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

Presented by
Sonia Parras Konrad, ASISTA Co-Director
& Hisham Leil, ASISTA Staff Attorney

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Goals

1. To present strategies to release immigrant survivors from immigration detention

2. To increase practitioners safety and action planning skills
Avoiding a Crisis

1. Explore red flags
2. File skeletal applications if mandatory detention
3. Team work
   - With your client
   - With her advocate
   - ICE-OCC
Red Flags

1. Review your intake!!!

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

1. **Avoid a crisis**, identify issues on day one

2. Your work with her around safety planning must also **include** how to address situations where she is arrested and:
   - Her children are alone at home or daycare
   - She did not pick up her last paycheck
   - The perpetrator has her passport and access to her money
   - There is a question regarding her ability to pay her bond (criminal or immigration)
   - The abuser may be neglecting children
   - Medical concerns, trauma issues, memory gaps

3. These may be some of her immediate concerns but it is helpful to have her think about all other potential issues and address them in advance. This will **avoid her signing her removal** without first defending her rights.
Where is My Client?

1. Any encounter with the criminal system may place your client in removal proceedings
   - Traffic ticket & going to court
   - Reporting to probation
   - Arrest
   - False documents with DOT
   - Any court proceeding

2. Prior immigration violations heightens potential encounters with ICE
   - In absentia orders & prior removals, denied petitions by CIS
The interaction between ICE ACCESS Programs and the Criminal Justice System is illustrated below:

**START: Police Stop/Arrest**

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

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

**287(g) Task Force**

- Officers target noncitizens for civil immigration enforcement

**Under CAP, ICE**

- Gets place of birth and other booking biographic info, which they use to ID noncitizens to interview

**Using Info from Secure Communities Database Check or Jail Interview**

- ICE or 287(g) officer issues detainer

**While in Custody, ICE or 287(g) Officer**

- Conducts initial/additional interview of noncitizen

**Judge Grants Bail**

- Usually higher due to detainer. If bail is posted, detainer is triggered and noncitizen goes into immigration custody/detention and removal proceedings are initiated.

**Detainer Triggers Judge to Deny Bail, OR**

**Checks in FBI & Secure Communities Databases**

- To ID noncitizens in system

**During or Shortly Subsequent to Interview**

- ICE or 287(g) officer initiates paperwork for removal process (e.g., stipulated removal, NTA, expedited removal, referral for illegal reentry prosecution).

**Completion of Sentence and Release**

- Triggers immigration detainer; noncitizen goes into ICE custody/detention OR

**Referral to US Attorney for Illegal Reentry Prosecution**
S Comm: How it Works

1. ICE then evaluates each case to determine what, if any, enforcement action will be taken:
   - Generally, ICE will issue detainer against person

2. ICE claims, on average, the process from submission of fingerprints to issuance of ICE detainer takes approximately 4 hours.

3. Undocumented persons with no immigration history will not be identified through S-Comm
What is an Immigration Detainer?

1. Notifies the jail or police that ICE is interested in this person
   - ICE files Form I-247 with jail

2. Requests jail to inform ICE when person is released from criminal custody
INA Section 287(d)(3)

• (d) Temporary detention at Department request. Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period **not to exceed 48 hours**, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

• Requests jail to hold person for additional 48 hours (excluding weekend & holidays) after release from criminal custody for ICE to take custody.
U.S. Department of Homeland Security

Immigration Detainer - Notice of Action

File No: 
Date: 

TO: (Name and title of Institution) 
FROM: (Office Address) 

Name of Alien: 
Date of Birth: _________________ Nationality: _________________ Sex: _________________

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

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

It is requested that you:

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

☐ Under Federal regulation 8 CFR § 287.7, DHS requests that you maintain custody of this individual for a period not to exceed 48 hours (excluding Saturdays, Sundays, and Federal holidays) to provide adequate time for DHS to assume custody of the alien. Please notify this Office at least 48 hours prior to the inmate's release by calling _________________ during business hours or _________________ after hours in an emergency.

☐ Please complete and sign the bottom block of the duplicate of this form and return it to this office.
☐ A self-addressed stamped envelope is enclosed for your convenience.
☐ Please return a signed copy via facsimile to _________________.

Return fax to the attention of _________________, at _________________.

☐ Notify this office of the time of release at least 48 hours prior to release or as far in advance as possible.
☐ Notify this office in the event of the inmate's death or transfer to another institution.
☐ Please cancel the detainer previously placed by this Office on _________________.

__________________________________________________________________________

(Signature of DHS Officer) (Title of DHS Officer)

Receipt acknowledged:
Date of last conviction: _________________ Latest conviction charge: _________________
Estimated release date: _________________
Signature and title of official: _________________

DHS Form I-247 (08/10)
How is the Detainer Triggered?

1. Pre-trial release on own recognizance or posting bail

2. Case against defendant is dismissed

3. Defendant completes sentence (after conviction).

4. In practice, detainer prevents the person’s release from criminal custody while their criminal charges are pending.
What Happens When Detainer is Triggered by Release?

1. Jail calls ICE to alert them of imminent release;

2. Jail holds person additional 48 hrs. for ICE to pick them up and take into ICE custody

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

1. FILE SKELETONAL APPLICATION UPON ARREST

2. REQUEST EXPEDITED ACTION WHEN NEEDED

3. PREPARE I-246 & FILE. CONTACT ICE DIRECTOR AND SUPPLEMENT WHEN NOTICE OF ACTION RECEIVED

4. PAY CRIMINAL BOND IF ANY IMMEDIATELY FOR THE 48 HRS TO START RUNNING

5. CONTACT JAIL TO PROVIDE COUNSELING SERVICES, SAFETY PLANNING FOR THE CHILDREN
What Happens Next?

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

• Proceedings commence with filing of NTA with immigration court

• NTA is charging document that sets out factual allegations to support stated legal charge of deportability or inadmissibility
NTA

- Describes category:
  a. arriving alien
  b. present without admission
  c. admitted but deportable

- Factual Allegations

- Underlying legal charge

- Hearing date, time, place
Careful Considerations

1. Review factual allegations with client

2. Get entire I-213 and review for accuracy
   - FOIA to EOIR
   - Request OCC to provide copy
   - “put a pin on it”
     - File motion to suppress, terminate etc if appropriate
Custody Determination

A. Initial bond set by ICE may be reviewed by an Immigration Judge.

B. Bond Redetermination (before proceedings)
   a. No bond: Mandatory Detention INA §236©
   b. Eligible for Bond and Bond Redetermination (Average $7,500 if no crimes-$10,000)
      • Danger to the community
      • Flight risk
Mandatory Detention

• UNDER INA SECTION 236 C, certain convictions may render your client ineligible for bond

• These crimes include:
  – Drug crimes
  – Crimes involving moral turpitude
  – Firearms offenses
  – Aggravated felonies for immigration purposes
Bond Hearing

• Hearing to review bond amount initially set

• Factors considered:
  – flight risk &/or danger to community

• Goal:
  – to assure alien’s appearance in court. Amount must be paid in full & recover after termination of proceeding
Motion for Bond Redetermination

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

• Petra is calling you from jail. She was brought by her husband 9 years ago. She has 5 children ages 1-9. She has been working with the local DV advocate. 2 weeks ago, her husband assaulted her and she had to go to the hospital.

• Petra tell you that ICE has already “talked to her” and there is no bond set. She wants out and is ready to sign her “deportation order.” ICE has told her that with two DUIs she is better of signing the order.
Filing Procedures

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

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

www.usdoj.gov/eoir

Resource for:

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

More information is available at www.asistahelp.org

OR, contact us at questions@asistahelp.org