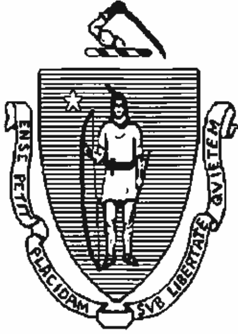

Committee for Public Counsel Services
Public Defender Division
Immigration Impact Unit
21 McGrath Highway, Somerville, MA 02143

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JEANETTE KAIN
IMMIGRATION LAW SPECIALIST

Demystifying Removal Proceedings[1]

Your client has just received notice of an immigration detainer, or he was just arrested by Immigration & Customs Enforcement ("ICE"). He wants to know what is going to happen to him. This article takes you through the various stages of removal proceedings to provide an overview of the process.

When will my client be placed in immigration detention?

Immigrants are placed in immigration detention under a variety of circumstances. Immigrants in state custody can be taken into immigration custody when they are released from state custody, either on bail or upon completion of their criminal sentence. 8 C.F.R. § 287.7(d). The Department of Homeland Security also frequently arrests immigrants when they return to the U.S. from travel abroad, when they come into contact with law enforcement, or when they apply for further immigration relief such as naturalization or green card renewal.

If your client is in state custody, ICE may lodge a detainer against him. It will issue a "Notice of Action" (also known as Form I-247), which is a notification that it has issued the detainer and explains the reasons for it. *See* 8 C.F.R. § 287.7. A sample "Notice of Action" can be found at the end of this advisory.

[1] Written by Jeanette Kain, Esq., Immigration Law Specialist, CPCS. Reprinted from *Immigrant Defense News*, Vol.2, Issue 1 (Dec. 2009).

Why will my client be placed in immigration detention?

There are three reasons why ICE would issue a detainer against your client:

1) ICE is investigating whether your client is deportable. If ICE determines that your client is not deportable, then it removes this detainer and your client can be released.
2) Your client has been placed in removal proceedings because he is inadmissible or deportable. In this situation, usually a Notice to Appear (see below) will be attached to the detainer.
3) Your client has already been ordered deported. In these circumstances, the detainer will say that your client has a prior order of removal and ICE is taking your client into its custody in order to actually deport him.

ICE has discretion as to which immigrants it will detain. Immigrants with final orders of removal or criminal convictions, particularly if they are subject to mandatory detention under 8 U.S.C. § 1226(c) (see below), will likely be detained. ICE will consider special circumstances on a case-by-case basis, such as if your client has serious health problems or is the sole caregiver for a small child.

What does it mean to be inadmissible or deportable?

An immigrant is *inadmissible* when he is not eligible for admission to the U.S. because one or more of the grounds of inadmissibility set out in 8 U.S.C. § 1182 apply to him. An "admission" means legal entry into the U.S.; therefore, an immigrant who physically enters the U.S. without inspection is not considered to have been admitted. 8 U.S.C. § 1101(a)(13). An immigrant applies for admission to the U.S. when he tries to enter the U.S., unless he is a permanent resident (except under certain circumstances set out in 8 U.S.C. §1001(a)(13)(C), including engaging in criminal activity). An immigrant is also considered an applicant for admission when he applies for permanent residence (also known as "adjustment of status"). *See Matter of Shanu*, 23 I&N Dec. 754 (BIA 2005).

An immigrant is *deportable* when he has already been admitted to the U.S. in any status, including on a temporary visa or as a permanent resident, and one or more of the grounds of deportability under 8 U.S.C. § 1227 apply to him.

Where does ICE hold its detainees?

