NATIONAL IMMIGRANT JUSTICE CENTER

Bond Quick-Start Guide for Detained Immigrants

Overview

Some detained immigrants may be released while proceedings remain pending. DHS makes an initial custody determination. If DHS refuses bond or sets it too high to pay, you may request that the Immigration Judge (IJ) schedule a bond (redetermination) hearing. The immigration judge will determine bond based on whether the individual poses a danger to the community or is a flight risk. Factors in setting bond include: (1) Whether the individual has a fixed address in the United States; (2) length of residence in the United States; (3) family ties in the United States; (4) employment history; (5) record of appearance in court; (6) criminal record; (7) history of immigration violations; (8) any attempts to flee prosecution; and (9) manner of entry to the United States.

The following groups are **not** eligible for bond from an immigration judge and face mandatory detention:

- Arriving noncitizens (those charged as seeking admission at a port of entry).
- Noncitizens with certain convictions:
  - Inadmissible under INA § 212(a)(2) (crimes involving moral turpitude (CIMT) and drug offenses) and not eligible for the petty offense exception.
  - Deportable under INA § 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) (aggravated felonies, drug offenses, firearms offenses, espionage, 2 CIMTs).
- Rarer exceptions for security grounds, exclusion proceedings, and people born in the Panama Canal Zone.

Life of a Case in Detained Removal Proceedings

- Bond cases move quickly and may be completed with an appearance to ask for prep time, the filing of a bond motion and evidence, a bond hearing, and a bond decision all within 2-4 weeks.
- Sign retainer and other case documents. Be realistic with client, and never promise guaranteed bond.
- Gather criminal records. Discuss any arrest record with client in depth and make it clear you need info on any contact with police, any time they were fingerprinted, any time they went to the police station, any time they were ticketed, even if they were innocent, even if it was minor. Start with general state database searches for anywhere they lived or remember an incident. Start with any published records request procedures and then try contacting the police, court clerks, prior attorneys, public defenders, and prosecutors.
- Determine if the client is subject to mandatory detention.
- Gather evidence from the attached checklist. Cases will not have all categories of evidence, relevance may vary.
- Consider finding a sponsor, especially for recent arrivals: Someone who can submit a letter of support and/or other documentation that they can provide housing and financial support if the person is released.
- Draft or request a release plan, especially if history of substance abuse, violence, or mental health issues.
- Determine if a client affidavit is helpful. Be aware a client may need to decline to testify about pending charges.
- Reach out to family, friends, organizations, victims, who could draft a letter of support or help pay bond.
- Draft and file a bond memo.
- Draft a bond hearing plan, including what the client can pay. Prepare a brief oral summation called a proffer.
- Prepare client for testimony (rare), discuss whether they should plead the 5th on open criminal matters.
- Discuss with client what they want to do if bond is denied. Other relief, voluntary departure, removal.
- Review how to pay bond with this guide, get help from bond funds, and get a bond refund at the end of a case.

Special Notes

- Bond proceedings and removal proceedings are separate. Even though bond hearings often occur at the same time as master calendar hearings, evidence introduced in a bond hearing is not part of the record of proceedings for removal and must be re-filed if relevant.
- If criminal record, evidence should address: *Client takes responsibility and is sorry*, client has learned and taken steps to prevent future problems, client has a support network, client has attended rehabilitation programs, other evidence of rehabilitation, mitigating circumstances around the crime.
- Many IJs require police reports or additional criminal records, but consider contesting their reliability and carefully decide how much information to submit beyond the certificate of disposition, if any.

Trainings and Resources:

- CLINIC: Practitioners' Guide to Obtaining Release From Immigration Detention
- ILRC How to Address Evidentiary Issues in Bond Proceedings
- ILRC Representing Clients in Bond Hearings: An Introductory Guide

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Client's Name:

BOND CHECKLIST

This is for reference. Documents listed may be optional, dependent on IJ preferences or not relevant to your case. Talk to your supervisor and colleagues about specifics for your case.

Forms and other Documents

❑ Retainer ❑ EOIR-28 ❑ G-28 ❑ Medical release

❑ FOIA Requests – agencies: _____ ❑ Crim Records Search - jurisdictions: _____

❑ Bond Memo

Supporting Evidence	**Have**	**Need**	**N/A**
Client's Affidavit	❑	❑	❑
Certificate(s) of Disposition	❑	❑	❑
Criminal Complaint	❑	❑	❑
Additional Crim Records as Needed (do not volunteer them unless helpful): Court files, plea minutes, orders of protection	❑	❑	❑
Evidence of Rehabilitation	❑	❑	❑
Release Plan by Social Worker/Coordinator	❑	❑	❑
Client's Passport or ID	❑	❑	❑
Client's Birth Certificate	❑	❑	❑
Proof of USC/LPR family	❑	❑	❑
Evidence of long residence in USA	❑	❑	❑
Letter of Support from Sponsor (especially if recent arrival)	❑	❑	❑
• Proof of sponsor's employment	❑	❑	❑
• Sponsor's last tax return	❑	❑	❑
• Proof of residence (utility bills) where client will live	❑	❑	❑
• Proof LPR or USC	❑	❑	❑
Letters of Support from Friends and Family + ID: *How they know the client, specific anecdotes showing how client helps them/family/community, description of ways they will act as support network, mitigating circumstances.*	❑	❑	❑
Letter of Support from Employer/Proof of Employment	❑	❑	❑
Letters of Support from Community (School, Church, Charity)	❑	❑	❑
Certificates/Diplomas/Certifications/Awards	❑	❑	❑
Medical Records/Letter of Support from doctor or psychiatrist documenting mitigating condition or need for release	❑	❑	❑
Family Photos	❑	❑	❑
Evidence of Eligibility for Immigration Relief	❑	❑	❑
Other: _____	❑	❑	❑

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