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Your Responsibility When Using this Information:

Because we cannot give specific advice or assistance to every person who requests it, and because we know legal information is often difficult to obtain in prison, we are sending this letter for the purpose of providing information to as many people as possible.

We also encourage people to be aware that laws change frequently and can be interpreted in different ways, and that we may not have the resources to update this pamphlet every time the law changes.

If you use this pamphlet, it is your responsibility to check whether the law has changed since the time we published this information, and also to determine how this information applies to your specific situation (if at all). We recommend that you do so using materials available in your institution's law library materials.

**INFORMATION RE:
ICE AND DEPORTATION PROCEEDINGS FOR PEOPLE
IN CALIFORNIA PRISONS AND JAILS**

(November 2023)

We received your letter asking for assistance or advice concerning an ICE hold or deportation proceedings. We apologize for sending you this form letter response. We are not experts in immigration law and we are not able to send individual responses to everyone who contacts us.

We are attaching a manual called *From Prison to Ice to Freedom: A Handbook for Immigrants Inside* which was published in August 2023 by a non-profit law office called Asian Americans Advancing Justice-Asian Law Caucus. This handbook was written for people in California who are in prison, jail, or immigration detention and who are facing possible deportation. The handbook discusses what you can do to prepare yourself if you have an immigration hold, what to expect when you reach your release date, and how you can fight deportation. It also includes contact information for the Asian Law Caucus and other organizations that may be able to provide information or help with immigration issues. The handbook was written with a focus on Asian and Pacific Islander immigrants and refugees, but most of the information applies to people of other nationalities.

Attachment: *From Prison to Ice to Freedom: A Handbook for Immigrants Inside (2023)*



From Prison to ICE
to Freedom:
A Handbook
for
Immigrants
Inside

Authors

Asian Americans Advancing Justice - Asian Law Caucus is the nation's first legal and civil rights organization serving low-income Asian Pacific Islander communities. The Asian Law Caucus provides legal representation to immigrants detained in Northern California facing deportation and also takes part in litigation and policy advocacy.

Asian Prisoner Support Committee (APSC)'s mission is to provide direct support to Asian and Pacific Islander (API) prisoners and to raise awareness about the growing number of APIs being imprisoned, detained, and deported. APSC is one of the only organizations in the nation led by formerly incarcerated APIs in its staff and leadership. Based in Oakland, APSC works primarily with APIs incarcerated in San Quentin State Prison and provides reentry services in the greater San Francisco Bay Area.

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I. Introduction

This handbook is written for immigrants in California who are in prison or in immigration detention and are facing possible deportation. Immigration law is incredibly complex. We also know it is extremely difficult to get information on immigration while incarcerated or detained. The handbook discusses what you can do to prepare yourself if you have an immigration hold, what to expect when you parole, and how you can fight deportation.

We wrote this handbook for people in California state prisons with a focus on Asian and Pacific Islander immigrants and refugees. The information, however, may also be helpful to others.

II. Freedom from Prison

If you are not a citizen and are in prison, Immigration and Customs Enforcement (ICE) is likely aware of your conviction. ICE, a part of the Department of Homeland Security (DHS), is the agency responsible for deporting immigrants. Although ICE is not a part of the California Department of Corrections and Rehabilitation (CDCR), CDCR shares information with ICE and allows agents in prisons to interview and arrest people.

Even if you are a Lawful Permanent Resident (a green card holder) or have asylum or are a refugee, ICE may be able to take away your status and deport you based on your conviction. This is true even if your green card or other status has not expired. Whether they are able to try and do this depends on a number of factors including what you were convicted of, your sentence, and when the conviction happened.

If ICE believes that they may be able to deport you, they will place a detainer on you. A detainer is a request that CDCR notify ICE prior to your parole date and hold you for up to 48 hours after your parole date, not including weekends and holidays, for ICE to detain you. A copy of the detainer will be placed in your Central File (C-File) and should also be sent to you. This may happen early on in your time in prison.

A. How does an ICE detainer affect my experience in prison?

ICE detainers should not impact your eligibility for parole, security classification, release date, credits, or access to programming. If your path to freedom requires a parole board hearing, an ICE

detainer may impact how you prepare for parole board. See the next section on preparing for parole board with an ICE detainer.

We are aware of instances where CDCR denied transfer to a lower level yard or access to certain programs, or college programs denied enrollment to people, because ICE placed a detainer or CDCR marked the person as having a “potential” ICE detainer. Please write and let us know if this has happened to you.

B. How do I prepare for a parole board hearing with an ICE detainer?

You will have a hearing before the Board of Parole Hearings (BPH) if you are serving a sentence of life with the possibility of parole, or if you are a youth offender serving a determinate sentence of more than 15 years, or if you qualify for elderly parole (60 years or older and incarcerated for at least 25 years). Much of the information below applies to anyone appearing before the parole board, regardless of immigration status.

More information on preparing for a parole board hearing can be found in Chapter 9 of the Prison Law Office’s Prison and Parole Law Handbook. A copy can be found online at <https://prisonlaw.com/resources/prison-handbook/> or requested by writing the Prison Law Office at:

Prison Law Office
General Delivery
San Quentin, CA 94964

For immigrants facing possible deportation, the biggest difference in the parole process is that you need to prepare two sets of parole plans – you need to plan for release in the United States as well as in your country of citizenship. You may also want to think about whether experiences or trauma related to being an immigrant or refugee played a role in decisions you made.

1. Preparing for Board and Programming

Once you are in custody, you should begin preparing for your release immediately. Do not wait years to begin parole preparation. The parole board will consider your progress over your entire time in prison. From the board’s perspective, a lack of programming and a pattern of discipline problems is evidence that you are not rehabilitated. However, even if you have a poor record, it is *never* too late to start a new positive program. But the longer you wait to start this process, the older you will be when and if you are released. Remember to do this for the betterment of yourself and not just for the release.

If you are serving a determinate sentence, programming may also help make you eligible for credits. Depending on your options to fight deportation, a record that you were productive while in prison may also be helpful in your immigration case.

To begin preparing for your parole board hearing, first sit down and thoroughly evaluate your goals. Make a list of goals you wish to accomplish. For example:

Education, Vocation, and Work

- If you don't have a GED or High School Diploma, work toward obtaining one.
- If you are in a facility that offers a college program, take advantage of it.
- Complete two or more vocational trades and find work that will help you develop marketable work skills.

Self-Help and Other Programming

- Complete as many self-help and life skill classes as you can, especially programs that addresses core issues leading and correlated to your incarceration.
- Join facilitator training programs to develop leadership skills.
- Participate in 12-step or other faith-based programs.
- Participate in community service or charitable activities.

Most correctional institutions have self-help programs that assist in developing insight and preparation for the parole board. If these programs are available to you, take advantage of them. If programs are limited at the facility where you are housed, you can look for resource guides at your law library or chapel. You can also send a request to your institutional program director or a local "Friends Outside" chapter asking for correspondence courses.

When you complete a program, you will receive a certificate of completion (and, in some cases, a CDCR 128G chrono). Remember — always keep track of your accomplishments by creating your own portfolio! Each goal that you achieve will provide proof of your rehabilitation. It is best to organize your certificates and chronos with the dates, along with having a master sheet of all the programs.

In addition to programs, there are two important types of written documents that you should start working on as early as you feel ready:

- First, consider writing *remorse letters* to your victims (or surviving families, if your victim is deceased). You are not permitted to contact victims or survivors directly, but the purpose of writing the letter is to put into words the genuine empathy, regret, and accountability you feel about the harm you caused. If your crime harmed multiple victims, consider writing a separate letter to each.

- Second, consider writing one or more *relapse prevention plans* addressing any major behavior issues that led to your crime, or other incidents in your history. This purpose of this plan is to identify the triggers, warning signs, coping tools, and supporters or resources that help prevent you from falling back into harmful behaviors. If you have more than one issue, create a separate plan for each. Examples of behavior issues: Codependency, Anger Management, Alcohol/Drug Use, Gambling, Gang Activity.

It is recommended that you start working on these documents for your own betterment, and not just for the board; however, be aware that the board will expect to see these from you. These documents can take a lot of soul-searching and hard work, and it is normal to revise them multiple times over the years as you grow and gain more insight. Start as early as you can.

2. What can I expect and do several months before my parole hearing?

About a year in advance of your anticipated parole hearing, you might want to start preparing a parole packet. A parole packet can help demonstrate to the board that you are organized and well prepared. Here is a sample template for creating a parole packet:

Table of Contents

- **Summary of Parole Plans for US**
Housing
Employment
Other Support
Short-Term and Long-Term Goals
- **Summary of Parole Plans for Outside of US (if you might be deported)**
Housing
Employment
Other Support
Short-Term and Long-Term Goals
- **Reentry Support Letters**
Housing offers
Employment offers
Other forms of support (social, emotional, financial, etc.)
- **Character Reference Letters**

If possible, include letters from people who know you and can speak to your positive changes and good character. It's helpful to have letters from people in a variety of roles, such as supervisors, teachers, program staff, community members, and peers.

- **Relapse Prevention Plan(s)**

Include a separate plan for each documented behavioral issue(s) that the Board is likely to address, based on the issues that led to your crime and other incidents in your history.

- **Letters of Remorse**

Letter of Apology to Each Victim (and/or Surviving Family, if deceased)

- **Book Report(s)**

Optional. If programs are limited at your facility, or if you can't access programs that are relevant to specific issues you have, a possible strategy is to read relevant books and write reports (1-2 pages) briefly explaining the insights and tools you gained.

If you are an immigrant with an ICE detainer, you need to prepare two sets of parole plans: one for the United States and one for your country of citizenship. It can be challenging to create parole plans in a country that you have not been to in decades or may have never seen. You should begin researching options for housing and employment well in advance. If you have family in that country, try to get in contact with them. Contact nonprofit and religious organizations in that country to see if they offer housing or job training.

Three to six months before a scheduled parole hearing, a psychologist employed by BPH will evaluate you. The psychologist will interview you, review your central file, and prepare a written report called a Comprehensive Risk Assessment (CRA). The Board will rely heavily on this report at your parole hearing, so it is very important and should be taken seriously.

In your CRA interview, the psychologist will ask about your personal history, prior juvenile and adult criminal record, mental health and substance abuse history, disciplinary and programming record in prison, and any parole plans you have prepared. The psychologist will also ask about your commitment offense, your understanding of it, and what you have done to address the issues that led you to commit it. Be prepared to discuss all these aspects of your history, show insight and remorse regarding who you were in the past, and explain how you have rehabilitated to become who you are today. It is a good idea to bring your parole packet to this interview. Even if your packet is not yet complete, it is helpful to show that you have made at least some progress with preparing parole plans and relapse prevention plans.

You and your attorney should receive a copy of the written CRA report at least 60 days before the hearing. The report will provide a summary of your entire history, including the commitment offense; and it will include the psychologist's opinion on whether you would pose a low, moderate, or high risk of violence relative to other people serving long sentences.

Many refugees and immigrants experience trauma before and/or after transitioning to the United States. If you experienced trauma, and your trauma contributed to the behaviors that led you to prison, it can be helpful to show your understanding of how these factors impacted you, both at your risk assessment interview and at your parole hearing. However, it is important to make clear that you are not blaming the trauma, or any other circumstances, for the actions you took.

If you have an attorney helping you, ask them to submit your parole packet to the board at least 2 weeks before your scheduled hearing date; otherwise, plan to bring the packet to your hearing and have your own copy. It is best to bring an extra set or copies of your parole packet to your parole board hearing in case some documents, chrono, certificates did not make it to the person central files. (Note: Aside from parole plans and support letters, you can only present up to 20 pages on the day of your hearing. However, there is no page limit for any supporting documents that your attorney submits to the board in advance.)

Note on language services: If English is not your first language, you should have the option of using telephone or in-person interpreter services during your CRA interview, meetings with your attorney, and your parole hearing. For your CRA interview, you can request an interpreter from the psychologist at the start of the interview. For your parole hearing, you must request an interpreter in advance when signing the BPH forms to confirm that you will attend your hearing (these forms are provided by your correctional counselor). However, be aware that the quality of these services is inconsistent, and often very poor. When using an interpreter during a CRA interview or parole hearing, you run the risk of having your statements translated inaccurately or incompletely, and misrepresented on the record. For this reason, it is recommended that you use an interpreter only if your ability to understand and speak English is extremely limited. If your English abilities are imperfect but you can get by, it might be better to go without an interpreter.

