

GUIDE TO 90 DAY CUSTODY REVIEW PROCESS



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.

Important Words to Know

Immigration Law has a lot of technical words. Here's a list below of some of the words you'll see a lot in this guide and an short explanation of what they mean.

- **Immigration Judge (“Judge”):** this is the person who will make a decision about your case. He or she holds hearings in the courtroom and wears a black robe. This person doesn't work for ICE. It's her job to look at the facts of your case and apply the law fairly.
- **Immigration and Customs Enforcement (“ICE”):** this is the agency that has put you in deportation proceedings and is in charge of detaining you. ICE is part of the Department of Homeland Security, or “DHS.”
- **Government Attorney:** this is the lawyer who represents ICE when you go to your court hearings. He or she sits at the table next to you and also talks to the Judge. It's usually this attorney's job to ask the Judge to order you deported.
- **Deportation:** ICE has put you in deportation proceedings, which are also called “removal proceedings.” If the Judge orders you deported or “removed” from the United States, you will be sent back to the country where you are a citizen and will not be able to return legally to the U.S. for at least ten years.
- **The Florence Project:** this is a group of lawyers and legal assistants who provide free legal help to people without lawyers. The Florence Project wrote this guide to help you understand your case.

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Overview

This guide is designed to help individuals with a **final “order of removal, deportation, or exclusion”** who are still in detention after **90 days**. The law states that Immigration & Customs Enforcement (ICE) has 90 days from the date you received your final order to remove you from the US. If they have not removed you after 90 days they must justify why they are still detaining you. In some cases ICE may not be able to remove you. For example, the government of the country where you were born may not exist anymore, documents proving your citizenship might not exist, or your country may not accept people removed from the US.



If you are still in detention after 90 days, ICE will review your custody status to decide whether to release you or continue to detain you to try to remove you from the US. This guide helps you understand and prepare for this **custody review** process.

In order for ICE to release you, you must show that you are making every effort to cooperate to get travel documents for your removal. At your first 90 custody review, ICE may decide to hold you for another 90 days since the law gives them 6 months to try to remove you. This does not mean that you will automatically be released after 6 months, but you should receive a second custody review at the 6 month mark. Please consult the guide *Challenging Your Detention through Habeas Corpus* if you are still detained after 6 months.

ICE can detain you indefinitely if it believes you have not cooperated in getting your travel documents and this is the reason why you cannot be removed quickly. Review this guide carefully to better understand the custody review process so you can be prepared and not be detained for longer than necessary.

The ICE Custody Review Process Step-by-Step



→ Step One: *A Final Order*

You should make sure that you have a final order of removal from the court, otherwise the 90 day custody process does not begin. Your removal order only becomes final if:

- (1) You do not appeal the Immigration Judge's order of removal,
- (2) You appeal and the Board of Immigration Appeals (BIA) rules against you, or,
- (3) You win protection under the Convention Against Torture or withholding of removal.

ICE begins counting your removal period from the date of the judge's decision if everyone waived appeal or the day the BIA decides against you.

Within a few weeks of receiving a final removal order, you will receive a notice from ICE telling you the date of your custody review will be held.

→ Step Two: *Working With Your Deportation Officer*

During the first 90 days after your final order, your **deportation officer** will visit you to ask for certain documents and give you the forms needed to request travel documents from your country. Sometimes the deportation officers review cases much earlier than the 90-day date. So, it is a good idea to turn in your support packet as soon as you have it all together. More information about this step and what documents you need to do to prepare appears later in this guide.

If you have any questions about your case, ask your deportation officer. Your relationship with your deportation officer is extremely important since he or she has the power to recommend your release (or not). No matter how



frustrated you may feel about your situation at times, try to be patient and polite.

As long as you cooperate with obtaining travel documents, your deportation officer will review your file at the end of the 90 days and make a recommendation to either release you or continue to detain you.

➔ **Step Three: *Local ICE Review***

At the end of the 90 day period, your file and the deportation officer's recommendation will go to the ICE Field Office Director and he will make the final decision. When ICE grants release, the detention facility will simply inform you that it is time to pack up and go.

