

PRESENTED AT

40th Annual

Conference on Immigration and Nationality Law

Austin, Texas

Removal Proceedings & Relief

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Removal Proceedings & Relief: Detention, Bond, and Prosecutorial Discretion

By George Rodriguez

Detention Matters

Many times the biggest challenge at the initiation of a case is finding your client. The client may be in one of three phases of custody:

1. **Hold** – they may still be in the custody of local law enforcement and merely have a “hold” placed on them by the Department of Homeland Security’s US Immigration and Customs Enforcement (ICE). It is a form of a detainer, but that can be confusing because it is not an immigration custody detention. This process is generally based on an understand between local law enforcement and ICE. It is merely a process by which ICE is requesting that an individual identified as a non-citizen not be released from custody until ICE has had an opportunity to interview (process) that non-citizen. The “hold” is a matter of courtesy between the local law enforcement agency (LEA) and the local ICE office. LEAs who have not obliged by this unofficial agreement to hold someone in custody for ICE have been labeled “sanctuary cities”. A hold is an administrative mechanism to insure that a non-citizen will not be released until DHS/ICE has an opportunity to act. *Matter of Sanchez*, 20 I&N Dec. 223 (BIA 1990).
2. **Processing** - A decision on detention is made after the non-citizen is processed. Processing will require questioning of the individual (most probably without legal counsel), fingerprinting, photographing, and a thorough background check for crimes and immigration violations. ICE can make several determinations: a) individual is not removable; b) individual is removable but will not be placed in detention or removal; c) individual is removable and will be detained with a bond; d) individual is removable and will be detained with a “no bond”; or e) individual is removable and will be detained under the mandatory detention provisions of INA Sec. §236(c). The only determination, with some rare exceptions, that will not allow ICE to exercise prosecutorial discretion in releasing a non-citizen is when it is determined that the individual is subject to mandatory detention.
3. **Detention** – this is an official determination by ICE to hold a non-citizen in custody. The detention may or may not be with the option of posting bond. Some individuals are not eligible for a bond based on law and are subject to mandatory detention. Others may not be given a bond based on discretion exercised by the ICE officials and their internal guidelines.

How do you find your client among the three phases of custody?

- Talk to the family and ask questions about what has transpired with the non-citizen. Many times the family will begin with “he’s been detained by immigration” and what really happened is that he was just arrested and he’s waiting for an arraignment. Usually, the situation is that a bond has been set by the LEA and when the family attempted to post the bond they were told by the LEA not to post the bond “because immigration had a

hold” on the individual. Remember, a hold is not an immigration detention. Hence, the ERO office will not set a bond and the IJ will have no jurisdiction to determine a bond.

- When a person is detained by ICE they are entered into the DACS system which is accessible by ICE offices around the country and searchable by Alien Number or name/DOB/nationality.
 - If the individual is not in the custody of the LEA, then you can search the Online Detainee Locator System (ODLS) at www.ice.gov
 - <https://locator.ice.gov/odls/homePage.do> ODLS will allow you to search for the individual by Alien Number & Country of Birth. Or, you can search by Name, Country of Birth, and Date of Birth. Not always accurate. It will not contain information about juveniles or individuals who were released more than 60 days ago. It will not tell you if someone was removed or transferred.
 - *Practice Pointer:* Most of the time you will not have the alien number (“A number”) and therefore, an online inquiry is impossible. Most of the time your best bet is to contact the local ICE/ERO office.
 - www.ice.gov/contact/ero will provide you with local field office information for ICE Enforcement and Removal Operations (ERO) address, sometimes phone number, and their Outreach e-mail address. This is the office that issues the hold, determines detention and determines bond. If the non-citizen is not in the local jail, then your first call should be here. This is where the non-citizen where be taken to be processed.
 - *Practice Pointer:* ERO offices now have an Outreach program which includes an e-mail address. This e-mail address can be used to locate the non-citizen in ERO’s custody. Depending on the jurisdiction this Outreach program can be very responsive and in other jurisdictions not.
 - *Practice Pointer:* If at all possible go to the actual office and get the information directly from the detention officer. Direct contact could assist you in getting a bond determination and possibly a more reasonable bond determination. It could also be your first shot at requesting prosecutorial discretion.
 - www.ice.gov/detention-facilities will provide you with specific rules in English and Spanish regarding visitation, permitted items, paying bonds, directions, etc. However, you must know the name of the facility. For example, in North Texas one of the ICE detention facilities is commonly referred to as Haskell because it is located in Haskell, Texas. However, if you do a name search using Haskell you will not find the facility. Using “Plains” does get you to the Rolling Plains County Jail and Detention Center in Haskell, Texas which is the “Haskell” detention center.
 - www.ice.gov/contact/legal will provide you with a listing of all the Chief Counsel offices and the “PD inquiries” email to request prosecutorial discretion. The Chief Counsel’s address and sometimes phone number is included on this page. This information is also important for servicing the Chief Counsel’s office with

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First appeared as part of the conference materials for the
40th Annual Conference on Immigration and Nationality Law session
"Removal Proceedings and Relief"