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Enforcement and Removal Operations

Bond Management Handbook

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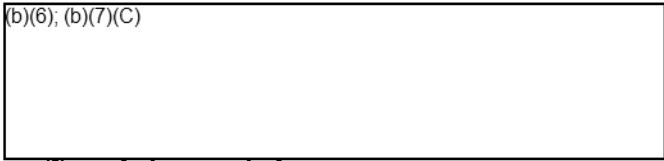
Foreword

This Bond Management Handbook (Handbook) provides ERO Field Office personnel with a comprehensive explanation of immigration bond policies and procedures from the time a bond is first issued until it is breached or canceled. Immigration bonds perform a critical role in efficiently administering immigration laws. Bonds allow the Federal Government to avoid the expense of detaining aliens while removal proceedings are conducted.

This Handbook takes a tiered approach to provide information about managing immigration bonds. The body of the Handbook addresses general policies while appendices provide more detailed guidance and examples of critical documents used in managing immigration bonds.

I am confident that this Handbook will help ERO personnel to more effectively manage immigration bonds and better understand the highly technical aspects of bond management.

(b)(6); (b)(7)(C)

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Tae Johnson
Assistant Director for Custody Management
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I. Introduction

A. Background

This Bond Management Handbook (Handbook) provides guidance and detailed procedures for issuing immigration bonds and processing bond paperwork, including demand notices, breach notices, breach rescission notices, and cancelation notices.

The audience of this Handbook includes the ERO officers who process bonds and Financial Operations-Burlington (FinOps-Burlington). The body of the Handbook provides general guidance on immigration bonds. The appendices contain detailed procedures for handling bonds as well as samples of bond forms. Obtain forms from the inSight ICE Forms home page or EAGLE in order to make sure you are using the most recent approved version of a form.

Send any questions, comments, or concerns about immigration bonds to the Bond Management Unit (BMU) at the Headquarters (HQ) ERO Bond mailbox at (b)(7)(E). Additional information about the immigration bond program may be found at the (b)(7)(E).

The procedures detailed in this Handbook are intended for the internal management of ICE and do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against ICE or any agency of the Federal Government. Any failure of ICE to comply with any provisions in this document shall not be available to any person or entity as a defense, except as otherwise required by law.

B. Sensitive Personally Identifiable Information (SPII)

Department of Homeland Security (DHS) policy designates A-Numbers as SPII and should only be shared with those who have a need to know. SPII is any personally identifiable information about a person which, if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to the individual. All SPII must be handled in compliance with the (b)(7)(E).

When sending documents via the U.S. Postal Service, UPS, or any other commercial mail carrier, do not use the A-Number as a reference number on tracking forms, return receipts, envelopes, or packages. If you need an identifying number to track a shipment or to file a return receipt, use the bond number. Using "EARM" and "BMIS," you can search by the bond number to identify the alien and his or her A-Number.

C. Immigration Bond Overview

The immigration bond program allows ICE to avoid detention costs for aliens who are released from custody on bond. In FY 2013, 45,179 immigration bonds were posted in

the amount of \$243 million. Each bond is in effect for an average length of 25 months, which translates into hundreds of millions of dollars saved in detention costs.

Another benefit of the bond program is that, by statute, the amounts collected on breached bonds are deposited into a special fund called the Breached Bond Detention Fund (BBDF). ICE may use money deposited in the BBDF to pay for detention bed space and costs incurred in collecting amounts due on breached bonds. To reap the benefits of a well-administered bond program, ICE employees processing bonds should fully understand how bonds are issued and managed so that the bonds serve as an effective incentive for aliens to surrender into ICE custody, timely depart the United States, or comply with the terms of an order of supervision.

Three different entities within ICE – the BMU, ERO Field Offices, and FINOPS-BURLINGTON – are directly involved with immigration bond management. The BMU, part of HQ ERO Custody Management, supports field operations by providing guidance related to immigration bond management to achieve uniformity in bond processes and procedures. ERO employees in the Field Offices and sub-offices issue bonds and process bond paperwork. FINOPS-BURLINGTON employees, as part of the Office of Financial Management, oversee the financial aspects of bonds, such as refunding cash deposits on canceled bonds, issuing invoices for breached surety bonds, and issuing interest payments on breached or canceled cash bonds. Office of the Principal Legal Advisor (OPLA) attorneys support all three of these entities by providing legal advice in the performance of their functions. An explanation of the responsibilities of each office is set forth in Appendix 1.

II. Issuing Immigration Bonds

A. Legal Authority for Issuing Bonds

Immigration bonds are issued pursuant to the broad grant of authority to the Secretary of Homeland Security to “prescribe such forms of bond” to carry out the authority delegated under the Immigration and Nationality Act (INA). 8 U.S.C. § 1103(a)(3).

The primary regulatory authority addressing immigration bonds is codified at 8 C.F.R. § 103.6. While this section is titled “Surety Bonds,” it encompasses both bonds secured by cash and bonds issued by surety companies. Because this regulation was issued by the former Immigration and Naturalization Service (INS), it includes bonds that are not currently issued by ICE, such as public charge bonds and maintenance of status bonds.

Pursuant to 8 C.F.R. § 103.6, Field Office Directors (FODs) are authorized to approve bonds and to take appropriate action to protect the interests of the United States with respect to such bonds. Enforcement Delegation Number 001 also enables FODs to re-delegate this authority to appropriate subordinate ICE officials. After an immigration bond has been posted to release an alien from ICE custody, a FOD at any time may revoke the bond, rearrest the alien under the original warrant, and detain the alien. 8 U.S.C. § 1226(b).

