

PROLONGED DETENTION BOND HEARING

Overview

This guide should be reviewed if you have requested a bond hearing based on the Ninth Circuit decisions in *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008), *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), or *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011). In those cases, the court decided that most people who were originally not allowed to have a bond should get a hearing once they've been detained for six months or their case reaches the Ninth Circuit. In general, most people should qualify for a post final order bond hearing if 1) you have a final order of removal and 2) your case is on appeal to the Ninth Circuit.

The Immigration Court must first decide whether to grant or deny your request for a bond hearing. If they DENY your request for a bond hearing and you are still interested in having one, you should send a *Notice of Appeal* on the colorful forms to the Board of Immigration Appeals within 30 days of the date on the notice from the Immigration Court denying your request for a hearing. If they GRANT your request you should receive a notice in the mail informing you of the date of your bond hearing, and you should start to prepare for that hearing.



www.shutterstock.com · 69734962

This memo is intended to help you get ready for that hearing. We cannot determine whether or not you will be granted a bond hearing. However, if you have one of these hearings please report back to the Florence Project about how it went so that we can update this document accordingly.

How do I request a post-final order bond hearing?

Some courts may schedule a post final order hearing automatically once they receive notice that your case has reached the Ninth Circuit. Otherwise, like any bond request, you should submit a motion asking the court to schedule a hearing. In attachment A you will find a pro se motion requesting a custody redetermination

hearing. You should complete the blanks in this motion and file it with the court and you will then be assigned a hearing date.



Who is supposed to present evidence at the hearing?

At *this* type of bond hearing, the government, not you, should be required to present evidence that (1) you are a “flight risk” and/or (2) a “danger to society.” Even though in theory it *should not* be your job to present evidence at the hearing, in reality to get a bond the Immigration Judge will probably expect you to present some evidence too.

What if the Government argues or the Immigration Judge thinks that I am not eligible?

In some cases, it may not be entirely clear whether or not you are in fact eligible for this kind of bond hearing. If the government attorney argues that you are not eligible or the Immigration Judge tells you that you might not be eligible, then we encourage you to ask for a continuance to prepare a response and, if possible, to seek legal advice from an attorney.

EVIDENCE FOR THE BOND HEARING

Please do not worry if you cannot obtain some or all of the suggested evidence – remember that in theory the burden is on the government and not you. Nevertheless, in reality, the judge will probably expect you to present a good deal of testimony and some documentary evidence will help. So to prepare, you should try to gather as much of the following evidence as possible.

You may be presenting two types of evidence at the hearing: documents and testimony. Remember that testimony is also evidence and it is important to practice

and think beforehand about what you want to tell the judge. The rest of this memo will discuss the topics that the judges will be most interested in hearing about and what kind of evidence you can use to address that topic.

Do you have a “sponsor” to give you place to live once released?

The judge will want to know where you are planning to live, if released. He or she will want to know that you will be living with a responsible person in the United States. This person must have legal status and must be willing to provide you with a place to stay.

BEST EVIDENCE: you should submit a signed letter from someone with legal status in the United States. The letter must state that this person agrees to provide a home for you during this time. The letter must include their address and a copy of the person’s identification documents.



What is your “criminal history”?

The immigration judge is going to want to hear a lot of testimony about your criminal convictions, arrests, warrants, and restraining orders. So, you should try to familiarize yourself with your criminal record. He or she will want to know about the circumstances of each: *what were you doing? why were you doing it? have you accepted responsibility for the things on your record? how are you going to make sure it does not happen again?*

If you cannot remember all of your arrests or convictions, many of them may be listed in one or more of the documents that you received from the government attorneys during your original immigration case. The government might have given you a document called the I-213, which often has many mistakes, but does have information about your record, or the government might have given you the conviction documents for the offense(s) that they believe make you deportable.



At this point in the process, you probably know that *usually* if you want to fight your actual immigration case it is often times not a good idea to make admissions about your crimes or criminal history because it is often the government's job to prove those things. BUT, bond hearings are separate and distinct from your immigration case. So, if you talk honestly and frankly and in great detail about your convictions and arrests, the government is not allowed to use that against you in your immigration case. At the bond hearing, it is very important that you talk honestly about your criminal record and that you do your best to remember everything that is on it.

BEST EVIDENCE: your testimony

Have you been “rehabilitated”?

The judge will want to know what steps you have taken and what thoughts you have about the things in your criminal record. He or she will want to know whether you have come to terms with convictions etc. in your past and whether you have taken responsibility. He or she will want to know what affirmative steps you have taken to “rehabilitate” and what your present frame of mind is in terms of making sure that you do not have problems with the law after you are released on bond.

BEST EVIDENCE: your testimony, letters from probation officers, public defenders, social workers, proof that you have contacted programs that you could attend after you are released, certificates of participation in a program, copy the front cover of books or articles that you read about rehabilitation etc.

