

GETTING OUT OF DETENTION: OPTIONS FOR PEOPLE WITH POSITIVE CREDIBLE FEAR DETERMINATIONS

This guide was prepared and updated by the staff of the Rocky Mountain Immigrant Advocacy Network (RMIAN) and was written to provide general information to immigrant detainees in Colorado. This guide is not intended to provide legal advice or serve as a substitute for legal counsel. RMIAN is a nonprofit legal services organization and does not charge for its services to immigrant detainees in Colorado. This material is copyright-protected but can be shared and distributed widely to assist indigent immigrants around the country. We kindly ask that you give credit to RMIAN if you are adapting the information in this guide into your own publication.

Usually, while you are waiting for your credible fear interview with an asylum officer, you have to stay in detention. But once you get a positive credible fear determination from the Asylum Office, or once the Immigration Judge reverses the Asylum Office's negative decision, Immigration and Customs Enforcement (ICE) should consider you for release from detention.

The way you are allowed to get out of detention will depend on how you came into the United States and how and when you were caught by immigration agents. The first step in figuring out your options for getting out of detention is figuring out whether immigration considers you an "arriving alien" or someone who "entered without inspection."

"ARRIVING ALIEN"

- **What is an "arriving alien"?** An arriving alien is someone who tries to come into the United States through a "port of entry" at the border or at an airport. This includes people who turn themselves in at the border and ask for asylum, and people who try to go through an immigration checkpoint with fake documents or someone else's documents. It does not include people who sneak across the border and are then caught inside the United States.
- **How do I know if I am considered an "arriving alien"?** Your Notice to Appear, which is the document that starts the court process after a positive credible fear determination, should tell you whether you are an arriving alien.



If you are an arriving alien, after you get a positive credible fear decision from the Asylum Office, ICE will decide whether to let you out of detention on something called "parole."

In order to get parole, you have to show the following things:

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1. **That you are who you claim to be.**
2. **That you are not a “flight risk.”** A flight risk is someone who won’t come to their future court dates.
3. **That you are not a danger to the community.**

Once the Asylum Office or Immigration Judge decides that you have a credible fear of returning to your home country, ICE will look through your immigration file to see if the papers in your file prove those things. If ICE needs more information, your ICE deportation officer will ask you for that information.

Here is what ICE usually wants:

1. Documents that prove your identity (who you are and where you are from).
 - a. You may provide identification if you have any (like a passport, or other photo ID card from your country). ICE may already have your identification if it was taken away from you when you were arrested.
 - b. If you don’t have an official identification document, then friends or family can write affidavits confirming your identity.
 - i. An affidavit is a sworn statement – a letter that is signed under oath and stamped by a notary public.
 1. The letter should say “Affidavit” at the top.
 2. The letter should start with the sentence: “I, NAME, swear or affirm.”
 3. The letter should end with the sentence: “I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.”
 4. The letter should be signed and dated by the person who wrote it, and signed and stamped by a notary public.
 - ii. The person writing the affidavit should talk about how they know you and how it is they know who you are and what country you are from.
 - iii. The person writing this letter should also send a copy of his or her government-issued photo identification (like a passport or driver’s license) and proof of address (like copies of utility bills showing his or her name and address).
 - iv. The affidavit should be in English. If somebody is going to write a letter in a language other than English, then it needs to be translated into English, and the person who translated it needs to fill out a Certificate of Translation.
2. A letter of support from a “sponsor,” a person in the United States who has permission and is willing to provide you with a place to live and financial support, and to make sure that you go to all of your immigration hearings after you get out of detention. The letter should say:

