

## **DHS POST-FINAL ORDER CUSTODY REVIEW**

**This section is for those people who are still in immigration detention after 90 days of receiving a Final Order of Removal, Deportation, or Exclusion. These people may be eligible to a custody review and possibly for “parole” or supervised release from custody.**

### **What is the 90-Day “Removal Period”?**

- Once you receive a **“final order of removal, deportation, or exclusion,”** the Department of Homeland Security (DHS) has 90 days in which to remove you from the United States. This is called the “Removal Period.”
- You will be detained during these 90 days.
- The 90 days **will not begin** if you have a pending appeal at the Board of Immigration Appeals (BIA) or at the federal court of appeals if the court of appeals orders a stay of removal.

### **What happens after the 90-Day Removal Period?**

- You may be eligible to apply for release from detention if the government has been unable to remove you during the 90-Day Removal Period.
- At the end of the 90-Day Removal Period, your deportation officer should conduct a review of your case and might release you if he or she believes that you are not a flight risk or a danger to the community. This is called a 90-day custody review.
- You can request a face-to-face interview, although the officer may not grant your request.

### **What happens if you are released?**

- DHS may place conditions on your supervised release. Failure to follow these conditions may lead to prosecution and detention.
- If you are released and issued an order of supervision or if you are paroled, you can apply for an Employment Authorization Document (EAD) based on the order of supervision or parole.

### **What happens if you are denied release at the 90-day Custody Review?**

- If you are denied release at the 90-day custody review, your file will be sent to the DHS Headquarters Post-order Detention Unit (HQPDU) in Washington, DC.

- Once your file is sent to HQPDU, DHS is supposed to review your case once a year.
- You may also request release from detention at any time if you can show a “change in circumstance” that might change the decision to keep you in detention. You must send your request directly to HQPDU.
- You may also submit evidence or documents supporting your release.

### **When can you file a Petition for Writ of Habeas Corpus?**

- You can file a petition for a writ of habeas corpus in U.S. district court **6 months** after your final order of removal the initial if you are still in detention and it is unlikely that you will be removed in the foreseeable future.
- A habeas petition challenges your continued “unlawful” detention.
- You can learn more about habeas petitions in [A Legal Guide For Ice Detainees: Petitioning For Release From Indefinite Detention](#) (American Bar Association - Commission on Immigration),

### **What does DHS consider in your Custody Review?**

#### **1) *The nature and seriousness of your criminal convictions***

- You should be familiar with your criminal charges and prepared to discuss them.
- DHS will look at any evidence of your taking responsibility for your crimes.

#### **2) *Other criminal history***

- Be aware that the DHS has the ability to review any other criminal charges and arrests even if they were not mentioned in your immigration court case.
- DHS will look at previous problems with drugs, alcohol, or domestic violence and submit evidence of your having been in a treatment program or anger management.

#### **3) *Sentence(s) imposed and time actually served***

- Know how much time you served of your sentence. Discuss how you used that time and what, if any, changes in your life you have made.

#### **4) *History of escapes, failures to appear for judicial or other proceedings, and other defaults.***

- These may indicate that you are likely to be a flight risk if you are released.
- Be prepared to discuss what led you to do these acts and why you or your situation has changed.

#### **5) *Probation history***

- Know the conditions and terms of your probation or parole, the name, phone number, and address of your probation/parole officer and be prepared to explain if you violated probation or parole in the past.

#### **6) *Disciplinary problems while incarcerated***

- Any violent incidents in detention can be used against you in your custody review.

#### **7) *Evidence of rehabilitation***

- Show what you have done to try to improve yourself and change your past behavior.

- DHS will look at previous problems with drugs or alcohol, domestic violence you have had and any evidence of your having been in a treatment program.
- Explain why you know or feel that what you did is wrong, how it is has affected your life, and how you will do things differently in the future.

**8) *Equities in the United States (positive factors or assets in your life)***

- Show that you have community and family ties to the United States, especially to U.S. citizens and lawful permanent residents. You should obtain letters of support from family, friends, neighbors, employers, pastors, or any community group to which you belong.
- Include proof of education and degrees and certificates earned. Also include proof of past and any offer of future employment. Proof of payment of taxes and ownership of personal or business property will help your case.

**9) *Prior immigration violations and history; and***

**10) *Cooperation in obtaining your travel document.***

- DHS will not release you if you do not cooperate with obtaining a travel document.

Provide information of where you will live if you are released. If someone is willing to provide you with housing, food, and other expenses until you are able to support yourself, provide evidence of this promise of support. Otherwise, it helps to find a halfway house, residential treatment program, or shelter that will write you a letter of acceptance. All letters must be originals. Include **YOUR NAME** and **A#**; **the NAME**, **A#**, and **ADDRESS** of the person who is writing the letter; their **IMMIGRATION STATUS**; and their **RELATIONSHIP** to you. Submit any documentation at least one week prior to the date of the review to the attention of the Officer.