Will you continue to participate in and comply with immigration proceedings and orders after you are released?



The judges will be *very concerned* with the question of whether you will attend future hearing dates (if there are any) and comply with a deportation order, if that is the final outcome of your case. They may or may not ask you to PROMISE that you will attend all hearings and comply with a deportation order (if that happens).

BEST EVIDENCE: your testimony, letters from friends, family, teachers, and other members of the community (along with a copy of their identification showing lawful status in the U.S.), who have known you for a

long time and know you to be a responsible person, evidence that you have paid bills and taxes in a timely fashion, evidence that you have complied with other types of court proceedings, evidence of employment (if you had permission to work), evidence that you wish to enroll in a school or training program (eg. course catalogue, admissions info.), evidence that you have a place to live when you are released etc, evidence that you belong to any sort of community organization. . .

What has your behavior been like while you were detained?

The judge will probably focus a good deal on both positive and negative things that have happened while you were detained.

Negative Behavior While Detained

If there have been any “write ups” or “incident reports” the government attorney will probably submit those as evidence. You can and really should OBJECT and then argue that they were prepared by a person who is not in court for you to cross-examine. But, the judge will almost certainly overrule that objection and let the documents in. Even though this will probably make you angry, try to let it go and insist that you have a turn to explain what happened. You should be prepared to discuss exactly what happened in each of those incidents, and if there are errors or missing information in the “write ups” and “disciplinary reports,” it is important to clarify and correct them in front of the judge.

BEST EVIDENCE: your testimony and letters from other detainees who witnessed the incident.

Positive Behavior While Detained

Make sure to emphasize the good things that you have done while you have been detained. For example, working, attending religious services, reading books, keeping a journal, writing, exercising, helping others prepare or practice for a hearing, repairing relationships with friends and family outside, etc. But note, that if you have prepared legal documents for others that is the unauthorized practice of



law and the judge will not like it.

BEST EVIDENCE: favorable letters from C.O.s, CCA and ICE employees that have supervised your work, religious volunteers or the chaplain, a list of the books that you have read, the types of exercise that you have done. . .

Do you have a shot at being successful on the merits of your immigration case?

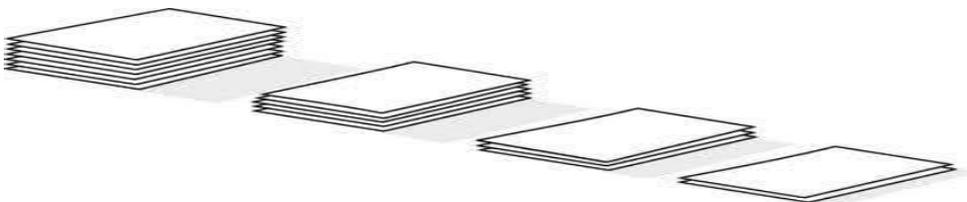
The judges will probably spend a fair amount of time discussing with the government attorney whether or not there is any chance you will win your immigration case. If this happens and you feel comfortable, you may want to tell the judge that you have something to say about your case. If you do, you can explain to him or her why you feel like you have a strong case and why you think you will win. However, if you do not feel comfortable talking about the law with the government attorney or the judge, that is fine, because they probably will not expect you to do so.

BEST EVIDENCE: proof that you have an attorney at the 9th Circuit or the BIA, copies of the opening brief that the BIA or the 9th Circuit have yet to decide, copies of a court decision (from any stage in your case) that was in your favor etc.

Other Miscellaneous Issues and Evidence

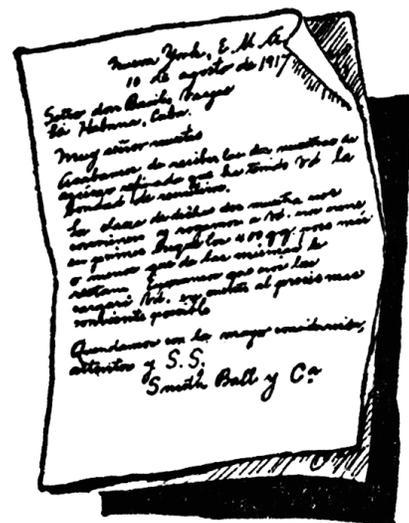
All sorts of other types of evidence or issues may arise in any particular case. If there is something else that you think reflects positively on you and that has not been mentioned here, it is probably a good idea to submit it or discuss it at your hearing. However, I am including here a list of other more minor issues that you may or may not want to raise at your hearing or that the government attorneys might raise.

