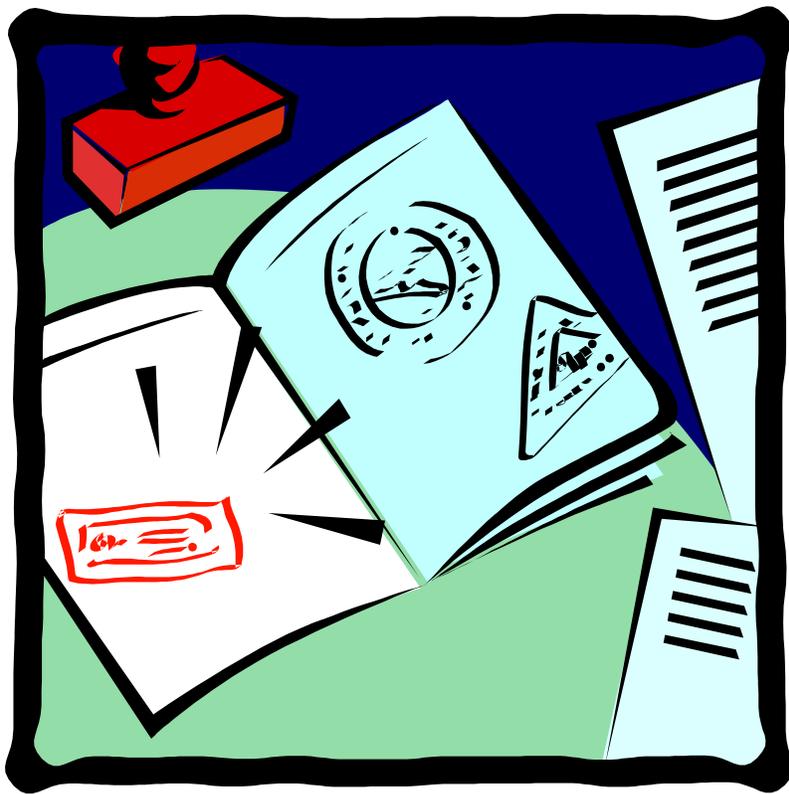


# WHAT WILL HAPPEN TO ME?



A guide for immigrants in the  
Arizona criminal justice system

# ***Introduction***

This guide is designed for immigrants in the Arizona criminal justice system. Part I explains how being an immigrant may affect you during your criminal case. Part II explains what may happen once your criminal case is done and you are transferred into the custody of Immigration and Customs Enforcement, also known as "ICE." Part III discusses what you need to know after your criminal and immigration cases are completed.

*This guide is NOT intended to provide legal advice on either your criminal or immigration case.* Rather it is a general guide on procedures and practices in the Arizona criminal justice and immigration systems. For more assistance, please talk to your public defender or an immigration attorney.

***PART I: DURING YOUR CRIMINAL CASE..... 3***

***PART II: DURING YOUR IMMIGRATION CASE..... 8***

***PART III: AFTER YOUR CRIMINAL AND IMMIGRATION CASES..... 17***



Copyright 2008  
The Florence Immigrant and Refugee Rights Project

# ***PART I: WHAT WILL HAPPEN TO ME DURING MY CRIMINAL CASE?***

## ***Will I get deported if I plead guilty to a crime?***

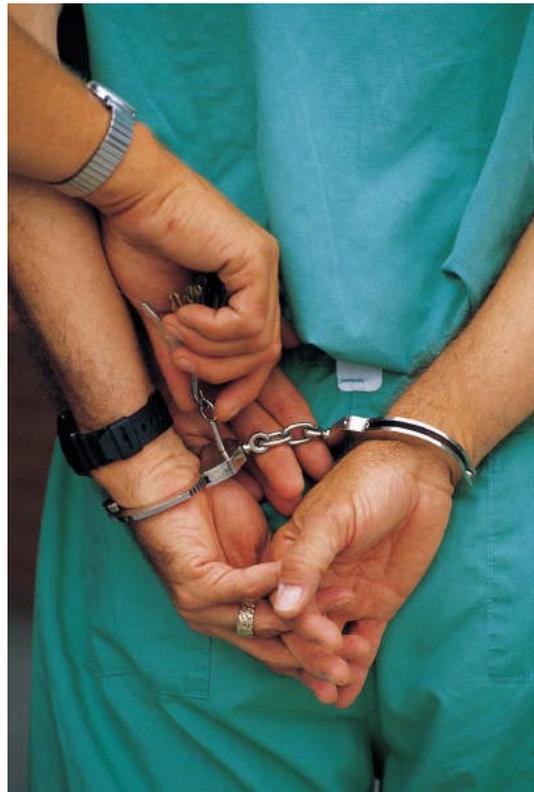
It depends. If you don't have papers, you may be deported just because immigration has realized you are in the U.S. without permission. However, even if you have legal immigration status, some convictions may cause you to lose that status and be deported. And if you don't have legal immigration status, some convictions may make it difficult or impossible for you to get status in the future. Ask your public defender to consult with an immigration lawyer to find out the immigration consequences of your conviction before you accept a plea.

