



# HOW TO APPLY TO THE DEPARTMENT OF HOMELAND SECURITY FOR

## RELEASE FROM IMMIGRATION CUSTODY

**NOTE:** As of March 1, 2003, the Immigration and Naturalization Service (INS) is now part of the Department of Homeland Security (DHS). Immigration enforcement functions, including immigration detention and removal cases, are handled by the **Bureau of Immigration and Customs Enforcement (BICE)** within the Department's Border and Transportation Security Directorate. The **Bureau of Citizenship and Immigration Services (BCIS)** will handle other immigration matters, including citizenship, asylum and refugee services.

This booklet was prepared by the Florence Immigrant and Refugee Rights Project, with funding from the Ford Foundation. It was not prepared by DHS or by any other part of the United States government. The fact that it is made available to detainees in the library does not mean that DHS or any other branch or department of the U.S. government agrees with what it says.

### • Who was this booklet written for?

This booklet is for certain individuals in the custody of DHS who do not qualify under the law to ask an Immigration Judge to lower their bonds but who may qualify to ask the Immigration and Naturalization Service to set bonds in their cases or to let them leave the detention center without paying bonds.

This booklet does not discuss how to ask for release if you are in expedited removal proceedings. If that is your case, we advise you to seek legal assistance if possible.

### THIS BOOKLET APPLIES TO YOU IF –

1. **You were arrested by U.S. officers at the airport or a “port of entry”** (such as an inspection station, on a boat or at the coastline) while you were trying to enter the United States and taken into custody at that time;
2. You were allowed to enter the United States with a special type of permission called **“parole,”** and now the government has taken that permission away and taken you into custody; or
3. **Your immigration case is over but you are still in DHS detention.** This could happen if:

- you lost your immigration case in front of the immigration judge and did not appeal that decision to a higher court called the “Board of Immigration Appeals.”
- your case was appealed to the Board of Immigration Appeals and that court ruled against you; OR
- you won “withholding of removal” or a form of protection under the Convention Against Torture called “deferral of removal.”

If you are in one of the three situations just listed, you must ask DHS rather than an Immigration Judge for your release. If DHS approves your release from custody, your release is called a “parole.” For purposes of this pamphlet, we call it “DHS parole.”

If you are not in one of the three situations just listed and this pamphlet does not apply to you, you may qualify to ask the Immigration Judge to give you a bond, lower your bond, or let you out of detention without paying a bond. Another booklet, called, “**All About Bonds**” explains who qualifies to ask the judge for a bond.

- **Who wrote this?**



This booklet was written by the Florence Immigrant and Refugee Rights Project, an organization that helps people who face removal from the United States. We do not work for the Immigration Court or DHS. We are funded by people who want to help immigrants and refugees by making sure that they understand their legal rights and know how to make use of them. Funding for this booklet comes from the Ford Foundation.

**WARNING!** It is not possible for us in this pamphlet to talk about every possible case. If your case is out of the ordinary, you may need more information. Also, immigration law changes often, and some parts of the law are unclear. We can only tell you what we understand the law to mean. The judges and DHS may disagree with us! For these reasons, it is always best, if possible, to get advice from a lawyer who knows the facts in your particular case and who can tell you what the law is at the time your case is being decided.

- **Why can’t I ask the judge to let me out of custody or to set a bond in my case?**

The law that applies to a person’s custody depends on where the DHS arrested the person and whether his or her immigration case is finished or is still going on. In the three kinds of situations we mentioned on the first page of this booklet, DHS and most Immigration Judges believe that the law gives DHS alone – and not the Immigration Judge – the power to decide whether or not a person must stay in custody.

Some lawyers and some federal judges disagree with this and think that immigration judges do have this power in some of these cases. But getting out of custody by making a

“parole” request to DHS is the most common way to get out of detention if you are in one of the situations we have described.

The only other way would be to file papers to bring a case in federal court (separate from immigration court). It is too complicated for us to explain here how to do that. But if DHS does not respond to your parole request or denies your request, you may want to get advice from a lawyer about bringing a case in federal court. This is especially true, if you have a final order of removal, deportation or exclusion and DHS denies your request for release.

