

SFILDC RAPID RESPONSE PROTOCOLS

[Last updated 10/17/2018 by Avantika Shastri]

Recommended Emergency Response Materials

- Valid government-issued ID and valid bar card
- Your business cards for quick identification and contact information
- Blank Intake Forms
- Blank (or pre-filled with attorney's information) Forms G-28 and E-28
- Blank Templates of ICE letters and EOIR Bond Redetermination Request
- Blank Forms I-246 (ICE stays of removal)
- SFILDC Detainee Handbook
- NCCIJ Pro Se Bond Information Packet
- Government contact information (attached)
- Water and snacks
- Cell phone and charger
- Notepad/blank paper

SFILDC also has Spanish Forms I-589, and informational handouts on how to contact detainees at different detention centers for family members.

SFILDC EMERGENCY RESPONSE PROCEDURES

- Note down the name of any ICE officers you speak to, and what they tell you.
- At any point, ask to speak to an ICE Supervisor if ICE officer is not giving you access to a detainee or information about his/her case within a reasonable period of time.

I. If detainee is at 630 Sansome

- If not already done by Attorney Coordinator, call SF ICE Control Room and confirm if detainee is in their custody, if A # assigned, if any decisions made on case, and if any DO has been assigned to the case.¹
- Go to the ICE Office ASAP. Take the recommended rapid response materials with you.
- After arriving at 630 Sansome and going through security, go to the 6th Floor. First go to the lobby window. If no one is there, go right away to Room 635.
- Ask to meet with the detainee. If questioned, explain that the detainee's family member requested your assistance.
 - Ask to see any documents signed by/issued to the detainee.
 - Ask if any decisions have been made on the detainee's case, and to see any documents signed by/issued to the detainee.
 - If informed that the detainee is being processed by ICE, ask to speak to him/her right away so that you can advise him/her of rights and legal options, and advise ICE of any relevant information about his/her case, before any statements are taken or decisions are made in the case.
 - If access issues, ask to speak to a Supervisor.
- When meeting with the detainee, conduct intake, provide KYR, and determine next steps as quickly as possible:
 - Explain your role.
 - Ask basic intake questions from Intake Form.
 - Ask if they have signed any documents so far, if they have been given any documents, and what has happened since they were arrested.
 - Provide information re their rights and immediate legal options, including strategies to avoid transfer to non-SF jurisdiction.
 - Get their signatures on necessary forms if possible. You do not need the detainee's signature on the G-28 if you have verbal consent to representation.²

¹ If you know the client name and/or A number, you can also email or fax your G-28 and any applicable documents. Depending on how much information you have about the individual case and the detainee's wishes, you may be able to advocate on the detainee's behalf by phone. However, because you may have incomplete information about the case, you may still need to go to 630 Sansome to talk with the detainee directly.

² Detainees should not need to sign G-28s; generally the attorney should write "detained" on the signature line for the detainee. See AILA National ICE Liaison Minutes 12/17/2013 (at p. 5)

- ❑ **You should file a Form G-28 ASAP with ICE at Room 635.**
 - ❑ Ask if any decisions have been made on the detainee's case, esp.:
 - (1) whether a NTA has been or will be issued? (if not, then officer should tell you how case will be processed –reinstatement, unexecuted prior order, administrative removal, etc.);
 - (2) whether detainee has been granted release on bond by ICE?,
 - (3) if not released, where will detainee be housed?
 - ❑ If detainee has signed any documents, ask for a copy of those documents immediately.
 - ❑ In case of reinstatement and administrative removals, ask for copy of any documents supporting the removal procedures and review those documents.

- ❑ File appropriate forms as soon as possible and advocate on detainee's behalf.
 - ❑ Consider strategies to avoid transfer.

- ❑ ICE Decision
 - ❑ If ICE notifies you that detainee is eligible to be released on bond, contact family members right away and advise them to pay bond **before 3pm** today if possible. Bond office is on the 5th Floor of 630 Sansome.

 - ❑ If ICE notifies you that Respondent will not be released on bond or does not make a custody decision, file a request for a bond hearing with the IJ on the 4th Floor of 630 Sansome by 4pm at the latest. (An NTA does not have to be issued in order to file a bond redetermination request.)
 - ❑ Inform ICE immediately regarding filing of bond hearing request.
 - ❑ Serve OCC in person, by mail or e-service later in the day.