## ***Why did the criminal judge deny me a bond?***

Under Arizona law, some immigrants can be denied a bond during their criminal case if they committed a "serious felony" and if they entered the U.S. illegally or overstayed their visa. If you have been charged with a "serious felony" and if you do not have lawful immigration status, you may not be eligible for a criminal bond.

## ***If I pay my criminal bond, will I get the money back if I'm deported?***

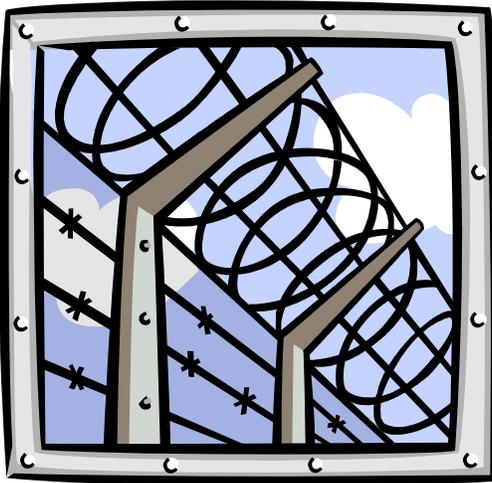
If you attend all your criminal courts, your bond money will be returned to you. However, if you do not attend all your criminal courts, you will not get your money back. Unfortunately, this is true even if you are



prevented from attending your criminal court by the fact that you are detained by immigration or you have been deported and cannot legally reenter the U.S. If the person who paid your bond can present proof that you were deported, you *may* be able to get some or all of your bond money returned.

***Can my family members get in trouble for my criminal charge?***

If your family members do not have papers, they will not necessarily get in trouble because you are in criminal proceedings. However, if they



happen to come into contact with immigration officials or the police as a result of your criminal proceedings, they may be questioned and put into deportation proceedings.

***What if I get deported while I'm on probation?***

In Arizona, some criminal judges have a special form of probation for people who are going to be deported immediately. This probation only requires that you not reenter the U.S. illegally for a certain period of time. If you reenter illegally during this time, you will violate your probation.

Sometimes people are not deported immediately and are given regular probation. If you are given regular probation and ICE later deports you, you may not be able to comply with certain terms of your probation, such as attending classes. This may be considered a violation of probation even though it is not necessarily your fault. A probation violation can lead to a warrant for your arrest or an additional jail sentence.

***Make sure to write down the name, address, and telephone number of your probation officer so you can let him or her know if you get deported.***

***What if I can't attend my next criminal court because I'm being deported?***

ICE will not usually release a person from immigration custody to attend a criminal court, and you will probably not be allowed to reenter the U.S. legally to attend a hearing after you have been deported. Therefore, you may not be able to attend your next hearing. If you know you will not be able to attend your next hearing, it is always a good idea to call or send a letter to your public defender or the office of the public

defender in the county where you were charged with the crime.

***Make sure to write down the name, address, and telephone number of your public defender so you can communicate with him or her later.***

***Am I eligible to serve only half of my criminal sentence?***

If you are serving a sentence at the Department of Corrections, you may be eligible to serve only half your sentence

in the U.S. before being deported. In order to be eligible for this, you must:

1. Have an order of deportation (issued by an immigration official or judge who comes to the prison)
2. Have served at least one-half of your sentence
3. Have not been convicted of certain crimes, such as a class 1 or 2 felony or a crime of sexual abuse
4. Have not been convicted of a crime that is considered "dangerous" or "repetitive" by the court



***Remember: if you serve half of your sentence, return illegally to the U.S., and are apprehended, you can later be forced to serve the rest of your sentence!***

If you believe that you may be eligible for deportation and release after serving half your sentence, talk to an official of the facility where you are being incarcerated.

