



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

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**ICE Detainers and Parole
(for attorneys)**

NOTE: This general information will not substitute individualized assessment of your client's case. If you are representing someone in a parole matter and determine that your client was not born in the United States, please contact the Immigration Impact Unit (IIU) at 781-338-0825.

What is an ICE detainer?

The ICE detainer has become a familiar tool of immigration enforcement. It is lodged against an individual in state custody. An ICE detainer indicates the desire of Immigration and Customs Enforcement (ICE), the enforcement arm of the Department of Homeland Security, to take custody of an individual once that person has been released from state custody. ICE uses detainers when they believe an individual is subject to removal from the United States.

Who is subject to an ICE detainer?

ICE can issue a detainer for any non-citizen in state custody whom they think is removable. This can include undocumented individuals, people who have or had lawful status but who have been convicted of deportable offenses, and/or additional grounds of removability.

Some individuals with ICE detainers will have already completed immigration court proceedings while serving their state sentence or prior to their incarceration. In those circumstances, if released to ICE custody, they will be detained until the government can facilitate their physical removal. Some individuals will not have completed removal proceedings and will be detained by ICE while they appear before the immigration court. In other cases, removal proceedings may be conducted while a person is in state custody.

How to check for an ICE detainer?

Often, your client will know that there is an ICE detainer. They will have been approached by ICE officers while serving their sentence or their Institutional Parole Officer (IPO) will inform them of the ICE detainer.

If your client is not sure whether there is an ICE detainer, you can reach out to the records department at the prison and ask if there is anything else holding your client, i.e., any other

“wants or warrants.” This question almost always produces an ICE detainer, if there is one, but it is also vague enough that attorneys are not inadvertently notifying state officials of immigration issues that they didn’t already know about.

If your client has already seen ICE or been told there is an ICE detainer, you do not need to be concerned about asking for a copy of the ICE detainer because both ICE and the prison are already aware of your client and the immigration issues. Once you know there is an ICE detainer, you can request a copy from the six-part folder. The subject of the ICE detainer is entitled to a copy, so at a minimum, your client can request a copy.

How will an ICE detainer impact parole?

An ICE detainer does not prevent the Parole Board from granting parole. However, it does change the process in several ways:

1. The Parole Board will always require that people who are released on parole have a “home plan,” meaning a place they plan to live, whether it is a residential home, a program, or a sober home. If there is an ICE detainer, the Parole Board will require creation of a plan for *this country* and a home plan *in the country of origin*, to ensure that no matter what happens with immigration, there is a release plan. Parole counsel should work with the client to set up this two-part plan, which will require approval by the Board prior to parole release, in the event that they decide to parole the client. Having a strong home plan in both places will increase the chances of a positive parole decision and can minimize delays in release following a positive vote.
2. With very few and rare exceptions, people with immigration detainers who are granted parole will not be released to the community and will instead be arrested and detained by ICE. The DOC and ICE will coordinate a “release” date and simply transfer custody to ICE. When considering parole, if ICE has expressed a desire to arrest the individual and is not present at the intended parole date, the state can continue to hold your client while trying to coordinate with ICE. Note, this ability to hold a person is different from when a person is being released pre-trial on personal recognizance or bail, and different from when a person is wrapping their sentence. In those situations, the state cannot continue to hold a person for ICE.
3. Some clients may want to reconsider whether they want to seek parole if the outcome is simply deportation. When there is an ICE detainer, it is critical that the client understands the likely outcomes before proceeding. That said, any client serving a sentence with a wrap date--i.e. not an indeterminate sentence of life with the possibility of parole—will eventually be released to their detainer whether or not they pursue parole release.

What will happen in ICE detention?

If your client has not been deported previously and has not seen an immigration judge yet:

- ICE can detain them anywhere in the country. We see many people from Massachusetts taken to ICE custody in Plymouth, MA, Strafford, NH, and Philipsburg, PA.
- Once they are in ICE custody, they will be scheduled to appear in immigration court. It can take a few weeks before a hearing is scheduled. Most likely, they will appear in immigration court by video. They will not be brought to the immigration court. If they need an interpreter, the court will provide one.
- There is no right to appointed counsel in immigration court. The court will provide a list of legal service organizations, but there is very little capacity to represent individuals in detention. It can be very hard for our clients to find a lawyer and if they cannot afford to hire someone, they are often forced to represent themselves.
- The length of ICE detention varies based on several factors including whether your client tries to fight removal or not.

If your client has been deported previously, or if they completed immigration court while serving their state sentence:

- In that case, there is likely already a final order of removal. If there is a final order, they will not appear in front of an immigration judge again. ICE will arrest them and put them in detention until they can get them on a flight to their country of birth.

As a parole attorney, what can I do to help my client prepare for ICE detention?

The experience in immigration detention is often similar to the prison experience. Information about property, legal paperwork, phone calls, mediation and other aspects of ICE detention can be found in the [ICE Detainee Handbook](#). If your client wants this information, you can provide them a copy of the handbook.

When should I reach out to the Immigration Impact Unit?

It is recommended to reach out *any time* your client was not born in the United States. That way, you can determine whether or not there is an immigration issue in your case.

IIU contact information: iiu@publiccounsel.net; 781-338-0825

Parole Unit contact information: parole@publiccounsel.net