 - ❑ For other decisions, notify detainee and family members, file additional documentation if necessary, and provide information regarding next steps or options.
 - ❑ Advise family re danger of transfer out of jurisdiction (or immediate removal if applicable), and possible ways of avoiding transfer.

II. If detainee is at non-SF ICE Office (or attorney cannot go to ICE office)....

- ❑ Call that ICE Processing room and confirm detainee in custody, whether detainee has an A number, if any decisions have been made on the detainee's case, the name of ICE officer processing detainee and name of supervisor for that ICE officer. (Numbers for other ICE offices are available on AILA Norcal)

- ❑ Fax G-28 to ICE office, and email G-28 to ICE email address. If you have sufficient info

<http://www.aila.org/content/default.aspx?docid=48498>; AILA National ICE Liaison Minutes 4/10/2014 (at p. 1) <http://www.aila.org/content/default.aspx?docid=50517>.

re case, email/fax any other documents that are relevant to the case.

- ❑ Right after sending G-28, call ICE office and ask to speak with the officer processing the detainee's case. Ask questions above, including request for relevant documents, and ask to speak confidentially with detainee as soon as possible (or that detainee be given your phone number to call you immediately)
 - ❑ If that officer is not available, ask to speak to the supervisor. Try different supervisors if necessary.
 - ❑ Keep calling and leaving messages, and keep detailed record of your calls.
- ❑ If you are unable to speak to officer or detainee, seek to speak to detainee's outside contacts to get more information re detainee's case.
 - ❑ Advise family re options and risk of transfer/removal.
- ❑ If limited access to detainee, consider what documents you may file on detainee's behalf to slow down removal/transfer (without prejudicing case).
- ❑ If ICE notifies you that detainee will not be released on bond or you do not have any information on case status, file a request for a bond hearing with the IJ on the 4th Floor of 630 Sansome ASAP (and by 4pm) at the latest. (An NTA does not have to be issued in order to file a bond redetermination request.)
 - ❑ Inform ICE immediately regarding filing of bond hearing request.
 - ❑ Serve OCC in person, by mail or e-service later in the day.
- ❑ Make arrangements (by phone or in person) to speak to detainee confidentially as soon as possible re case and legal options.

III. If detainee has been recently arrested and processed by ICE, and is in ICE custody at a detention facility:

- ❑ Call ICE and confirm detainee's custody location and likelihood of staying at that location, whether detainee has an A number, if any decisions have been made on the detainee's case, the name of ICE officer processing detainee and name of supervisor for that ICE officer.
 - ❑ Based on this information, you may need to act quickly or may have more time to investigate.
- ❑ Provide advisals (by phone or in person) to detainee re legal rights and options, if detainee has not otherwise received advisal.
 - ❑ If needed, you may need to collect more information and documentation from family or detainee to fully assess case and options.

EMERGENCY LEGAL ANALYSIS

- In the course of your advocacy with ICE and when advising the detainee, seek to avoid any concessions of alienage to the government.
- If the detainee is a minor or shows indicia of mental health issues, argue the need for special protections.
- If time permits, ask the detainee facts about his/her arrest in case there is a basis for a motion to suppress.

I. If detainee has never been in proceedings and/or ICE wants to issue NTA:

- A. If time and information permits, present arguments that your client is not subject to grounds of removability and therefore, no NTA should be issued.
- B. Ask for release on own recognizance/reasonable bond, or alternatively to house locally based on representation by local counsel (and local bond redetermination request).
 - 1. See arguments in section IV to avoid/ slow down transfers to non-SF jurisdictions.
- C. If no decision made on bond (or bond denied), file request for bond redetermination or custody hearing with IJ (unless arriving alien).
 - (a) A request for bond redetermination may be filed even if a NTA has not yet been issued. 8 C.F.R. § 1003.14.
 - (b) Advise ERO immediately that bond redetermination request has been filed with IJ (and serve OCC same day).

