

How to Prepare Information to Support Your Request for Release from Detention



AMERICAN **BAR** ASSOCIATION

Commission on Immigration

This packet of materials is intended to assist you in seeking release from detention when your case is pending, or after you have had a decision in your case, or after prolonged detention following a decision in your case.

To be successful you must convince the decision-maker to do something they are reluctant to do, in this case that is releasing you from detention.

You will convince them to release you by writing up an explanation which addresses each issue they are worried about, and then you will supplement this explanation with a variety of support letters and other documents.

Please note that the ABA is not an organization that represents persons before U.S. Immigration and Customs Enforcement (ICE), the immigration court, or the Board of Immigration Appeals. This information is for educational purposes only and is not meant to be taken as legal advice. Immigration law and the facts in your case are complex and you should seek that advice of an attorney regarding procuring supporting documents as well as other aspects of your immigration case.

If you have any questions, comments, or would like to request more information, please contact us at:

American Bar Association
Commission on Immigration
1050 Connecticut Avenue, NW
Suite 400
Washington, DC 20036
Telephone Hotline for detainees: 2150#
Website: www.americanbar.org/immigration

This packet discusses what supporting information you should collect to support your request from detention. Your request may come in a variety of situations: when you are fighting your case but are not subject to mandatory detention; when you are asking for a bond hearing from a judge, after you have lost your case and are preparing for a 90-day or 180-day ICE review to determine whether to continue your detention; or when you have filed for habeas corpus before a federal court judge.

Each of these situations is unique and complicated and you should discuss your situation with an immigration lawyer. If you are unable to find a lawyer to represent you, you may want to consult the following publications from which some of the information in this packet was adapted.

These materials may be obtained online from the project which produced them, or you may contact the American Bar Association through their Detainee Hotline at 2150# or by writing to the ABA at the Washington DC address on page 2.

The Commission on Immigration appreciates the 2019 revisions made to this guide by Morgan Peck.

From the Florence Immigration and Refugee Project:

<https://firrp.org/>

“Getting a Bond: Your Keys to Release from Detention”

<http://firrp.org/media/Bond-Guide-2013.pdf>

“Guide to 90 Day Custody Review Process”

<http://firrp.org/media/90-Day-Custody-Review-Guide-2013.pdf>

The PAIR Project:

<https://www.pairproject.org/>

“Getting Out of Detention After a Deportation Order: Post-Order Custody Reviews and Habeas Corpus”

ABA Commission on Immigration:

https://www.americanbar.org/groups/public_services/immigration.html

“A Legal Guide for ICE Detainees: Seeking Release from Indefinite Detention After Receiving A Final Order of Deportation”

Deciding who gets released, who are the Decision-makers?

- **If you are applying for release from detention under supervision while your case is pending, the request will be decided by your deportation officer and the ICE Field Office.**
- **If you are filing a bond request with the Immigration Court while your case is pending, the request for release will be decided by the Immigration Judge.**
- **If you are applying for release for detention after your case has been decided and as your 90-day review is approaching, the decision will be made by the Field Office.**
- **If you are applying for release for detention after your case has been decided and as your 180-day review is approaching, the decision will be made by the ICE Headquarters Case Management Unit in Washington, DC.**
- **If you are filing for release through habeas corpus after a period of prolonged detention following your final order of removal, the decision will be made by a Federal District Court Judge.**

What are the reasons that the decision-maker may be reluctant to release you?