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- a. The sponsor's full name
 - b. How the sponsor knows you or is related to you (example: brother-in-law, cousin, friend)
 - c. The address and phone number of the place where you will be living
 - d. What kind of support this person will give you and for how long (example: will give you a place to live and food to eat for as long as you need help)
- The letter should be signed and dated.
 - The letter should be in English and if it is not you should have it translated into English. The person who translates the letter should fill out a Certificate of Translation to go with the translation.
 - It is best if the letter is notarized (stamped by a notary public who watches the sponsor sign the letter) but it does not have to be.
3. A copy of your sponsor's official identity document (example: driver's license or ID card) and proof of lawful immigration status (example: green card, U.S. passport, work permit).
 4. Copies of utility bills (example: gas, electricity, phone) showing your sponsor's name and the address where your sponsor lives.
 5. Proof that your sponsor has a job (example: a signed letter from your sponsor's employer, copies of pay stubs, tax returns, W-2 forms).



Sometimes, once ICE has all of this information, ICE will release you from detention without asking you to pay any money for your release. Other times, ICE will ask you to pay a "parole bond." This is money that someone outside of detention has to pay to ICE in order for you to be released. If ICE has asked you to pay a "parole bond," you should know that the Immigration Judge **cannot** lower the amount of the bond. This is because

Immigration Judges do not have the power to change bond amounts for people who are arriving aliens.

"ENTRY WITHOUT INSPECTION" (EWI)

- **What is Entry Without Inspection (EWI)?** Entry without inspection is crossing into the United States illegally, without going through an immigration checkpoint. People who cross the border without permission by walking through the desert or crossing through the river are entering without inspection. (People who enter without inspection and are caught by immigration agents

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close to the border or less than two weeks after they have entered the U.S. usually have to go through the expedited removal/credible fear process before they are allowed to see an Immigration Judge.)

- **How do I know if I am considered “EWI”?** Your Notice to Appear, which is the document that starts the court process after a positive credible fear determination, should tell you whether you entered without inspection.

If you entered without inspection, after you get a positive credible fear decision from the Asylum Office or Immigration Judge, ICE will decide whether to set a bond in your case.

If ICE gives you a bond, your friends or family outside the detention center can pay it right away. You do not have to wait for your first immigration court hearing in order to pay the bond. If you keep reading, you will see **more information below about how to pay a bond.**

But if ICE does not give you a bond, or gives you a bond that is too high for you to pay, when you go to court, you can ask the Immigration Judge to give you a bond or to lower your bond.

To get a bond or lower your bond, you have to show the Immigration Judge two things:

1. **That you are not a “flight risk.”** A flight risk is someone who won’t come to their future court dates. You can show that you are not a “flight risk” by:
 - a. Showing that you have strong ties to the community such as:
 - i. Whether you own a house or car,
 - ii. Whether you have family and children with legal status, and
 - iii. Whether you have a job.



2. **That you are not a danger to the community.**
 - a. The judge will look at your past arrests and convictions to see whether it’s likely that you’ll continue to commit similar offenses if you’re released. If you do not have any criminal history, this will probably not be an issue in your case.

You should gather as much evidence as you can to show that you have strong ties to the community and you are not a danger to the community. Bring 3 copies of each piece of evidence – you should give one to the judge, one to the government attorney, and keep one for yourself.

If this is your very first time coming to the U.S., you probably do not have many of the types of proof we will talk about in this section. If that is the case, you should look at the section up above called

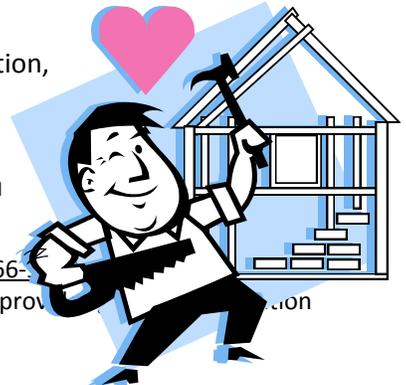
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“Here is what ICE usually wants.” Even if you don’t have much other evidence, you should try to get a letter from a “sponsor,” and to give that letter to the Immigration Judge during your bond hearing.