II. If person has prior removal order:

- A. If DHS seeks to reinstate prior removal order:
 - 1. If detainee has signed any documents and waived any rights, request to withdraw his or her signature immediately.
 - 2. Ask to see documentation in support of reinstatement: prior order of removal, fingerprints used to verify identity, evidence of subsequent unlawful re-entry, notice of intent to reinstate (Form I-871). 8 C.F.R § 241.8(a)-(b).
 - (a) Check that different officers signed the top and bottom of the Form I-871.
 - 3. Request opportunity to make written or oral statement contesting reinstatement determination, and time to review evidence with client. 8 C.F.R. § 241.8(b).
 - 4. If applicable, argue that reinstatement provisions do not apply because ICE does not have the necessary evidence to support reinstatement or the charges are incorrect. For example:
 - (a) Client's identity has not been properly verified

- (b) Client does not have a prior deportation order.
 - (c) Client never departed the US under that prior order.
 - (d) Client did not enter unlawfully following that prior order.
 - (e) Other legislative, regulatory and judicial exemptions to reinstatement
5. **If fear of return, ask for reasonable fear interview (RFI).** 8 C.F.R. §§ 208.31, 241.8(e).
 6. If no fear of return and possible basis to argue that reinstatement is invalid, file petition for review at the Ninth Circuit with request for stay and 14 days to supplement the stay request. Send copy of PFR and stay to ERO.
 7. Other statutory remedies for prior orders:
 - (a) If an in absentia removal order is basis for reinstatement and there was lack of proper notice, file motion to reopen the in absentia order for lack of notice (with automatic stay) in addition to other remedies for reinstatement. Miller v. Sessions, Case no. 15-72645 (9th Cir. May 8, 2018).
 - (b) If the prior removal order was issued by EOIR, consider whether motion to reopen (and terminate or other remedy) based on insufficient NTA or hearing notice under Pereira v. Sessions, 17-459, —U.S. — (June 21, 2018)/ Matter of Bermudez-Cota, 27 I & N Dec. 441 (BIA 2018) would benefit client, with request for stay. Consider also arguments for equitable tolling, and request for stay during adjudication of motion.
 8. Other discretionary remedies to reinstatement:
 - (a) Request reinstatement proceedings be terminated and detainee placed in removal proceedings under INA § 240. Perez-Guzman v. Lynch, 835 F.3d 1066, 1081 (9th Cir. 2016); Villa-Anguiano v. Holder, 727 F.3d 873, 878 (9th Cir. 2013).
 - (i) If client is a minor (or was a minor at time of prior order) or suffers from mental health issues (and/or did suffer from mental health issues at time of prior order), consider whether DHS properly served client with NTA and commenced case pursuant to case law and regulations. See e.g., Matter of MAM, 25 I. & N. Dec. 474 (BIA 2011) (summarizing regulations affecting persons with mental health issues); Lawrence et al, Strategies for Suppressing Evidence and Terminating Removal Proceedings for Child Clients (March 2015) (summarizing regulations and case law affecting Minors).
 - (b) File motion to reopen/reconsider reinstatement order to ICE. 8 C.F.R. § 103.5.
- B. If person has never left US but has outstanding unexecuted removal order:
1. If in absentia order: File skeletal motion to reopen with notice of automatic stay to IJ,