- **They are not 100% sure who you are, or what your “true identity” is.**
 - If ICE or the Judge are not absolutely certain who you are, if they are worried you are using a fake identify, they will not release you.
- **They are worried that if you are released you will not have a place to live, or money to live on.**
 - You will need to prove that you will have a roof over your head and someone who will be paying expenses so you will not be living on the street or committing crimes to survive.
- **They are worried you are a danger to society: that you may commit crimes when you are released and they will be blamed for letting a dangerous person leave detention.**
 - Neither a judge nor ICE are going to want to release you if they think you will commit a crime and hurt someone. If you do not have a criminal record this should not be a concern. If you do have a criminal record you will need proof of that your crime came from circumstances which will not be repeated and that you have been rehabilitated.
- **They are afraid you are a significant flight risk: that if they let you out of detention you will hide yourself, you will fail to appear for any scheduled court hearing, or they will not be able to find you when the time comes to remove you.**
 - While you are in detention they know where to find you, they are absolutely sure you will appear for future court hearing, and if they get travel documents they will be able to take you to the airport. In order to persuade them to let you out of detention you have to convince them that you are reliable when you say you will meet all the requirements of your release, including appearing for court hearing, and notifying them of any change of address.
- **They may be upset with you because they don't think you are helping them get the travel documents which are needed so that you can be removed.**
 - Once you have been ordered removed ICE will be trying to get travel documents from your home country so they can deport you. You have an obligation to cooperate with ICE's requests for travel documents, and if you fail to cooperate neither ICE nor a Judge are going to let you out of detention.

What are the steps you need to take to prepare your packet of information for the decision maker?

- **You must write up a statement or declaration which addresses each of the five concerns that the decision-maker will have releasing you from detention.**
- **You must collect any documents like passports, birth certificates, tax returns, etc. which support the statements you make in your declaration.**
- **You must collect support letters from family, friends, employers, and community members which support your statements in the declaration.**
- **You must combine your statement with all the relevant documents and send it to the decision-maker.**

Writing a statement or declaration requesting release.

To whom should the declaration be addressed?

- **If you are applying for release from detention under supervision while your case is pending, the request will be addressed to your deportation officer and the Field Office.**

ICE Detention and Removal Office
US Department of Homeland Security

Dear Immigration Officer (Name):

- **If you are filing a bond request with the Immigration Court while your case is pending, the request for release will be addressed to the Immigration Judge.**

To the Honorable Judge (Name):

- **If you are applying for release for detention after your case has been decided and as your review is approaching**

90-Day Review:

ICE Detention and Removal Office
US Department of Homeland Security
Field Office street address

180-day Review:

ICE Headquarters Case Management Unit
US Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

Dear Immigration Officer:

Greetings,

- **If you are filing for release through habeas corpus after a period of prolonged detention after your final order of removal the decision will be made by a Federal District Court Judge**

The Honorable Judge (Name)
US. District Court
(street address)

The Honorable Judge (Name)

What concerns should you address in your letter?

1. Your identity.
2. That you will have an address where you will be living and that you will have people who will be supporting you.
3. Proof that you will not be a danger to society.
4. Proof that you are not a significant flight risk and you will comply with the conditions imposed as part of your release.
5. That you are cooperating in getting travel documents.
6. If you are preparing for your 180 review, or you are applying for habeas corpus you also need to explain why you are unlikely to be removed in the reasonably foreseeable future.

How to address each issue in your letter, and what documents you should use to support your request.

1. Your identity.

You should explain where and when you were born and what documents you have which establish that you are who you say you are. These could include your passport, other government issued ID from your home country, a U.S. permanent resident card, your birth certificate, driver's license or other governmental identification card.

What documents should you collect to give to the decision-maker?

- Passport
- Birth certificate
- Other forms of government issued identification documents from your country of origin
- U.S. government issued identification documents such as a green card, driver's license, state-issued ID card

If you do not have identification papers you will need to get sworn statements from relatives and other people. These statements should state:

- Who the writer is, their address and their immigration status.
- If they are related to you.
- How long they have known you and/or your family.
- They should describe how they know your family relationship.
- They should have this statement notarized to show they are making these statements under oath that all this information is true and correct.

2. That you will have an address where you will be living and that you will have people who will be supporting you.

You should explain exactly where you will be living, whether these people are any relation to you, how long they have known you, and whether they are planning to help with your expenses. You should mention that you have attached a letter from the sponsor (these supporting documents will be discussed in the next section.) Explain what your plans for the future are and how you will live, finding a job, transportation, and dealing with other necessities. If you plan to work when you get work authorization you may want to include letters from potential employers.

What documents should you collect from your sponsor to give to the decision-maker?