- **WHO IS NOT ELIGIBLE FOR DHS PAROLE?**

Some people whose cases are not over and who have criminal problems are not eligible for release from DHS custody at all.

- I. **RULES FOR PEOPLE IN IMMIGRATION PROCEEDINGS WHOSE CASES ARE NOT FINISHED.***

If you were placed immigration proceedings after April 1, 1997, you will not be eligible for DHS parole if you have certain criminal problems discussed in the next box and your case is not over yet.

***Rule 1: People Placed in Immigration Proceedings after April 1, 1997***

You are not eligible for release from DHS custody if you have **committed** any of the following crimes:

- A crime involving moral turpitude (explained on page 18 of this pamphlet) (see discussion of petty offense exception below);
- An offense related to a controlled substance (drugs);
- Two or more offenses, for which together you received a sentence of 5 years or more;
- A drug trafficking offense;
- Prostitution or hiring a prostitute; or
- Terrorist activities.

**PETTY OFFENSE EXCEPTION:** If you only have **one crime of moral turpitude**, you may qualify for the “Petty Offense Exception,” and for release from detention. You qualify for the exception if either of the following is true:

- You committed the crime when you were under 18 years of age and more than 5 years ago; OR

- You could not have been sentenced to more than one year in custody and you were actually sentenced to 6 months or less in custody. To see if you qualify for this exception, you should ask the attorney who represented you in your criminal proceedings what the maximum sentence was that you could have received for your crime of moral turpitude.

**Even if you fall within this rule, you might still be eligible for DHS parole if you are a member of the ABC class.**

- **What is the ABC class?**

If you are a Salvadoran or Guatemalan who was in the United States as of a certain date in 1990, you may have registered for a program called “ABC.” If so, and if you filed a political asylum application with the Asylum Office by a certain date, a special rule applies in your case. You might be eligible for release from detention even if you have committed one of the crimes we just listed.

The only ABC class members who can be detained are those:

- convicted of an aggravated felony (discussed on page 16 and 17);
- a “crime of moral turpitude” for which you served more than six months (crimes of moral turpitude are discussed on page 18 ); OR
- DHS considers the person to be a threat to public safety.

If you think you may be protected by “ABC” and that you are eligible for release, ask DHS for parole from DHS custody. Also, to find out if you are protected by ABC or to get proof, there is a legal office you can call. The office is called Morrison and Foerster and the telephone number is (415) 677-7000.

- **What if I was placed in proceedings before April 1, 1997?**

As we mentioned before, if you were arrested when you arrived at an airport or other port of entry or you were given “parole” status and you were placed in immigration proceedings before April 1, 1997, the proceedings against you are called “exclusion” proceedings. If the exclusion proceedings against you are still going on and have not ended, the rule in the next box applies to you.

**Rule 2: People in Exclusion Proceedings whose proceedings have not ended**

**You are not eligible for DHS parole if**

**you have been convicted of an aggravated felony**  
(we explain what an “aggravated felony” is at the back of this pamphlet)

**UNLESS:**

- you are from a country to which our government **cannot deport you**; AND
  - you can show that you **will not pose a danger** to the safety of people or property.
- You may be from such a country if our government does not have relations with your country, your country no longer exists or your country does not take people back who are removed from the United States.

- **What if I do not have any of the criminal problems listed on pages 3 and 4, what do I have to show to be released from DHS custody?**

If you don't have any of the criminal problems discussed in the last two pages and you believe you are eligible for release during your immigration proceedings, you will have to show certain things in order to be released.

To qualify for DHS parole from custody, you must show:

- “urgent humanitarian reasons” – very important reasons that you need to be released immediately
- or
- “significant public benefit” – that it will be very good for the public if you are released.

DHS will usually find that you have shown one of these things and should be released if --

- You have a serious medical condition, OR
- You are going to be a witness in a case in the United States, OR
- It is not in the interest of the people of the U.S. for you to be in custody.

It is easier to figure out what it means to have a serious medical condition or to be needed as a witness in a case, **but what does the last sentence mean?** Basically, if you have a chance to win your case, you should ask for your release.