If you are denied release, ICE will send you a decision letter that explains their reasons. ICE may choose to continue your detention if they believe you have not helped get travel documents or that will commit crimes or disappear if released.

➔ **Step Four (sometimes): *ICE Headquarters Review***

In most cases, if you are denied release by the ICE Field Office Director, your file will be returned to your deportation officer at your detention center. Your deportation officer will have another 90 days to continue trying to get travel documents for you and for you to collect more documents supporting your release on the second review.



In some cases, after a denial, ICE *may* send your file to its headquarters in Washington D.C. for review. The decision letter should tell you whether ICE sent your case to Washington for another review.

If this happens, you should mail the original release packet you gave to your deportation officer, plus any new documents, and any comments you

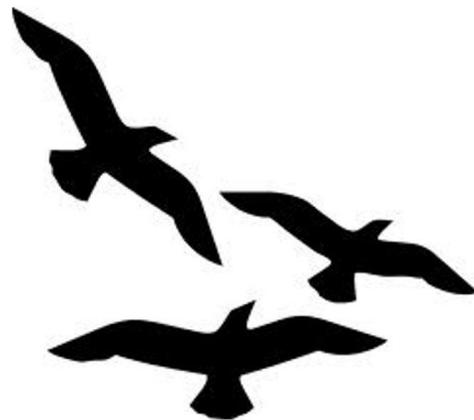
wish to express about your continued detention to:

Headquarters Post-Order Detention Unit
ICE Enforcement
801 I Street, NW – Suite 800
Washington, DC 20536

The ICE Headquarters office will not issue anything in writing, so there is no reason to wait for a response or a decision from Washington DC.

→ **Step Five (sometimes): *Release Under Conditions***

If ICE decides you release you, there may be restrictions, usually laid out in your Order of Supervision. It is helpful to think of your Order of Supervision like criminal probation or parole. There are certain things you must do to avoid being incarcerated again. It is important to follow all terms of release and report to ICE when required.



For example, if you have drug-related offenses it may require you to show proof of enrollment in a substance abuse treatment program that you will begin if you are released. Also, you usually must go to the nearest ICE office to check in once a month or every few months, depending on the instructions. ICE may prosecute and re-detain you if you fail to comply with the conditions of your release.

If you have any pending criminal parole or probation requirements, we recommend that you report promptly with evidence that you were in ICE custody during the time that you were absent.

Getting Prepared for Your Custody Review

The Custody Review Notice you receive after your final order usually says something like this:

Release is dependent on your demonstrating by '**clear and convincing evidence**' that you will not pose a danger to the community and will not be a significant flight risk. The Deciding Officer may consider, but is not limited to considering the following:

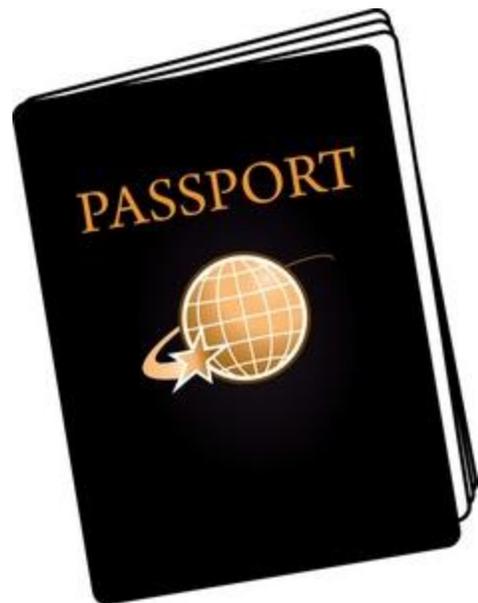
- 1) Criminal convictions and criminal conduct;
- 2) Other criminal and immigration history;
- 3) Sentence(s) imposed and time actually served;
- 4) History of escapes, failures to appear for judicial or other proceedings, and other defaults;
- 5) Probation history;
- 6) Disciplinary problems while incarcerated;
- 7) Evidence of rehabilitative efforts or recidivism;
- 8) Equities in the United States;
- 9) Cooperation in obtaining your travel document;
- 10) Any available mental health reports.