Note on waivers stipulations, and postponements: You should be notified by your correctional counselor when your hearing is scheduled by the board, typically about 6 months in advance. There are some situations, however, where you might want to delay going to your hearing. For example, maybe you're challenging a recent write-up, and it hasn't been resolved yet. Or maybe you're in the process of getting an ICE hold dropped with the help of attorneys. In these kinds of situations, you have a few options for delaying your hearing:

One option is to waive your hearing for one or more years. The deadline for submitting a signed waiver request is 45 days before your scheduled hearing. You can get the request form from your

correctional counselor. There is no penalty for waiving, and your next hearing will automatically be scheduled after 1, 2, 3, 4, or 5 years (whichever period you indicate in your request). You can waive up to three scheduled hearings in a row, so if there's even a slight chance that you'll be ready to go within a year, in many cases it makes sense to waive for the minimum period of one year.

Another option is to stipulate to unsuitability for 3, 5, 7, 10, or 15 years. Taking this option means telling the board you believe you're unsuitable for parole at this time. This option generally makes sense only if you have missed the deadline for submitting a waiver request, and only if it's clear that attending your scheduled hearing would be damaging to your interests. It is highly recommended that you consult with a trusted attorney before taking this route. In order to stipulate, you must submit your offer to stipulate in writing to the board at any point before your hearing, stating why you believe you're unsuitable for parole at this time. The board can accept or reject your offer.

A final option is to request a postponement for a specific number of months. This option is usually available only if you were unable to obtain information that is essential to your hearing, despite your diligent efforts – for example, if your CRA report (or other equally important document) was not made available to you and your attorney before the hearing. The board will grant a postponement only if you can show that you did everything you could to get the information and acted at the earliest possible opportunity in requesting a postponement. Unlike a waiver, which is easy to get if you meet the deadline, a postponement is harder to get.

3. What should I expect at my parole hearing?

The parole hearing is primarily an interview between two BPH commissioners and you, although your attorney and the district attorney's representative (and in some cases the victims and their immediate family members) will also be present. Generally, the commissioners will discuss the events of your life in the order they happened (although some like to jump around a bit). They often start by discussing your history prior to the commitment offense, then the crime itself, and then your history and behavior after coming to prison. The commissioners usually rely on the CRA report to get an initial sense of your background and use it as a starting point for their conversation with you. As they go through the CRA report and other official documents during the hearing, you should have a chance to explain, correct, or elaborate on any information or statements contained in the record.

If you have submitted documents before the hearing, expect that some commissioners will have looked at them carefully beforehand, and others will not have done so. Either way, be ready to answer questions about any writings you have submitted, and explain why you wrote what you

did. During the hearing, if the commissioners fail to ask about certain documents that you feel are important, you can ask for permission to talk about them.

If there is an ICE hold in your central file and/or there is uncertainty around whether or not you will be deported, the commissioners will definitely want to see parole plans for both the United States and your other possible destination country. If there is a low chance that you will actually be deported, and it is very difficult for you to create detailed parole plans outside of the United States, it will be helpful for you to understand the status of your immigration case and why your deportation is unlikely. Provide documentation to support your statements if possible. Most commissioners do not have expertise on immigration issues so it is important to provide information to them.

The commissioners may state their opinion on whether or not you will be deported. Don't let it discourage you or give you high hopes. They have no control over the deportation proceedings.

C. I am seeking release from prison through resentencing. How does an ICE detainer change how I should prepare?

Over the past several years, California has passed several laws allowing people to be resentenced and released from prison. These laws including resentencing on felony murder rule convictions (SB 1437, PC § 1170.95), resentencing at the recommendation of CDCR or the District Attorney (PC § 1172.1 (formerly 1170(d)(1)), and resentencing due to evidence of racial bias (AB 256 (“Racial Justice Act for All”), PC § 745).

Resentencing may alter the immigration consequences of a conviction. Immigration law recognizes state court orders vacating a conviction due to a “procedural or substantive defect” in the original conviction but does not recognize orders expunging a conviction or reducing a sentence due to rehabilitation. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003). Vacatur of a conviction obtained through the repealed felony murder rule or due to evidence of racial bias in obtaining the original conviction, may eliminate the immigration consequences of the conviction.

- If you are required to be resentenced to an alternate count, you should discuss with your defense counsel and investigate available dispositions which are immigration safe. For example, if your felony murder rule conviction is being vacated under PC § 1170.95, the court may convict and resentence you to a lesser underlying charge. You should communicate to your defense counsel that you are concerned about your immigration status and ask them to investigate the consequences of possible convictions early in the process.

- You may also want to request to be remanded to county jail in order to attend the resentencing hearing. Unlike CDCR, many county jails are governed by local ordinances that prohibit sharing information of recently released individuals. For that reason, it will often be very helpful to parole directly from county custody rather than CDCR custody after being resentenced.

D. How do I know when my parole date will be, and what can I expect?

If you have a determinate sentence, you should have an estimate of your parole date based on your credits. Of course, your estimated parole date may be subject to change due to credits you earn or lose through disciplinary incidents and/or programming activities.

If you are a lifer and found suitable by the Board, you need to wait for a decision from the governor before you get an official release date. This process can take anywhere from 90 to 150 days. If the governor approves your parole grant, you will be notified and asked to sign your conditions of parole.

If you are a lifer and the governor does not approve your parole grant, what happens next depends on whether your commitment offense involved a homicide.

- If you have a homicide conviction, the governor can reverse the parole grant decision on his own. This results in you being scheduled for your next parole hearing in 12- 18 months.
- If you have a non-homicide conviction, the governor cannot reverse the parole grant decision on his own, but he can ask the full parole board to reconsider the grant decision. If that happens, the board will hold a public hearing at their Sacramento headquarters where the commissioners will vote on whether to rescind (take away) the parole grant. You do not have a right to be present, but others can appear to make comments, including the district attorney, your attorney (if you have one helping you), and your friends, family, and other supporters. The board's decision will be announced later the same day.

Before your parole date, ICE officers may come to interview you. A California law called the TRUTH Act requires CDCR to notify you in writing before they come interview you. You will also be given a form asking if you consent to the interview in advance. This form must be available in a number of languages including Spanish, Chinese, Tagalog, Vietnamese, and Korean. You can mark a box declining the interview, consenting but asking for your attorney to be present, or declining to speak with ICE. It's important to remember that:

- **You always have the right to remain silent.**

- **You have the right to say "no"** to an interview with Immigration and Customs Enforcement (ICE).

Under the TRUTH Act, ICE can only interview you in prison if you sign a consent form beforehand and agree to the interview. **This means that you have the right to refuse the interview and the right to remain silent!**

CDCR makes arrangements with ICE to pick up people before their parole date. CDCR will no longer hold people past their parole date but will release them up to five business days early to ICE.

E. I was sentenced to Life Without the Possibility of Parole (LWOP). What can I do?

If you were sentenced to LWOP, you may want to explore the possibility of applying for a commutation from the governor. Write us for resources on applying for a commutation.

F. How can I prepare for ICE while in prison?

While in prison, you can prepare for dealing with ICE upon your release. You should learn as much as possible about your options and the process. You can begin gathering documents for your immigration proceedings and request a copy of your immigration file through a Freedom of Information Act (FOIA) request using the guide at Appendix C.

The FOIA response will come on a Compact Disc (CD). You may want to list a mailing address of someone outside who can print the contents for you. If you have prior immigration history, you should file a FOIA request with USCIS. If you were previously in immigration court, you should also file one with the Executive Office for Immigration Review (EOIR).

III. Transfer to ICE

On your release date, immigration officers will likely arrest you before you leave prison. Be prepared to be shackled with waist and leg chains and handcuffed, so wear thick comfortable socks and long sleeve shirt and pants as it will be cold in the ICE van and holding tanks.

You will be transferred to the nearest ICE office for processing which could be several hours away. Once you arrive at the ICE office, you will be interviewed by an officer and asked to sign paperwork. You have the right to not answer questions and not sign paperwork.

The way your case will be processed will differ greatly depending on whether you were previously a lawful permanent resident (green card holder). More information on the process and your options is provided below.

Do not sign any documents that you have not read carefully or do not understand. If you plan to fight deportation, you should not sign any documents waiving your right to a hearing. You should be allowed to make a brief, free phone call. Depending on which ICE office you are in, it may be possible for people to visit you or for your lawyer to talk to you on the phone.

You will be moved from the ICE office in the afternoon to a detention facility. You can ask to be housed at a particular facility. ICE will ultimately decide based on where space is available. ICE detains people in spaces rented in county jails and private immigration detention centers.

In California, people are detained by ICE in several facilities including Mesa Verde Detention Facility (Bakersfield, California), Golden State Annex (McFarland, California), Adelanto Detention Facility (San Bernardino County), Desert View Annex (San Bernardino County), Otay Mesa Detention Facility (San Diego), and the Imperial Regional Detention Facility (Calexico). If space is not available, ICE may also move you out of state. Conditions and policies vary greatly from facility to facility.

You can request and advocate to be transferred to another facility at any time. You can highlight relevant factors such as where your family is located or where your attorney is located to request a transfer.

Friends and family can find out where you are detained through a website at <https://locator.ice.gov>. They will need to have your A-Number. If they do not have your A-Number, they can also use your name, country of birth, and birthdate to locate you. The database takes a few days to get updated, so if someone is transferred to a new facility, they may not show up during the search.

A. How can I prepare to be picked up by ICE?

Most of your paperwork and possessions will be placed into storage when you enter ICE custody. Make sure to remember important phone numbers and addresses or write them on a small sheet of paper and carry it with you. ICE should let you take important documents with you to the detention center. Documentation of your parole plans, important chronos, and your psychological assessment if you had a board hearing may be helpful. If you forgot something, you can submit a kite asking ICE to retrieve specific documents from your property. You may also want to send copies of documents to someone outside before you parole.

Each facility has their own guidelines for prohibited items. The following items are generally allowed in most facilities:

1. Medical record and Medical chronos
2. Prescription medications

3. Address book (paperback with no rings or staples and remember to keep it with you at all times). Do not keep your larger address book on you, because most ICE agents will not allow you to keep it in your possession. They do allow a single piece of paper with key contacts listed.
4. White Tennis Shoes with Velcro: Almost all ICE facilities allow detainees to have in their possession a pair of all white Velcro Tennis Shoes. Most jails contracted with ICE will honor medical chronos as long as the shoes meet these criteria. You can also wear the shoes during transfer to most other facilities. If you don't have your own shoes, the jail-issued shoes are usually very uncomfortable.
5. Clothes For The Trip: Underwear, socks, and T-shirts (2 each), thick hooded jacket (can be extremely cold), thick sweat pants or pants with elastic and zipper pockets, slippers, 2 pairs of shoes: 1 pair for transportation white elastic type & 1 pair for release.
6. Parole Board paperwork (certificates, chronos, support letters, etc.)
7. Dictionary and a religious book (paperback)
8. Birth certificate or any other legal documents
9. Stamps, legal pad and envelopes
10. Photos of family and friends
11. Money: the money you have in your account will be transferred with you in a form of a check and will be place into your account at the facility. Also, your family can send you a check, money order or online wire. ICE does not provide detainees with personal phone calls, so having money in your personal account before leaving prison will give you the means to contact/connect with your family/loved ones. Otherwise, your only option is to rely on collect calls. Additionally, having funds in your account will enable you to purchase things from the commissary at your new facility.

In some facilities, phone calls to lawyers are accommodated free of charge by ICE. However, you are required to make a request through your assigned ICE agent, and this process could take 2 to 5 days. You should be able to call legal non-profits for free.

Preparing for the transfer: Try to use the restroom before you are transferred, since your transfer journey may take a very long time, and your transportation may not stop for you to use the

restroom. When you get to the field office, you will be given a phone call or two depending on the agent's mood. You will be at the field office for several hours waiting for processing and transportation. Non-contact visits are permitted at the field office.