ICE rents space in various detention facilities across the state. The most common detention facilities in Massachusetts are Plymouth County Correctional Facility, Bristol County House of Correction, and Suffolk County House of Correction. ICE also frequently transfers its detainees to larger, ICE-operated detention facilities in other states, depending on the amount of detention space it has available. *See, e.g., Aguilar v. U.S. Immigration and Customs Enforcement*, 510 F.3d 1 (1st Cir. 2007) (habeas action arising out of the widely-publicized 2007 raid of the Michael Bianco factory in New Bedford, MA

in which ICE arrested many immigrants and quickly transferred them to distant detention facilities). If your client is transferred out of state, he will have his immigration hearings at a court in that jurisdiction, unless he is released on bond and files a motion to change venue back to his home jurisdiction.

Information on ICE detention facilities throughout the U.S. is available at this website: http://www.ice.gov/pi/dro/facilities.htm

You or your client's family can find out where ICE is holding your client by calling ICE Detention and Removal Operations at its Burlington, MA office at (781) 359-7500. Alternatively, the following website lists the contact information for all of the ICE Detention and Removal Operations offices throughout the U.S.: http://www.ice.gov/about/dro/contact.htm

ICE will generally not divulge its intentions to transfer a particular individual out of state until the transfer has already taken place. However, sometimes an ICE agent will allude to the possibility of transfer during an arrest. Your client can ask ICE Detention and Removal Operations ("DRO") to refrain from transferring him out of state, particularly if he has health problems, or close family ties and counsel in Massachusetts. He or his family should make this request to DRO in writing. Additionally, if your client is eligible to be released on bond, he should move for a bond hearing immediately so that he has a chance at getting released on bond prior to being transferred out of state. It is important to note that filing a request for a bond hearing does not place a hold on your client's transfer. ICE will sometimes transfer an immigrant out of state notwithstanding the fact that he was scheduled for a bond hearing in Massachusetts.

What is a Notice to Appear?

In order to commence removal proceedings, the Department of Homeland Security ("DHS") must prepare a charging document called a Notice to Appear ("NTA") and serve it on your client. 8 U.S.C. § 1229. A sample is attached to this newsletter at the end of this advisory. This document sets out the reasons that DHS believes your client is inadmissible or deportable. DHS is required to prove deportability in Immigration Court by clear, convincing and unequivocal evidence. 8 U.S.C. § 1229a(c)(3), 8 C.F.R. § 1240.8(a). [Note that if your client is charged as an "arriving alien," (see below) it is his burden to prove that he should be admitted to the U.S.]

If your client was ordered deported in the past, ICE will not commence removal proceedings against him again. Instead, it will work on deporting him. Your client will not have any hearings in Immigration Court and will not be released from custody, unless ICE is unable to deport him (see below) or an Immigration Judge agrees to reopen his removal proceedings. *See* 8 U.S.C. § 1229a(c)(7). Motions to reopen are entirely discretionary and, except in limited circumstances, they will only be accepted within ninety days of the final order of removal, or 180 days if the removal order was issued *in absentia*. *See also* 8 U.S.C. § 1229a(b)(5)(C); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

What is an arriving alien?

Criminal practitioners will not come across immigrants classified as arriving aliens very often, since they are generally placed in removal proceedings upon entry to the U.S., instead of during a criminal case. *Arriving aliens are immigrants who were placed in removal proceedings while attempting to enter the U.S. at a port of entry or who were arrested while in international or U.S. waters and brought to the U.S. See* 8 U.S.C. § 1101(a)(13); 8 C.F.R. § 1.1(q). Legally they are treated as if they are outside the U.S., asking to be allowed to enter. *See, e.g., Matter of R-D-*, 24 I&N Dec. 221 (BIA 2007). As such, they have the burden to prove why they should be allowed to be admitted to the U.S. 8 U.S.C. § 1229a(c)(2).

Arriving aliens are treated differently in Immigration Court. They are not eligible for bond hearings (see below), and are not eligible to apply for adjustment of status to permanent residence in Immigration Court. *See Succar v. Ashcroft*, 394 F.3d 8 (1st Cir. 2005); 71 Fed. Reg. 27585 (May 12, 2006) (an interim regulation announcing the procedure for arriving aliens to apply for adjustment of status with Citizenship & Immigration Services instead of the Immigration Court). Additionally, they are subject to the grounds of inadmissibility rather than the grounds of deportability.