As soon as you receive this notice you should get started gathering documents to support your release. Be prepared to give your deportation officer copies of all of your documents at least **two weeks** before the review date since they often start the process early.

What Documents Should I Prepare?

Identity Documents for Travel

As soon as you have a deportation order, give your deportation officer any documents that might help him or her obtain travel documents for you, such as your **passport or birth certificate**. If you do not have either of these, you must contact your country's consulate or embassy to request acceptable documents. Make sure to submit your request in writing and make two copies: one for your deportation officer and for yourself.



When you mail a letter to the consulate try to use certified mail to prove

that you actually sent the letter, and send a copy of that certificate to ICE with the letter. If the consulate or embassy responds in writing, also give a copy of their letter to your deportation officer. A list of all the consulates' phone numbers should be posted on the wall in your detention center housing area.

Travel Documents

Fill out the travel document request forms provided by your deportation officer. If you won CAT or withholding of removal you cannot be sent to the country where you fear harm. So, ICE will try to find another country to send you to, and you must request travel documents from those other countries in order to qualify for a custody review. In general, other countries will not issue a travel document to you unless you are a citizen, national, or lawful immigrant.



Anytime you call your consulate or embassy, always write down the date, time, name of the person you talked to, and what he or she said. If your family or friends call or write to the consulate or embassy they should also document any communication and send this information to you for your deportation officer.



Address Danger and Flight Risk

Since ICE's primary concern will be "**danger**", which means likelihood that you will commit crimes, and "**flight risk**", which means the likelihood that you will disappear, we recommend that you work on putting together the following evidence to address those concerns. It is important to show that you are rehabilitated and will have a support system available to you on the outside. Most importantly, this means that you need a plan for how you will live, including housing, finding a job, transportation, and dealing with other necessities. It is also important to show that you are not a flight risk and will comply with the conditions imposed as part of your release.

Please remember, however, that you should not become depressed or

discouraged if you are unable to put together a big packet for your custody review. ICE will sometimes release people who cannot be removed in a timely way so long as they can provide an address where they will live.

- **Housing**

You will need to show where you will live if you are released. If you have family or a friend with whom you can stay, then they **MUST** write a letter addressed to your D.O. in support of your release. The letter should include:



- Date
- Name of the author (friend or family member)
- How she or he knows you and for how long
- Address and phone number where you will live
- Signature
- Copy of his or her identification

Also, if your supporter is willing to provide you with food and other necessities until you are ready to support yourself again, then they should say that clearly in the letter.



If you do not have anyone to live with, then you will need to locate a halfway house, residential treatment program, or a shelter that will write you a letter of acceptance. The best way to find resource information in your area is to call a community information and referral hotline or The United Way. They can help direct you to resources if you explain what you need. There are several social service organizations, which are in nearly every state, and in most cities. You can start your search by contacting **Catholic Social Services, Salvation Army, Victory Outreach, or Travelers'**

Aid in your destination city. You can get their local numbers through “Information”, which can be reached by dialing 411 or by looking in the phone book.

- **Rehabilitation** (see document checklist at the end of this guide!)

If you have had a problem with drugs or alcohol in the past, then you will need to show that you are sober and you are going to attend a treatment program. If you have taken any educational, self-help, or rehabilitation courses while in prison or in detention, then you should submit copies of the **certificates and diplomas** with your packet. In addition, we suggest that you contact treatment programs directly to ask them to write a **letter of acceptance** upon your release or send **materials about their services**.

There are in-patient and out-patient substance treatment programs. In-patient, or residential, treatment means you live at the facility, which could be either a hospital setting or more a house with other people recovering from addictions. If you choose to go into an in-patient program, you will probably satisfy your housing, support, rehabilitation, and employment requirements. Sometimes the state or county assistance can help pay for the program.



To be admitted to a drug or alcohol treatment program you should call one of the agencies in your area. They will tell you what you need to do and refer you to the right program. You can also contact your probation or parole officer for rehabilitation program information. If you live in a county that is not listed you can call the following number to get referrals to programs all over the country: **1-800-711-6375**.