ICE may tell you where you are going before you leave the field office or may not. You may make several stops on the way to the detention center during which calls may be allowed. Bringing extra clothes is important. It may be cold on the van and the shackles may be tight. If you have long stops along the way, you may also be able to change clothes. Make sure all your cosmetics are sealed tight because it can spill all over your paperwork and clothes.

Memorize the phone number of a point person who will assist you should you lose your contact info. Also memorize your A-Number. The A-Number is an 8 or 9 digit number starting with the letter A printed on your immigration paperwork. If you haven't had contact with immigration before, they will issue you an A-Number when you are processed.

B. What is immigration detention like?

The transition from prison to immigration detention can be challenging. Often, immigration detention is just space rented in a county jail. Conditions are very similar to what you might have experienced pre-trial in county jail. ICE also uses detention facilities run by private companies. Conditions in private facilities are sometimes better than in county jails.

In some facilities, ICE has different security classifications for people. They will ask you about your gang involvement and categorize you as active, inactive, or drop out. Generally, people who served prison time are automatically placed in the higher security pods. Detention pods are typically dormitory-style bunks with a maximum of 40 to 50 people in a pod. Almost all of your time will be spent in the pod. There is little to no programming. Many facilities have a tiny yard or allow for very little yard time.

Facilities are required to offer a law library. The process for requesting to visit the library and the quality of materials available differ from facility to facility. You may be required to submit a written request to schedule a visit to the library.

In some facilities, you also have the ability to schedule private legal phone calls. You can call non-profit legal organizations at every facility from the pod. A list of facilities and their phone codes should be listed next to the phone.

C. Differences between private and county facilities as it relates to property.

You should be aware that there are major differences between what is allowed in a private facility (GEO or CCA) vs. a County Jail facility.

Private facility (Geo Group Corporation or CCA): Typically, you will be allowed to bring your belongings with you from prison to your housing in a private facility (except for some items listed below, such as belt and shoelaces). Below are the items that we recommend that you bring with you from prison to a private facility:

- Bowls with lids: All ICE detention centers allow detainee to purchase commissary and almost all of these facilities provide microwave ovens, hot water and other privileges. Having a good bowl will prove to become useful when preparing meals. The bowls selection in most ICE facilities are small and flimsy and can prove to be a waste of money.
- Ear plugs: Almost all ICE facilities are open dorm -- having earplugs can help filter noises and improve your sleep.
- AM/FM radio with earbuds: Most private facilities contracted with ICE gives out AM/FM radio with earbuds to detainee so that they can watch TV through the institution's network. Having a good AM/FM radio with earbuds will help you get more receptions and channels.
- Mugs/Cup with lid: This item is also allowed in most ICE facilities. For coffee and tea lovers -- you will want to bring your own -- the selections are not good in commissary.
- Food products: Most food items are allowed at a private facility.
- Health: Medications, Hygiene products are allowed at a private facility.
- Misc: Shower shoes, No jewelry (except wedding band).
- Paper Work: Medical records and medical chronos, Medical prescriptions, Birth certificate or any other legal documents, Address book with key contacts, Parole board paperwork (certificates, chronos, support letters, etc.).
 - NOTE: You will need your documents, certificates, chronos, etc. to give to the judge or to ICE to plead your case for immigration relief, early release from custody, your 90-day custody review, or for posting bond. As such, it is very important that you mail a copy of all your documents to family/loved ones for safekeeping in case your properties are lost during transfer.

Prohibited items: they will not let you have these items while in ICE custody, but you should bring them for when you are released (it stays in your property): Belt, Shoe Laces, Extra Clothes, Electric Shaver or Hair Clipper.

Collect calls: Phone calls from private facilities are typically cheaper than from county jails.

County Jail: Typically, you will not be allowed to bring any belongings with you from prison to an ICE-contracted County Jail facility. It may be stored in the county jail or an ICE field office and should be given back to you when you are released. This includes legal materials, photos, and personal mail. After the completion of your intake process at the county jail, which may take 3 to 10 days depending on the facility, you may submit a request to your ICE agent (who will be assigned to you when you arrive at the ICE field office), and request your legal documents, chronos and certificates, parole board materials, and materials relating to your parole. All of your other property items will not be given to you. Any items that are perishable -- food categories -- will be disposed of by the ICE agent(s) upon your arrival to the ICE intake facility. All of your other belongings will remain in the care of ICE.

D. Can I call and visit with my family while in detention?

Yes. The phone systems vary across facilities. Many of the private facilities use Global Tel Link. You may also be able to buy cards from commissary.

While in detention, you are allowed visits. Most visits are non-contact visits behind glass similar to that in county jail. However, some detention facilities do allow contact visits. Facilities have specific visiting times each week depending on your housing location. There may also be specific rules for visitors on dress code, identification, and what they can bring with them.

IV. Freedom from ICE

The legal process to deport someone is referred to as removal proceedings. The process varies greatly for people with convictions depending on whether they have immigration status. ICE can deport undocumented people without a hearing if they have aggravated felony convictions or prior deportation orders. They must request and go through a separate process before getting a hearing in immigration court. Their options to fight deportation are also limited. Lawful Permanent Residents, on the other hand, do have the right to a hearing in immigration court and also may have more options to fight deportation.

A. I am not a lawful permanent resident. What is the process?

If you are not a lawful permanent resident and have an aggravated felony conviction, ICE can deport you without a hearing before a judge. This process is known as “administrative removal” or “expedited removal.” If you were previously deported but do not have an aggravated felony conviction, ICE can also deport you without a hearing through a similar process called reinstatement of removal.

If you are subject to administrative removal or reinstatement of removal, you will be served with a removal order. While you cannot appeal this decision except in very limited ways, you can fight deportation by informing an officer that you fear harm if deported. The deportation officer will likely not ask you if you fear harm so you should affirmatively tell the officer orally and in writing that you fear harm if deported.

Telling ICE that you fear harm will trigger an interview with an Asylum Officer. Asylum Officers are not a part of ICE. The interview will take place several days later. The Asylum Officer will interview you about your fear of return and determine whether you have a reasonable fear of return. You should be prepared to clearly explain why you fear return and provide any supporting documentation.

If the Asylum Officer decides you do have a reasonable fear of harm if deported, you will be scheduled for a hearing in immigration court but will only be eligible for two forms of relief— withholding of removal and deferral under the Convention Against Torture. Both forms of relief are explained further below.

If the Asylum Officer finds that you do not have a reasonable fear of harm if deported, you can challenge this decision in a hearing before an immigration judge. If the immigration judge also finds that you do not have a reasonable fear of harm, you may be able to appeal the decision by filing a petition for review in the federal court of appeals with jurisdiction over the location of your removal proceedings.

B. I am a lawful permanent resident. What is the process?

A few weeks after you enter ICE custody, you will be scheduled for an initial hearing called a master calendar hearing. Depending on where you are detained, you may appear at your court hearing in person or remotely using Video Teleconference (VTC). If you appear by VTC, the judge and attorneys will be in the courtroom while you appear remotely over a webcam.

If you would prefer to have an interpreter at your court hearing, you can let the judge know. The court will provide an interpreter at no cost to you.

At your first master calendar hearing, you have a few options. If you are planning to fight deportation but need more time to prepare or find an attorney, you can ask the judge for a continuance. It may be possible to get more than one continuance, but at the next hearing, be prepared to explain to the judge what you have been doing to prepare your case or to find an attorney.

If you already know that you want to take a deportation order or how you want to proceed with your case, you can ask the judge to move forward. The judge will ask you to plead to the Notice to Appear (NTA).

You should have received the NTA when you entered ICE custody. If you were not served with the NTA, you can let the judge know and ask to be given a copy. This may cause a delay in your case.

The NTA contains two sections—allegations and charges. The judge will first ask you if you admit or deny each allegation. You have the right to deny each allegation. Denying an allegation does not mean that you are saying it is not true but just that you want ICE to prove that it is true.

The allegations will look something like this:

1. You are not a citizen of the United States.
2. You are a national of X and citizen of X.
3. You were admitted on X date as a refugee. Your status was adjusted to a Lawful Permanent Resident on X (If you are undocumented, this allegation will include information on how you entered the United States.)
4. On X date, you were convicted of X and sentenced to X years.

There will be one or more charges citing a section of the Immigration and Nationality Act (INA).

You should have also been served with a Form I-213 summarizing your immigration and criminal history and copies of your conviction documents. ICE cannot use the Form I-213 or a rap sheet to prove a conviction. If you have not been served with these, you can ask the judge if they were filed and request copies.

If you denied the charges against you, the judge may ask if there is an argument why you are not properly charged. If there are complicated issues, the judge might continue the hearing and ask for written statements. If the judge finds that you are not properly charged, proceedings will be terminated. ICE can appeal this decision.

If you concede the charge or the judge sustains the charge, the judge will then ask if you would like to designate a country for removal. You have the right to decline to designate a country.

The judge will then ask if you wish to apply for relief from removal. Some common forms of relief from removal are explained below. If you tell the judge that you want to apply for relief from removal, you will be given the application form and told to come back on another date. You can save time by preparing the applications in advance. The judge will then set you for a hearing on your application that will be a few weeks or a couple months later. Otherwise, if you want to take a removal order, you can tell the judge that you do not want to apply for relief.

C. How can I get a lawyer?

Unlike criminal proceedings, a lawyer is not appointed to you if you cannot afford one. If you cannot find a lawyer, you will have to represent yourself in immigration court. Detention facilities have a listing of free pro bono attorneys that may be willing to accept your case. You can contact attorneys as well as other organization at no cost using the speed dial system. You should be given a list of non-profit organizations when you enter ICE custody.

It will be helpful to reach out to organizations before you parole so that they are already familiar with your case. Many detention centers also have Legal Orientation Programs or Know Your Rights presentations. Attorneys from non-profit organizations visit to give presentations and provide brief consultations every few weeks.

D. Can I fight my case?

Immigration law is extremely complicated. To determine if you have options to fight your deportation, you should speak with an immigration attorney. An intake form and list of non-profit organizations is included in this handbook at Appendices A and B. Fill out the intake form and send it to us so that we can evaluate your case.

This section explains some possible ways to fight deportation. If you want more information, please fill out the intake form and send it to us.

1. Arguing that you are a U.S. Citizen

U.S. citizens cannot be detained or deported by ICE. You may be a U.S. citizen without realizing it. There are two ways that people not born in the United States obtain citizenship from their parents—(1) birth to a parent who is a citizen and (2) naturalization of one or both of your parents

when you were still a child. The laws on acquiring citizenship are very complicated and have changed over time.

If you had a parent who was a U.S. citizen when you were born or became a citizen before you turned 18, you should talk to an immigration attorney about whether you may be a U.S. citizen.

2. Challenging Deportability

If you do not have legal status, ICE can charge you with being deportable even if you do not have criminal convictions. However, if you are a lawful permanent resident, refugee, or asylee, ICE can only charge you with being deportable if you have certain criminal convictions. A wide range of convictions can be used to charge someone as deportable. The law is frequently changing and may not make sense, as some minor offenses are deportable while some offenses that carry lengthy sentences are not deportable.

Below are common categories of convictions that ICE can charge as deportable offenses for people who are permanent residents, refugees, or asylees:

- **Aggravated Felonies:** Aggravated felonies cover a wide range of offenses including crimes of violence, murder, possession for sale, and dozens of others. Aggravated felonies severely limit the available options to fight deportation.
- **Drug Offenses:** Drug offenses including simple possession offenses are deportable offenses.
- **Crimes Involving Moral Turpitude (CIMT):** CIMTs include a wide range of offenses from petty theft to some domestic violence crimes. Multiple CIMT convictions from different incidents can make you deportable even if you have legal status.
- **Domestic Violence:** Some domestic violence offenses are deportable offenses.

Here are some common California convictions and their immigration consequences. You should use your law library to check if these cases are still valid.

- **Burglary (California Penal Code 459/460):** This is not a deportable offense regardless of sentence. *Descamps v. U.S.*, 570 U.S. 254 (2013).
- **Voluntary Manslaughter (California Penal Code 192(a)):** This is not an aggravated felony, although attempted voluntary manslaughter is. *Quijada-Aguilar v. Lynch*, 799 F.3d 1303 (9th Cir. 2015); *Matter of Cervantes Nunez*, 27 I&N Dec. 238 (BIA 2018).

