

RELEASE FROM IMMIGRATION DETENTION - HABEAS

This memo provides a very brief overview of the different ways to seek release from immigration detention in the United States, including the basic eligibility requirements. For more detailed information about seeking release from detention, please review the materials included with this memo.

In seeking release from detention, we strongly suggest that asylum seekers contact a lawyer or an organization that represents asylum seekers for advice and possible legal representation. We have included a list of non-profit organizations in your area that may be able to provide representation or assist you finding representation.

After release from detention, asylum seekers must attend all court appearance and comply with all court orders. Only an immigration judge can decide to grant or deny asylum for an individual in removal proceedings. Failure to appear in court to present the claim will result in a removal order being issued in the asylum seeker's absence.

There are five main ways to be released from detention: parole, bond, "humanitarian" parole, post-order custody review, and writ of habeas corpus. The meaning of each of these and their eligibility requirements are discussed briefly below.

Release Before Completion of Immigration Proceedings

Parole

"Parole" is a form of release from detention before the completion of immigration court proceedings on the condition that the individual will continue to appear at all required court hearings for the duration of the court process. Parole may be available for an individual who:

- Requested asylum at a "port of entry" to the United States, which is an official border crossing or an airport; and
- Has been found to have a "credible fear" of persecution or torture.

Individuals in this situation are considered "arriving asylum seekers." Under U.S. law, arriving asylum seekers can only ask Immigration and Customs Enforcement (ICE) to release them from detention - an immigration judge cannot order an arriving asylum seeker to be released from detention.

As of 2010, ICE is required to evaluate all arriving asylum seekers found to have a credible fear for eligibility to be released on parole. A document from United States Citizenship and Immigration Services (USCIS) will provide written information about the parole process and requirements for parole with a "credible fear decision if, after an interview process, it is determined that an asylum seeker has established a "credible fear" of return to their country of origin.

Bond

“Bond” is an amount of money, set by an immigration judge, to be paid to the U.S. government as a financial guarantee that an individual released from detention will attend all of his/her court dates and obey the court’s decisions. Individuals who comply with all court dates and decisions will have the money returned to them. Those who do not will forfeit the bond money. Bond may be available for individuals who:

- Were apprehended by immigration authorities after having crossed unlawfully into the United States at a place other than a lawful port of entry; and
- Have been found to have a “credible fear” of persecution or torture.

Such individuals can only ask an immigration judge to be released from detention on bond. ICE cannot set bond for individuals in this situation.

“Humanitarian” Parole

Individuals in detention may also request release through “humanitarian” parole, a process designed for special cases where there are urgent reasons why an individual should not be in detention. These special cases can include individuals requiring emergency medical care, pregnant women, victims of torture or rape, an individual serving as a witness in a criminal prosecution, and any other situation in which the release of the individual would be in the public interest. Humanitarian parole is almost never available to individuals being held under mandatory detention provisions.

Release following a Final Removal Order

Post-Order Custody Review

An individual who has been issued a final order of removal can seek to have his or her custody reviewed after 90 days of detention and again after 180 days. This procedure does not challenge the removal order but seeks release from detention until the individual can be deported. An individual may be eligible for release through a post-order custody review if she or he:

- Has received a final order of removal, deportation, or exclusion, all of which are commonly referred to as a “removal order”;
- Has been detained for more than 90 days (three months) since the order; and
- Can show that he/she is unlikely to be removed in the reasonably foreseeable future.

Writ of Habeas Corpus

A petition for a writ of habeas corpus is a request to a federal district court to be released from “indefinite”, or long-term, detention following a final order of removal. It does not challenge the removal order but seeks release from detention until the individual can be deported. An individual may be eligible to petition for Habeas Corpus if he or:

- Has received a final order of removal, deportation or exclusion;
- Has been detained for more than 180 days (six months), since the final order; and
- Can show that s/he is unlikely to be removed in the reasonably foreseeable future.

All asylum seekers who meet these three criteria are eligible to file a habeas corpus petition to request release from detention.

Conditions or Treatment in Detention Facilities or More Habeas Corpus Information

If you would like information on reporting conditions or abuse in a detention facility, or more detailed information on seeking release from detention through a habeas corpus petition, you may wish to contact the American Bar Association at the following address:

American Bar Association
1050 Connecticut Avenue, NW
Suite 400
Washington, DC 20036
Phone: 202-662-1005
E-mail: immcenter@americanbar.org

Information in the Attached Packet

Based on the information provided, we have included the following materials:

1. A list of non-profit organizations in your area that may be able to help you if you do not have legal representation.
2. *ICE Community Helpline*, ICE Enforcement and Removal Operations
3. *How to Protect Yourself from Immigration Fraud and What Should You Expect from Your Legal Representative*, EOIR Legal Orientation Program,
4. *Release from DHS Custody*, Northwest Immigrant Rights Project;
5. Florence Immigrant & Refugee Rights Project:
 - a. *Guide to 90 Day Custody Review Process*
 - b. *Pro Se Guide to Challenging your Detention through Habeas Corpus*
6. *A Legal Guide for ICE Detainees: Petitioning for Release from Indefinite Detention*, American Bar Association (2006)
7. *Appointment of Counsel in Habeas Corpus Proceedings*, Legal Action Center
8. *Jennings v. Rodriguez* Practice Advisory

* This report was written specifically for individuals detained in certain states in the U.S. The information about the requirements and procedures for seeking habeas corpus are generally applicable even for those not detained in one of the specific states. **Please do not rely on the government contact information**, which is specific to those states, and instead inquire as to the appropriate government contact information where you are.

If you have internet access, you may wish to visit www.refworld.org UNHCR's online database that includes reports on human rights conditions in countries worldwide.