Immigrants who successfully entered the U.S. without inspection and are found later in the U.S. are not classified as arriving aliens when they are placed in removal proceedings. This is because they were not arrested at a port of entry or in international or U.S. waters. *See* 8 C.F.R. § 1.1(q). Notwithstanding this, immigrants who entered the U.S. without inspection are generally subject to the grounds of inadmissibility.

Does my client have a right to appointed counsel in removal proceedings?

No. By statute, your client is not entitled to appointed counsel, but he is allowed to hire an attorney at his own expense. 8 U.S.C. §§ 1229a(a)(4), 1362. *See also Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) (setting the standard for ineffective assistance of counsel claims in removal proceedings). Removal proceedings are considered civil in nature. Immigrants are only protected by the Fifth Amendment right to due process during their proceedings, which means that they have a right to a fundamentally fair hearing, and a right to present evidence, examine evidence against them, and cross-examine witnesses. 8 U.S.C. § 1229a(a)(4)(B). The Immigration Court is required to provide immigrants with a list of local organizations that provide low-cost or free immigration representation. 8 U.S.C. § 1229(b)(2). This list is available at http://www.justice.gov/eoir/probono/states.htm. Most of these organizations do very little direct representation and provide only advice and self-help materials due to limited funding.

When will my client have his first hearing in Immigration Court?

After ICE arrests your client and prepares the Notice to Appear ("NTA," see above), it files the NTA with the Immigration Court. If your client is in detention, this will usually

take at least 1-2 weeks. It can take much longer if your client is not detained. The court clerk then assigns your client to a judge and schedules him for a "master calendar hearing," which is a preliminary hearing. If your client is not in custody, he will receive written notice in the mail of this hearing. *See* 8 U.S.C. § 1229(a). Sometimes immigrants do not receive their Notice of Hearing, particularly if they change their address after coming into contact with DHS. In these circumstances, they can call the Immigration Court's hotline at (800) 898-7180 to find out the date of the next hearing.

If your client is in custody, he will either be brought to the hearing or he will appear at the hearing by closed-circuit television. Immigrants held at Suffolk County House of Correction almost always appear in person for hearings because of this facility's proximity to the Boston Immigration Court. Immigrants held at the other facilities in Massachusetts usually appear by television unless ordered to appear in person by the Immigration Judge. Note that if your client is transferred out of state, the venue of his removal proceedings will be in that state.

Can my client get released from immigration custody?

In some circumstances, Immigration Judges have the authority to review ICE's determination to detain an immigrant. They can release immigrants from custody on their own recognizance or on a bond of not less than $1500. 8 U.S.C. § 1226(a). Your client can request a bond hearing at any time, even before the Notice to Appear has been filed with the Immigration Court. The Boston Immigration Court has an informal policy of scheduling immigrants for bond hearings within three days of their request.

There are certain categories of immigrants who are not entitled to bond redetermination hearings in Immigration Court:

- Arriving aliens (see 8 C.F.R. § 1003.19(h)(2)(B));
- Immigrants subject to mandatory detention under 8 U.S.C. § 1226(c), which generally include those who have committed crimes involving moral turpitude, drug offenses, aggravated felonies, firearms offenses, or engaged in terrorism, espionage, or otherwise threatened national security.

If ICE has decided not to release immigrants that fall into either of these categories, they will remain in custody while their removal proceedings are pending. However, if there is an argument that your client may be entitled to a bond redetermination hearing, he is allowed to request a hearing to determine that. 8 C.F.R. § 1003.19(h)(2)(ii); *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999). This is called a "Joseph hearing."