The regulation sets forth the broad standard used to determine whether a bond should be breached or canceled. The regulation states that a “bond is breached when there has been a substantial violation of the stipulated conditions.” 8 C.F.R. § 103.6(e). Conversely, a bond obligor is released from liability (the bond is canceled) when substantial performance of all conditions imposed by the terms of a bond exists. *Id.* § 103.6(c)(3). A summary of case law explaining the “substantial performance” standard is attached as Appendix 2.

B. Alien’s Release from Custody on a Bond

Immigration bonds are primarily issued to release an alien who has been placed in removal proceedings before an immigration judge from ICE custody. The purpose of most immigration bonds is to have a mechanism in place requiring the alien to appear in response to a properly issued notice to surrender on a particular date at a particular place and time (a “demand notice”). Most immigration bonds are like criminal bail bonds. The person or company that posted the bond on behalf of the alien (the obligor) forfeits the face value of the bond if the obligor or the alien fails to comply with the terms and conditions of the bond.

1. Custody Determination

Before a bond is issued, a DHS official first evaluates whether the alien is eligible to be released from ICE custody. Because this Handbook focuses on bond management, you should review other ICE guidance for more detailed information about making custody determinations. From a bond management perspective, ICE employees processing bonds must know whether the alien may be released from custody on an immigration bond and the amount of the bond to be issued.

a. Form I-286 – Notice of Custody Determination

A DHS official issues **Form I-286 – Notice of Custody Determination** pursuant to section 236 of the INA to notify the alien whether he or she will be detained in custody, released under an immigration bond, or released on his or her own recognizance while a removal proceeding is ongoing. This form is served on the alien, typically at the same time a Notice to Appear setting forth the reasons why the alien is subject to removal from the United States, is served on the alien.

b. Appeal of Custody Determination

Unless Federal law prohibits the alien’s release from custody, or unless the alien is in “asylum only” proceedings or expedited removal, the alien may request a review of the custody determination by an Immigration Judge (IJ). The categories of aliens who may obtain IJ review of custody determinations may vary among the judicial circuits. An officer who has any doubts about an alien’s eligibility for IJ redetermination of bond should consult an OPLA attorney in the Office of Chief Counsel (OCC attorney).

If the alien requests IJ review of the custody determination, an IJ schedules a custody hearing and issues a custody order. The IJ may reduce the amount of the bond, keep it the same, or increase the amount of the bond. While the alien may appeal the IJ's decision to the Board of Immigration Appeals (BIA), further appeals rarely happen and typically the IJ's custody order will be the final decision setting the amount of the immigration bond. If you have any questions about whether the IJ's custody order is final, please consult with an OCC attorney.

C. Issuing the Immigration Bond

If a final custody determination states that the alien may be released from DHS custody after posting a bond in a certain amount, the alien's family or friends may seek to have a bond issued. By regulation, immigration bonds may be secured by cash or cash equivalent (currency, postal money orders, other money orders accepted at the discretion of the FOD, cashier's checks, or U.S. bonds/notes) or by a surety company authorized by the Department of the Treasury to post bonds on behalf of the Federal government. See field office bond verification instructions attached as Appendix 3.

Immigration bonds are posted on **Form I-352, *Immigration Bond*** (attached as Appendix 4). The bond form contains instructions as well as the bond's general terms and conditions, which explain the parties' obligations under the bond agreement and identifies events that automatically cancel the bond.

Paragraph G of the Form I-352 sets forth the different conditions that may be imposed on the bond obligor. Paragraph G. (1) applies when the bond is conditioned upon the delivery of the alien (a "delivery bond"), meaning that the bond is breached when the obligor fails to deliver the alien to ICE in response to a demand notice. More detailed information about delivery bonds is attached as Appendix 5.

Paragraph G.(2) applies when the bond is conditioned upon the alien not becoming a public charge (a "public charge" bond). ICE does not issue bonds with this condition.

Paragraph G.(3) applies when the bond is conditioned upon the voluntary departure of the alien (a "voluntary departure" bond), meaning the bond is breached when the obligor fails to provide valid proof that the alien left the United States on or before the voluntary departure date set by court order. This proof must be submitted within 30 days of the voluntary departure date. More detailed information about voluntary departure bonds is attached as Appendix 6, including an explanation of what constitutes "valid" proof of departure.

Paragraph G.(4) applies when the bond is conditioned upon the alien complying with an order of supervision (an "order of supervision" bond), meaning the bond is breached when the alien violates one or more of the terms set forth in his or her order of supervision. More detailed information about order of supervision bonds is attached as Appendix 7.

1. Bonds Secured by Cash or Cash Equivalent (“Cash Bonds”)

Roughly 90% of the bonds issued by ICE are secured by cash, money orders, cashier’s checks, or U.S. bonds/notes (hereinafter collectively referred to as “cash”). ICE collects from the bond obligor the face amount of the bond as security for performance of the bond’s terms and conditions. If the obligor performs the bond’s conditions, the bond is canceled and the cash deposit is returned to the obligor. If the obligor fails to perform the bond’s conditions, the bond is breached and ICE retains the cash deposit. By statute, regardless of whether the bond is breached or canceled, the Government pays interest on the cash deposited as security for the bond to the obligor.