- if client is eligible based on exceptional circumstances (within 180 days or equitable tolling arguments), lack of notice or because in custody (at any time). INA § 240(b)(5)(C). Request additional time to supplement motion with arguments and evidence. Send copy of MTR and automatic stay to ERO immediately, and serve OCC.
2. If eligible for VAWA protections: File skeletal motion to reopen with notice of automatic stay to IJ/BIA (within 1 year or with waiver request). INA § 240(c)(7)(c)(iv). Request additional time to supplement motion. Send copy of MTR and automatic stay to ERO immediately, and serve OCC.
 3. Other discretionary remedies to prevent deportation:
 - (a) Request discretionary stay of removal from ICE (Form I-246).
 - (b) Skeletal motions to reopen on other bases with discretionary stay requests to IJ/BIA. If possible, include arguments for equitable tolling of numerical and time limits.
 - (i) If the prior removal order was issued by EOIR: consider whether motion to reopen (and terminate or other remedy) based on insufficient NTA or hearing notice under Pereira/Matter of Bermudez-Cota would benefit client, with request for stay. Consider also arguments for equitable tolling, and if there are compelling reasons to support a stay during adjudication of motion.
 - (ii) If client is a minor (or was a minor at time of prior order) or suffers from mental health issues (and/or did suffer from mental health issues at time of prior order), consider whether DHS properly served client pursuant to caselaw and regulations. See e.g., Matter of MAM, 25 I. &N. Dec. 474 (BIA 2011) (summarizing regulations affecting persons with mental health issues); Lawrence et al, Strategies for Suppressing Evidence and Terminating Removal Proceedings for Child Clients (March 2015) (summarizing regulations and case law affecting Minors).
 - (c) File petition for writ of habeas corpus and TRO in district court? Contact ACLU Immigrants' Rights Project at irp_mt@aclu.org prior to any filing.

III. If DHS wants to issue summary removal order:

- A. If DHS wants to issue administrative removal order under INA § 238(b):
 1. If detainee has signed any documents and waived any rights, request to withdraw signature immediately.
 2. Ask to inspect DHS's evidence of removability related to alienage and charged criminal conviction, and 10 day rebuttal period. INA § 238(b)(4)(C); 8 C.F.R § 238.1(c)(2)(ii). Detainee may also seek an additional extension of time if required. 8

C.F.R § 238.1(c)(1).

3. Argue that administrative removal process cannot be applied and/or **request RFI**. 8 CFR § 238.1(f)(3). For example:
 - (a) Detainee is not the person named
 - (b) Detainee is a citizen or LPR
 - (c) Detainee was not convicted of the charged crime
 - (d) The charged crime is not an aggravated felony
4. If administrative removal order is final, no fear of return and possible basis to argue that order is invalid, file petition for review at the Ninth Circuit with request for stay and 14 days to supplement the stay request (within 30 days of issuance of final order). INA §§ 238(b)(3), 242(a)(1), (b)(1). Send copy of PFR and stay to ERO.
5. Other discretionary remedies:
 - (a) Request administrative removal proceedings be terminated and detainee placed in removal proceedings under INA § 240.
 - (b) File motion to reopen/reconsider administrative removal order to ICE. 8 C.F.R. § 103.5.

B. If DHS wants to issue expedited removal (ER) order:

1. If detainee has signed any documents and waived any rights, request to withdraw his or her signature immediately.
2. Argue that detainee not subject to ER. INA § 235(b)(1)(A)(i), 8 CFR § 235.3(b):
 - (a) Was admitted with valid visa (without fraud or misrepresentation), no false claim to USC, or was paroled in.
 - (b) Has been continuously present in the United States for over 14 days (or two years if DHS Secretary expands ER authority).
 - (c) Was not arrested within 100 miles of international land border (unless DHS Secretary expands ER authority).
 - (d) Has a valid claim to lawful permanent resident status, has been granted refugee or asylee status, or a claim to citizenship. 8 CFR § 235.3(b)(5).
 - (e) Other sub-rules
3. **If has fear of return, ask for credible fear interview (CFI)**. INA § 235(b)(1)(A)(ii), 8 CFR § 235.3(b)(5).
4. Other discretionary remedies:
 - (a) Request expedited removal proceedings be terminated and detainee placed in removal proceedings under INA § 240.
 - (b) File motion to reopen/reconsider expedited removal order to DHS office that issued expedited removal order. 8 C.F.R. § 103.5.
 - (c) Can file habeas action in district court to contest limited issues related to expedited removal procedures? INA § 242(e)(2)(A)-(C).

C. If DHS seeks to use stipulated removal procedures:

1. File motion to reopen to Immigration Court to withdraw signature and request master calendar hearing because detainee did not voluntarily, knowingly, or intelligently waive right to a hearing. INA § 240(d); 8 C.F.R. § 1003.25(b).