### ***What is an immigration detainer?***

Immigration and Customs Enforcement (ICE) has the authority to question and obtain information about people who are incarcerated for criminal convictions. If ICE encounters someone who is incarcerated and believes that this person can be deported from the U.S., ICE may put a detainer on the person. A detainer is a request to the authority who is detaining the person that the authority should notify ICE before the person is released. This allows ICE to pick up a person before he or she is released from criminal custody in order to transfer him or her to ICE custody.



### ***What if I'm not picked up by immigration after 48 hours?***

If your criminal custody ends and you have an ICE detainer, you are supposed to be picked up by ICE within 48 hours (not including weekends and holidays). If you are not picked up within 48 hours and you are still being held in criminal custody, you should ask an official why you have not been released. If this does not work, talk to your criminal lawyer or call an immigration attorney.

### ***Should I pay my criminal bond if I have an ICE detainer?***

It depends. If you pay a criminal bond while you have an ICE detainer, you will not be released; you will simply be transferred to ICE detention.

However, while you are in ICE custody, you may be eligible for an immigration bond that would allow you to be released. If you have enough money to pay both your criminal bond *and* an ICE bond, you may be able to get out of detention. However, if you *don't* have enough money to pay both a criminal bond and an ICE bond, OR if you are not eligible for an ICE bond, it may not be a good idea to pay your criminal bond. If you are not sure whether you will be eligible for an ICE bond, ask your criminal defense attorney to consult an immigration attorney.



# DURING YOUR IMMIGRATION CASE...

## *What will happen after I'm transferred to immigration custody?*

When you are transferred to immigration custody, one of three things may happen:

### *1.) Sign for deportation*

If you can be deported from the U.S., ICE *MAY* give you the chance to voluntarily sign for your deportation. If you sign for your deportation and you are from Mexico, you may be sent to Mexico within several days. However, even if you sign, a judge may decide that you are eligible to fight your case and refuse to accept your deportation.



If this happens, you will be required to see an immigration judge.

### *2.) Hearing before an immigration judge*

If you see an immigration judge, you will have the right to contest that you can be deported, apply for remedies from deportation, and request voluntary departure. Once you are transferred to immigration custody,

***In most cases, a person who would have a right to fight her immigration case will lose that right once she is deported. If you think you may have a way to legally stay in the U.S. (see page 10), make sure to talk to an immigration lawyer BEFORE you ask for deportation!***

it usually takes several weeks until your first hearing in front of the judge. If you want to request your deportation, you may do so in your first hearing. If you want to fight your case, you will likely have several hearings, and your case may last several months or longer.

### 3.) *Automatic deportation*

There are several situations in which you may be automatically deported without signing anything or without seeing an immigration judge. First, if you have previously been deported, ICE may simply use your old deportation order to deport you without giving you a chance to fight your case again. Second, if you do not have papers, and you have been convicted of an offense known as an "aggravated felony," ICE has the



power to deport you without giving you the opportunity to see an immigration judge. Third, if you are caught within 14 days of crossing the border and 100 miles (160 kilometers) from the border, you may not be able to see an immigration judge unless you are afraid to return to your country.

#### ***Will I get an immigration lawyer?***

In immigration court, you do not have the right to a free lawyer the way you usually do in criminal court. Instead, you have the right to a lawyer but you must pay for the lawyer yourself. A list of low-cost lawyers will be given to you at your first immigration court. If you cannot afford a lawyer, you can represent yourself before the immigration judge. Most people in immigration detention represent themselves, and some of them even win their cases without a lawyer.

If you are scheduled to see an immigration judge in Florence or Eloy, you should have the opportunity to speak to a lawyer from the Florence Immigrant and Refugee Rights Project. This lawyer will not be able to represent you, but she or he can tell you whether you have a chance to fight your immigration case.



### ***Do I have any way to fight my case?***

This is a difficult question that will depend on your particular situation. You **may** have a way to fight your case if one or more of the following apply to you:

- One of your parents or grandparents is a U.S. citizen
- You are a permanent resident (have a "green card")
- You have some other type of legal status, such as a visa or Temporary Protected Status
- A family member or an employer has filed a petition for you
- You have been in the U.S. for at least ten years and you have a U.S. citizen/permanent resident spouse, parent, or child
- You or your child has been abused by a U.S. citizen/permanent resident spouse or parent
- You are currently under 18 years old and you have been abused, neglected, or abandoned
- You are afraid to return to your country
- You have been the victim of a crime, the victim of trafficking, or you have important information about a criminal organization
- You entered the U.S. legally and you have a spouse or child over 21 who is a U.S. citizen

Even if you fall into one of these categories, you will probably have to present your case in front of an immigration judge and it will take at least several hearings for the judge to make a decision. If you lose your case in front of the immigration judge, you can appeal it. You may be eligible for a bond while you are fighting your immigration case, but if not, you will have to remain detained until your case is done.