- Grand Theft (California Penal Code 487): California theft convictions are generally not considered aggravated felonies but may still be charged as crimes involving moral turpitude. *Lopez-Valencia v. Lynch*, 798 F.3d 863 (9th Cir. 2015); *United States v. Esparza-Ponce*, 193 F.3d 1133 (9th Cir. 1999). A theft conviction where the sentence is one year or longer and the loss to the victim exceeded \$10,000 may be charged as an aggravated felony. *Matter of Reyes*, 28 I&N Dec. 52 (AG 2020).
- Robbery (California Penal Code 211): This is currently an aggravated felony if your sentence was one year or longer. *Matter of Delgado*, 27 I&N Dec. 100 (BIA 2017).
- Domestic Violence (California Penal Code 273.5): A conviction under 273.5 is deportable as a domestic violence offense and if your sentence is one year or longer, it is also an aggravated felony. *Vasquez-Hernandez v. Holder*, 590 F.3d 1053 (9th Cir. 2010).

If your conviction took place prior to November 18, 1988, it cannot be charged as an aggravated felony. *Ledezma-Galicia v. Holder*, 636 F.3d 1059 (9th Cir. 2010).

3. 212(c) Waiver

Congress eliminated the 212(c) waiver in 1997, but it is still available if your conviction was prior to November 30, 1990. It is also available if your conviction was prior to April 24, 1996 **and** you served less than five years on it. In addition, you must be a lawful permanent resident. Under a 212(c) waiver, a judge will consider factors like rehabilitation, family ties, and hardship in determining whether to grant a second chance.

4. Cancellation of Removal for Lawful Permanent Residents

If you are a lawful permanent resident and do not have an aggravated felony conviction, you may be eligible for cancellation of removal. Cancellation allows the judge to consider factors like rehabilitation, family ties, and hardship, and grant a second chance.

5. 209(c) Waiver

If you are a refugee or have asylum but never became a permanent resident, you may be able to apply for a waiver of deportation. If you became a permanent resident, this waiver is not available. The waiver is available for all convictions except drug trafficking. You will still need to show the judge that you deserve a second chance.

6. Asylum, Withholding of Removal, and Convention Against Torture

Asylum, Withholding of Removal, and Convention Against Torture (CAT) all allow you to argue that you would be persecuted or tortured if deported.

ASYLUM: Asylum is not available if you have an aggravated felony conviction or the judge determines you have been convicted of a particularly serious crime. Most people with prison sentences are not eligible for asylum. If you are eligible, you need to show that there is more than a 10% chance that you will be persecuted because of your race, religion, political opinion, nationality, or membership in a particular social group.

WITHHOLDING: You can be eligible for withholding even if you have an aggravated felony conviction as long as it is not a particularly serious crime. You need to show that there is more than a 50% chance that you will be persecuted if deported because of your race, religion, political opinion, nationality, or membership in a particular social group.

CONVENTION AGAINST TORTURE (CAT): Your convictions do not matter for CAT. However, it is not easy to win CAT. You must prove that there is more than a 50% chance that you would be tortured if deported and that the government would participate in the torture or not intervene.

7. 212(h) Waivers

If you have a U.S. citizen spouse or child over 21 years old, it may be possible to have them petition you for permanent residence. There are two key restrictions:

- You cannot have any drug, murder, attempted murder, or conspiracy to commit murder convictions.
- If you have an aggravated felony conviction and are a legal permanent resident, you cannot have previously entered the country as a permanent resident. If you entered as a refugee or on another visa and later became a permanent resident while in the United States, you may still qualify.

If you plan to apply for 212(h), you may want to have your relative file a petition for you well in advance of paroling. You will likely need to establish a very high level of hardship if you are deported and also convince a judge that you deserve a second chance.

8. Can I challenge my conviction?

It may be possible to resolve your immigration situation by challenging your conviction. Options include:

- **VACATING CONVICTION.** If you were not advised of the immigration consequences of your plea, you may be able to file a motion to vacate your conviction through a writ of habeas corpus or under California Penal Code 1473.7 or 1016.5.
- **SENTENCING.** You may also be able to request resentencing under California Penal Code 1170(d), although this may not fix your immigration status.
- **GOVERNOR ACTION.** Similarly, a commutation of your sentence by the Governor may not fix your immigration status. However, a full and unconditional pardon by the Governor does remove deportability due to a conviction but is not effective for drug or domestic violence convictions. The Asian Law Caucus has a guide on applying for a pardon, available at <http://bit.ly/PardonGuide>

E. What are master and individual hearings?

There are several types of hearings in immigration court. Shorter hearings to discuss your case are called master hearings. It is not uncommon to have several master hearings if you are fighting your case. If you are applying for relief from removal, your final hearing is called an individual or merits hearing. At the hearing, the IJ will begin the hearing by reviewing the documents that were submitted on the record. After the record is complete, you will have an opportunity to testify. An ICE attorney will also cross-examine you and ask you questions. You can also have other witnesses testify and can submit documents in support of your case.

G. The Immigration Judge ordered me removed. Can I appeal?

If the Immigration Judge orders you deported, you can appeal to the Board of Immigration Appeals (BIA) and possibly to a federal court. You have thirty days from the deportation order to appeal. If you plan to appeal, you need to tell the judge that you reserve appeal. You cannot be deported while your BIA appeal is pending. If you do not want to fight your case, you should waive appeal.

If you are in expedited removal proceedings and found to not have a reasonable fear of return, you cannot appeal that decision to the BIA. However, you may be able to appeal directly to the Circuit Court of Appeals that has jurisdiction over the immigration court.

H. What if I have mental health issues?

If you have mental health issues, be sure to communicate that to the deportation officers and the immigration judge to make sure you are seen by a physician and receive medication. The judge may also provide additional protections for you including appointing a free attorney to represent you. *Franco-Gonzalez v. Holder*, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014).

I. Am I eligible for bond?

You will likely not be eligible for bond when you enter ICE custody from prison. A long list of criminal convictions including aggravated felonies and drug convictions trigger mandatory detention. Mandatory detention means that you are not given a bond hearing before a judge. Depending on your conviction, there could be arguments that your conviction does not trigger mandatory detention.

If you remain in detention for a prolonged period, generally more than six months, it may be possible to argue for a bond hearing by filing a habeas petition in federal district court.

The law on whether people can be held in mandatory detention without a bond hearing for long periods is frequently changing. You should consult an attorney if you think your conviction does not trigger mandatory detention or that your detention has become prolonged.

J. I've been ordered deported. Now what?

What happens after you are ordered deported depends on what country you are being deported to. ICE must first get a travel document from the country you are being deported to before they can deport you. For some countries, this only takes a few days or weeks. Other countries, however, refuse to accept people for deportation and will not issue a travel document.

1. Will any country accept me for deportation?

Cambodia	The United States and Cambodia signed a repatriation agreement in 2002. Cambodia often recognizes people born in refugee camps outside of Cambodia as citizens. In practice, Cambodia has fluctuated on how willing it is to accept people for deportation. At times, Cambodia accepts dozens of people for deportation while refusing to accept some people at other times.
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Central America: Honduras, El Salvador, Guatemala, Nicaragua	It usually takes ICE a couple weeks to deport people to Central America.
China	China does not have a repatriation agreement with the United States. China is reluctant to accept people with criminal convictions for deportation. However, at times it has agreed to accept some people.
Cuba	Historically, Cuba has refused to issue travel documents. At times, Cuba has reconsidered this position for some Mariel Cubans.
Fiji	Fiji accepts people for deportation. It may take a couple months for ICE to obtain travel documents and schedule a flight.
India	India often declines to issue travel documents. However, it is unclear when India will and will not agree to issue travel documents.
Iran	Iran generally refuses to issue travel documents.
Laos	Laos has not signed a repatriation agreement with the United States. Further, Laos citizenship law automatically strips citizenship from people who have been gone for more than seven years. The United States has pressured Laos for several years to sign a repatriation agreement and placed sanctions on Laos in 2018. Still, Laos very rarely issues travel documents.
Mexico	Mexico accepts Mexican citizens for deportation without a passport. It usually only takes a few days from being ordered removed to deportation.
Other Countries	Dozens of other countries refuse to issue travel documents for some or all people.
Philippines	The Philippines generally issues travel documents. It takes a few weeks to obtain a travel document and for ICE to schedule a flight.
Thailand	If you were born in a refugee camp in Thailand, you are likely not a Thai citizen. The Thai consulate is generally willing to issue a letter confirming this. If one of your parents was a Thai citizen, you may be a Thai citizen. Thailand is generally willing to accept Thai citizens for deportation.

Vietnam	The United States and Vietnam signed a repatriation agreement in 2008. Vietnam agreed to accept people for deportation who came to the United States after July 12, 1995. People who came before that date would not be accepted. In practice, Vietnam sometimes refuses to take people who came after 1995 as well. In 2020, the United States and Vietnam signed a repatriation agreement creating a process for the deportation of people who came before 1995, but Vietnam has accepted a relatively small number of people under that agreement.
Western Samoa	Western Samoa has been inconsistent on when it is willing to issue travel documents.

2. What happens if no country will take me for deportation?

The Supreme Court has held that ICE cannot hold people indefinitely if no country will accept them for deportation. *Zadvydas v. Davis*, 533 U.S. 678 (2001). ICE has a limited amount of time to deport someone once their deportation order is final.

There are three stages during which someone who has been ordered deported can be detained.

First 90 Days: After you have been ordered deported and are no longer appealing, a deportation officer will likely have you fill out an application for a travel document. In the first 90 days after your deportation order is final, ICE can detain you while waiting for a travel document. ICE will sometimes release people during this 90 day period if it knows it will not get a travel document. However, you should not expect to be released during this period.

90-180 days: Ninety days after your deportation order is final, ICE is required to conduct a Post-Order Custody Review (POCR). In making a POCR decision, ICE considers the likelihood that a travel document will be issued, whether you pose a flight risk, and whether you pose a danger. Often, you will not be interviewed or given a chance to speak before receiving the POCR decision. You can, however, submit documents in advance of the POCR. More information on preparing for the POCR is attached at Appendix D. If you prepared documents for your parole hearing, they may be helpful here.

After 180 days: One-hundred-eighty days after your deportation order is final, ICE will conduct another review of your detention. If a travel document still has not been issued, you should consider filing a writ of habeas corpus in federal district court. See Appendix E for more information on filing a habeas.

3. How can I prepare for my Post-Order Custody Review (POCR)?

At the time of your POCR, ICE is supposed to release you if you are not a flight risk or a danger to your community. Not being a “flight risk” means that, if you are released, you will show up when ICE requests to see you, and if you are issued a travel document, you will show up for deportation. Not being a “danger to your community” means that you are not likely to engage in criminal activity or harm anyone.

This guide will help you present evidence to ICE showing that you should be released from custody. It includes: (1) a template cover letter for you to personalize and sign, (2) a list of supporting documents to collect, and (3) a template letter of support for family and friends. The template letters should be used only as guides. It is important that you fill in your personalized information.

Friends and community members can mail you their letters of support and other documents, and you can submit them to your deportation officer before the date of your POCR. Alternatively, a family member or friend can help you collect letters and submit them on your behalf to your local ICE Enforcement and Removal Operations (“ERO”) Field Office before your POCR date. They can find your local ERO office at this website:

<https://www.ice.gov/contact/ero>.

In support of your request for release from ICE custody, you may collect the following documents and attach them to your cover letter:

- Letters of support from family members, friends and community members
- Letter of support from employer
- If you suffer from a health condition, include a letter from your treating physician explaining the medical care that you need OR medical records about your condition
- If you are a caretaker of someone with a health condition, include medical records or a doctor’s letter describing the care that this person needs from you
- If you were in criminal custody, include certificates of completion of programming and education
- Any other documents that you believe ICE should consider when deciding whether to continue detaining you.

VII. I’m getting out. Now what?

Congratulations! In order to be released from immigration detention, you will either need to win your case, be granted bond, or released because no country would accept you for deportation.