Within ICE, ERO is responsible for issuing the bond, collecting the cash deposit, and processing the bond paperwork associated with the bond (demand notice, breach notice, breach rescission notice, bond cancellation notice, etc.). FINOPS-BURLINGTON is responsible for handling the financial aspects of the bond (issuing refunds for bond cancellations, issuing interest payments, ensuring the funds are deposited in the correct Treasury account, etc.).

Like all immigration bonds, cash bonds are issued using **Form I-352, *Immigration Bond***. When the bond form is used for a cash bond, Part I is signed by the obligor who pledges the cash as security for performing the terms of the bond. Other forms are used with cash bonds:

- **Form I-305, *Receipt of Immigration Officer – United States Bonds or Notes, or Cash, Accepted as Security on Immigration Bond***. This document serves as a receipt for payment of the cash securing the bond and the original is given to the obligor once the bond has been approved. It must be sent to FINOPS-BURLINGTON by the obligor for the cash deposit to be refunded.
- **Form I-312, *Designation of Attorney in Fact***. This form allows an individual (the “attorney in fact”) to accept on the obligor’s behalf the funds deposited to secure the cash bond upon cancellation of the bond.
- **Form I-395, *Affidavit in Lieu of Lost Receipt***. If Form I-305 is lost or destroyed, the bond obligor may complete this form to seek refund of the cash deposit. Form I-395 must be notarized.
- **Form I-352A, *Notice to Cash Bond Obligors IRS ‘Backup Withholding’ Rules***. This document notifies cash bond obligors that some of the interest earned on cash bond deposits may be subject to withholding based on IRS rules. This form should be provided to cash bond obligors when the cash bond is posted and also when the cancellation or breach notice is sent to the obligor. This form does not apply to surety bonds because surety bonds are not secured by cash deposits and thus no interest is earned on surety bonds.

Detailed instructions for posting cash bonds and handling the cash can be found at

(b)(7)(E)

Appendices 8, 9, and 10 contain a Bond Worksheet that may be used when an obligor seeks to post a cash bond, a copy of the “Notice to Cash Bond Obligor of IRS ‘Backup Withholding’ Rules,” information on using OTCnet check scanning to process a cash bond deposit electronically, and back-up procedures to use when the OTCnet check scanner is not working.

2. Bonds Secured by a Surety Company

By statute, the Department of the Treasury is responsible for certifying surety companies as authorized to post bonds, including immigration bonds, on behalf of the United States. Treasury publishes a list of certified surety companies on the Internet at

(b)(7)(E)

The list of approved sureties is called “Department Circular 570.”

Surety companies typically post bonds using an agent. An agent is a company acting on behalf of the surety company and is a “co-obligor” on the bond. As co-obligor, the agent (as well as the surety) may be liable for any amount due when the bond is breached. Because the agent is acting on behalf of the surety company, a “Power of Attorney” form must be submitted with each surety bond establishing that the surety has authorized the agent to post a bond of a certain amount on the surety’s behalf.

Surety companies do not deposit cash when posting an immigration bond. Rather, they agree to pay the face amount of the bond after the bond is breached. FINOPS-BURLINGTON issues an invoice to collect the amount due on the bond from the surety company or its agent after it receives a copy of the breach notice from the Field Office.

Almost all surety companies are currently using the eBONDS system. When surety companies and their agents use eBONDS, the Field Office receives electronically a draft of a completed, unsigned Form I-352 and a Power of Attorney form. Detailed instructions for issuing surety bonds can be found at

(b)(7)(E)

D. Changing the Bond Amount

On occasion the face amount of a bond already issued may need to be increased or lowered before any action is taken on the bond.

1. Surety Bonds

If the face amount of a surety bond needs to be changed, the Field Office cancels the original bond by issuing **Form I-391** (see section III.A below) and issues a new bond in the new amount. The new surety bond must be accompanied by a new power of attorney in the correct amount. This does not apply to surety bonds posted through eBONDS. Refer to the user manual for bonds posted through eBONDS.

2. Cash Bonds

The procedures for increasing and decreasing the amount of a cash bond can be found at (b)(7)(E)

III. Issuing Bond Notices

ICE informs the bond obligor about each action ICE takes pursuant to the terms and conditions of the bond by issuing a notice to the obligor. ICE personnel decide what action to take on a bond by monitoring the progress of the alien's removal proceeding, reviewing documents in the alien's A-file, and reviewing entries in agency databases, such as EARM, and BMIS. Before addressing the different types of bond notices, a few general points need to be addressed:

A. Factors When Issuing Bond Notices:

Processing immigration bond notices is highly technical because immigration bonds are contractual agreements. Both ICE and the bond obligors must comply with the terms and conditions set forth in the bond forms. In the past, when the obligors and ICE disagreed over the correct interpretation of the terms and conditions of the bond form, they have sought rulings from the federal courts on the meaning of those terms. Litigation in the federal courts is ongoing. Until these cases are finally resolved, uncertainty about the proper interpretation of certain terms and conditions in the bond forms will remain. This Handbook provides guidance on the best practices to use when issuing bond documents.