Information from your sponsor:

- A letter from your sponsor. (If the letters aren't in English, you'll need to translate them and include a "Certificate of Translation" an example is provided on page 17.) The letter should state:
 - That you will be living with them, and if they will be providing support for you.
 - The address and telephone number of the residence.
 - How long they have lived at that address, if they are renting or buying.
 - What their immigration status is (e.g., U.S. Citizen, Lawful Permanent Resident).
 - How long they have known you, whether it is as family, friend, co-worker, etc.

- Documents which your sponsor should send you to include with your letter:
 - A piece of mail with his name and address on it to prove that they are living at the address. Examples are a phone or electric bill with their name and address on it.
 - A copy of their identification, such as a driver's license, and proof of their immigration status, such as a passport or a permanent resident card.

If you do not have anyone to live with:

If you do not have anyone to live with, then you will need to locate a halfway house, residential treatment program, or a shelter that will accept you. The best way to find resource information in your area is to call the local United Way.

What documents should you collect from alternative housing to give to the decision-maker?

- A letter from the shelter or other location indicating they are willing to accept you as a resident.

Information about potential employment if you are given permission to work in the U.S.:

- A letter from a potential employer:
 - Should be written on company stationery.
 - Should include the employer's immigration status.
 - What the job is, the wage, hours per week, and when you can start.
- Reference letters from former employers.
 - Should be written on company stationery.
 - Should include how long you worked there, what your job responsibilities were.
 - How well you performed.
 - If they would hire you back, they should mention that.
- For work you performed while detained:
 - A statement or performance evaluation from your supervisor showing what you do, when you started, and how well you performed your duties.
- Copies of any certificates from education or job-training classes you completed in detention which may help you get a job.

3. Proof that you will not be a danger to society.

If you've gotten into trouble with the police in the past, you'll need to explain to the Judge how you've changed and how you know that you won't get into trouble in the future. Think carefully about what you've learned from your trouble in the past and why you want to be able to leave detention. Do you want to be able to work and support your family? Do you want to be able to spend time with your spouse or children? Do you need to support your family? Tell the Judge about those hopes.

What documents should you collect to give to the decision-maker?

- Letters from family and friends which state:
 - How long they have known you and in what capacity (friend, co-worker, religious leader, etc.)
 - Positive things they know about you.
 - You are not dangerous and will not flee if released from detention.
- Letters from other people who believe that you can be trusted when you are out of detention.
 - This can include religious leaders, prison chaplains, former employers, or jail/detention officers who you know personally.
- Evidence of rehabilitation if you have committed a crime.
 - Certificates from any courses you attended to deal with issues such as substance abuse, anger management, etc.
 - Certificates of education or job-training courses taken while in ICE custody or elsewhere (English-language instruction, GED, college, etc.)
 - Documents showing that the state or federal correctional system released you on parole because they did not consider you a danger to society.

4. Evidence that you are not a significant flight risk and you will comply with the condition imposed as part of your release.

In this part of the letter you will be explaining how you are so connected to your family and community that you will not want to leave. This is important because the decision-maker may fear that you will leave and they will never be able to find you again.

Things which you may want to include to show that you are not going to leave include:

- Your ties to the community.
- Your length of residence in the U.S.
- Your family members in the U.S. and their immigration status.
- If you are married to a U.S. citizen or LPR, and whether you have any children with legal status.
 - ***You want to tell the decision-maker about your family ties – spouse, children, and other relatives that live in the area. This is an opportunity for you to also allow the decision-maker to see you as a person by including family pictures.
- Your employment history and any job offer in writing
- Your education, degrees, or certificates which will aid you in finding employment and show your stability.
- Your history of appearance in other court cases.
- Your history of meeting all requirements of release by ICE or while on parole or under a suspended sentence.
- Your likelihood of winning your immigration case.

What documents should you collect to give to the decision-maker?

- Documentation of the length of time you have lived in the U.S., such as school records, rental agreements, government records relating to any legal status you had such as Lawful Permanent Resident (LPR), Temporary Protected Status (TPS), etc.
- Documents showing ownership of a business, real estate, or vehicles.
- Evidence that you were providing financial support to your family.
 - Proof you paid rent, groceries, child support, etc.
 - Pay stubs from lawful employment
 - Tax records
- Evidence of your participation in religious or community groups.
- Marriage certificate, birth certificates of any U.S. citizen children.
 - Photos of you and your family (birthday parties, holidays, pets, babies, etc.) to show that you are a person and not just an A-number and a jumpsuit.
- Names of any relatives living in the area who have legal status.