You should argue that **it is not in the interest of the people of the U.S.** for you to be in custody because you have a good chance to win your case and you are likely to show up for all of your court hearings. To find out if you have a chance to win your case, seek advice from an experienced immigration attorney or advocate or ask for other booklets prepared by the Florence Project. Also see if you can watch a video called “Know Your Rights.”

To be released, you must show that you are likely to show up for your hearings. The DHS is likely to consider the following factors:

- **whether you have a sponsor willing to let you live with him or her while your case is going on.** If you do not have the right to work in the U.S., the sponsor should be willing to provide you with financial support as well as a place to live. The sponsor can be a family member, friend, organization or other person. The sponsor should have legal permanent residence in the U.S. or be a U.S. citizen.
- **Whether you have other ties to the community**—such as membership in a religious organization or other community group.
- **Whether you have a job** (but only if you are authorized to work in the United States).
- **Whether you have any criminal history** and whether you are a **danger to the community.**
- Whether you have **failed to show up for any type of court hearings** or appointments in the past (including criminal court, civil court, DHS interviews or court hearings)
- Your **disciplinary record in DHS detention.**

Starting on page 10 we discuss how to provide proof related to the factors we just listed.

- **How do I ask DHS to release me?**

If your case is still going on, you will need to write to the DHS District Director to ask for your release. There are many different district directors across the country. You should write to the one in charge of the area where you are detained. Starting on page 10, we discuss how to write to the District Director and what documents to include.

- **Special Option for People Seeking Asylum**

If you are applying for asylum, you might get a **special interview with an asylum officer** where the asylum officer decides whether you should be released from DHS custody while you go through immigration court proceedings. This interview is called an **“APSO” interview.** The asylum officer will consider the factors we just listed and also will consider **whether your fear of persecution is credible.** In other words, the officer will consider whether you really are afraid to go back to your country because you were mistreated in the past or may be mistreated in the future.

The asylum officer will also consider your **“true identity”**--whether you are who you say you are. To show your true identity, if you don't have a passport, birth certificate, or other identification papers, get sworn statements from relatives or other people who know you and can swear that you are who you say you are.

If you are applying for asylum, it is important to explain in your interview why you were mistreated in the past or why you may be mistreated in the future if sent back to your country. For more information on asylum, see the booklet called, **“How to Apply for Asylum and Withholding of Removal.”**

If you are applying for asylum, ask a DHS officer whether you are going to get an APSO interview. If you are not going to get an APSO interview, you will need to apply for DHS parole by writing a letter to the District Director. We discuss this process starting at page 9 of this pamphlet.

## **II. PEOPLE WHOSE IMMIGRATION CASES HAVE ENDED BUT THEY ARE STILL IN DHS CUSTODY.**

If your immigration case is over but you are still in DHS custody, you might be able to ask DHS to release you from detention if:

1. The Immigration Judge, the Board of Immigration Appeals, or DHS has ordered that you be sent back to your country, that order is final AND the DHS is not able to send you back to your country.
  2. You have an order of deportation or removal, but you have filed a habeas petition in a federal district court or an appeal in a federal circuit court and that court gave you a “stay” of your deportation or removal order;
  3. You have an order of deportation or removal, but you have filed a motion to reopen/reconsider your case with the Immigration Court or the Board of Immigration Appeals, the motion is pending, and you have a “stay” of your removal or deportation order;
  4. You were granted withholding of removal or “deferral of removal.”
- **If I have an order of removal or deportation and have not filed any appeals or motions to reopen my case, why wouldn’t DHS be able to send me back to my country?**

Usually the reason DHS cannot send you back is one of the following:

1. Our government does not have relations with the government of your country;
2. Your country no longer exists; or
3. Your country does not take people back who are removed from the United States.

### **• What is withholding of removal?**

There are two types of withholding of removal. It is a form of protection from being sent back to your country granted to you by an Immigration Court. The Court would grant you this protection if you establish that it is more likely than not that:

1. If returned to your country, you will be persecuted by the government or a group the government cannot or will not control and the persecution will be because of your race, religion, nationality, political opinion or membership in a particular social group.