When issuing notices, keep in mind:

- Different versions of the bond form contain different terms and conditions. Bonds on the 1997, 1999, 2000, and 2008 bond forms are still in effect. You may even come across a bond using the 1984 bond form. Different rules may apply to different bond forms. This Handbook highlights those different rules. See Appendix 15 for specific information about the various bond forms.
- Different rules may apply to different bond obligors. Most significantly, different rules apply when Gonzales and Gonzales Immigration Bonds (G&G) is the agent for Farwest, Amwest, or American Surety companies. Different rules apply to G&G because the former INS entered into two settlement agreements known as the "Amwest Agreements" with G&G in 1995 and 1997. These settlement agreements set forth certain terms and conditions that apply only to bonds posted by G&G for certain surety companies. This Handbook highlights the different rules that apply to bonds posted by G&G.
- Check for thoroughness and accuracy after completing a form. Make sure certified mail receipts that you received are properly filed in the alien's A-file or sent to the Records Digitization Facility (RDF) to be added to a digitized A-file. Remember that in order to collect money due on a breached bond, ICE often

must prove that it issued notices properly and that those notices were received. We cannot establish this proof without complete records.

B. eBONDS System

ERO implemented the eBONDS system to streamline the processing and issuing of surety bonds. The eBONDS system allows surety companies and their agents to fill in information required on the bond form and electronically submit the bond form to Field Offices. The eBONDS system enables Field Offices to prepare bond notices, using EARM. Upcoming software enhancements will also enable Field Offices to electronically issue demand, breach, and cancellation notices directly to surety companies and their agents. ERO also plans to periodically update the guidance provided in this Handbook to reflect upcoming enhancements to the eBONDS system.

The eBONDS system interfaces with EARM. ERO also integrated the EARM system with BMIS. The current version of EARM (EARM 5.0) enables real-time data entry, data posting and information-sharing for processing immigration bonds.

EARM 5.0 enables ERO Bond Control Specialists to complete all related bond activities within EARM and submit that information immediately to BMIS or eBONDS as appropriate. Activities include:

- Initiating and completing immigration bond form I-352 online for both cash and surety bonds
- Tracking the status of a bond in real time
- Storing all bond documents in the SharePoint document repository
- Canceling a bond
- Breaching a bond
- Mitigating a bond
- Creating the surety bond breach checklist
- Preparing the Motion to Re-open

Note: See Appendix 25 to manually post a bond in EARM if the eBONDS system goes off line.

C. Cancellation Notices (Form I-391, *Notice Immigration Bond Canceled*)

The bond's terms and conditions list several events that, when they occur before a bond is breached, automatically terminate the bond. When one of these events occurs before a bond is breached, ERO personnel issue a Cancellation Notice, Form I-391. See attached as Appendix 11.

After completing a Cancellation Notice, Form I-391, print a copy of the electronic version and place the hard copy in the alien's A-file.

The events that automatically cancel a bond when they occur prior to the breach are:

- Death of the alien (evidenced by a death certificate).
- DHS taking the alien back into its custody (detaining the alien for more than a few hours).
- Removal of the alien.
- Grant of permanent residence or citizenship to the alien.
- ICE's receipt of notice that the alien has been taken into custody by another federal, state or local law enforcement agency and will be detained for more than 30 days.
- Termination (but not administrative closure or stay or closure without prejudice) of removal proceedings.
- Voluntary departure of the alien as evidenced by valid proof of departure.

Issue cancellation notices when the bond obligor fulfills the bond conditions, i.e.:

- The alien is surrendered on the date in the demand notice fulfilling the condition of a delivery bond and the alien is taken into ICE custody;
- ICE receives valid proof that the alien left the United States on or before the voluntary departure date fulfilling the condition of a voluntary departure (VD) bond; or
- The alien is in compliance with all requirements set forth in an order of supervision fulfilling the conditions of an order of supervision (OSUP) bond.

In the exercise of discretion, bonds may be also canceled when:

- The alien is granted Temporary Protected Status by IJ or U.S. Citizenship and Immigration Services (USCIS).
- The alien is granted a benefit under a special category visa (ex. T, U-Visa,) by USCIS.
- The alien is granted Withholding of Removal or Deferred Enforcement Action by IJ and the possibilities of removal due to a change in country conditions are unforeseeable (consult with your Supervisory Detention and Deportation Officer (SDDO) and local OCC).
- Administratively Closed cases pursuant to an OPLA prosecutorial discretion review.
- Aliens are granted asylum by the IJ or the BIA, unless ICE reserved an appeal.

Upon cancelation, submit Form I-391, *Notice Immigration Bond*, to FINOPS-BURLINGTON using EARM or manual back up procedures (refer to eBONDS participants handbook). Submit Form I-391 within 60 days of the event that warranted the action. Place a copy of Form I-391 in the alien's A-File.

When cash bonds are canceled, the Field Office sends Form I-391 and Form I-352A by regular mail to the obligor. The Field Office also notifies the obligor to forward the original Form I-305 (issued when the bond was posted) to the FINOPS-BURLINGTON. The cash deposit cannot be refunded until FINOPS-BURLINGTON receives Form I-305. If the obligor loses Form I-305, the obligor submits notarized **Form I-395**, *Affidavit in Lieu of Lost Receipt*. The Obligor sends the original, notarized Form I-395 to FINOPS-BURLINGTON so that the cash deposit can be refunded.

Because surety companies do not deposit cash to secure bonds, the cancelation process for surety bonds is simpler. The Field Office need only send Form I-391 by regular mail to the company and agent, submit Form I-391, *Notice Immigration Bond*, to FINOPS-BURLINGTON using EARM or manual back up procedures (refer to eBONDS participants handbook), and place a copy of Form I-391 in the alien's A-File.

