



**Committee for Public Counsel Services  
Immigration Impact Unit**

6 Pleasant Street, 6th floor, Malden, MA 02148

Tel: 781-338-0825 – Fax: 781-338-0829

[iiu@publiccounsel.net](mailto:iiu@publiccounsel.net)

**ANTHONY J. BENEDETTI**  
CHIEF COUNSEL

**Jennifer Klein**  
DIRECTOR

## **Demystifying Removal Proceedings**

This advisory takes you through the various stages of removal proceedings to provide an overview of the process. It also explains key terms that may be relevant to your noncitizen clients.

### The Basics of Removal

#### **What does it mean to be removable?**

Removable is a term that includes both inadmissible and/or deportable. For a noncitizen to be legally and/or physically removed from the United States by ICE, an immigration judge must first find that they are removable.

An immigrant is *inadmissible* when they are 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 them. 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). There are many different grounds of inadmissibility, which include both lack of immigration status (i.e. being undocumented) as well as different criminal grounds.

- Admissibility applies in many different scenarios. For example, a person must prove that they are admissible when applying for a green card. Or a lawful permanent resident ("LPR" or "green card holder") may have to prove admissibility if they are returning from a trip abroad and have certain criminal convictions on their record.

An immigrant is *deportable* when they have 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 them.

- Like inadmissibility, there are many different kinds of deportability. For our clients, they may be deportable if they are a green card holder, visa holder, or refugee convicted of certain criminal offenses.

### **If my client is undocumented/removable, is there anything I can do in their criminal case?**

Yes! Undocumented people, in some circumstances may be eligible to apply for lawful status. This is true even if they have already been placed in removal proceedings. For those with lawful immigration status, some people may apply for a “second chance” or apply for a different form of immigration status. This is called “removal defense” or “relief from removal.” If a person succeeds in obtaining lawful status, their deportation will stop.

Examples:

- Your client entered the United States with a visa but that visa has since expired and so she is now undocumented. She marries a U.S. citizen and wants to apply for a green card. Although she is already removable because she is undocumented, you can help her preserve her eligibility for a green card by avoiding grounds of inadmissibility.
- Your client entered the United States without lawful status. He was apprehended at the border and is now applying for asylum. Although he may be undocumented and in removal proceedings, you can help him by avoiding certain crimes that will bar asylum.
- Your client is a green card holder who is deportable because she was previously convicted of two larcenies. Although she may be deportable, she may be eligible to apply for removal defense after being placed in removal proceedings. Helping her avoid certain criminal convictions may help her get a “second chance” in immigration court and stop her deportation.

### ICE Arrest and Detention

#### **Will my client be placed in immigration detention?**

Immigrants are placed in immigration detention under a variety of circumstances. By statute, ICE has the authority to detain anyone pending a decision on removal as well as anyone with an outstanding removal order. 8 U.S.C. 1226(a). This means that ICE has the authority to detain undocumented people with no criminal record. However, anytime a person interacts with the criminal legal system, it increases their chances of being arrested by ICE.

If your client is in state custody, ICE may issue a detainer. There are three reasons why ICE would issue a detainer against your client:

- 1) ICE believes that your client is already removable based on lack of immigration status or because of criminal convictions.
- 2) Your client is already in removal proceedings because they are inadmissible or deportable.
- 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 to actually deport them.

ICE has discretion with respect 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), will likely be detained.

Learn more about [ICE detainees](#) and [representing clients detained by ICE](#) at our website.

### **Where does ICE hold its detainees?**

Plymouth County Correctional Facility is the only facility in Massachusetts that houses ICE detainees. 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. In most cases, they will have their immigration hearings at a court in that jurisdiction.

Information on ICE detention facilities throughout the U.S. is available at this website: <https://ice.gov/detention-facilities>.

You or your client's family can find out where ICE is holding your client by searching on the ICE detainee locator website: <https://locator.ice.gov/odls/#/search>.

ICE will generally not divulge its intentions to transfer a particular individual out of state until the transfer has already taken place.

### **The Stages of Removal Proceedings**

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

No. By statute, your client is not entitled to appointed counsel, but they are allowed to hire an attorney at their own expense. 8 U.S.C. §§ 1229a(a)(4); *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 [here](#). However, the demand for assistance heavily exceeds the resources available.

#### **What is a Notice to Appear?**

To commence removal proceedings, 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 at the end of this advisory. This document sets out the reasons that DHS believes your client is removable. In most cases, noncitizens have the burden of proving that they are not removable by clear and convincing evidence. 8 U.S.C. § 1229a(c)(2). However, for a person previously admitted (examples include green card holders or visa holders), the burden of proof is on DHS.