OR

2. If returned to your country, you will be tortured by a public official.

### **• What is deferral of removal?**

“Deferral of removal” is another form of protection from being sent back to your country if you prove you will be tortured there by a public official.

If you were granted withholding of removal or “deferral of removal,” DHS still has the right to try and deport you to a “third” country. A “third country” means a country different than the one where you would be persecuted or tortured. If DHS is not able to send you to a third country, it has the right to keep you in DHS detention. DHS has the discretion of whether to release you or not.

Ask for a booklet called, “How to Apply for Asylum and Withholding of Removal to learn more about these forms of protection and how to apply for them.

- **How soon after my case is over can I get released?**

The general rule is that DHS has 90 days from the time your case ends to try and send you back to your country. If DHS is not able to send you back within the 90 days, you might be able to get released from detention. The 90-day-rule only applies if you are cooperating with DHS by providing the officers with the information they need to prove your identity and to arrange for you to be deported.

Please note that the United States Supreme Court recently decided a case called *Zadvydas v. INS*, which changes this rule for certain people. Based on the Court’s decision, anyone who was lawfully admitted to the United States prior to being ordered removed **SHOULD BE RELEASED AFTER SIX MONTHS** unless (1) it is “reasonably foreseeable” that DHS is going to actually be able to remove you from the United States, or (2) DHS has determined that there are “special circumstances” justifying your continued detention under DHS regulations. Generally, DHS should not be able to consider your criminal history if it is not foreseeable that you will be removed to your country and six months have passed.

It is difficult to know what “reasonably foreseeable” means, so if you were lawfully admitted in the past, it has been six months since you were ordered removed, you are still in custody, and you do not think DHS will be able to remove you in the near future, you should ask for your release from DHS. If DHS thinks it is “reasonably foreseeable” that you will be removed, it could still choose to release you and can consider whether you are a danger to the community in making its decision. We do not know yet what process DHS will use to make its decisions. It may be similar to the process outlined below.

If DHS does not release you, you might want to file a writ of habeas corpus petition in the federal district court in the area where you are detained. This is difficult to do and you should consult with an attorney or legal services organization if you find yourself in this situation.

**The next sections describe the process for asking for release for those who were never lawfully admitted to the United States. This may include people who were “paroled” into the United States or caught at the border, airport or at sea trying to enter the United States.**

- **How do I ask for release from DHS?**

You should not have to formally ask for your release. The DHS District Director should review your file by the end of the 90-day period if you cannot be removed to your country. At the end of the 90-day period, the District Director should decide whether you will be released. But, **you should get together any documents you want the District Director to see and give them to District Director as soon as possible after your case is over.** You should get a notice 30 days before your custody review asking so that you will know where to submit the documents.

We recommend writing a letter to the District Director explaining why you think you should be released. If sixty days have passed since you were ordered removed and you have not gotten a notice about where to submit documents, ask a DHS officer who you should write to. There are many different district directors across the country. You should write to the one in charge of the area where you are detained. If you have been transferred since your case was decided, you need to write to the District Director in charge of the area where your case was decided. We discuss below what to say in the letter and what documents to provide. Please note that if you are a Cuban who arrived in the United States as part of the Mariel Boat Lift, the process for seeking release from DHS custody is a little different. You must ask DHS, not the Judge. We do not discuss the process in detail but all of the factors we discuss later about what you need to show DHS to get released apply.

- **What if the District Director decides not to release me at the end of the 90 days?**

Two things could happen. The District Director could decide to keep your file for up to three months. This would probably happen if the Director thinks you could actually be removed during that three-month period. During that time, the Director could change his or her mind.

If the Director does not decide to release you during that three-month period, your file will be sent to a DHS office in Washington, D.C. called the “Headquarters Post Order Detention Unit (HQPDU).” This office will look over your file and review the District Director’s decision. If they think they agree with the District Director that you should not be released, they will appoint a two-person panel to conduct a personal interview with you in detention. This office should give you notice of when that interview takes place.

If after the interview, the HQPDU office still thinks you should remain in detention, they will keep your file and review it one year later. At that time, HQPDU will follow the same process: a file review and then a two-person panel interview.