Detailed instructions for issuing a cancelation notice (**Form I-391**) can be found at

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D. Demand Notices (Form I-340, *Notice to Obligor to Deliver Alien*)

Demand notices are issued by using **Form I-340**, *Notice to Obligor to Deliver Alien*. Under the current version of the bond form, demand notices are issued only for delivery bonds

To properly issue a demand notice, determine:

- Whether the demand notice needs to be sent to more than one obligor;
- The last-known address of the obligor(s);
- An appropriate date to use as the surrender date;
- The proper purpose for issuing the demand notice; and
- Whether a "Questionnaire and Worksheet" (Form I-340A) needs to be sent with the demand notice

Detailed instructions on completing and sending demand notices can be found in Appendix 13.

After completing a demand notice, Form I-340, print a copy of the electronic version and place the hard copy in the alien's A-file.

Note: Do not issue demand notices for voluntary departure and order of supervision bonds because these bonds are not conditioned upon the delivery of an alien.

Demand notices on delivery bonds may be issued when ICE has a reason to call the alien into an ICE office. Reasons for issuing demand notices include:

- To remove the alien pursuant to a final order of removal;
- To interview the alien about his or her immigration status; and
- To take the alien back into custody, for example, if the alien committed a crime while released on bond.

Send Form I-340 demand notices within 30 days of the date of the final order of removal.

A “final order” of removal has a specific and highly technical meaning in immigration law. A detailed explanation of when an order of removal becomes “final” is attached as Appendix 12.

- On all final order cases, the alien must be taken into custody and processed accordingly. If you determine that the alien is eligible for release, you may release the alien on an Order of Supervision with the additional compliance tool known as an “OSUP” bond.

Send demand notices to the bond obligor(s) by certified mail, return receipt requested. File copies of the demand notices in the alien’s A-file. Follow proper procedures for issuing an I-340 using (b)(7)(E) or if necessary, follow the manual backup procedures (see (b)(7)(E) participants manual). Staple the certified mail receipts (commonly known as “greenies”) to the demand notice in the A-file as soon as they are received from USPS.

When certified mail to an obligor comes back as “Returned to Sender,” take further action to make sure the obligor receives a copy of the demand notice. Detailed instructions on resending demand notices are attached as Appendix 14.

E. Breach Notices (Form I-323, Notice – Immigration Bond Breached)

Issue breach notices by using **Form I-323, Notice – Immigration Bond Breached**. Breach notices may be issued for delivery bonds, VD bonds, and OSUP bonds. For certain bonds, the breach notice must be issued within 180 days of the breach date. A chart setting forth the mandatory time frames for issuing breach notices is attached as Appendix 15.

Send breach notices to the bond obligor(s) by regular mail. Submit a copy of Form I-323 to FINOPS BURLINGTON using EARM or manual back up procedures (refer to eBONDS participants’ handbook). Print a copy of the electronic version and place the hard copy in the alien’s A-file.

The best practice is to issue breach notices within 45 days of the breach date so that prompt action may be taken by FINOPS-BURLINGTON in handling the financial aspect of the bond breach.

Before issuing a breach notice on a surety bond, ERO personnel complete the checklist titled *Breached Surety Bonds – Referral for Collection*, which is signed by the SDDO supervising bonds. This checklist is designed to make sure current procedures for surety bonds are completed and that the surety bonds are sent to the FINOPS-BURLINGTON along with the breach notice. A copy of this checklist is attached as Appendix 16.

Note: Referral for Collection Checklist signature authority cannot be delegated below the level of an SDDO or acting SDDO.

Breach of a Delivery Bond. A delivery bond is breached when the obligor fails to surrender the alien (or the alien fails to appear) on the date and place specified in the demand notice. The breach date is the date when the alien was supposed to but failed to appear, known as the surrender date. A sample breach notice for a breach of a delivery bond is attached as Appendix 17.

Breach of a VD Bond. A VD bond is breached when the obligor fails to submit valid proof to ICE that the alien left the United States on or before the voluntary departure date. The breach date for a VD bond is the 30th day after the date by which the alien was supposed to depart. A sample breach notice for a breach of a VD bond is attached as Appendix 18.

Breach of an OSUP Bond. An OSUP bond is breached when the alien fails to substantially comply with one or more terms contained in an order of supervision. The breach date is the date that the alien violated the order of supervision. Include a brief explanation on the breach notice how the alien violated the order of supervision. A sample breach notice for a breach of an OSUP bond is attached as Appendix 19.

Note: upon execution of the breach bond documents, the alien is considered a fugitive. Ensure the file is forwarded to the Fugitive Operation Unit for further review and action.

F. Annotating Breach Notices to Reflect Mitigation

Mitigation is a policy that encourages bond obligors to surrender aliens to ICE offices, even if they missed the surrender date. Mitigation means that the amount forfeited (because the bond was breached) will be reduced because the obligor surrendered the alien within 90 days of the surrender date.

Mitigation applies only to delivery bonds when the obligor surrenders the alien. It does not apply when the alien on his or her own appears at an ICE office.

The amount of mitigation varies depending on how close to the surrender date the obligor delivers the alien. The amount forfeited is reduced by these amounts:

- Alien delivered 30 days or fewer after the surrender date – amount forfeited is reduced by 66% (\$3,400 would be due on a \$10,000 bond).
- Alien delivered 31-60 days after surrender date – amount forfeited is reduced by 50% (\$5,000 would be due on a \$10,000 bond).
- Alien delivered 61-90 days after the surrender date – amount forfeited is reduced by 30% (\$7,000 would be due on a \$10,000 bond).
- 91 or more days after surrender date – no mitigation.

