



ICE DETAINER

QUESTION: My husband was arrested on a simple assault charge and now he can't get out of jail. The jail staff told me that there is a \$1,000 bond on the simple assault charge but he can't get out because there is also an "ICE Detainer". I thought on simple criminal charges all you had to do was pay a bond and get out. Why can't my husband get out and what is this ICE Detainer?

ANSWER: An ICE Detainer is a request by U.S. Immigration and Customs Enforcement (ICE) of Homeland Security to the local court, asking the court to "detain" the arrested individual until the criminal matter is completed. Hence, the word "ICE" "Detainer". Once the criminal matter is completed, ICE will take custody of the individual and deport him.

For example, when a person is arrested and a police officer suspects that the arrested individual may be an illegal alien, the officer conducts a cross check with the immigration office to determine if the individual is in the United States legally. If the check shows that the individual is illegal or there is no record of him entering the United States legally, then ICE will ask the officer to detain that individual until ICE can come and get him.

Just because there is an ICE Detainer will not always mean that the persons will be deported immediately. ICE will not take custody of an individual if he is still in county jail and awaiting trial on his criminal charge. The reason is that the state court has taken jurisdiction over the individual first; and ICE will respect that jurisdiction and defer any deportation action until the criminal matter is concluded.

However, there is one instance where a person can be deported even while a criminal case is pending: when that person is released on criminal bond. For example, when an individual is held on both criminal bond and ICE Detainer, and that individual pays the criminal bond, it doesn't mean that he will get out of prison right away. Rather, when an individual pays his criminal bond, ICE has within 48 hours to take that individual to immigration holding cell. Once ICE assumes jurisdiction, they can deport him at any time regardless of any ongoing criminal case. To add another layer of complexity, when that individual gets deported and fails to show up for his criminal court, the family who posted the criminal bond will lose that money because the individual failed to show up. In addition, because the individual failed to show up for criminal court, the judge will issue a bench warrant for his arrest in the event that he comes back to the United States.

Thus, when a family member comes to me with someone who has been charged with a crime and who is held on both a criminal bond and ICE Detainer, I advise the family to hold off on paying the criminal bond until I can determine if an immigration bond can also be requested. If the individual qualifies for an immigration bond, then I will prepare all the paperwork necessary



to file the immigration bond, then simultaneously request an immigration bond with the immigration judge while the client is released on criminal bond. In that way, I alert the ICE that an immigration bond is pending and that the client should not be deported right away.

Not everyone qualifies for immigration bond. However, it's important to weigh all your options when ICE and deportation is involved. Sometimes, a simple act of paying for a criminal bond can have a disastrous effect of getting oneself deported.