IV. If DHS seeks to transfer detainee from SF jurisdiction to other jurisdiction:

1. If you have good faith belief that detainee *may* be eligible for bond hearing (including Joseph hearing), consider filing pro se request for bond hearing before SF Immigration Court immediately.
 - (a) It is not required that a NTA be filed before requesting bond hearing.
2. If appears that detainee may be subject to reinstatement and you have good faith reason to believe that he or she *may* have fear of returning, file request for fear interview as soon as possible with ICE and SF Asylum Office.
 - (a) If ICE has not alleged reinstatement and/or official record of prior removals is unclear, this action will require a strategy call.
3. If detainee is a Salvadoran national who is eligible for asylum, with detainee's consent to disclose alienage, consider Orantes protections and violations. Orantes-Hernandez v. Gonzales, No. 82-v-01107 (C.D. Cal. Nov. 26, 2007) (modified, consolidated injunction).³
 - (a) In particular, Orantes injunction:
 - (i) Prohibits transfers of unrepresented respondents within 7 days of arrest
 - (ii) Requires represented respondents to be transported to jurisdiction where case venue lies to consult with attorney prior to hearing (which is an argument for not transferring them out of the venue in the first place)
 - (b) If detainee had any other rights possibly violated, inform ICE that you have informed class counsel for Orantes re violations and they will need time and access to detainee to investigate, and detainee should therefore be kept in SF jurisdiction.⁴
4. If detainee is a minor and was previously released from ORR custody, consider Saravia protections. Saravia v. Sessions, 280 F. Supp. 3d 1168 (N.D. Cal. 2017), *aff'd sub nom. A.H. v. Sessions*, No. 18-15114, 2018 WL 4689978 (9th Cir. Oct. 1, 2018) (granting preliminary injunction providing that the minor and sponsor must receive notice of the basis for the rearrest, and the hearing must occur within seven days of arrest, absent extraordinary circumstances, in the jurisdiction where the minor has been arrested or

³ Available at www.nilc.org/wp-content/uploads/2015/11/orantes_modified_injunction_2007-11-26.pdf.

⁴ If you see an Orantes violation: contact Karen Tumlin, tumlin@nilc.org, 213-674-2850.

where the minor lives).

5. If detainee may have mental health issues, with detainee's consent to disclose information re mental health issues, consider informing ICE re mental health issues and invoking protections under Franco-Gonzalez v. Holder, No. CV 10-02211 DMG (DTBx) (C.D. Cal.).
 - (a) Inform SF OCC immediately re potential Franco class member.
6. Other ways of possibly avoiding transfer:
 - (a) File petition for writ of habeas corpus and TRO in district court? Area of developing law.
 - (b) Immediately commence process relevant to immigration case, which requires detainee's presence in SF jurisdiction (e.g. hearings, medical appointments, forensic exams)

Government Contact Information

Print out most recent full contact lists/organizational charts for the Court, OCC and ERO – all available through AILA Norcal.

However, this information frequently changes unexpectedly, so always follow up by phone to confirm that your fax, voicemail, or email communications have been received by the correct person or a supervisor.

- EOIR Automated hotline number: 1-800-898-7180
- ICE detainee locator - <https://locator.ice.gov/> or 1-888-351-4024
- SF ICE Contact Info (*for attorneys only*)
 - ICE Control Room Number (630 Sansome): 415-844-5551
 - Fax number for Control Room at 630 Sansome: 415- 844-5563
- ICE email address for AILA members only: sfr-ero-inquiries@dhs.gov
 - Subject line: DETAINED, LAST NAME, A### ### #
 - Must attach G-28
 - This address is ostensibly not for emergency inquiries. Per ICE official rules, allow 48 hours for a response. BUT Supervisors are routinely monitoring this email address, so it is best way to get information to ICE quickly and reliably.
- SF Immigration Court (phone)- 415-705-4415 (Montgomery) /-1033 (Sansome)
- SF OCC (phone) - 415-705-4604 (Montgomery) / -1855 (Sansome)
 - Documents may be served in person on Sansome OCC at 630 Sansome, 11th Floor
 - Documents must be served on 100 Montgomery OCC by e-service or mail (P.O. Box 26449, San Francisco, CA 94126)
- For contact information and protocols re working with detainees in Northern California detention facilities (and some non-Northern California detention facilities), see JDC Resource Bank/Detention Resources – contact JDC for access.