## **When will my client have their 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 them for a "master calendar hearing," which is a preliminary hearing. If your client is not in custody, they 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 encountering DHS. In these circumstances, they can check the date and time of their hearing [here](#).

## **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.

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, they are allowed to request a hearing. 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 them at least one continuance for that purpose. If your client already has counsel, or wishes to proceed *pro se*, the Judge will then ask

them to submit pleadings or otherwise answer the charges on the Notice to Appear and advise the court as to the relief that they are seeking.

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 they will also schedule your client for an "individual hearing," or merits hearing, to present testimony in support of those applications.

If your client is applying for relief, they will need to fill out the appropriate application and submit it to the court by the deadline set by the judge. 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.

If your client is in detention and eligible for bond, the judge will hold a bond redetermination hearing. Bond hearings are separate proceedings 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, they should wait to proceed with their bond hearing until they have counsel because bond decisions are not easily appealed.

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

### **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. 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 removal defense, the burden of proof is on your client, and they will be expected to testify in support of their application. *See, e.g., Matter of Fefe*, 20 I&N Dec. 116 (BIA 1989).

At the end of the individual hearing, the judge may decide the case orally or may continue the case so that they can prepare a written decision. 8 C.F.R. § 1003.37. At the end of proceedings, the immigration judge will either (1) terminate proceedings because the noncitizen is not removable as charged, (2) grant the application for removal defense, or (3) order the person be removed from the United States.

### **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 judge makes their decision, your client is required to reserve appeal of that decision. Your client then has 30 days to submit a 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 just ordered deported. When will they be deported?**

After an immigrant is ordered deported, they are required to cooperate in effectuating their deportation by providing ICE with their 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 them to deport them. 8 U.S.C. § 1231(a)(2); 8 C.F.R. § 241.

**My client was ordered deported almost six months ago, but they are still in custody and have not been deported yet. What can they do?**

Once your client has been ordered deported, ICE is required to review your client's custody status 90 days after the final order and 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.

*A more in depth explanation of immigration law and immigration court can be found in our [Immigration Impact Unit Guide](#).*

*If you have specific questions about your client's removal proceedings, the CPCS Immigration Impact Unit is available for individual consultation. Please fill out an [IIU intake form](#) and e-mail it to [iiu@publiccounsel.net](mailto:iiu@publiccounsel.net)*

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 # \_\_\_\_\_  
Case # \_\_\_\_\_

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

PAUL STERLING  
SUPERVISOR, 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:

Date:

(Signature and Title of INS Officer)

### Certificate of Service

This Notice to Appear was served on the respondent by me on 3/25/04 in the following manner and in compliance with section 239(a)(1)(F) of the Act:

(Date)

☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☒ 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)



Person'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 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

PAUL STERLING

Title

SUPERVISORY SPECIAL AGENT

DEPARTMENT OF HOMELAND SECURITY  
**IMMIGRATION DETAINER - NOTICE OF ACTION**

Subject ID: \_\_\_\_\_  
Event #: \_\_\_\_\_

File No: \_\_\_\_\_  
Date: \_\_\_\_\_

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

**MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS**

Name of Alien: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Nationality: \_\_\_\_\_ Sex: \_\_\_\_\_

**THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:**

- ☐ Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):
- ☐ has a prior a felony conviction or has been charged with a felony offense;
  - ☐ has three or more prior misdemeanor convictions;
  - ☐ has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
  - ☐ has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
  - ☐ has illegally re-entered the country after a previous removal or return;
  - ☐ has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
  - ☐ otherwise poses a significant risk to national security, border security, or public safety; and/or
  - ☐ other (specify): \_\_\_\_\_.
- ☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on \_\_\_\_\_ (date).
- ☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on \_\_\_\_\_ (date).
- ☐ Obtained an order of deportation or removal from the United States for this person.

***This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.***

**IT IS REQUESTED THAT YOU:**

- ☐ Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours**. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling \_\_\_\_\_ during business hours or \_\_\_\_\_ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- ☐ Provide a copy to the subject of this detainer.
- ☐ 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, hospitalization or transfer to another institution.
- ☐ Consider this request for a detainer operative only upon the subject's conviction.
- ☐ Cancel the detainer previously placed by this Office on \_\_\_\_\_ (date).

\_\_\_\_\_  
(Name and title of Immigration Officer)

\_\_\_\_\_  
(Signature of Immigration Officer)

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:**

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to \_\_\_\_\_. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: \_\_\_\_\_ Latest criminal charge/conviction: \_\_\_\_\_ (date) Estimated release: \_\_\_\_\_ (date)

Last criminal charge/conviction: \_\_\_\_\_

**Notice:** Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

\_\_\_\_\_  
(Name and title of Officer)

\_\_\_\_\_  
(Signature of Officer)