ERO personnel annotate the breach notice (Form I-323) with the date the alien was surrendered and the percentage of mitigation to which the obligor is entitled so that FINOPS-BURLINGTON personnel will know how to handle the financial aspect of a breach when the mitigation policy applies.

Send copies of the annotated breach notice reflecting mitigation to the bond obligor(s) by regular mail. File copies of the annotated breach notice in the alien's A-file. Send copies by e-mail to FINOPS-BURLINGTON.

A sample Form I-323 with an annotation for mitigation is attached as Appendix 24. Field Offices should obtain stamps reflecting the annotation in the sample.

G. Breach Rescission Notices/MTRs (ICE Form 71-042, Notice of Decision upon Motion to Reopen or Reconsider Bond Breach Declaration)

When ERO personnel are notified by the BMU that a bond breach is not valid or when they realize on their own that a bond breach is invalid, they should rescind the breach by issuing a *Notice of Decision upon Motion to Reopen or Reconsider Bond Breach Declaration*. This form is known as an MTR, ICE Form 71-042.

A breach rescission reverses the prior breach determination so that the bond is no longer breached. When rescinding the breach and issuing an MTR, ERO personnel consider whether the bond should stay in effect or be canceled.

- If the bond should stay in effect, ERO personnel check the box on the MTR form stating that the bond is reinstated.
- If the bond should be canceled, ERO personnel check the box on the MTR form stating that the bond is canceled.
- Only one of the boxes (bond is reinstated or bond is canceled) should be checked.

Send copies of MTRs to the bond obligor(s) by regular mail. Submit a copy of the MTRs to FINOPS BURLINGTON using EARM or manual back up procedures (refer to eBONDS participants handbook). File copies of the MTRs in the alien's A-file.

If the MTR is issued because an administrative error was made in issuing demand or breach notices, check the box stating that the decision was based upon an incorrect application of law or policy and insert "Notice Defect" or "Administrative Error" on the lines that follow.

A copy of the MTR form is attached as Appendix 20.

H. Notice to Surrender for Deportation (Form I-166)

Form I-166, *Notice to Surrender for Deportation* has in the past been sent directly to aliens to notify them of a proposed removal date and to ask them to appear on a specific date and time for removal. Do not send Form I-166 to bonded aliens. Only send a demand notice to the bond obligor. Do not send a demand notice addressed to the alien. See Appendix 23 for additional discussion.

IV. Processing Bond Appeals

By regulation, bond obligors have the right to appeal bond breach determinations. Obligors appeal bond breach determinations by filling out Form I-290B, Notice of Appeal. See Appendix 21 for a copy of Form I-290B and instructions.

The appeal is adjudicated by USCIS' Administrative Appeals Office (AAO). 8 C.F.R. § 103.3 grants the AAO jurisdiction to adjudicate breached bond appeals.

The obligor has 30 days from the date the breach notice was issued (adding three days if sent by mail) to file an appeal (submit Form I-290B). If the last date to file falls on a weekend or legal holiday, the filing period extends to the next business day.

The current fee for filing an appeal is \$630. This fee may be waived if the applicant can show an inability to pay the fee. USCIS developed Form I-912, *Request for Fee Waiver*, for this purpose. Fee waiver guidance is available at the USCIS website (<http://www.uscis.gov/i-290b>).

- The obligor submits the bond appeal (Form I-290B and required fees) via one of the Chicago Lockbox addresses listed below:

U.S Postal Service	USPS Express Mail/Courier
Chicago Lockbox USCIS P.O. Box 4733 Chicago, IL 60680-4733	Chicago Lockbox USCIS Attn: FBAS 131 S. Dearborn, 3rd Floor Chicago, IL 60603-5517

- Lockbox collects the fees and forwards an appeal package to the AAO.
- AAO receives the mail and notifies BMU via email of bond appeal cases that it received.
- BMU notifies FINOPS-BURLINGTON. The breach determination is not final until AAO renders a decision on the appeal. FINOPS-BURLINGTON cannot issue an invoice on a surety bond or process payment on a cash bond until AAO issues a decision on the appeal.
- BMU notifies the appropriate Field Office of the bond appeal and requests that the Field Office review the breach determination to ensure that it is valid.
- If the breach is not valid, the Field Office issues a breach rescission (MTR, discussed in Section III.E above).
- If the Field Office determines that the breach is valid, the office prepares a Record of Proceedings (ROP) according to guidance in Appendix 22 and forwards the ROP to the AAO via e-mail with a copy to BMU (ICE-BONDS-APPEALS MAILBOX).
- The ROP is a subset of documents from the alien's A-file. These documents are relevant to the breach determination and allow the AAO to review the breach to adjudicate the appeal. ERO personnel send the ROP and the appeal documents to the AAO within two weeks of receipt of the appeal. The ROP is considered the administrative record for the appeal.
- After the ROP is sent to the AAO, AAO personnel review the appeal and the documentation to issue a decision on the appeal. AAO generally issues a decision within a few months after its receipt of the ROP. File a copy of the AAO decision in the alien's A-file and email a copy of the decision to the FINOPS-BURLINGTON at (b)(7)(E)
- If the AAO dismisses the appeal, FINOPS-BURLINGTON manages the financial end of the breached bond.
- If the AAO sustains the appeal, ERO personnel determine whether to issue a new set of demand notices or cancel the bond. In general, new demand notices may be issued if the alien has not yet been taken into ICE custody, left the United States, or died. If you need assistance in determining what to do after an appeal has been sustained, please contact the BMU.