A. What happens if I am released on bond?

You will remain out on bond while your case is pending. Appeals or waiting for your next court hearing may take months or years. There may be other conditions on your release like wearing an ankle monitor or checking in with ICE. If you are arrested for a criminal offense or miss appointments with ICE, they may try to revoke your bond.

B. What happens if I am released because no country will take me?

You will be placed on an “Order of Supervision” that requires you to check in with ICE 1-3 times per year. You can apply for a work permit which will allow you to obtain a social security card and California ID. A guide is enclosed on how to apply for a work permit at Appendix F. If a country does agree to take you in the future, ICE can arrest you.

C. Will I be given the money on my account when I’m released? If so, what form (e.g. cash, check, etc.)?

If you are released and have money in your account, you will either be given a check or debit card depending on the facility. CDCR does not provide gate money to people who are transferred to ICE.

D. Where will I be released from?

Depending on where you are detained, you will either be released from an ICE office or the detention center. You may be provided with a bus ticket or dropped off at a bus station depending on the facility.

E. Do I need to check in with parole or probation?

If you are on parole with CDCR, you should report to your parole officer the following business day. Your time in immigration detention will count towards your time on parole. CDCR should be aware that you were in immigration detention.

If you are on county probation, they may not be aware that you were in immigration detention. You should call and find out if you need to report. You may also want to contact probation while you are in detention so they do not issue a warrant for you.

F. How can I get a state ID or Driver’s License?

The laws on obtaining a state ID or driver’s license vary from state to state. The information here is specific to California. Typically, the California DMV requests proof of identity and immigration

status. California passed AB 60 making it possible for undocumented people to obtain a driver's license. You can find out more about applying under AB 60 at <http://driveca.org/>

If you previously had a California identification card or driver's license, you may already be in their system. You may want to try applying through the normal process. Your parole officer can provide a memorandum with your name, photo, and release date. You should also bring any prison ID, bills or mail showing your residency, and any documentation of your residency at a reentry program.

G. How can I get a Social Security Card?

To get a Social Security Card, you will need your work permit, permanent resident card, or proof of U.S. citizenship or other immigration status. If you have a removal order but have a valid work permit, you can still get a social security card. See the section below on obtaining a work permit. If you had a social security number previously, your social security number remains the same.

H. How can I get a work permit?

If you were previously a green card holder and either won your case or are out on bond while the case is pending in immigration court or before the Board of Immigration Appeals, you are still a permanent resident and do not need to apply for a work permit.

If you were ordered removed but released on an order of supervision because no country would accept you, you will need to apply for a work permit. A guide is enclosed on applying for a work permit.

I. How can I get my green card back?

If you had a green card but were ordered removed as a result of a conviction, getting your status back can be difficult but is not impossible. Consult with an immigration attorney about your options.

J. Am I eligible for public benefits?

Possibly. Eligibility for most benefits is tied to immigration status. Depending on your immigration status, you may be eligible for some state and federal benefits. If you will be residing in a residential or re-entry program they should have public benefits resources available as well as at parole offices.

VIII. I'm getting deported. Now what?

We know this is an extremely difficult time for you. Your family or loved ones can drop off up to 30 lbs of luggage for you at the ICE office in the days before your flight. If you do not have anyone to drop off a bag for you, contact the organizations listed in this guide to see if they can help you.

For countries where deportations happen frequently like Mexico, El Salvador, Honduras, and Guatemala, deportations are carried out using ICE planes or charter flights. These flights have ICE agents on board and people remain shackled. For countries where deportations are less common, ICE uses commercial flights. You will be on a regular flight with other passengers. Typically, you will be accompanied by ICE agents on the flight, but you will not be shackled.

The process at the airport when you land varies from country to country. In some countries, you may be held for inspection for a while. In other countries, you will be able to walk out of the airport after passing through customs.

Before leaving the U.S.: If ICE informed you that a travel document has been issued for you or if you think ICE has obtained a travel document for you, tell your family and friends.

- 1) Request for a contact visit - some offices allow a last contact visit but most do not.
- 2) Deposit money on your account - ICE will give it to you in cash later.
- 3) Request to send you a 40-lb suitcase with your personal belongings: clothes, shoes, etc.
Most important: One international smartphone **with Wi-Fi capacity**, better with prepaid sim. Tell family to download Facebook and Messenger, or Viber or Tango app. Whichever app they download, they must create an account for your name and add themselves as a friend. Officials in some countries demand bribes when you arrive so you may want to be careful about carrying expensive items or large amounts of cash.
- 4) If you have family in your respective country, let them know to expect your arrival soon.

When you arrive at the U.S. airport, the deportation officer may be able to give you items from your luggage. If you can, take the phone and charger out of your luggage.¹

While waiting to board, charge your phone. Ask the deportation officer for your flight numbers and arrival time. If you can, call your family and leave a message with your flight information. Ask for help if you cannot use your phone.

¹ This will not apply if you are leaving on an ICE charter flight. The experience of people being deported varies greatly.

IX. Input from Former Detainees

Ny Nourn

Ny is Cambodian and served 16 years on a life sentence at the Central California Women's Facility (CCWF) before being transferred to ICE at the Yuba County Jail.

As an immigrant lifer or long-termers, preparing and going before the Parole Board is just as challenging as being a non-immigrant. Actually, we have to do extra work due to two main differences in a lifer portfolio. As an immigrant, first, you must have dual parole plans: one for America and one for the country you might get deported to. Second, you must obtain letters of acceptance and support for housing and other re-entry services. If you cannot provide realistic parole plans for the Parole Board panel, they will perceive that you are not ready for parole. It is hard work to prepare for the Parole Board. Obtain housing and support from another country is very difficult but not impossible. For example, I had difficulties gathering my parole plans for Cambodia because I have no family or support there. What I did was, two years in advance before my parole hearing, I did research by seeking reentry booklets. Resources should be available in your facility law library. Also, enclosed in this handbook are listings of non-profit organizations and legal agencies which provide low cost and pro bono services. You can never be too early to start preparing for your Parole Hearing, so start as soon as possible. Do research on your country of origin and if you even think you have a likely chance of being deported, get letters of acceptance and support as soon as possible. Remember, your letters must be dated within six months before your parole hearing. Another way for you to get help and obtain resources are support from family and friends.

Ke Lam

Ke is from Vietnam. After winning parole from a life sentence, he was turned over to ICE but eventually released on an order of supervision.

Things to remember when being detained are your family and friends' phone numbers and your A number. If you are processed in San Francisco, ICE will issue your wristband ID. You will be given a phone call or two, depending on the agent's mood. There's also visiting hours while you are there. I was detained there for about 10 hours. Visits are non-contact and between 30 minutes to 1 hour.

After you are processed, there is no telling where you may go. However, between stops, you may make collect calls. This is where the extra clothes are important. If you have a layover at a Detention Center (DC) and have to change clothes, you can put the fresh ones on.

LAST REMARK: Everything is expensive there!

Jon Sales

Jon is from the Philippines. After winning parole from a life sentence, he was turned over to ICE and spent years in several detention centers before winning release on bond.

Depending upon where ICE intends on housing you for detention purposes, the process is different. I was initially detained in Rio Cosumnes Correctional Center (RCCC) in Elk Grove. Your personal property, whether you were picked up from the streets or from jail or prison, will be kept in the field office.

I spent over three years in immigration detention and what I learned the most as far as my experience is that you have to take the initiative to handle what's necessary to get the job done. Immigration proceedings are similar to criminal proceedings yet different in regards to how to be successful in being released from detention.

Immigration detention is based on a Notice to Appear that is filed against you for a specific Immigration violation of the Immigration and Nationality Act or otherwise known as the "Act." A specific section of the Act is specified and from there, you can determine the route or game plan to go as far as litigating your case.

Depending on your criminal charge, you will fall into a category of crimes that determine eligibility for relief from deportation. If you fall under the "Aggravated Felony" or AF category, you will be limited as to what you can apply for as to relief. AF crimes are considered the most serious and for the most part carry a lifetime ban from returning to the United States for any reason.

The least serious category is the "Crimes Involving Moral Turpitude" or CIMT. CIMT crimes can be waived in order to remain in the states. However, most of the relief applied for are determined by an Immigration Judge (IJ) that operates under a discretionary system. Unfortunately, a discretionary decision is non-appealable but doesn't mean all hope is lost.

While in detention, gather up as much positive documentary evidence if you will be eligible for a bond hearing or to request release. Treat it like a parole hearing. Gather documentation of where you plan to live, employment offers, community ties, and evidence of rehabilitation including programs and chronos.

APPENDIX A

INTAKE FORM

PRISON IMMIGRATION INTAKE

All information provided remains confidential and will only be used to provide legal advice. Questions are optional but help us provide complete and accurate advice.

DATE		NAME OF PRISON OR JAIL				
NAME (LAST NAME[S], First, Middle)				OTHER NAMES/NICKNAMES		CDCR # AND HOUSING LOCATION
GENDER <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> OTHER _____ TRANSGENDER? <input type="checkbox"/> Y <input type="checkbox"/> N	DATE OF BIRTH	CITIZENSHIP & PLACE OF BIRTH			ETHNICITY: <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> White (non-Hisp.) <input type="checkbox"/> Other/Unknown	
PAROLE ELIGIBILITY DATE (IF APPLICABLE)		LANGUAGE(S) <i>(circle best)</i>			HAVE YOU BEEN SERVED WITH AN IMMIGRATION DETAINER? <input type="checkbox"/> Y <input type="checkbox"/> N	
ARE YOU A SURVIVOR OF DOMESTIC VIOLENCE? <input type="checkbox"/> Y <input type="checkbox"/> N		DO YOU IDENTIFY AS LGBTQ+? <input type="checkbox"/> Y <input type="checkbox"/> N (Lesbian, Gay, Bisexual, Trans, Queer, plus)			A-NUMBER (IMMIGRATION NUMBER)	
Family Member/ Friend Contact(s)		Relationship	City, State	Language(s)	Telephone and/or email	Can we contact them?
IMMIGRATION HISTORY						
When did you first enter the United States?		How did you enter? (Refugee, Visa, Without Papers)				
Have you left the United States since then? If yes, when did you leave and return? How did you return?						
Were you ever issued a permanent resident card (green card)? When? How did you become a permanent resident?		Have you ever been to immigration court before or deported before? When? What happened?				
CRIMINAL HISTORY						
Year	County, State	Arrest / Charge / Conviction	Plea / Trial	Sentence	Did you have a public defender or private attorney?	Did your attorney tell you about the immigration consequences of the conviction?

U.S. FAMILY TIES				
MARITAL STATUS <input type="checkbox"/> single <input type="checkbox"/> married <input type="checkbox"/> divorced <input type="checkbox"/> widow[er] <i>(including same-sex)</i> <input type="checkbox"/> separated <input type="checkbox"/> engaged <input type="checkbox"/> partner		Spouse's Immigration Status:		
PARENTS Did your mother become a U.S. citizen before you turned 18? <input type="checkbox"/> Y <input type="checkbox"/> N If yes, when? _____ Did your father become a U.S. citizen before you turned 18? <input type="checkbox"/> Y <input type="checkbox"/> N If yes, when? _____ Where any of your grandparents U.S. citizens? <input type="checkbox"/> Y <input type="checkbox"/> N If yes, who and when? _____ Were your parents legally married? <input type="checkbox"/> Y <input type="checkbox"/> N Did your parents ever separate? <input type="checkbox"/> Y <input type="checkbox"/> N When? Did they get divorced? _____				
CHILDREN Total # of children: ____ Any with U.S. citizenship or other immigration status? <input type="checkbox"/> Y <input type="checkbox"/> N <i>(If yes, complete fields below)</i>				
Child's Name	Child's Age	Child's Immigration Status	Who are they living with?	Are you in contact with them?
If you are undocumented, has a family member ever filed an immigrant visa petition for you? (If yes, who and when?)				
Do you fear being harmed if deported? Why?				
Have you ever been diagnosed with a disability? Taken medications? Been found incompetent to stand trial? Do you have any other medical uses?				
OTHER INFORMATION YOU WOULD LIKE TO SHARE <i>Feel free to attach additional sheets</i>				
May we contact other attorneys about your case to try to find legal assistance for you? <input type="checkbox"/> Y <input type="checkbox"/> N				

APPENDIX B

LIST OF ORGANIZATIONS

Organizations and Resources

This is a partial list of organizations that may be able to provide assistance or resources.