Please note that this process could be delayed if you do not cooperate with DHS in giving them information to establish your identity and country of origin or if DHS determines at some point in the process that you could actually be sent back to your country.

- **What do I need to show in order to be released?**

The two most important factors that DHS considers when deciding whether to release someone from custody are:

- Whether you are a danger to the community;
- Whether you will show up for future court dates or if you have been ordered removed, whether you will show up for your deportation/removal if some day you can be removed from the U.S.

- **HOW DO I PROVE I SHOULD BE RELEASED FROM DHS CUSTODY?**

Whether your case is still going on or not, to prove you should be released, as we discussed earlier, you should write a letter to either the District Director or your deportation officer.

- **What should I say in my letter to the District Director or deportation officer?**

Here are the things you should have in your letter:

- Your name, A# (immigration identification number), address in custody, and the date;
- That this is a request for release from DHS custody;
- At what address and with whom you will live if you are released;
- A list of any letters of support or other documents you are including with your letter;
- Why you meet all of the requirements for release (you are not a danger to the community, you are not likely to flee DHS)

- **How can I show I am not a danger to the community?**

In deciding whether you are a danger to the community, DHS will consider:

1. Your entire criminal history.
2. The nature and seriousness of your criminal convictions.
3. The length of the sentences you received for your crimes and how much time you served.
4. Your probation history—including any violations of probation or parole
5. Any disciplinary problems you have had while in jail, prison or DHS custody.
6. Evidence that you have been rehabilitated or are not likely to commit more crimes.
7. Prior immigration violations.

Whether you are writing to the District Director or a deportation officer or you are having an interview, you will need to talk about all of the factors we listed above. Do not make the mistake of thinking that if you have crimes that are not listed in your immigration papers, DHS does not know about them. DHS usually has a list of all your arrests, convictions, and probation violations. Also, it does not do any good to say that you were innocent of your crimes, if you were convicted of the crimes. If you have pled guilty or no contest, or if you have been found guilty of a crime, DHS will consider that you are responsible for the crime.

The best thing for you to do is to accept responsibility for what you have done and to explain why you got into trouble with the law. You also should explain why you will not commit any crimes in the future. If you have taken any classes or attended any rehabilitation programs, talk about what you learned and include any proof you can get that you attended. If you were not able to attend any rehabilitation programs because they were not offered to you or you were transferred too often, you should mention this. If you received early release from jail or prison because of good behavior, mention this as well. If you have had no disciplinary problems while in DHS custody, jail or prison, this is also good to say in your letter. If you have worked in the past, get letters from your supervisors showing that you are a good worker.

Also, you should have solid plans for the future. Explain what they are and why things are going to be different for you this time. For example, if you often got into trouble when you were with certain friends, showing that you are going to live in a different city or somewhere away from these friends may help convince DHS that you really intend to change. Also, it might help to show you will change if you are going to attend a rehabilitative program if released. It is helpful to give DHS written information about the program. Many programs will mail you pamphlets if you write to them.

If you are eligible to work legally, it also is helpful to have a job lined up, and to prove it by including a letter from your future employer. If your case is over and you are asking for your release, you should be eligible for work authorization. If your case is still going on and you have no legal status in the United States, you might not be eligible to work.

Showing that you have strong ties to and are needed by your family or community may also help convince DHS that you will not be a danger to the community.

- **How can I show I am likely to show up for all hearings and appointments?**

Here are some things which may help convince DHS that you are likely to show up when you are supposed to:



-- family ties in the United States, especially if your family members are U.S. citizens, legal permanent residents, or otherwise in legal status

-- ties to the community where you live in the U.S., including close friends, groups you belong to (such as church or community groups or sports leagues), and a long time living at the address where you will be living if released

-- ownership of a house, business, or anything else of value

-- a good work history (and that you have a job waiting for you)

-- a good record of appearing for other court hearings when you were not in custody

-- a good chance of winning your immigration case. (If you do not know whether it is possible to win or what your chances are, there is no need to talk about this.) (If you have a final order of deportation, exclusion or removal, you do not need to talk about this.)