V. Interactions with Bond Obligors

Bond obligors often communicate with Field Office personnel in response to notices they received from ICE. This Handbook addresses two of the most common issues that arise. Other questions should be addressed with your supervisor or the BMU.

A. Request to Change the Surrender Date

After receiving a demand notice, an obligor may contact the Field Office to ask for an extension of time to deliver the alien.

- It is solely within the discretion of Field Office personnel whether to extend the time that the obligor has to surrender the alien.
- It generally is advisable to grant an extension when the obligor is actively trying to locate the alien. The bond was issued to secure delivery of the alien and sometimes obligors need to obtain a reasonable extension of time to perform.
- If the Field Office agrees to set a new surrender date, Field Office personnel issue a new demand notice with the new surrender date. Note the decision to change the surrender date in the comments section or the case actions and decisions screen of EARM.

B. Request to Surrender the Alien before a Demand is Made

Sometimes bond obligors seek to surrender the bonded alien into ICE custody before ICE issues a demand notice. Obligors seek early surrender because they want to avoid future liability under the terms and conditions of the bond when they believe the alien has become a flight risk.

- If the obligor makes a telephonic request for early surrender, ask the obligor to submit the request in writing so a formal written response can be made. The obligor should submit a written request at least three days in advance of the date the obligor seeks to surrender the alien.
- It is solely within the discretion of the Field Office Director whether to allow the early surrender of an alien.
- In deciding whether to allow early surrender, consider the following factors:
 - Whether the bonded alien is a flight risk;
 - Whether the bonded alien committed a serious offense after the bond was posted;
 - Whether the obligor can reasonably guarantee delivery on demand given the circumstances;

- Whether the bonded alien is a threat to public safety;
- Whether adequate detention space is available to house the bonded alien; and
- Any other factors deemed relevant.
- The Field Office should issue a brief written decision on the request for early surrender with an explanation of the reasons the request was denied.

C. Deceased Obligors

Upon notification that a cash bond obligor is deceased, contact HQ BMU before taking any action on the bond. HQ BMU will refer to HQ OPLA for an opinion on a case-by-case basis.

VI. Administrative/General Matters

When processing bond paperwork, ERO personnel must consistently and timely update files and computer systems in order for others in DHS to know about the latest actions taken on a bond.

- In a timely manner, file all bond-related paperwork in the alien's A-file. Most bond documents are filed in the right-hand side of the A-file with the most current documents placed on top.
- If the alien's A-file is digitized, create a T-file. When bond breach or cancellation is final, send the file to the RDF in Williamsburg, KY. The RDF's address is: Records Digitization Facility; 965 South Highway 25W; Williamsburg, KY 40769.
- For bond documents that are not automatically sent to FINOPS-BURLINGTON electronically through the eBONDS system, be sure to email copies of bond documents to FINOPS-BURLINGTON at (b)(7)(E)
- When taking actions on bonds, such as sending out demand or breach notices, note the date such actions were taken in the Comments section or the case actions and decisions screen of the EARM system. It is particularly helpful to note whether the alien was delivered to the Field Office on the surrender date.
- Respond to other offices' requests for A-files as soon as possible. If you aren't currently using the file but need it back by a certain date, staple a note onto the top of the A-file asking that it be returned to your office by that date.
- When a bonded alien is granted a change of venue, document and file this information using Form I-350.

- Make sure that bond files are not sent prematurely to the National Record Center (NRC).
- Review all files with an open bond before retiring the file or sending it to NRC.

(b)(7)(E)

VII. Appendices

APPENDIX 1: Responsibilities

ERO Field Office (SDDO, Deportation Officer, Bond Control Specialist, Enforcement and Removal Assistant) - responsible for:

- Approving new bonds
- Properly handling cash deposited as security for bonds
- Determining whether a bond should be breached, canceled, or remain in effect
- Issuing all types of bond notices
- Documenting whether the alien appears in response to a demand notice
- Reviewing bond breach appeals
- Reviewing bond appeals and taking appropriate action depending on whether the review of the breach determination establishes that the breach is valid
- Updating Agency databases with bond-related information
- Filing all bond-related documents in the A-file or sending them to the office having custody of the A-file, NRC, or the RDF if the A-file is digitized. Note: When sending documents to NRC, the RDF, or any other USCIS office to be filed in the A-file. Log into the USCIS intranet, and comply with USCIS procedures at:

(b)(7)(E)

FinOps-Burlington (Bonds Branch) - responsible for:

- Accounting for cash bond deposits and refunds
- Issuing cash bond interest payments
- Issuing invoices for breached surety bonds
- Tracking debts owed by surety companies on breached bonds
- Working with OPLA to collect delinquent surety bond debt
- Updating the BMIS database to reflect current obligor information (address changes name changes, etc.)

ERO BMU - responsible for:

- Developing policy guidance on immigration bond issues

- Providing training to Field Office personnel on bond issues
- Notifying Field Office personnel of breach rescissions and bond cancelations that need to be prepared based on legal reviews
- Answering questions from Field Office personnel about bond issues and consulting with OPLA when legal issues arise
- Organizing focused bond review projects
- Updating sureties and agents about new developments, such as the eBONDS system

APPENDIX 2: Substantial Performance/Substantial Violation Standard

ICE regulations state that when “**substantial performance**” of all conditions imposed by the bond occurs, the obligor is released from liability under the bond when the bond is canceled.