5. That you are cooperating in getting travel documents.

You must make reasonable efforts to assist ICE in securing travel documents for your removal. ICE will not release you if you are not cooperating with their efforts to deport you.

Your letter should describe what you have done to help ICE deport you, such as telling your Deportation Officer when and where you were born, giving ICE a copy of your birth certificate or passport, having your picture and fingerprints taken, signing your travel document application, and so on. You should keep track of every time you have called your consulate and note the date, to whom you spoke, and what they said.

Include on your list every time you tried to call them but no one answered. Be sure to keep all copies of all documents that you gave to ICE and copies of any correspondence from your consulate.

What Documents should you collect to give to the decision-maker?

- Copies of any identification documents which you provided to ICE including:
 - Passport.
 - Birth certificate.
 - Other forms of government issued identification documents from your country of origin.
 - U.S. government issued identification documents such as a green card, driver's license, state-issued ID card.
- A list of all contact you have had with your consulate including the type of contact (telephone, in-person interview), the date, the name of the person to whom you spoke if known, what you told them and what they told you. Be sure to include on the list every time you called and no one answered.
- Copies of any letters you wrote to the consulate and of any letter the consulate sent you.
- Copies of any written communication with ICE.

6. If you are preparing for your 180-day review, or you are applying for *habeas corpus*, you also need to explain why you are unlikely to be removed in the reasonably foreseeable future.

ICE is given a reasonable amount of time to procure travel documents from your country which will allow them to deport you; however, it is not an unlimited amount of time. Generally, if you have been cooperating with getting your travel documents and you are still detained six months after your final order of removal, a Judge may decide it is no longer likely that you will be removed in the reasonably foreseeable future. The Judge may order you released under such conditions as ICE deems appropriate.

If you believe your country is unlikely to accept you for deportation in the reasonably foreseeable future – even if people have been deported there – explain what reasons you have for believing this, and include as much proof and detail as you can. If your country’s consulate informed you that they will not issue travel documents for you, mention that your country has refused to issue you travel documents. If your country does not have a repatriation agreement with the United States, or it is considered a “recalcitrant” country that does not cooperate with ICE, be sure to mention this.

Because ICE claims that it can get travel documents from almost every country, even countries that do not often issue them, you should give ICE any proof you have that your country has refused to accept you, or that you and ICE have tried unsuccessfully to apply for your travel documents.

Turning in your evidence supporting your request for release to the decision-maker

Once you have all your papers together, you need to prepare them for the decision-maker.

- Make a list of everything that you are giving to the Judge and put that on top.
- Sign and attach a “Certificate of Service,” which we gave given an example of at the end of this page. This document is used to prove that you also gave a copy of all your documents to the government attorney.
- When your packet is complete, make copies of all original documents.
- Make two copies of the whole packet.
 - One copy will go to the Judge.
 - The other copy will go to the government attorney.
 - You’ll keep the third packet for yourself. You can either mail your packet to the government attorney and the Judge or bring it with you to your hearing.

Sample Certificate of Service:

Certificate of Service

I, [full name], certify that a true copy of the above document (Materials in support of release for detention; or Materials in support of Petition for Writ of Habeas Corpus) together with the attached documents, was served on [date when you mailed your petition to the U.S. Attorney’s Office], upon the following:

U.S. Attorney’s Office

[Address of the U.S. Attorney’s Office to whom you served your Petition]

by placing a copy of the above in the mail system at the facility where I am detained.

[Signature]

[Full name], Pro Se

How to provide a Certificate of Translation

If you are including any documents that were not originally written in English, they must be accompanied by an English translation. Make sure the translator includes a certificate swearing that he or she is competent in both languages.

Here is an example:

Certificate of Translation

I, (name of translator), am competent to translate from (name of other language) into English, and certify that the translation of (type of document – letter, birth certificate, etc.) is true and accurate to the best of my abilities.

Signature of Translator

Name of Translator