It is usually a **good idea to get a sworn declaration from a “sponsor,”** if you can get one. A sponsor is someone who is willing to let you live with him or her, who is willing to support you until you are allowed to work, and who is willing to make sure that you go to all your appointments with DHS and with the Immigration Court. In the declaration, the sponsor should be sure to state his or her full name, his or her relationship to you, his or her legal status in the United States, his or her address, and that he or she has a steady job.

Also, if you have ever failed to appear for a court hearing, you will need to explain the circumstances and why it will never happen again. If you don't, this will count against you and may keep you from being released.

- **What kinds of letters and other papers should I get to prove that I should be released?**

You should include anything that shows that what you are saying is true. For example, if you are saying that your wife is a United States citizen, it would help to include a copy of your marriage license and her birth certificate (or her naturalization certificate, if that is how she became a U.S. citizen). If you are saying that your children are U.S. citizens, it helps to include their birth certificates.

If you are saying that your family needs you and cares about you, you should include letters of support from your family members.

Each letter should be written in the person's own words and should:

- start with "Dear District Director" or "Dear deportation officer"
- say the name and immigration status of the person writing the letter
- say what relationship that person has to you (for example, your mother or employer)
- be signed by the person writing the letter



If you have had problems with the law, some of the letters should talk about these problems. They should explain how you got into trouble and how you have changed.

The letter from your employer should say how much time you have worked for him or her, what your job was, and what position you are now being offered.

DHS will not look at any papers in a foreign language unless you also include an English translation of the papers. So, if your letters or papers are in another language, you must have someone translate them. You must include the original letters or papers in the foreign language along with the translation.

Whoever translates the letters of papers must sign a "Certificate of Translation" for each letter or other paper he or she translates. Here is what a Certificate of Translation should say:

<b><u>Certificate of Translation</u></b>	
<b>I certify that I am competent to translate the foregoing document, and that the translation is true and accurate to the best of my abilities.</b>	
_____	_____
<b>Translator's Signature</b>	<b>Date</b>

**If I have an interview to see if I can be released, can I be represented? Can I bring witnesses to speak on my behalf?**

You can bring a lawyer, friend, employer, minister, priest or someone else to your interview with you. Ask a DHS officer how many people you can bring. You should bring someone who will speak well on your behalf. If you are not fluent in English, you can request that you have a translator at the interview.

- **What else is important?**

One thing you will need before you can get out of detention is a **complete address**. Many people, especially newcomers to this country, have only a telephone number of a friend or family member, or an address that is not complete. But DHS won't let you go if you don't have a complete street address. If your case is still going on, the court will need to send you papers telling you when and where your next hearing will be. If you have a final order of removal, DHS stills wants to know your complete address.



Also, DHS will not accept a post office box address. It needs the name of the street and the number of the house or apartment building where you will be living. It also needs the apartment number.

- **If DHS will not let me out of detention, can I appeal that decision? And what if I wrote to the District Director to ask for "parole" and never got an answer?**

The law says that no court can change a decision that DHS makes about bond or parole. IN other words, there is no right to appeal the DHS decision to a higher authority. But, the United States Constitution allows you to go to federal court if you think the government is violating your rights by keeping you locked up.

If you do take your case to federal court and DHS is able to show that it looked at all the papers you sent to the District Director, used the proper rule for your case, and made a careful decision, the federal judge normally will not change that decision. But going to federal court may help, especially if DHS does not respond to your request, or if you are or used to be a lawful permanent resident. Some federal courts have decided that a legal permanent resident must be allowed to have a parole hearing with an immigration judge.

This pamphlet does not explain how to file your case in federal court.

- **If DHS agrees to release me, will I have to pay a bond to get out?**

DHS may or may not require you to pay a bond. If you do have to pay a bond and your case is still going on, you will get the bond money back after you have attended all your court hearings. If you lose your case, you will have to show up for your removal from the United States in order to get the money back.

If your case is over or you were given withholding of removal or deferral of removal and DHS requires you to post a bond to be released, it is not clear when you will get the money back. If some day DHS can remove you, DHS should give you the bond money back at that time as long as you show up for your removal. If you never get removed, you might not get the bond money back until after your death.