- ◆ You have been detained for a long time (emphasize how long it has been) and there is no end in sight (try to guess how much longer you realistically believe this process could take)
- ◆ You are from a country that does not issue travel documents or your embassy has said they will not issue travel documents.
- ◆ You have had prior deportations, voluntary departures, or previously were involved in immigration proceedings somehow.
- ◆ You have goals for the future – this should include goals of what you want to accomplish in the U.S. if you win and goals of what you will do in the designated country if you lose your case.
- ◆ You did or did not comply with terms of probation.
- ◆ You have a failure to appear or an attempt to escape.
- ◆ You currently or have owned property (a car, a house etc.)
- ◆ You completed a GED, high school, training program or certificate program, some college, etc.



Letters as Evidence

You may have noticed that “letters” form a big part of the suggestions for documentary evidence that you may submit. These letters should be signed with something to the effect of “I swear that everything I said is true and correct.” The letters do not have to be notarized. However, the author should include a copy of their identification and proof of lawful status. Some people may feel uncomfortable submitting identity documents. If they remember, it is a good idea to say in the letter that they are not including a copy of their I.D. for that reason.



Letters from family, friends, church, former employers, landlords and other community members should discuss:

- ◆ Their relationship to you, how they know you, how long they have known you.
- ◆ What your relationship to them means or how you are a valuable member of the community.
- ◆ If they believe that you will be responsible in going to your hearings and complying with orders or what they will do to help make sure that you do.
- ◆ If they know your temperament or have specific stories of things that you have done that were generous, kind, or peaceful.
- ◆ What they can offer to ensure that your return to non-detained living is smooth and comfortable (eg. provide a home, help you enroll in classes, find a job etc.).

APPEALS

If the judge sets a bond that is too high, decides that you are a “flight risk,” decides that you are a “danger,” or makes some other decision that you feel is wrong, you can appeal his or her decision. It is a good idea to make up your mind before the hearing about whether you will appeal a bad decision. If yes, then make sure to indicate “yes” when the judge asks, “do you want to appeal my decision?” If you are happy with his decision, you can say “no.” If you waive your right to appeal, then you will probably not have another opportunity to challenge your detention.

The Florence Project has a separate guide that you can consult to help you file and write an appeal.

BOND STAYS

If the judge gives you a bond, the attorneys for the government have 48 hours to “stay the bond” if they wish. That means that you cannot go pay the bond so that you can be released. Make sure to contact someone from the Florence Project if this happens.



Conclusion

I hope that this document is useful to you in preparation for your bond hearing, and please provide us with feedback based on your experience after the hearing. Best of Luck!!!

This guide was prepared and updated by the staff of the Florence Immigrant & Refugee Rights Project and was written for immigrant detainees in Arizona who are representing themselves pro se in their removal proceedings. This guide is not intended to provide legal advice or serve as a substitute for legal counsel. The Florence Project is a nonprofit legal services organization and does not charge for its services to immigrant detainees in Arizona. This guide is copyright protected but can be shared and distributed widely to assist indigent immigrants around the country. All of our guides are available to download on our website: www.firrp.org. We kindly ask that you give credit to the Florence Project if you are adapting the information in this guide into your own publication.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
ELOY, ARIZONA**

In the Matter of:)
)
A# ,) In Bond Proceedings
)
)
Respondent _____)

REQUEST FOR CUSTODY HEARING

I respectfully request that the Immigration Court schedule a custody redetermination hearing for me. My case is presently or has at one time reached the Ninth Circuit Court of Appeals, and I was initially detained based on:_____.

I believe that I am now eligible for a bond hearing pursuant to *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942 (9th Cir. Cal. 2008) and/or *Diouf v. Napolitano*, 634 F.3d 1081, 85 (9th Cir. Cal. 2011). Under INA § 236(a) the Immigration Judge may release me on bond or grant conditional parole. At the solicited hearing, I am “entitled to release on bond unless the government establishes that [I am] a flight risk or will be a danger to the community.” *Casas-Castrillon*, 535 F.3d at 951 (citations omitted) (emphasis added).

At the hearing, I ask the Immigration Court to faithfully apply the *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006) factors to determine whether the government meets its burden of proving danger and flight risk by clear and convincing evidence. *See Singh v. Holder*, 638 F.3d 1196, 1200, 1206 (9th Cir. 2011).

Finally, I request that the court grant conditional parole or set a bond amount that is reasonable because the Ninth Circuit has correctly suggested that “serious questions may arise concerning the reasonableness of the amount of the bond if it has the effect of preventing an alien’s release.” *Doan v. INS*, 311 F.3d 1160, 1162 (9th Cir. Cal. 2002).

Respectfully submitted this ____ day of ____, 20__.

Respondent, *pro se*

Certificate of Service

I, _____ hereby certify that a copy of the attached was submitted to ICE Litigation for DHS District Counsel at the following address _____ on the date indicated below.

Signature _____

Date _____