Bond decisions, including the decision about whether an immigrant is subject to mandatory detention, can be appealed to the Board of Immigration Appeals. 8 C.F.R. § 1003.1(b)(7). They can also be contested through a writ of habeas corpus. If DHS decides to appeal a bond decision, it can request a stay on the release of your client until the appeal is decided. 8 C.F.R. § 1003.19(i).

What happens at the client's first hearing in Immigration Court?

The first hearing in court is called a master calendar hearing. At this hearing, the Immigration Judge will inquire as to whether your client has counsel or would like to hire counsel. If your client needs more time to find counsel, the Judge will give him at least one continuance for that purpose. If your client already has counsel, or wishes to proceed *pro se*, the Judge will then ask him to submit pleadings or otherwise answer the charges on the Notice to Appear and advise the court as to the relief that he is seeking. Sample pleadings can be found in Appendix L of the Immigration Court Practice Manual, available at this website: http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm

After pleadings are submitted, the Judge will ask DHS to prove the charges on the Notice to Appear. If the charges are sustained and your client is found removable, the judge will set a deadline for your client to submit any applications for relief, and he will also schedule your client for an "individual hearing," or merits hearing, to present testimony in support of those applications. Forms of relief are defenses to removal, so if your client's application for relief is successful, he will be allowed to remain in the U.S. If your client is not eligible for relief, the judge will inquire into eligibility for voluntary departure (see below) or order your client deported.

If your client is applying for relief, he will need to fill out the appropriate application and submit it to the court by the deadline set by the judge. The applications are available at this website: http://www.justice.gov/eoir/formslist.htm. Failure to follow deadlines set by the court can result in an order of removal after a finding that your client has forfeited all relief.

After the judge handles pleadings and applications for relief, he will then go off the record and hold a bond redetermination hearing, if your client is in detention and eligible for bond. Bond hearings are separate proceedings that are always heard off the record, and evidence submitted during a bond hearing is kept separate from your client's removal file. 8 C.F.R. § 1003.19(d). If your client is thinking of hiring counsel, he should wait to proceed with his bond hearing until he has counsel, as bond decisions are not easily appealed.

Detained cases are on a special, expedited court calendar. Thus, if your client is in custody, he can expect his case to be heard within a matter of weeks. Non-detained cases are on a much slower calendar. Your client may have to wait a year or more before he has his individual hearing.

For a discussion of the three types of hearings in Immigration Court, please review Chapter 4 of the Immigration Court Practice Manual, available at http://www.justice.gov/eoir/vll/OCIJPracManual/Chap%204.pdf

What are typical forms of relief for a client?

The relief available to your client depends primarily on whether he is a lawful permanent resident (i.e., has a green card) and whether he has been convicted of any aggravated felonies. See 8 U.S.C. § 1101(a)(43) (list of aggravated felonies). Typical forms of relief for permanent residents who have not been convicted of aggravated felonies include cancellation of removal under 8 U.S.C. § 1229b(a) and a waiver of inadmissibility under 8 U.S.C. § 1182(h) (also known as a "212(h) waiver," referencing the Immigration & Nationality Act citation). Immigrants who are not permanent residents are sometimes eligible for adjustment of status, a 212(h) waiver or cancellation of removal under 8 U.S.C. § 1229b(b).

All immigrants, regardless of whether they are aggravated felons, can also apply for relief under Article III of the United Nations Convention Against Torture and sometimes withholding of removal. *See* 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 1208.16-18. These forms of relief are for immigrants who fear torture or persecution in their home country, and they are very difficult to win because of the stringent burden of proof. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (discussing the burden of proof for withholding of removal); *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002) (discussing the meaning of torture for claims of relief under the Convention Against Torture). Asylum is also available on a very limited basis to immigrants with only very minor crimes on their record who fear persecution in their home country. *See* 8 U.S.C. §§ 1101(a)(42), 1158. Asylum and withholding of removal are not available to immigrants who have been convicted of a "particularly serious crime," a term of art that is not synonymous with aggravated felony. *See Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2009); *Matters of Y-L-, A-G-, and R-S-R-*, 23 I&N Dec. 270 (A.G. 2002).

