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GETTING OUT OF DETENTION AND BONDS



How do I get released from detention during my immigration case?

Some people in Immigration detention have a right to be released on bond while others do not.

What is a bond?

A bond is an amount set by Immigration or the Immigration Judge that you must pay before being released from Immigration detention. It helps guarantee that you will show up for your court hearings and leave the U.S. at the end of your case if you do not win. If the bond is paid, you will be released from detention during your case. At the end of your case, the person who paid the bond will get the money back if you win or if you leave the U.S. when you are ordered to do so. If you miss a hearing or if you do not leave the U.S. by the date ordered, the person who paid the bond will lose the money. Bonds can be set as low as \$1,500; although many are \$3,000, or \$5,000 or more.

Does everyone have a right to ask for bond?

No. Many people do not have a right to ask for bond. For example, if you were ordered deported in the past but never left, in most cases you will not have a hearing before an Immigration Judge and cannot ask for a bond. If you have been convicted of certain crimes, you do not have a right to ask for bond. This is called mandatory detention. These crimes include an aggravated felony (see page 12) or most crimes of moral turpitude (see page 13) or nearly any drug conviction. 8 U.S.C 1226(c). However, if you have been convicted of these types of crimes but you finished serving your criminal sentence before October 9, 1998, you can still seek a bond.

Who has a right to ask for bond?

You have a right to ask for bond if you do not have a criminal conviction or a final order of removal. Even if you have been convicted of certain types of crimes, you can still ask for bond. These crimes include certain domestic violence crimes with a sentence under one year; smuggling; false claims to U.S. citizenship; document fraud; and certain other crimes, although these crimes could be crimes of moral turpitude, restricting your right to bond. 8 U.S.C. §1226(c).

If you have a right to ask for bond, you must show the Immigration Judge that: (1) you are not a danger to the community; (2) you are not a threat to national security; and (3) you are

not a flight risk.

When can I ask for bond or for a lower bond?

Usually you only get one bond hearing, so it is important to gather the evidence before going through with the bond hearing. At your first Immigration Court hearing, you can ask the Immigration Judge to lower the bond or set a bond if the government did not. You need to have evidence that you are not a danger to the community, or a flight risk or a threat to national security. It is usually better to tell the Judge that you do not want a bond hearing right away and need more time to collect evidence and prepare witnesses to come to court.

What happens at the bond hearing?

The Immigration Judge will first decide whether you have a right to ask for bond or whether you are required to stay in detention without bond due to certain criminal convictions described above. If you have a right to seek bond, the Judge will usually ask you questions about your background. The lawyer for the government will present evidence to the Judge about any arrests and criminal convictions, and your past immigration history. The Judge will ask you questions about this and about drug or alcohol addiction. The Judge will consider the same kind of evidence used for bail in a criminal case, to decide whether you are a danger to the community, a flight risk, or a threat to security, including:

- (1) Your ties to the community
- (2) Your length of residence in the U.S.
- (3) Your family members in the U.S. and their immigration status
- (4) Your employment history and job offer in writing
- (5) Your history of appearance in other court cases
- (6) Whether you are a danger to the community or a security threat
- (7) Your criminal record and rehabilitation
- (8) Your likelihood of winning your immigration case

If you have a criminal conviction, it does not help to tell the Immigration Judge that you did not commit the crime. The Immigration Judge cannot change your criminal record. You want to focus on your ties to your family and community and tell the Judge how long you have lived in the U.S., where your family is, whether you have a job offer, how you have changed if you have been in prison, what type of relief you are seeking in Immigration Court (like asylum, or cancellation of removal), and how much money you have to pay a bond.

Try to gather as much written evidence as you can about these eight points, and to have at least one or two witnesses in court. Witnesses could include your spouse or children or other family members who have legal status, or the victim of the crime, or your employer or someone offering you a job, or your pastor or other religious leader, or a probation officer, or a social worker. If it is not possible for witnesses to come to Immigration Court, they should write letters of support that you can give to the Immigration Judge. Other helpful evidence to give the Judge could be:

If you are married to a U.S. citizen or lawful permanent resident, a copy of the marriage certificate, the birth certificate or certificate of naturalization or green card of your spouse.

If your children have legal status, a copy of their birth certificates and green cards.

If you have a medical condition, a letter from your doctor.

If you have professional training or education in the U.S., a copy of your GED, or diploma or other certificates.

Proof of the length of time you have lived in the U.S.

How does someone post a bond?

The person who pays the bond needs to have legal status. He or she is called the “obligor” and is the only person who can ask for the bond money back at the end of the case. The obligor should first call the Office of Enforcement and Removal and ask for the Bond Officer. If the Bond Officer is not there, the obligor should leave a message with your name and A number. Then the obligor must bring a bank check or money order in the amount of the bond payable to: “U.S. Department of Homeland Security”

DHS/ICE Enforcement and Removal Operations
10 New England Executive Park
Burlington, MA 01083

Phone: 781-359-7500
Open for bond Monday to Friday 9 a.m. to 3 p.m.

The obligor must bring his or her driver’s license, green card, passport or other valid identification. The obligor will pay the bond money and sign some papers stating that he or she will get the money back at the end of the case if you go to all your court hearings and leave if the Judge orders deportation. The obligor must keep these original bond papers since he or she will need them to get the money back at the end of the case. If you flee the area or miss any court hearings, the obligor will lose the bond money and you can be deported if the Judge issued a final order of deportation.

If the Immigration Judge ordered me deported, but my country will not accept me, will I be released from detention?

The government has 90 days after a final order to deport you from the U.S. 8 U.S.C. §1231(a). After that, the government may release you from detention. However, you will remain locked up beyond that time if you are a danger to the community or if you are a flight risk. See 8 U.S.C. §1231(a)(6).

Within 90 days after a deportation order, the government must review your case for

possible release. In Boston, the government rarely releases people at 90 days unless it is not possible to deport them.

If you want to be considered for release, you should write the government about where you will be living, if you have a job offer, whether your family and friends will support you, why you are not a danger to the community, and why you are not going to miss any appointments. See the sample letter in Appendix D requesting release under supervision. Send this information to:

DHS/ICE Enforcement and Removal Operations
10 New England Executive Park
Burlington, MA 01803

If the government does not deport you after six months, then in most cases the government must release you. The law says that if your deportation is not reasonably foreseeable, the government must release most people after six months. You can write to the address listed above, and request your release. You can also write to Immigration headquarters in Washington, D.C. asking for release after waiting six months from your final deportation order. You write to:

ICE, Office of Enforcement and Removal
801 I Street N.W., Suite 900
Washington, D.C. 20536

You can contact them by phone or fax:

Phone: 202-514-8663
FAX: 202-353-9435

You must cooperate with Immigration in getting travel documents for Immigration to return you to your home country. You must give Immigration a copy of your birth certificate or your passport, or you must contact your consulate for travel documents so that Immigration can start your deportation. If you do not cooperate with Immigration, this six month time period does not start, and Immigration can detain you even longer. If you appeal your immigration case and have a stay of removal, the six month time period does not run.

If you are not released, you can file a habeas corpus petition in federal court. For sample habeas forms, call or write PAIR.

GROUND OF DEPORTATION FOR CRIMINAL CONVICTIONS

Can Immigration deport me for any criminal conviction?

No. Only certain criminal convictions lead to your deportation. Some of the main ones are:

(1) Aggravated Felonies. The immigration law calls certain crimes aggravated felonies.