Asian Law Caucus 55 Columbus Ave. San Francisco, CA 94111 Phone: 415-896-1701	Asian Law Caucus (ALC) is a non-profit legal organization. ALC provides legal advice and sometimes representation to people in prison and immigration detention facing deportation.
Asian Prisoner Support Committee P.O. Box 1031 Oakland, California 94604	Asian Prisoner Support Committee is led by formerly incarcerated people and provides direct support to incarcerated Asian Pacific Islanders.
California Coalition for Women Prisoners (CCWP) 4400 Market Street Oakland, CA 94608	CCWP has members inside and outside of women's prisons in California. CCWP visits and supports people inside.
University of California at Davis School of Law – Immigration Clinic One Shields Avenue Building TB30 Davis, CA 95616-5201	UC Davis provides legal advice and representation in some cases to detained individuals facing deportation.
Uncommon Law 220 4 th Street, Suite 103 Oakland, California 94607	Uncommon Law provides free representation to some people at parole hearings and also free resources to prepare for a parole board hearing.
University of Southern California Gould School of Law Post-Conviction Justice Project (PCJP) 699 Exposition Blvd. Los Angeles, California 90089-0074	The USC clinic provides free representation to some people at parole hearings.

APPENDIX C

REQUESTING RECORDS

Requesting Immigration and Criminal Records: **A Guide for Immigrants with Removal Orders**

Some immigrants may be eligible to file a “motion to reopen” their removal case. If your motion is granted, you no longer have a removal order. This is a complex legal process, so it is best to work with a trusted immigration lawyer. The lawyer will need to review your criminal and immigration records to give you accurate advice on whether it is possible to reopen.

1) Request your immigration records

You can request your records from immigration agencies using the “Freedom of Information Act” (FOIA), a law that allows you to get copies of government records about you. It is safe and free. The Executive Office for Immigration Review (EOIR) has your immigration court records, and the U.S. Citizenship and Immigration Services (USCIS) has your documents from family petitions, refugee application, etc.

The fastest way to request your records is online:

- For your **immigration court records**, you can email the immigration court that issued your removal order to request your “whole file,” following the instructions here: <https://www.justice.gov/eoir/request-rop-email-immigration-courts>.
 - You can look up when and where your removal order was issued at <https://acis.eoir.justice.gov> or call (800) 898-7180.
 - If you have an older case, the immigration court may not have your records, and you should file a FOIA with EOIR here: <https://foia.eoir.justice.gov>.
- For your **USCIS records**, you can request them here: <http://first.uscis.gov>.

You can also submit your FOIA requests by mail. There are two letters in this guide, one for your immigration court records at EOIR, and one for your records with USCIS.

- Fill out both letters and mail to the address at the top of each page. You will get a letter soon acknowledging your requests, and within a few months, you will receive in the mail your immigration records on a CD.

2) Request your criminal records

You can request your criminal records from the court where you were convicted. If you have convictions from more than one county, you will need to contact each court. Visit the court’s website or call the court clerk for specific instructions. The clerk can search for your case(s) using your name and date of birth.

- You should request a copy of the “entire case file” for each case. If the case file is very large and too expensive to request, ask the clerk for the “charging document” and the “disposition,” which shows your conviction and sentence. You do not need “certified” copies.

This guide is for information purposes only and is not intended as legal advice. If you are at risk of being re-detained and deported, contact Asian Americans Advancing Justice – Asian Law Caucus at (415) 896-1701.

Office of the General Counsel – FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2150
Falls Church, VA 22041

Re: FOIA/PA Request of _____, **A#** _____
(name) (8 or 9 digit A number)

Dear FOIA Officer:

I am writing to request that you send me a complete copy of my record of proceedings, including any audio recordings.

Full Name: _____

Date of Birth: _____

Place of Birth: _____

I was previously in removal proceedings in _____ in the year _____.
(city, state)

Please send the copy of my file to me at the following address:

Thank you for your time.

I declare under penalty of perjury that the foregoing is true and correct.

Signature: _____

Printed Name: _____

Date: _____

U.S. Citizenship and Immigration Services
National Records Center (FOIA/PA Office)
P.O. Box 648010
Lee's Summit, MO 64064-8010

Re: FOIA/PA Request of _____, **A#** _____
(name) (8 or 9 digit A number)

Dear FOIA Officer:

I am writing to request that you send me any and all records relating to me.

Full Name: _____

Date of Birth: _____

Place of Birth: _____

Please send the copy of my records to me at the following address:

Thank you for your time.

I declare under penalty of perjury that the foregoing is true and correct.

Signature: _____

Printed Name: _____

Date: _____

APPENDIX D
POST-ORDER CUSTODY
REVIEW

Sample Cover Letter For 90-Day Post-Order Custody Review

[Date]

Department of Homeland Security
Immigration and Customs Enforcement
[Address of ICE ERO Office]

Re: Request for Release from ICE Custody
[Your Full Name]
[Your 9-Digit Alien Number]

Dear Officer:

My name is _____, and I have been in ICE detention since [date]. I am submitting this cover letter and the attached documents in support of my request for release on an order of supervision.

I am not a flight risk.

[If you have complied with your ICE order of supervision in the past, describe that here:
“Until my current detention, I was on an ICE order of supervision for [insert length of time]. During that time, I never missed an ICE check-in, and have always reported to ICE when I was requested to do so. If I am released, I will continue to comply with my order of supervision.”]

I am not a flight risk. When I am released I will live at the following address: [insert residential address]. I have lived at this address for [insert number of years] with [if you live with family members, list them and how they are related to you].

I work at [insert job title and employer], and I have worked there for [insert number of years]. It is important for me to be a reliable employee so that I can provide for myself and my family. [If you have sick or elderly family members or friends you care for, or if you are the financial provider for family members, describe your responsibilities here. If you are on parole, you may add a paragraph about the conditions of parole: ex. “Additionally, I will be checking in regularly with my parole officer and will be subject to travel restrictions.”]

I am not a danger to my community.

I am not a public safety concern. [If applicable, insert explanation for conviction. If you were young when you committed the crime, include that. You may write about how you have matured since that time. Explain why you will not re-offend. If you are involved in any community organizations, describe your involvement here. You may describe educational courses and programs you participated in, as well]

Due to the low flight and public safety risks I pose, I ask that I be released from custody on an order of supervision. If you have any questions or requests for additional documentation, please do not hesitate to contact me.

Sincerely,

[Signature & Name]

List Of Documents To Collect For 90-Day Post-Order Custody Review

In support of your request for release from ICE custody, you may collect the following documents and attach them to your cover letter:

- Letters of support from family members, friends and community members (see template)
- Letter of support from employer
- If you suffer from a health condition, a letter from your treating physician explaining the medical care that you need OR medical records about your condition.
- If you are a caretaker of someone with a health condition, include medical records or a doctor's letter describing the care that this person needs from you.
- If you were in criminal custody, certificates of completion of programming and education.
- Any other documents that you believe ICE should consider when deciding whether to continue detaining you.

Template For Letter Of Support From Family Member Or Community Member

[Date]

Department of Homeland Security
Immigration and Customs Enforcement
[Address of ICE Field Office, if known]

Re: Request for Release from ICE Custody
[Name of Detainee]
[9-Digit Alien Number of Detainee]

My name is _____, and I am writing this letter in support of the release of [Name of Detainee] from ICE custody. I have known [Name of Detainee] for [number of years]. I know [Name of Detainee] because she/he is my [insert relationship: ex. brother, friend, co-worker].

[Describe the positive contributions she/he has made in your life and why you do not think she/he is a flight risk or a danger to the community. If you rely on her/him financially or as a caretaker, please describe. If possible, include stories and specific details to illustrate what you are saying about the person.]

For all of the reasons above, [Name of Detainee] is someone who I know will continue to make positive contributions to our community, and should be released from ICE custody.

Sincerely,

[Signature]
[Printed Name]
[Phone number]

APPENDIX E
FILING A ZADVYDAS
HABEAS PETITION



INDEFINITE IMMIGRATION DETENTION: HOW TO FILE A LAWSUIT DEMANDING RELEASE

Who is this guide for?

This guide is for immigrants who are detained by Immigration and Customs Enforcement (ICE) and have a **final removal order**. Your removal order becomes final when you stop fighting your case, which means:

- When the immigration judge orders you removed and you give up your right to appeal, or the 30-day period to appeal expires.
- If you appeal, when the Board of Immigration Appeals dismisses your appeal.
- If you petition for review in the Court of Appeals and get a stay of removal, when the Court of Appeals dismisses your petition.

This guide is written specifically for immigrants detained in the region of ICE's San Francisco Field Office. The following detention facilities are under the San Francisco Field Office: the Golden State Annex in McFarland and the Mesa Verde Detention Facility in Bakersfield.

How long can ICE hold me?

In a 2001 case called *Zadvydas v. Davis*, the U.S. Supreme Court ruled that ICE cannot hold immigrants **indefinitely** after they are ordered removed. In general, ICE is allowed to hold you for **six months** after your removal order becomes final. After six months, if you can show that it is unlikely that you will be removed in the **reasonably foreseeable future**, you should be released. Some reasons why your removal is unlikely may include, for example: your home country does not have a repatriation agreement with the United States, your home country generally does not accept the deportation of people with certain criminal convictions, your home country does not consider you a citizen, or you are not a citizen of any country.

How do I file a lawsuit to get released?

If you have been detained for more than six months with a final removal order, and you are detained in the region covered by the San Francisco Field Office, you can file a “petition for writ of habeas corpus” in the U.S. District Court for the Northern District of California. If you are detained in the region covered by another field office, you will need to file in a different court and modify the sample petition.

1. Fill out the attached “Petition for Writ of Habeas Corpus.” You must write in English and you must sign and date the petition. Be sure to fill out paragraph 19, explaining why your removal is unlikely. It is your burden to show that ICE probably cannot remove you.
2. If you want to ask the Court to appoint a free lawyer for you, fill out the attached “Motion for Appointment of Counsel.”
3. Prepare the filing fee of \$5.00 in cash or money order or check (made out to “Clerk, U.S. District Court”). If you cannot pay, see the Court’s official “Instructions for Filing and Application to Proceed In Forma Pauperis,” attached. If you want to be considered for a free lawyer, you must apply to be “in forma pauperis” instead of paying the \$5.00.
4. Mail the originals plus two copies of the documents, and the filing fee, to the address below. Also make an extra copy for yourself.

Clerk’s Office
United States District Court
450 Golden Gate Ave., 16th Fl.
San Francisco, CA 94102

What happens next?

Your case will be assigned to a judge and the judge will order the government to respond to your petition by a certain date. After you receive the government’s response, you can file an optional “reply” by the date set by the judge. If you are moved to a different detention facility, be sure to inform the Court. The judge will probably take several months to make a decision.



Asian Americans Advancing Justice – Asian Law Caucus (ALC) created this guide for informational purposes only, not as legal advice. The contents are up-to-date as of February 2023. You can contact ALC at 55 Columbus Avenue, San Francisco, California 94111, at (415) 896-1701, or through the free telephone line in detention.

What happens if the government seeks to transfer my case to a different court?

In response to your petition, the government may argue that the detention center where you are held is not located within the geographic region covered by the U.S. District Court for the Northern District of California. Therefore, the government may argue that your case should be transferred to a different “venue,” the U.S. District Court for the Eastern District of California, because the detention center where you are held is located in that district.

If you face these arguments, you can respond that the U.S. District Court for the Northern District of California is the correct venue for your case because the federal official who has authority to release you from detention is the Director of the ICE Field Office for San Francisco, and San Francisco is located within the Northern District. If the government seeks to transfer your case to the Eastern District of California, please contact us using the phone number or mailing address below to discuss how to further respond.

If the Court accepts your argument, you will be able to proceed with your case in the Northern District of California. If the Court, instead, accepts the government’s argument, your case will be automatically transferred to the U.S. District Court for the Eastern District of California.