What is voluntary departure and does it benefit my client?

If your client is not eligible for any relief and does not have an aggravated felony on his record, he is eligible for preliminary voluntary departure on a discretionary basis if he does not apply for any other relief. Voluntary departure means that your client voluntarily leaves the U.S. within the time period set by the court, up to 120 days. He is responsible for making his own travel arrangements and paying for his own transportation out of the U.S.

If your client is in custody, he might be granted voluntary departure "under safeguards." This means that he will remain in custody until he is returned to his home country, but he (or his family) will be responsible for his travel arrangements in order to avoid a removal order. *See* 8 C.F.R. § 240.25(b); *Matter of M-A-S-*, 24 I&N Dec. 762, 765-767 (BIA 2009).

If your client decides to apply for immigration relief, he can choose voluntary departure as an alternative to removal if he is denied relief. This form of voluntary departure has more restrictions and requires a showing of good moral character for the previous five years. 8 U.S.C. § 1229c(b).

Voluntary departure has very limited benefits. The main reasons why a client would accept it over an order of removal are that it allows him to avoid a removal order on his record, and it allows him to leave on his own accord within a set period of time. 8 U.S.C. § 1229c(a). While ICE executes removal orders by taking immigrants into custody, immigrants who were granted voluntary departure are not taken into custody unless they fail to leave the U.S.

In some cases, it may be easier for your client to return to the U.S. in the future if he leaves the U.S. under voluntary departure instead of through a deportation order. Immigrants who have been ordered deported are barred from reentering the U.S. for ten years (unless they have been convicted of an aggravated felony, see below). 8 U.S.C. § 1182(a)(9)(A)(ii). Avoiding a removal order avoids this bar to reentry, although most immigrants are also separately barred from reentering the U.S. for three or ten years due to unlawful presence in the U.S. 8 U.S.C. §1182(a)(9)(B). These bars can be waived in certain circumstances, so avoiding a removal order means that there is one less bar that your client needs waived. 8 U.S.C. §§ 1182(a)(9)(A)(iii), 1182(a)(9)(B)(v). In circumstances in which the three-year bar for unlawful presence applies, avoiding a removal order would mean that your client is only barred from reentry for three years, instead of ten.

There is a negative side to voluntary departure. If your client does not actually leave the U.S., the voluntary departure order becomes a removal order. In addition, he is subject to a large fine and becomes ineligible for most forms of immigration relief. 8 U.S.C. § 1229c(d). *See also Dada v. Mukasey*, 128 S.Ct. 2307 (2008) (discussing the effect of overstaying voluntary departure on future immigration relief and on motions to reopen).

Immigrants with aggravated felonies on their record are not eligible for voluntary departure, and are generally subject to a permanent bar to reentering the U.S., regardless of how they leave the U.S. 8 U.S.C. §§ 1229c(a)(1), 1182(a)(9)(A)(ii).

What happens during an individual hearing?

An individual hearing, also known as a merits hearing, is the closest thing that the Immigration Court has to a full-fledged trial. Before this hearing, your client will be required to submit any applications for relief and evidence in support of these applications. *See* Chapter 3 of the Immigration Court Practice Manual for filing rules at http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm. On the day of the hearing, your client will testify, be cross-examined, present supporting witnesses, and cross-examine any Homeland Security witnesses. For all forms of discretionary relief, the burden of proof is on your client and he will be expected to testify in support of his application. *See, e.g., Matter of Fefe*, 20 I&N Dec. 116 (BIA 1989).

It should be noted that because removal proceedings are considered administrative, the rules of evidence do not apply and evidence is rarely suppressed. *See, e.g.*, 8 C.F.R. §1240.7. *See also INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984). The court will admit all

evidence that is found to be relevant, probative and fundamentally fair, even if there was a Fourth Amendment violation. *Matter of Toro*, 17 I&N Dec. 340 (BIA 1980). (But see recent unpublished decision in which Hartford Immigration Court granted a motion to suppress, available at http://media.yaledailynews.com/media/files/2009/09/28/fairhavenruling1.pdf).