### ***Am I eligible for an immigration bond?***

Your eligibility for a bond may depend on whether you entered the U.S. legally or have any type of lawful status now. Whether or not you have lawful status, you are not eligible for an

immigration bond if you have a conviction for drugs or firearms. Also, if you have convictions such as theft, assault, or using false documents, you may not be eligible for a bond. Other types of crimes, such as a simple DUI, do not make you ineligible for a bond, but the judge can consider them in order to decide whether you deserve a bond.

***What do I have to show the judge to get an immigration bond?***

If the judge decides you are eligible for a bond, he or she will consider two things: whether you are likely to attend your next hearing and whether you are a danger to the community.



To prove that you are likely to attend your next hearing, the judge will want to know whether you have a way to fight your case. If any of the

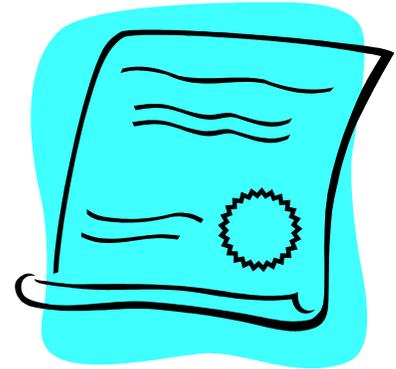
situations on page 10 apply to you, make sure to tell the judge. Also, you should have a letter from a friend or family member who has legal immigration status telling the judge how long the person has known you and that you can live at a certain address with this person after you are released. You will also need

***You must take three (3) copies of any paper that you wish to present in court: one for the judge, one for the ICE attorney, and one for you.***

something to show that this person is legally in the U.S., such as a copy of a permanent resident card or a birth certificate. If you have other family in the U.S., such as children who were born here, it also helps to have copies of their birth certificates or immigration papers.

***Do not have your family send documents directly to the judge! The judge cannot accept documents unless they come from you or your lawyer.***

If you have any criminal convictions that might make you seem dangerous, such as domestic violence or a DUI, it is very important to present the judge with any proof that you will not commit such crimes in the future. For example, if you have certificates showing that you completed alcohol, drug, or anger management classes, you should present these at your bond hearing.



***Should I fight my case now or after I've been deported?***

In some situations, you may be able to ask for voluntary removal or deportation and continue to apply for legal status from outside the U.S., usually through a U.S. consulate. However, ***leaving the U.S. often makes it much more difficult to fight your case.*** For instance, if you



are a permanent resident with a drug conviction, you may be able to ask the immigration judge for a pardon to stay in the U.S. But if you accept deportation and do not fight your case in the U.S., you will no longer be a permanent resident and you will probably not be

able to apply for a pardon or get immigration papers in the U.S. again. Also, if a family member has submitted papers for you, you may not need a pardon for the time you were in the U.S. illegally if you stay and fight your case before the immigration judge. Although it is very difficult to be in detention and separated from your family, it is important to talk to an immigration lawyer before you make any decisions that could permanently affect you and your family.

***How can my family find out where I've been transferred?***

Unfortunately, there is no central immigration number where your family can call to find out where you are. There are two main detention locations for adult immigrants in Arizona:

Florence (520-868-8383) and Eloy (520-464-3000). Your family can try to call these numbers to see where you are detained, but these numbers may not release your information or they may require an "A" number, which is an 8 or 9-digit number that is assigned

***To find out the date of your next immigration hearing, call 1-800-898-7180 and enter your "A" number.***

to immigrants. There is no number to find out where juveniles are being detained in Arizona. However, juveniles are allowed to make at least one free phone call to their families when they are detained.



***Can my family visit me in immigration custody?***

Yes, but they will need some sort of identification document, and ICE may run a background check on them. If your family is undocumented, they should ***not*** visit you in immigration custody, nor should they try to pay your bond in person. You will probably have to fill out a form authorizing your family's visit in advance. Ask an official at your detention center how to get this form and where to submit it.