1 Name: _____

2 A Number: _____

3 Address: _____

4 _____

5 _____

6 PRO SE

7
8
9 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

10 Name: _____,

Case No.

11 Petitioner,

12 v.

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

13 Field Office Director, San Francisco Field Office,
14 United States Immigration and Customs
15 Enforcement; Director, United States
16 Immigration and Customs Enforcement;
17 Secretary, United States Department of
Homeland Security; and United States Attorney
General,

18 Respondents.

19
20
21
22 Petitioner [name] _____ petitions this Court for a writ
23 of habeas corpus to remedy Petitioner's indefinite detention by Respondents.

24 **JURISDICTION AND VENUE**

25 1. This Court has subject matter jurisdiction and may grant relief under 28 U.S.C. §
26 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 1331 (federal question).
27 This Court also has jurisdiction to hear this case under the Suspension Clause of Article I of the
28

1 United States Constitution. *INS v. St. Cyr*, 533 U.S. 289 (2001).

2 2. Because Petitioner challenges his or her custody, jurisdiction is proper in this
3 Court. While the courts of appeals have jurisdiction to review removal orders through petitions
4 for review, *see* 8 U.S.C. §§ 1252(a)(1) and (b), the federal district courts have jurisdiction under
5 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness of their
6 detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *Nadarajah v. Gonzales*, 443
7 F.3d 1069, 1075-76 (9th Cir. 2006).

8 3. Petitioner has exhausted any and all administrative remedies to the extent required
9 by law.

10 4. Venue is proper in the Northern District of California pursuant to 28 U.S.C §§
11 1391(b) and (e) because a substantial part of the events or omissions giving rise to these claims
12 occurred in this district. All material decisions have been made at the San Francisco Field Office
13 of Immigration and Customs Enforcement (ICE), which has authority over the detention of
14 Petitioner and is located in this judicial district. *See, e.g., Sales P. v. Kaiser*, No. 22-CV-03018-
15 DMR, 2022 WL 17082375, at *5 (N.D. Cal. Nov. 18, 2022) (holding the Northern District is the
16 proper forum for habeas petition filed by noncitizen detained at Golden State Annex facility
17 under the purview of the San Francisco FOD); *Ameen v. Jennings*, No. 22-CV-00140-WHO, 2022
18 WL 1157900, at *4-5 (N.D. Cal. Apr. 19, 2022) (collecting cases) (same); *Zepeda Rivas v.*
19 *Jennings*, 445 F. Supp. 3d 36, 39 (N.D. Cal. 2020) (same with regards to petitioners held at Mesa
20 Verde Detention Facility and Yuba County Jail under the purview of the San Francisco FOD).

21 **PARTIES**

22 5. Petitioner is a noncitizen who is currently detained by Immigration and Customs
23 Enforcement (ICE) at the [name of detention facility] _____
24 in [city, state] _____.

25 6. Respondent Field Office Director for the San Francisco Field Office of ICE (“SF
26 FOD”) has the authority to order Petitioner’s release or continued detention. As such, Respondent
27 SF FOD is a legal custodian of Petitioner.
28

7. Respondent Director of ICE (“ICE Director”) is the head of ICE, an agency within the United States Department of Homeland Security that detains and removes certain noncitizens. Respondent ICE Director is a legal custodian of Petitioner.

8. Respondent Secretary of the United States Department of Homeland Security (“DHS Secretary”) is responsible for the implementation and enforcement of the immigration laws and oversees ICE. As such, Respondent DHS Secretary has ultimate custodial authority over Petitioner.

9. Respondent Attorney General of the United States (“U.S. A.G.”) is the head of the United States Department of Justice, which oversees the immigration courts. Respondent U.S. A.G. shares responsibility for enforcement of the immigration laws with Respondent DHS Secretary.

10. All Respondents are sued in their official capacities.

FACTUAL ALLEGATIONS

11. Petitioner [name] _____ was born in
[country] _____.

12. Petitioner entered the United States on or about [date] _____.

Petitioner's immigration history is as follows: _____

13. Petitioner's criminal history is as follows:

14. Petitioner was detained by Immigration and Customs Enforcement on or about

1 [date] _____. Petitioner has remained in ICE custody since that date.

2 15. An Immigration Judge ordered Petitioner removed from the United States on or
3 about [date] _____. Petitioner [circle one] DID / DID NOT appeal
4 the Immigration Judge's decision to the Board of Immigration Appeals (BIA). The BIA dismissed
5 Petitioner's appeal on [date, if applicable] _____.

6 16. Petitioner received a document titled "Decision to Continue Detention" from ICE
7 on or about [date] _____. Petitioner received a second "Decision to
8 Continue Detention" from ICE on or about [date] _____.

9 17. Petitioner has cooperated fully with all of ICE's efforts to remove Petitioner.
10 Petitioner has cooperated with ICE in the following ways: _____
11 _____
12 _____

13 18. Nonetheless, ICE has been unable to remove Petitioner from the United States.
14 ICE is unlikely to be able to remove Petitioner because: _____
15 _____
16 _____
17 _____
18 _____

19 **LEGAL FRAMEWORK**

20 19. In *Zadvydas v. Davis*, the Supreme Court held that the immigration statute 8
21 U.S.C. § 1231(a)(6) does not allow ICE to detain a noncitizen indefinitely while attempting to
22 carry out removal. 533 U.S. 678, 689 (2001). Because of the "serious constitutional problem"
23 posed by indefinite detention, the Court read the statute to limit a noncitizen's detention to "a
24 period reasonably necessary to bring about that alien's removal from the United States." *Id.*

25 20. The Court also recognized six months as the "presumptively reasonable period" of
26 post-removal order detention. *Id.* at 701. After six months, once the noncitizen provides "good
27 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
28

1 future,” the burden shifts to the government to rebut that showing. *Id.* Moreover, “as the period of
2 prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’
3 conversely would have to shrink.” *Id.*

4 21. In *Clark v. Martinez*, the Supreme Court held that its ruling in *Zadvydas* applies
5 equally to noncitizens who have never been admitted to the United States. 543 U.S. 371 (2005).

6 **CLAIM FOR RELIEF**

7 **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**

8 22. The foregoing allegations are realleged and incorporated herein.

9 23. Petitioner’s continued detention is unlawful and violates 8 U.S.C. § 1231(a)(6) as
10 interpreted by the Supreme Court in *Zadvydas*. The six-month presumptively reasonable period of
11 detention has expired and Petitioner has provided good reason to believe that his or her removal is
12 not significantly likely to occur in the reasonably foreseeable future. Therefore, Respondents lack
13 authority to continue detaining Petitioner.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

- 16 a. Assume jurisdiction over this matter;
17 b. Issue an order pursuant to 28 U.S.C. § 2243 directing Respondents to show cause
18 why the writ of habeas corpus should not be granted;
19 c. Grant the writ of habeas corpus and order Petitioner’s immediate release from
20 custody;
21 d. Grant any other and further relief as the Court deems just and proper.

22
23 Date: _____

Signature: _____

24 Petitioner

1 Name: _____

2 A Number: _____

3 Address: _____

4 _____

5 _____

6 PRO SE

7
8
9 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

10 Name: _____,

Case No.

11 Petitioner,

12 v.

**MOTION FOR APPOINTMENT OF
COUNSEL PURSUANT TO 18
U.S.C. § 3006A**

13 Field Office Director, San Francisco Field Office,
14 United States Immigration and Customs
15 Enforcement; Director, United States Immigration
16 and Customs Enforcement; Secretary, United
17 States Department of Homeland Security; United
18 States Attorney General; and WARDEN OF
19 IMMIGRATION DETENTION FACILITY,

20 Respondents.

21 Petitioner [name] _____ has filed a petition for writ of
22 habeas corpus under 28 U.S.C. § 2241 challenging Petitioner's indefinite detention by
23 Respondents. Petitioner was detained by Immigration and Customs Enforcement (ICE) on or
24 about [date] _____. Petitioner has remained in ICE custody since that
25 date. An Immigration Judge ordered Petitioner removed and Petitioner's removal order became
26 final on or about [date] _____, but ICE has been unable to remove
27 Petitioner.
28

1 In *Zadvydas v. Davis*, the Supreme Court held that the immigration statute 8 U.S.C. §
2 1231(a)(6) does not allow ICE to detain a noncitizen indefinitely while attempting to carry out
3 removal. 533 U.S. 678, 689 (2001). After six months of presumptively-reasonable detention, if
4 the noncitizen provides good reason to believe that removal is not reasonably foreseeable, the
5 burden shifts to the government to rebut that showing. *Id.* at 701.

6 Petitioner moves the Court to appoint counsel to represent Petitioner in this case. The
7 Court may appoint counsel in a habeas action when the “interests of justice so require.” 18 U.S.C.
8 § 3006A(a)(2)(B). Here, Petitioner has a strong chance of success on the merits because
9 Petitioner has been held for longer than six months since being ordered removed and Petitioner’s
10 country still refuses to accept him or her. However, given the complexity of the law on
11 immigration detention and Petitioner’s status as a detained immigrant, Petitioner would have
12 great difficulty presenting the case without the assistance of counsel. For these reasons, Petitioner
13 respectfully requests that the Court appoint counsel.

14
15 Date: _____

Signature: _____
Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**INSTRUCTIONS FOR FILING AN APPLICATION TO PROCEED
IN FORMA PAUPERIS BY A PRISONER UNDER 28 U.S.C. § 1915**

You must submit to the court a completed Prisoner's Application to Proceed *In Forma Pauperis* if you are unable to pay the entire filing fee at the time you file your complaint or petition. The court will consider as part of your application the transactions in your prison trust account statement for the last six months. If you are housed at a California Department of Corrections and Rehabilitation (CDCR) facility, the court's application form includes your authorization for CDCR to provide a certified copy of your trust account statement directly to the court. But if you are housed at a non-CDCR facility (such as a local jail), you must have your institution complete the certification at the end of the application form and attach a certified copy of your trust account statement.

A. Civil Actions other than Habeas Actions

The fee for filing any civil action other than a petition for a writ of habeas corpus is \$402 (\$350 filing fee plus a \$52 administrative fee). If you are not granted leave to proceed *in forma pauperis*, you must pay the \$402 fee in one payment.

If you are granted leave to proceed *in forma pauperis*, you must still pay the \$350 filing fee (not the \$52 administrative fee), but the filing fee will be paid in several installments. You must pay an initial partial filing fee of 20 percent of the greater of (a) the average monthly deposits to your account for the 6-month period immediately before the complaint was filed or (b) the average monthly balance in your account for the six-month period immediately before the complaint was filed. The court will use the information provided on your trust account statement to determine the filing fee immediately due and will send instructions to you and the prison trust account office for payment.

After the initial partial filing fee is paid, your prison's trust account office will forward to the court each month 20 percent of the most recent month's income to your prison trust account, to the extent the account balance exceeds ten dollars (\$10). Monthly payments will be required until the full filing fee is paid. If you have no funds over ten dollars (\$10) in your account, you will not be required to pay part of the filing fee that month.

If your application to proceed in forma pauperis is granted, you will be liable for the full \$350 filing fee even if your civil action is dismissed. That means the court will continue to collect payments until the entire filing fee is paid.

B. Habeas Actions

The fee for filing a petition for a writ of habeas corpus is \$5 (\$5 filing fee plus \$0 administrative fee). If you are granted leave to proceed *in forma pauperis*, you will not be required to pay any portion of this fee. If you are not granted leave to proceed *in forma pauperis*, you must pay the fee in one payment and not in installments.

If you use a habeas form to file a civil action other than a habeas action, you will be required to pay the fee applicable to civil actions other than habeas actions.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,

v.

Defendant(s).

CASE NUMBER _____

**PRISONER'S APPLICATION AND
DECLARATION TO PROCEED
IN FORMA PAUPERIS**

I, (print your name) _____, declare under penalty of perjury that I am the plaintiff in this case; I believe I am entitled to relief; and I am unable to pay the costs of this proceeding or give security thereof.