At the end of this hearing, the judge may decide the case orally, or may continue the case so that he can prepare a written decision. 8 C.F.R. § 1003.37. Please review Chapter 4 of the Immigration Court Practice Manual for more information about individual hearings. http://www.justice.gov/eoir/vll/OCIJPracManual/Chap%204.pdf

What if my client is ordered deported?

If the Immigration Judge decides to order your client removed, your client is allowed to appeal that decision to the Board of Immigration Appeals. 8 C.F.R. § 1003.1(b). On the day that the Immigration Judge makes his decision, your client is required to reserve appeal of that decision. He then has 30 days to submit his Notice of Appeal to the Board. 8 C.F.R. §§ 1003.3, 1003.38.

If the BIA also orders your client removed, there are limited circumstances in which your client may be allowed to file a Petition for Review with the U.S. Court of Appeals. 8 U.S.C. § 1252. A Petition for Review must be filed within 30 days of the BIA's decision. 8 U.S.C. § 1252(b).

My client was granted relief. Why is he still in immigration custody?

If the Immigration Judge grants your client relief but DHS decides to appeal that decision, it is allowed to continue holding your client in custody while the appeal is pending because your client is still considered to be in removal proceedings. 8 U.S.C. § 1226. Your client may be eligible for a bond hearing, unless he is an arriving alien or subject to mandatory detention (see above). In some circumstances, the Immigration Judge may make a new determination regarding mandatory detention, if he finds that DHS is substantially unlikely to establish on appeal the charge that makes your client subject to mandatory detention. *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999).

My client was just ordered deported. When will he be deported?

After an immigrant is ordered deported, he is required to cooperate in effectuating his deportation by providing ICE with his passport or identity documents, if available. *See, e.g.*, 8 C.F.R. § 241.13(d)(2). ICE will make arrangements with the consulate of the country to which your client will be deported. In some cases, deportation will take a few weeks; in other circumstances, particularly if your client or the consulate is not cooperative, deportation can take months. For security reasons, ICE will not usually divulge the exact date of an immigrant's deportation until after the deportation occurs.

If your client has been ordered deported but is not in custody, ICE has the authority to

arrest and detain him in order to deport him. 8 U.S.C. § 1231(a)(2); 8 C.F.R. § 241.3.

My client was ordered deported almost six months ago, but he is still in custody and has not been deported yet. What can he do?

Once your client has been ordered deported, ICE is required to review your client's custody status at 90 days after the final order and at 180 days after the final order, as required by the landmark U.S. Supreme Court case of *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See also* 8 C.F.R. § 241.4. Your client is required to cooperate in the deportation arrangements. Usually, only immigrants from countries that do not have repatriation agreements with the U.S. are released at the 90-day custody review. After 180 days of post-order custody, ICE is required to release anyone for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 8 C.F.R. § 241.13. Thus, your client can request a custody review at the 90-day mark and the 180-day mark, and in most cases will be released from custody after 180 days.

Why does my client have to report to ICE every month?

If an immigrant has been ordered deported but is released from custody, he will be placed on an Order of Supervision. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4. Under this Order, he is required to report to ICE occasionally. If he later commits a new crime, otherwise violates the conditions of his release, or if ICE believes that it can now deport him due to changed country conditions, ICE will take him back into custody when he reports.

If you have specific questions about your client's removal proceedings, the CPCS Immigration Impact Unit is available for individual consultation. Please fill out the intake form at the end of this newsletter and e-mail it to Wendy Wayne at wwayne@publiccounsel.net or Jeannie Kain at jkain@publiccounsel.net.