If you have had problems with domestic violence in the past, then you should find a domestic violence recovery program to attend. In fact, your conditions of probation or parole may state that you must attend these groups. They usually consist of group

meetings, and you may need to pay for the class yourself.

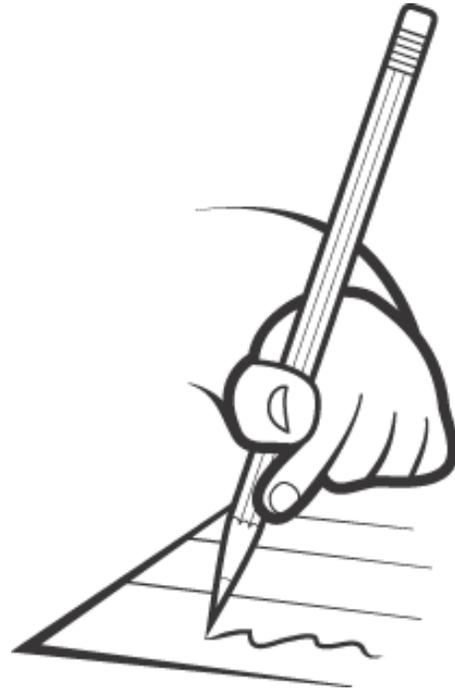
Finally, you can also be creative and think of other ways that show you are trying to change your life for the better. For example, if you have written letters to family, friends, or past victims expressing regret for your actions, you may want to include copies of these letters.

- ***Personal Declaration***

When your deportation officer reviews your file, he or she will only know your immigration and criminal history. By writing a personal declaration you are giving him a chance to know more about you and see you as a person rather than another file. The main goal of a personal declaration is to ask ICE to release you and to express remorse for whatever crime brought you to detention.

We recommend that you address the following topics:

- **Rehabilitation:** ICE wants to know that you are sorry for your crime and that you take responsibility for your actions. It is very important that you express why you know or feel that what you did is wrong, how it has affected your life, and how you want to do things differently in the future.
- **Immigration History:** It might be a good idea to talk about how you came to the United States. Talk about your family and what they went through to get here and what it was like for you growing up, if you feel it is relevant to your case.
- **Plans and Goals:** Talk about your future plans and goals and what you need to do to achieve them.
- **Housing:** Tell ICE where you will be living and with whom if you are released. Also, provide an address and a letter from your sponsor at that address.
- **Dependents and Hardship:** You can also talk about anyone at home

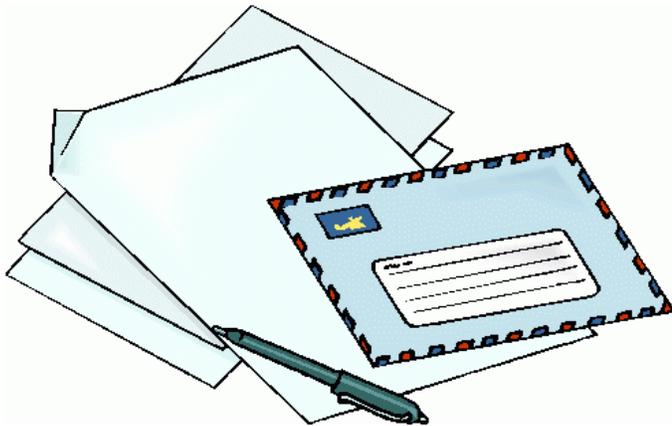


who is having a hard time because you are in detention. If you have children or family members that rely on your financial and emotional support you should write about why they need you. What kind of hardship is your family experiencing because of your incarceration? How will you help them if you are released?

In addition to your declaration, you should also answer the nine questions on the questionnaire for 90 day review, if your deportation officer gives it to you with your notice.

- ***Letters from Family and Friends*** (see document checklist at the end of this guide!)

Friends and family can help by writing letters of support and sending copies of their identification. A pastor, priest, neighbor, co-worker or former employer, or any person who knows you well can also provide letters of support.



Each letter should be written in English or translated. It should also be original, meaning different from the other letters. We recommend that the author write something that is personal, and honest. They can mention your crimes and how they know

you have changed and will not commit crimes in the future. They should talk about the kind of support they are able to give you to help you avoid trouble.