- **YOUR RESPONSIBILITIES AFTER LEAVING THE DETENTION CENTER**

- **What happens if I leave the detention center?**

If you are allowed to leave the detention center before your immigration case is over, your immigration case continues. The court will send you a letter telling you the date, time, and place of your next hearing.

For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.

**When you leave the detention center,  
 look for legal help for your case!**

It is also very important that you or your lawyer ask the court to transfer your case to a different court, unless you want to go to court where your case is now. You do this by filling out a form called a "Motion for Change of Venue" on which you write the address where you plan to live when you leave the detention center. Remember: your address has to be a street address, not a post office box!

At some detention centers, an Immigration officer will give you the form and will give it to the court after you complete it. If that is not how it is done at the detention center where you are, make sure to find out how to get file a "Change of Venue" motion. Ask the court if it has a form you can use. Make sure to file the motion with the court and send a copy to DHS's attorney.

If for some reason you do not fill out the "Motion for a Change of Venue" before you leave, you can still write to the judge in English to tell him or her what your complete address is and to ask that your case be transferred to the nearest Immigration Court. Remember to send a copy of your letter to DHS.

**When you leave the detention center, if you do not want  
your next court hearing to be where you are now,  
 file a "Motion for Change of Venue!"**

- **How can I find out for certain that my case has been transferred?**

There is a number you can call for free to get certain information about your case. That number is 1-800-898-7180. When you call, a tape-recorded voice will ask you to give

your immigration identification number (8 numbers with an "A" in front of them) by pressing the numbers on your telephone. By doing what the voice on the tape tells you, you can find out when and where your next hearing is.

You can use this telephone system to get information in either Spanish or English. It may take a few days from the time the court gets your "Motion for Change of Venue" to the time the telephone system has the information, so wait a few days if you can.

If you do this and find out that your case has not been transferred to a new court, but you think you gave the court a "Motion for Change of Venue," you can call the court directly. If your English is not good, have a friend who speaks English well help you make the call.

When the court gets the motion for a change of venue, it will decide whether to move your case to the Immigration Court closest to the address you wrote down. If the court grants your motion, the new court will send you a letter telling you where and when to go for your next hearing. Most courts will grant the motion to change venue. If for some reason, your motion is denied, seek legal assistance! Call the immigration court where you were detained if you don't receive a notice from the court that your case has been moved to a location near you. **You must attend your court hearing wherever it is or you will be ordered removed from the United States!** You can also lose your right to apply for anything else, such as asylum.

- **What should I do if I move?**



**Every time you move, it is your responsibility to tell both the Immigration Court and DHS!** There are special forms to do this and you can get one from the Court and a different one from DHS. The DHS officers may give you the forms when you leave. Letting the Court and DHS know your new address will not change where you will have your hearing. As we explained before, in order to do that, you need to send the Court and DHS a "Motion for a Change of Venue." The special forms used for changes of address let the Court and DHS know where to send you papers about your case.

When the Immigration Court and DHS send you papers, they will send them to the address you gave them. **If the Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address, and when you don't show up to court on that date, you can receive an order of removal. This means that the next time DHS arrests you, you can be sent back to your country without the chance to speak to a judge.**

**If you move,**



**send the Immigration Court your new address!**

It is important to remember that the Court and DHS are two different things. If you let DHS know your new address but you don't send the right form (a blue "Change of Address" form) to the Immigration Court, the Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you can get a removal order without seeing a judge.

If you have any applications on file with DHS, you also need to send a special "Change of Address" form to the Immigration office that is dealing with that application, if you have moved. For this, you don't use the Court's blue form. Instead, you use a special form called an "AR-11" that you can only get from an immigration office. If you can't get one, you can send the immigration office that has your application a letter telling that office what your new address is. Make sure you put your full name and "A number" on the letter. Also, keep a copy for yourself and make sure you get proof that your change of address form or your letter was received (For example, you can send it by certified mail.).

- **What if my immigration case is already over at the time DHS lets me out of custody?**

DHS will tell you what your responsibilities are at the time it releases you, but one thing you will probably be required to do is to report to DHS on a regular basis. Make sure you do this and everything else DHS requires you to do. If you don't, you may be taken back into custody.