C.O. Copy

From T-728 P.001/001 F-821

Department of Homeland Security
Immigration and Customs Enforcement

Detainer – Notice of Action

U.S. Immigration and Customs Enforcement

File No
Date: Nov. 13, 2006

To: (Name and title of institution)	From: (ICE office address)
Boston Municipal Court	ICE Criminal Alien Group

NAME OF ALIEN: FBI #:

DATE OF BIRTH. NATIONALITY: MEXICO SEX: M

You are advised that the action noted below has been taken by Immigration and Customs Enforcement concerning the above-named inmate of your institution:

☒ Investigation has been initiated to determine whether this person is subject to removal from the United States.

☐ A Notice to Appear or other charging document initiating removal proceedings, a copy of which is attached, was served on ________.

☐ A warrant of arrest in removal proceedings, a copy of which is attached, was served on ____.

☐ Deportation or removal from the United States has been ordered.

It is requested that you:

Please accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the offender's classification, work and quarters assignments, or other treatment which he or she would otherwise receive.

☐ Federal regulations (8 CFR 287.7) require that you detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays, and Federal holidays) to provide adequate time for ICE to assume custody of the alien. You may notify ICE by calling ________ during business hour or ________ after hours in an emergency.

☐ Please complete and sign the bottom block of the duplicate of this form and return it to this office. ☐ A self-addressed stamped envelope is enclosed for your convenience. ☐ Please return a signed copy via facsimile to ____________.

☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

☐ Notify this office in the event of the inmate's death or transfer to another institution.

☐ Please cancel the detainer previously placed by this Service on ____.

Karen L. Bruce *Karen Bruce*
(Signature of ICE Officer)

Immigration Enforce. Agent
(Title of ICE Officer)

Receipt acknowledged:

Date of latest conviction: ____________ Latest conviction charge: ____________

Estimated Release date: ____________

Signature and title of official: ____________

617-565-7503

U. S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File N
Case N

In the Matter of:

Respondent: ______________________ currently residing at:

(Number, street, city state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

See Continuation Page Made a Part Hereof

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
JFK Federal Building 15 Sudbury Street Room 320 Boston MASSACHUSETTS US 02203
(Complete Address of Immigration Court, Including Room Number, if any)

on a date to be set (Date) at a time to be set (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

PAUL STERLING
SUPERVISORY SPECIAL AGENT
(Signature and Title of Issuing Officer)

Date: May 19, 2004

Boston, MA
(City and State)

See reverse for important information

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

____
(Signature of Respondent)

Before:

____
(Signature and Title of INS Officer)

Date: _______________________________

Certificate of Service

This Notice to Appear was served on the respondent by me on 5/25/04 (Date), in the following manner and in compliance with section 239(a)(1)(F) of the Act:

- [x] in person
- [ ] by certified mail, return receipt requested
- [ ] by regular mail
- [ ] Attached is a credible fear worksheet.
- [x] Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the English language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

____
(Signature of Respondent if Personally Served)

JENNIFER HOOD
IMMIGRATION AGENT
____
(Signature and Title of Officer)

Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name	File Number Case No:	Date May 19, 2004

The Service alleges that you:

1) You are not a citizen or national of the United States;

2) You are a native of Haiti and a citizen of Haiti;

3) You were admitted to the United States at Miami, Florida on or about st 1993 as an immigrant;

4) You were, on 2003, convicted in the Cambridge District Court, Cambridge, Massachusetts for the offense of Possession with the intent to distribute a class D controlled substance, to wit: Marijuana, in violation of Chapter 94C, Section 32 of the Massachusetts General Laws.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the Act, an offense relating to the illicit trafficking in a controlled substance, as described in section 102 of the Controlled Substances Act, including a drug trafficking crime, as defined in section 924(c) of Title 18, United States Code.

Signature	Title
PAUL STERLING	SUPERVISORY SPECIAL AGENT

Form I-831 Continuation Page (Rev. 6/12/92)