help you take classes, find a job, etc.)

What Other Evidence or Issues Can Arise?

It is possible that other types of evidence or issues will be talked about in your case. If you have other positive things to share, include them or talk about them at your hearing.



Some issues that you or the government attorney might talk about at your hearing include:

- You have been detained for a long time (say how long it has been) and no end is in sight (guess how much longer you think the process will take).
- You are from a country that does not issue travel documents, or your embassy has said it will not issue travel documents.
- You have prior deportations, voluntary departures, or previously were involved in immigration proceedings.
- You have goals for the future – this should include goals of what you want to accomplish in the U.S. if you win and goals of what you will do in your country if you lose your case.
- You did or did not follow the terms of your probation.
- You did not appear or tried to escape.
- You have owned or currently own property (You own a car, a house, etc.).
- You completed a GED, high school, training program or certificate program, some college, etc.
- You have the financial ability to pay a bond. If you want to ask the judge for a low bond, show proof of your financial ability to pay a bond (tax returns, paystubs, debts and bills, etc.)

What Will Happen if You Disagree with the Judge's Decision?

The judge may set a bond too high, decide you are a flight risk, decide you are a danger, or make a decision that feels wrong to you. You can appeal the judge's decision if you do not agree with it.

Before the hearing, it is a good idea to decide whether you will appeal a bad decision.

If you will, then make sure to say, "Yes," when the judge asks, "Do you want to appeal my decision?"

If you are happy with the decision, you can say, "No." If you waive your right to appeal, then you will probably not have another chance to challenge your detention.

The Florence Project has another guide to help you file and write an appeal. Go to https://firrp.org/resources/prose/.

What if the ICE Attorney Disagrees with the Judge's Decision?

If the judge gives you a bond and the ICE attorney disagrees, the attorney may ask to *stay* — or stop — the judge's decision and appeal it to the Board of Immigration Appeals.

If the ICE attorney decides to stay the bond, they have to file a notice of intent to appeal the judge's decision (*Notice of Intent to Appeal the Custody Redetermination*, Form EOIR-43) with the court. They will give you a copy within 1 business day of the order. They also must file a notice of appeal within 10 days. While the stay is in place, you cannot pay your bond and you will not be released until the Board of Immigration Appeals decides your case.