Also, you should be eligible for work authorization. You can apply for work authorization at the DHS office closest to where you are living after your release.

Best of luck in your case.

## What Does It Mean? -- Some Important Words

**AGGRAVATED FELONY:** In the next box are some of the most common aggravated felonies.

- **Certain drug crimes or trafficking in firearms, explosive devices or drugs.**  
**Drug trafficking includes:**
  - **transportation, distribution, importation;**
  - **sale and possession for sale;**
  - **possession of over 5 grams of cocaine base (not possession of cocaine – “cocaine base” is different from “cocaine”);**
  - **maybe two convictions for simple possession of drugs.** (If you have been convicted of two crimes of simple possession, try to get a lawyer’s help. There is an argument that may help you if the first drug crime was not used to give you a harsher sentence the second time.)
- **A certain crime for which you received a sentence of one year or more,** (whether you served time or not) including any of these:
  - **theft** (including receipt of stolen property)
  - **burglary**
  - **a crime of violence** (including anything with a risk that force will be used against a person or property, even if no force was used)
  - **document fraud** (including possessing, using, or making false papers) – unless it was your first crime time and you did it only to help your husband, wife, child, or parent)
  - **obstruction of justice, perjury, bribing a witness**
  - **commercial bribery, counterfeiting, forgery, trafficking in stolen vehicles with altered identification numbers**
  - **certain gambling crimes** (if you have another gambling conviction)
- **rape**
- **sexual abuse of a minor**
- **murder**
- **felony alien smuggling** (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)
- **fraud or income tax evasion**, if the victim lost over \$10,000
- **failure to appear** (if you were convicted of 1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or 2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years)
- **money laundering** (of over \$10,000)

You are also an aggravated felon if your conviction was for **attempt or conspiracy** to commit one of the crimes just listed.

For the complete list, see volume 8, section 1101(a)(43) of the United States

Code, or section 101(a)(43) of the Immigration and Nationality Act

Even if you were convicted of one of the crimes on the list, if your conviction was in state court, there may be an argument that your crime is not an aggravated felony if the state law is in some way different from federal law. To find out about that argument, you should try to talk to an immigration lawyer.

### **CRIME INVOLVING MORAL TURPITUDE:**

This includes many different types of crimes, both felonies and misdemeanors. Generally, a crime involves "moral turpitude" if it involves an intent to steal or get something by fraud, or if it was done carelessly or on purpose and someone was or could have been greatly harmed. Acts considered "lewd" or perverted are often "crimes involving moral turpitude," too.

### **DHS PAROLE**

This can be confusing because the word "parole" can mean different things. One thing it can be is a kind of permission from DHS that allows a person to come into the United States temporarily for a certain purpose. For example, a person can be "paroled" into the United States in order to participate in some kind of hearing (for example, a criminal prosecution, an exclusion hearing, or a "removal" hearing), to apply for political asylum (as a refugee), or to get a specific medical treatment. Before 1980, some people, including many Cubans, were allowed to enter the United States on parole for an indefinite period of time.

Also, as we explained before, DHS "parole" can mean release from immigration custody.

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**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

\_\_\_\_\_  
City and state where court is

_____ )	IN REMOVAL PROCEEDINGS
In the Matter of )	
_____ )	File No. A _____
(your name) )	
Respondent )	<b>MOTION FOR CHANGE OF</b>
_____ )	<b>VENUE</b>

The Respondent has bonded out and will be residing at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(your address outside of detention)

The Respondent requests that his case be transferred to the Immigration Court that covers the area of his residence.

CERTIFICATE OF SERVICE

This original document is being sent by mail to:

Executive Office of Immigration Review  
Office of the Immigration Judge

\_\_\_\_\_  
\_\_\_\_\_  
(address of court that handled your case while you were in DHS custody)

I hereby certify that I have served a copy of this motion by mailing a copy to:

District Counsel  
Department of Homeland Security

\_\_\_\_\_  
\_\_\_\_\_  
(address of the DHS office that handled your case when you were in DHS custody)

Date: \_\_\_\_\_ Signed: \_\_\_\_\_  
Respondent (sign your name here)