If you have been in the United States before and have ties to the U.S., other evidence for a bond hearing can include:

- b. Letters from friends and family:
 - i. The letters should explain how the person knows you and why you deserve to be released from detention and stay in the United States.
 - ii. Each person writing a letter should include a copy of their identification.
 - iii. The letters must be in English. If somebody is going to write a letter in a language other than English, then it needs to be translated into English, and the person who translated it needs to fill out a Certificate of Translation.
- c. Proof that you have family members who are U.S. citizens or permanent residents, for example:
 - i. If your kids are U.S. citizens, copies of their birth certificates.
 - ii. If your husband or wife is a U.S. citizen or Lawful Permanent Resident, a copy of your marriage certificate and proof that your spouse has legal status in the U.S. (for example, a copy of his or her U.S. birth certificate, U.S. passport, Certificate of Naturalization, or Permanent Resident Card).
 - iii. Pictures of your family
- d. A letter from you:
 - i. If you’ve gotten into trouble with the police in the past, you’ll need to explain to the Judge how you’ve changed and how you know that you won’t get into trouble in the future. Think carefully about what you’ve learned from your trouble in the past and why you want to be able to leave detention. Do you want to be able to work and support your family? Do you want to be able to spend time with your spouse or children? Tell the Judge about those hopes.
- e. Evidence of the time you have been in the U.S. if you have been here for several years:
 - i. Rent receipts, utility bills, birth certificates for your children with your name on them.
- f. Evidence of the difficulties your family is going through while you are detained.
 - i. Include letters from debt collectors or overdue bills.
 - ii. If you were the primary provider or were taking care of someone make sure to have your family include that in their letters.
 - iii. If one of your family members has a medical condition, include a doctor’s letter describing his or her symptoms, treatment, and why the person needs your help. If you can’t get a letter from a doctor, you



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- can include medical records.
- g. Evidence that you own property in the U.S.:
 - i. Make copies of the deed to your home, car, or trailer.
 - h. Your ties to the community:
 - i. If you participate in a church or volunteer at a school or other organization you can ask the leaders of those groups to write a letter.
 - i. Evidence of rehabilitation:
 - i. If you attended classes or meetings after you got in trouble (for example, AA meetings or anger management classes) include proof that you completed your classes or meetings.

Friends and family can testify on your behalf in court. Make sure that they have U.S. immigration status. You can ask for a bond hearing when you go to court the first time, and the judge will give you the hearing right then, on the spot. **BUT you should know that you will only get ONE chance for a bond hearing.** If you do not have all of the evidence you would like to give to the judge when you go to court the first time, you may want to ask for a “continuance” (an extension of time) of one or two weeks so that you have more time to gather evidence for your bond hearing. You can then ask for a bond hearing the next time you go back to court.

What happens if I have to go to immigration court while I am still waiting for a decision about parole or while I am still trying to pay my bond?

1. When you go to court for the first time, the Immigration Judge will probably give you an **I-589 form**. This is the application for asylum. You will need to fill out this form and give it to the judge in order to continue with the asylum process.
2. But **if you are not ready** to turn in the I-589 form when you go to court – maybe you are planning to hire a lawyer when you get out of detention and you want to wait for the lawyer to fill out the I-589 for you, or you are working on filling out the form but are not done yet -- **you always have the choice of asking the judge for a continuance** (an extension of time). At your first hearing, it is usually very easy to get a continuance. At your second or third hearing, it can be harder to get a continuance, and the judge may want you to turn in the completed I-589 form and move forward with your case.
3. You should know that turning in the I-589 to the court **does not** mean that you will have to stay in detention for the rest of your case. You can be released from detention at any time before there is a final decision in your case.



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- Once you turn in the I-589 form, the Immigration Judge will schedule you for an Individual Hearing (a long, final hearing), usually one to three months in the future. If you are released from detention before your Individual Hearing, that hearing will be cancelled and you will be scheduled for a hearing at the immigration court in downtown Denver at a later date.

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