***Can my family send me money?***

Yes, but they must send it in the form of a money order. Also, certain detention centers only accept certain types of money orders, so you

should ask an official or look in your detainee handbook before your family buys the money order.

***When your family sends you a money order or any other mail, make sure they write your "A" number on the envelope or it will be returned.***

***Can I pay my immigration bond with money from my account?***

No, an outside person must pay your bond. A bond can be paid at the facility where you are being held or at any immigration office

across the country. If the bond is paid at the facility, it must be submitted in the morning or early afternoon. Do NOT have a person who is undocumented try to pay your bond.

***Can I get in touch with the consulate from my country?***

People who have been arrested and are not citizens of the U.S. have the right to call their consulate or to have the police inform their consulate that they have been arrested. The police must allow your consul to visit or speak with you. Your consul might assist you in finding a lawyer or offer other help, such as contacting your family.

***How long will it take to be deported?***

If you are from Mexico and you are allowed to sign your deportation, you will likely be deported within several days. If you see an immigration judge, your case may take several weeks or even months.

While some cases can last a very long time (even several years), this usually only occurs if the person decides that he or she wants to do one or more appeals. If you are from



a country other than Mexico, it will probably take from several weeks to several months to deport you once you have a final order of removal.

***Where will I be taken when I'm deported?***

If you are from Mexico and you are deported from Florence or Eloy, you will probably be taken to Nogales by bus. If you are from another country, you will be put on a flight to your country.

If you are deported through Nogales, you will be taken to the "Mariposa" port of entry, which is located west of the city. A group called "No More Deaths" offers food, first aid, and an orientation to people who are deported there. It takes about 45 minutes to walk to Nogales from the Mariposa port, or you can also get there by taxi or public bus. A Mexican border agency called "Grupo Beta" is a 25 minute walk from Mariposa; they can assist in making calls to family members, getting a ride to a shelter, or possibly helping to buy a bus ticket to another part of the country.



***Can I pick up my clothes and property from my house before I'm deported?***

Only if you pay a bond and are released during your immigration case. If you are in immigration custody and are ordered deported, or even granted voluntary departure, you will be taken directly from the detention center to your country without being released.

### ***Should I ask for voluntary departure?***

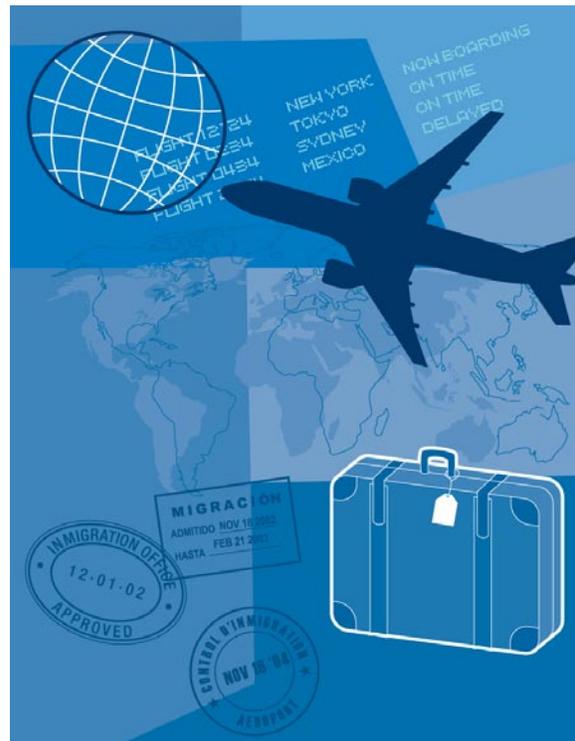
In some cases, voluntary departure is helpful. A person who has been deported is not able to lawfully return to the U.S., often for five or ten years (although there may be a pardon available). However, even if you

***If you are from a country other than Mexico, you should not ask for voluntary departure unless you have a passport or other travel document and you have the money to pay for your plane ticket.***

receive voluntary departure, you may still not be able to return to the U.S. for other reasons, such as a criminal conviction or the fact that you do not qualify to legally return to the U.S.

### ***Will I have to wait more time to receive voluntary departure?***

Maybe. Both Immigration and Customs Enforcement (ICE) and the immigration judge have the power to give you voluntary departure. If you cannot get voluntary departure from ICE, you can still ask the immigration judge for it. However, the immigration judge may not give you voluntary departure in your first hearing, which means you would have to wait at least one more hearing to receive it. Unfortunately, voluntary departure is not usually any quicker than deportation.



