

## MANDATORY DETENTION, BOND, AND PAROLE

**If you are detained, you can request a bond hearing in front of an immigration judge or you can ask ICE to release you on bond or “parole.” To be released, you must show that you are eligible under the law for release and that you are not a flight risk or a danger to the community.**

### What Is Mandatory Detention?

- Not everyone is eligible for release from detention. If you have criminal convictions, you **may** be subject to mandatory detention during your entire removal proceedings and appeal. If you are subject to mandatory detention, ICE will argue that you are **not** eligible for release from detention.
- However, you may qualify for release from mandatory detention if the length of your detention has become unreasonable. In *Sopo v. United States AG*, 825 F. 3d 1199 (11th Cir. 2016), the U.S. Court of Appeals for the Eleventh Circuit held that a detention is unreasonable if the noncitizen’s liberty interest has begun to outweigh any justification for the assumption to detain him/her without bond. *Id.* at 47.
- Other courts have held that a period of **six months** of detention is **unreasonable**. A helpful practice advisory by the ACLU on the *Sopo* decision is available online at: <https://www.aclu.org/legal-document/practice-advisory-prolonged-mandatory-detention-and-bond-eligibility-eleventh-circuit>. It is called “Practice Advisory: Prolonged Mandatory Detention and Bond Eligibility in the Eleventh Circuit.”

### How do you know if you are in Mandatory Detention?

- You may be in mandatory detention if:
  - (1) You are currently in immigration court proceedings **AND**
  - (2) You have a criminal conviction that makes your deportable or inadmissible.
- However, there are some exceptions. **Not every conviction subjects you to mandatory detention.** Even if you think you are in mandatory detention, make sure to ask the judge whether you are eligible for a bond hearing.

- If you are in mandatory detention, you **may still** request a bond hearing to the Department of Homeland Security or the Immigration Judge. If your bond hearing is denied, you may submit a habeas petition to the district court that has authority based on your area. *Sopo v. United States AG*, 825 F. 3d 1199 (11th Cir. 2016).
- If you were released from criminal custody BEFORE October 8, 1998, then you are **not** subject to mandatory detention. *Garcia-Arreola*, 25 I&N Dec. 267 (BIA 2010).
- If you have a mental disability or have trouble understanding or participating in your immigration court proceedings, you should tell the judge. The judge may be able to give you a lawyer for free.
- **It can be very difficult to know whether you have a criminal conviction that leads to mandatory detention. You can learn more about what crimes lead to mandatory detention in [Immigration Detention and Removal: A Guide for Detainees and Their Families \(Legal Aid Society of New York\)](#).**
- **Even if you are not sure if your detention is mandatory, you can ask the judge to decide whether your criminal record means that you are in mandatory detention.**

### **Who can get bond?**

- Detained individuals in immigration court proceedings can make a request for a bond hearing in front of a judge. If you are in detention and in removal proceedings, you can request release on bond before the judge during a master calendar hearing.
- If you are eligible for bond, the judge will consider your bond request in a separate “bond hearing.” You should present evidence in support of the request at the hearing to show that you are not a danger to the community and not a flight risk. It often helps to have family members and friends present at your bond hearing.

### **How can you appeal the judge’s bond decision?**

- If you disagree with the judge’s determination, you may file a bond appeal with the Board of Immigration Appeals (BIA) within 30 days of the judge’s decision.
- The BIA can take months to decide the appeal and the judge can order you removed before the decision from the BIA is made. You will be held in detention while your appeal is being decided.
- If the judge has given you a bond, the attorney for ICE can file an appeal to the BIA. In addition, the ICE attorney may be able to file what is called a “stay,” which means that you will not be released before their appeal is decided. In some

cases (where ICE had initially refused bond or set a bond of \$10,000 or more), you will automatically be kept in detention during a bond appeal.

### **“Arriving aliens” do not qualify for bond**

- An “arriving alien” is a person who was stopped by U.S. officers at a port of entry while attempting to enter the U.S. An “arriving alien” cannot be released on bond issued by an immigration judge, but ICE may be able to release someone in this situation.

### **What is Parole?**

- **Another way of being released from detention is to be “paroled.” Even if you are not eligible for bond because you were arrested when entering the country, you might be eligible for parole.** Parole is limited to special circumstances and available on a case-by-case basis for “urgent humanitarian reasons” or when there will be a “significant public benefit.”

- Humanitarian grounds apply to those whose circumstances involve extremely grave illness or particularly unusual hardship to a dependent. People who are elderly, pregnant, or have served in the U.S. armed forces may also qualify for parole.

- If your case is still pending and you would like to request parole, you should write to the DHS District Director and to your deportation officer to ask for your release. You should write to the Director in charge of the area where you are detained.

- In this request, you should tell the DHS officials why you need to be released. You should explain why your release is necessary for either:

- (1) Humanitarian reasons (e.g., medical condition, mental health condition, hardship to your family, dangers you would face if deported) **OR**

- (2) Significant public benefit (e.g., you could discuss how your education, employment, volunteer work or support for your family benefits the public).

### **What is the difference between Bond and Parole?**

- **Bond:** ICE or an immigration judge grants immigration bond. A bond is the amount of money paid as a condition to release a person from detention for an Immigration Court hearing at a later date. A bond may range between \$1,500 and \$25,000. The judge can also choose to release you without requiring any bond.

- After being released on bond, you must attend all future hearings or you will lose

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your bond money. A judge may also release you without having to pay. This is called release “on your own recognizance.” If you do not show up to court when you are scheduled to appear, any bond money you paid will not be returned and you will be ordered deported.

- **Parole:** Parole is used by ICE to temporarily release an immigrant from detention without lawfully “admitting” him into the country. You must ask for parole directly from ICE by asking or writing a letter to your deportation officer. The judge cannot grant parole.

### **Who may apply for release on Parole?**

- You are not eligible for parole if you are subject to mandatory detention under §236(c). See above, “How do you know if you are in Mandatory Detention?”
- However, you might be eligible for parole if you are in detention only because you are an “arriving alien.”

### **What factors will be considered when you apply for bond or parole?**

The judge and DHS will determine whether you are likely to appear for your hearings or a threat to the community. In order to make that determination, they will consider the following factors and you may present evidence to support your application:

- Whether you have a family member, friend, organization or other person (“sponsor”) willing to provide you with financial support as well as a place to live her while your case is pending.
- Whether you have other ties to the community—such as membership in a religious organization or other community group.
- Whether you have a job 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 hearing or appointment in the past.
- Your disciplinary record in DHS detention.