All letters must include YOUR NAME and A#; the NAME, A#, and ADDRESS of the person who is writing to ICE for you; their IMMIGRATION STATUS; and their RELATIONSHIP to you. They can state how they know you and for how long, and why they think you should be released.

Also, try to get a copy of your marriage certificate if you are married and birth certificates of your children or spouse, if you have immediate family born in the United States. In addition, you can include photos of you and your family. Finally, any letters you have received from your

children or family members while incarcerated will be helpful.

- **Employment** (see document checklist at the end of this guide!)



If you have a job waiting on the outside, then your future employer should write a letter on company stationery and include the same information as the letters from family and friends (name, A#, immigration status, etc). They should state what the job is, what the wage is, how many hours per week you will work, and when you can start. And, if you work in the detention center you can ask for a statement or performance evaluation from your supervisor showing what you do and when you started.

How Do I Organize and Submit My Documents?

It is best to submit all of your documents together in one organized packet. Try to get your documents together as soon as possible and submit them early. The deportation officer can review your file before the date on your notification letter and if you have not submitted anything your release will be denied. If your review date is coming up soon and you are still waiting for letters of support tell your deportation officer so that he or she knows there are more documents coming.

All of the documents should be in English or translated, including certificates and letters. Make sure the translator includes a certificate swearing that he or she is competent in both languages. Here is an example:



Certificate of Translation

I, (name of translator), certify that I am competent to translate this document and the translation is true and accurate to the best of my abilities.

(Signature of translator) and Date

If you have a lot of documents to submit, then you should group them by type and make a list of the categories. Each group of documents of a

particular kind should be separated with a blank page that just has the letter A, B, C, etc. Put the list, also known as an index, at the top of the packet so the Deportation Officer knows where to look for particular information. Here is an example of an index:

- Exhibit A: Housing and Sponsor Letter
- Exhibit B: Letters and Identification from Family
- Exhibit C: Offer of Employment

Always make and keep a copy of everything you submit to ICE. It is a good idea to keep a copy of all your documents even after you leave detention in case you need them in the future.

Submit all of your documents to your deportation officer at one of the following addresses if you are in Arizona, depending on where you are detained:

ICE Deportation Officer (name)	ICE Deportation Officer (name)
Florence ICE SPC	Eloy Detention Center
3250 N. Pinal Parkway Ave.	1705 E. Hanna Rd.
Florence, AZ 85132	Eloy, AZ 85131

If I am Released From my Custody Review, Can I Work in the US?

If you have a final deportation order, you technically have no legal status in the US even if you were a permanent resident before. However, you can apply for an Employment Authorization Document (EAD) to work lawfully in the US.

Once you are released, you will need to fill out an “Application for Employment Authorization” (Form I-765), which is available on-line at www.uscis.gov. The application includes instructions on how to fill it out, what to include with it, and how to file it. Everyone with a final removal order who is granted supervised release must pay the application fee unless you were granted withholding of removal or protection under CAT. The work permit should arrive within 90 days unless USCIS requests more information or denies your application.



Supporting Document Check List

Letters showing participation in my community. For example: any help that you have given to neighbors, such as yard work, rides, child care, etc.	
Letters or documents showing financial contributions to my family. For example: Proof that I paid rent, child support, groceries, etc.	
Letters from past employers	
Letters from religious organizations I belong to	
Photos of family (birthday parties, holidays, pets, babies, etc.)	
Informational pamphlets on rehabilitation centers/programs in my area (I should contact a rehabilitation center if I have any domestic violence, driving under the influence, or controlled substance convictions.) Letter of acceptance from a rehabilitation program I will attend in the future.	
Letter to my probation/parole officer explaining that I am in ICE custody and any documents I have showing my conditions of probation/parole.	
Letter showing that I have a job when I get out of detention	
Pay Stubs from <i>lawful</i> employment	
Social Security Records	
Tax Records	
Proof of English Language Training, GED, college, etc.	
Certificates from courses taken while in ICE custody and elsewhere	
Certificates from rehabilitation programs (AA, NA, Anger Management, etc.)	