### ***What if my rights are violated while I'm in immigration detention?***

There are different places to send a complaint depending on which of your rights have been violated. See page 19 for a list of instructions and addresses.

# AFTER YOUR CRIMINAL AND IMMIGRATION CASES...

## *How can I sell my car or house if I'm not in the U.S.?*

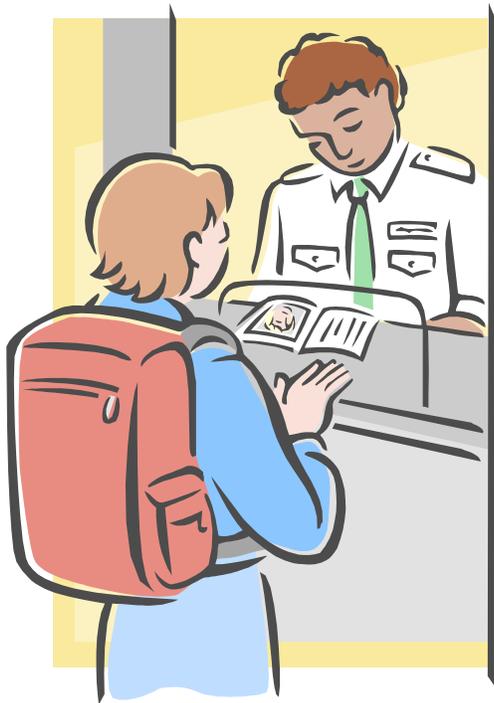
It is not easy to sell property, particularly a house, if you are not in the U.S. You may be able to assign someone else the power to sign legal documents and sell your property for you.

## *If my children are U.S. citizens, can they put papers in for me?*

Unfortunately, having children who are U.S. citizens does not give you an automatic right to live in the U.S. When

U.S. citizen children are 21 years old, they can file a petition to help you enter the U.S. as a permanent resident.

However, there may be other reasons that you are ineligible to use this petition, such as an order of deportation, criminal convictions, or the amount of time that you were living in the U.S. without permission.



## *Is there any other way I can return to the U.S.?*

U.S. Citizenship and Immigration Services (USCIS) has the power to issue visas and allow people to enter the U.S. legally for a short period of time. It is very difficult to get this type of visa or permission, but you have a right to apply for it. If you are from Mexico, the closest place to do this would be the U.S. consulate in Ciudad Juarez.

***What if I come back without papers?***

If you come back to the U.S. illegally after being deported, you can be prosecuted under federal law for illegal reentry. Depending on your criminal history, you can be sentenced to up to twenty years. While most people are not sentenced to this much time, the U.S. is prosecuting many more people than it used to, and defendants can often receive several years in prison.



# *Resources*

## **Detention Centers in Arizona**

(If you are sending something to a detainee, make sure to put their name and 8 or 9 digit "A" number before the address)

Florence SPC  
3250 N. Pinal Parkway  
Florence, AZ 85132

Pinal County Jail  
P.O. Box 2610  
Florence, AZ 85132

CCA/CADC  
P.O. Box 6300  
Florence, AZ 85132

CCA/FCC  
P.O. Box 6900  
Florence, AZ 85132

Eloy CCA  
1705 E. Hanna Rd.  
Eloy, AZ 85131

## **To report a violation of your rights while in immigration custody:**

Mr. Timothy Perry  
Acting Chief of the Detention Acquisition and Support Branch  
ICE Office of Detention and Removal  
U.S. Department of Homeland Security  
801 "I" Street, Suite 980  
Washington DC 20536

(For complaints regarding medical and mental health)  
Captain Philip Jarres  
Branch Chief of Field Operations for the U.S. Public Health Service  
1220 L Street NW, Suite 500  
Washington DC 20005

DHS Office for Civil Rights and Civil Liberties  
Department of Homeland Security  
Mail Stop #0800  
Office for Civil Rights and Civil Liberties  
Washington DC 20528

Commission on Immigration  
American Bar Association  
740 15<sup>th</sup> Street, NW, 9<sup>th</sup> Floor  
Washington, DC 20005-1022

**To allow immigration advocates to track the process please send a copy of any complaints to:**

Tara Magner  
Director of Policy  
National Immigration Justice Center  
208 S. LaSalle Street  
Suite 1818  
Chicago, IL 60604