In support of this application, I provide true, correct and complete answers to all of the following questions:

1. Are you presently employed in prison? ☐ Yes ☐ No

The number of hours you work per week: _____ The hourly rate of pay: _____

2. For the past twelve months, list the amount of money you have received from any of the following sources.

- | | |
|---|----------|
| a. Business, profession or self-employment | \$ _____ |
| b. Income from rent, interest or dividends | \$ _____ |
| c. Pensions, annuities or life insurance payments | \$ _____ |
| d. Disability, Social Security or other government source | \$ _____ |
| e. Gifts or inheritances | \$ _____ |
| f. Describe any other source of income: _____ | \$ _____ |

3. List the amount for each of the following (include prison account funds):

Cash on hand \$		Checking account \$		Savings account \$	
--------------------	--	------------------------	--	-----------------------	--

4. Do you own or have any interest in any real estate, stocks, bonds, notes, retirement plans, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

If Yes, describe the property and state its approximate value:

<input type="checkbox"/> Yes		\$	
<input type="checkbox"/> No			

5. Do you have any other assets?

If Yes, list the asset(s) and the approximate value:

<input type="checkbox"/> Yes	<div style="border: 1px solid black; width: 600px; height: 50px;"></div>	\$	<div style="border: 1px solid black; width: 150px; height: 50px;"></div>
<input type="checkbox"/> No			

6. Does anyone depend upon you for financial support?

If Yes, state their relationship to you, and indicate how much you contribute towards their support each month. Use initials (not names) to refer to minor children.

<input type="checkbox"/> Yes	<div style="border: 1px solid black; width: 600px; height: 50px;"></div>	\$	<div style="border: 1px solid black; width: 150px; height: 50px;"></div>
<input type="checkbox"/> No			

This form must be dated and signed below for the court to consider your application.

I hereby authorize the institution having custody of me to provide a certified copy of my trust account statement for activity covering the last six months to the court. Additionally, once eligibility is established, I further authorize the institution having custody of me to collect from my trust account and forward to the court payments in accordance with 28 U.S.C. § 1915(b)(2).

_____ Signature of Prisoner	_____ Prisoner's CDCR Number	_____ Date
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CERTIFICATION FOR PRISONERS *NOT* IN CDCR CUSTODY

CERTIFICATE OF FUNDS IN PRISONER'S ACCOUNT
(to be completed by authorized officer)

I certify that attached hereto is a true and correct copy of the prisoner's trust account statement showing the transactions of _____ for the last six months at

PRISONER'S NAME

_____, where (s)he is confined.

NAME OF NON-CDCR INSTITUTION

_____ Signature of Authorized Officer	_____ Officer's Name (printed)	_____ Date
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APPENDIX F
APPLYING FOR A WORK
PERMIT

Applying for a Work Permit

If you were ordered deported but released from ICE custody on an Order of Supervision because no country would accept you for deportation, you can apply for a work permit, also called an Employment Authorization Document. Some benefits of obtaining a work permit include permission to work, ability to get a state identification card or driver's license, and obtaining a Social Security card.

Work permit applications are submitted by mail. To apply, you need to submit the following:

- ☒ Form I-765
- ☒ Form I-765WS
- ☒ Filing Fee (\$410 as of November 2022) or a Fee Waiver Request (Form I-912)
- ☒ Copy of Removal Order
- ☒ Form I-220B, Order of Supervision
- ☒ Up-to-date ICE Check-In Sheet
- ☒ For renewals only: copy of previous work permit card

Instructions on filling out each form are provided below. The forms are available at <http://www.uscis.gov>. The forms frequently change. Please check to make sure the information is up to date before sending your application.

Form I-765 – Application for Employment Authorization

The form is available at <https://www.uscis.gov/i-765>. Most of the questions are simple. A few notes on questions:

Question 1 – Reason for Applying

Mark box 1.a. if this is your first time applying for a work permit.

Mark box 1.c. if you already have a work permit and need to renew it.

Part 1. Reason for Applying

I am applying for (select only one box):

- 1.a. ☐ Initial permission to accept employment.
- 1.b. ☐ Replacement of lost, stolen, or damaged employment authorization document, or correction of my employment authorization document **NOT DUE** to U.S. Citizenship and Immigration Services (USCIS) error.
- NOTE:** Replacement (correction) of an employment authorization document due to USCIS error does not require a new Form I-765 and filing fee. Refer to **Replacement for Card Error** in the **What is the Filing Fee** section of the Form I-765 Instructions for further details.
- 1.c. ☐ Renewal of my permission to accept employment.
(Attach a copy of your previous employment authorization document.)

Asian Americans Advancing Justice – Asian Law Caucus (ALC) created this guide for informational purposes only, not as legal advice. The contents are up-to-date as of November 2022. You can contact ALC at 55 Columbus Avenue, San Francisco, California 94111, at (415) 896-1701, or through the free telephone line in detention.

Question 8 – Alien Number (also known as A-Number or USCIS Number)

The A-Number is a 9-digit number that usually starts with a zero. If you do not know your A-Number, check your ICE reporting paperwork. It is usually at the top of each page. It is important to include this number on the application.

8. Alien Registration Number (A-Number) (if any)

► A-

--	--	--	--	--	--	--	--	--

Question 12 – Have you previously applied for a work permit?

If you are not sure about the answer to this question, the answer is likely no. If you were a refugee before, you likely never applied for a work permit. If you do not remember applying for a work permit, answer “No.”

If you are applying to renew the work permit, answer “Yes.”

Question 13a – Have you ever been issued a Social Security card?

If you previously had a Social Security number, your number stays the same and remains valid, so check “yes” and list the number.

13.a. Has the Social Security Administration (SSA) ever officially issued a Social Security card to you?

☐ Yes ☐ No

Question 14 – Do you want a new Social Security card to be issued?

If you have your old social security card, you can continue using it. The number and card remain valid. If you no longer have your old card or never had a social security number, you should request a new card and answer Questions 15-17. If you do not need a new card, you can answer “No” and skip Questions 15-17.

Note: The new card will be issued with a stamp on the face that reads, “NOT VALID FOR EMPLOYMENT.” This means that you must also show a valid work permit when starting a new job.

14. Do you want the SSA to issue you a Social Security card?
(You must also answer “Yes” to **Item Number 15.**,
Consent for Disclosure, to receive a card.)

☐ Yes ☐ No

Questions 21-26 – Immigration History

You may not know all of this information. If you listed your A-Number in Question 8, USCIS can look up your immigration history. You may be able to find your date of entry on your immigration court paperwork.

If you entered as a refugee, you likely did not have a passport when you entered. For Question 24, your immigration status at the time of last arrival was “Refugee.”

The answer to Question 25 asking your current immigration status is “Order of Supervision.” Leave Question 26 blank.

Information About Your Last Arrival in the United States

21.a. Form I-94 Arrival-Departure Record Number (if any)

►

21.b. Passport Number of Your Most Recently Issued Passport

21.c. Travel Document Number (if any)

21.d. Country That Issued Your Passport or Travel Document

21.e. Expiration Date for Passport or Travel Document
(mm/dd/yyyy)

22. Date of Your Last Arrival Into the United States, On or
About (mm/dd/yyyy)

23. Place of Your Last Arrival Into the United States

24. Immigration Status at Your Last Arrival (for example,
B-2 visitor, F-1 student, or no status)

25. Your Current Immigration Status or Category (for example,
B-2 visitor, F-1 student, parolee, deferred action, or no
status or category)

Order of Supervision

26. Student and Exchange Visitor Information System
(SEVIS) Number (if any)

► N-

Question 27 – Eligibility Category

The category is (C)(18).

- 27. Eligibility Category.** Refer to the **Who May File Form I-765** section of the Form I-765 Instructions to determine the appropriate eligibility category for this application. Enter the appropriate letter and number for your eligibility category below (for example, (a)(8), (c)(17)(iii)).

() () ()

For Questions 28 through 31, leave these blank. They do not apply.

Finally, complete and sign page 4. If your application is not signed, it will be sent back.

Form I-765WS – Worksheet

To receive a work permit, you need to demonstrate a need for employment and some information on why you cannot be deported right now. These factors are not very strict. It is fine if you have some income or savings. A sample response is provided below:

“I am seeking a work permit to secure employment and to support myself. I was ordered deported but released from ICE custody because Vietnam refused to accept me for deportation. I was recently released from immigration detention after many years of incarceration. As a result, I do not have savings and must find employment to support myself.”

Filing Fee (\$410) or Fee Waiver (Form I-912)

The work permit application requires a filing fee of \$410 payable by personal check, money order, or cashier’s check to “U.S. Department of Homeland Security.” Work permits are only valid for one year.

If you are low-income, you can apply for a waiver of the filing fee. If granted, the application is free. The fee waiver application is available at <https://www.uscis.gov/i-912/> If you are applying for a fee waiver, do not send a check.

To qualify for a fee waiver, you need to show that you (1) are currently receiving a means-tested benefit; (2) have a household income below 150% of the poverty line, or (3) have financial hardship. You can select multiple bases for your request and would need to fill out only the relevant sections.

Means-Tested Benefit:¹ A means-tested benefit includes Medicaid, Supplemental Nutrition Assistance Program, Temporary Assistance to Needy Families, and Supplemental Security Income. You will need to include evidence that you are receiving the means-tested benefit in the

¹ USCIS is accepting means-tested benefit as a basis for requesting a fee waiver for now. Since there is pending litigation, please check <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver#meanstested> for the most up-to-date information.

form of a letter, notice, or other official document that contains your name, the name of the agency granting the benefit, the type of benefit, and any dates showing that you are currently receiving the benefit. A benefit card alone will not be accepted unfortunately.

Household Income: You can apply for the fee waiver by demonstrating that your household income is below 150% of the poverty line. Your household includes anyone on your income tax return. A table providing 150% of the poverty line is below.

The Federal Poverty Guidelines are established annually. Please check the current Federal Poverty Guidelines, available at <https://www.uscis.gov/i-912p>

2022 Federal Poverty Guidelines	
Household Size	Income (150% Poverty Line)
1	\$20,385
2	\$27,465
3	\$34,545
4	\$41,625
5	\$48,705
6	\$55,785
7	\$62,865
8	\$69,945
For families/households with more than 8 persons, add \$6,720 for each additional person.	

To document your income, provide your federal income tax return and Form W-2s or Form 1099s. If you do not have any income documentation, you may submit:

- ✓ A currently dated letter from parole. The letter should include your release date and a statement that you have no work history. The letter could also state any helpful information about your current living situation (e.g. a housing program).
- ✓ An affidavit from any person who can verify and explain your situation.
- ✓ Documentation that you currently get CalWORKs or have Medi-Cal. Receiving either of these benefits can help show that your income is below the 150% poverty level. You should submit the award letter or benefit approval document along with documentation of the income limit required to qualify for the benefit.
 - CalWORKs: You can find the income limit at your county human services agency or visit https://ca.db101.org/ca/programs/income_support/calworks/program2.htm and https://ca.db101.org/glossary_item.aspx?item-id=1372 for the current income limits.
 - Medi-Cal: If you plan to show that you have Medi-Cal, you must show you qualify based on income. You can contact your local county office or visit <https://www.dhcs.ca.gov/services/medi-cal/Pages/DoYouQualifyForMedi-Cal.aspx> for documentation of the income limit requirement.

- CalFresh and Healthy Families: Unfortunately, documentation of either of these benefits would not help to show your income is below the 150% poverty level. However, you can submit this documentation to support your fee waiver application based on financial hardship.

Financial Hardship: You can also apply for the fee waiver by showing that you have financial hardship. You should include a detailed description of your financial hardship and submit documentation listed to prove your financial hardship.

Supporting Documentation

Form I-220B Order of Supervision: This form should be included with the paperwork you show to ICE when you check-in. You need to provide a copy of it.

ICE Check-In Sheet: Provide a copy of your sheet showing the dates you checked in with ICE and your next check-in date. If your sheet does not have information about your most recent check-in because you have not checked in in-person during the pandemic, you can bring your Form I-220B to your local ICE office and ask for proof of compliance and the next check-in date.

Make sure to sign the Form I-765 and fee waiver application if you are using it. If you live in California, you can mail the application forms and supporting documents using the U.S. Postal Service to:

USCIS
Attn: AOS
P.O. Box 805887
Chicago, IL 60680

If you live in a state other than California, check <https://www.uscis.gov/i-765-addresses> for category (c)(18) for the most up-to-date filing address.