Conversely, when a “**substantial violation**” of the conditions imposed by the bond occurs, the bond is breached.

The federal courts use four factors to evaluate whether a violation of the terms of a bond is “substantial”:

- The extent of the breach
- Whether the breach was intentional or accidental
- Whether the alien acted in good faith
- Whether the alien took steps to make amends or place himself or herself in compliance

Consider the obligor’s conduct: did the obligor make a reasonable, good faith effort to timely surrender the alien in response to the demand notice?

The obligor is not required to deliver the alien exactly as specified in the demand. For example, if the demand notice sets the time for delivery at 9:00 a.m. on a particular day and the alien is delivered at 1:00 p.m. on that same day, no “substantial” violation of the conditions imposed by the bond would have occurred.

Reference: *Ruiz-Rivera v. Moyer*, 70 F.3d 498, 501 (7th Cir. 1995); *Bahramizadeh v. INS*, 717 F.2d 1170, 1173 (7th Cir. 1983); *Int’l Fidelity Ins. Co. v. Crosland*, 490 F. Supp. 446, 448 (S.D.N.Y. 1980).

Please contact the BMU if you have any questions about whether the substantial compliance standard has been met.

APPENDIX 3: Field Office Bond Verification Instruction

It is imperative to verify the identity of an alien in order to avoid an inadvertent release of an alien from ERO custody. The Field Office accepting the bond and the field office releasing the alien identifies the alien by name, alien registration number, FBI number, date of birth, country of citizenship, etc.

A. Accepting Office

All ERO offices that accept bonds must service the public from 9:00 a.m. to 3:00 p.m. local time.

The following persons can post a bond:

- U.S. Citizens
- Lawful Permanent Residents
- Lawfully admitted nonimmigrants (visa holders)
- Aliens released on an OSUP
- Aliens placed in removal proceedings; deferred action, stays of removal, etc.
- Authorized surety companies and their agents
- Foreign nationals

1. When an alien who is in violation of the INA appears in order to post a bond:
 - a. Place the alien in removal proceedings.
 - b. Once served with the *Notice to Appear*, Form I-862, the alien may post the bond.
2. If an alien subject to a *Final Order of Removal* appears in order to post a bond, take the alien into custody and have custody status determined by the Field Office Director.
 - a. If you plan to release an alien subject to a *Final Order of Removal* who appeared in order to post a bond, issue an Order of Supervision with or without an Order of Supervision Bond. Discuss the case with your supervisor.

Note: The cash bond obligor usually completes the Bond Worksheet (see Appendix 8). The Bond Worksheet is a useful reference guide, but is not needed for eBONDS processing because the eBONDS program is self-explanatory.

3. After the obligor completes and submits the Bond Worksheet:
 - a. Review Bond Worksheet for completeness.
 - b. Verify the identity of the obligor (valid Government-issued photo identification passport, military ID, LPR card, driver's license, etc.).
 - c. Verify the physical address of the obligor (e.g., zip code on USPS website).
4. Create a Bond Eligibility Request in eBONDS. Follow the *EARM Participant Workbook for eBONDS* instructions posted in Virtual University (VU). Log into VU and search for the *EARM Participant Workbook for eBONDS*. Send the Bond Eligibility Request to the DCO controlling the A-file for verification.
5. The individual or a corporation must pay in cash (i.e., currency, money order, certified check, or cashier's check). On all bonds over \$10,000, the only accepted methods of payment are cashier's or certified checks.
6. Checks and money orders should be payable to "US Department of Homeland Security" or "Immigration and Customs Enforcement." However, if an obligor presents a check or money order that contains an abbreviation (such as ICE) or a spelling error, the Field Office may accept the check since Treasury will process it for ICE.
7. If the alien is in the custody of an accepting office, arrange for the alien's release according to established local procedures. Otherwise, forward the bond documents to the appropriate field office to release the alien.
8. Upon bond posting completion, release the alien from custody in a timely manner in a location that is safe and where public transportation is available.

B. Releasing Office

1. Verify Bond Eligibility Request. Review the following information and documents. Verify that the alien is eligible to be released on a bond:
 - Alien information and bond amount;
 - Record of deportable/inadmissible alien (Form I-213)
 - Notice of Custody Determination (Form I-286)
2. If the alien appealed the custody determination, retrieve IJ bond redetermination from "PLAnet" and verify appeal status. If unable to retrieve a copy of the custody redetermination or appeal, contact OCC immediately.
3. Once the bond is posted, check with your FOD or designee regarding approval for releasing the alien.

4. Release the alien from custody in a timely manner in a safe location and where public transportation is available.
5. If the alien cannot be released upon posting of the bond, release the alien as soon as practicable.
6. Coordinate release of the alien with all appropriate parties identified, including the detention facility, the field office(s), obligor, and alien.
7. If the alien cannot be released within 24 hours after the bond is posted, notify HQ BMU immediately.

C. Database Updates

1. The Field Office **accepting** the bond is responsible for entering bond data in EARM.
 - a. On the BOND screen, enter the:
 - Amount deposited (BOND-AMT-POSTED)
 - Type of bond
 - Bond number
 - Posting date
 - Obligor's name and address
 - b. Review the comments section for completeness of information related to posting of the bond (e.g., bond accepted at Docket Control Office (DCO) ...; documents forwarded to DCO ..., etc.).
2. The field office **releasing** the alien is responsible for reviewing the data entered in EARM.
 - a. Also review the comments entered in EARM (e.g., unable to release alien because...; Field Office was notified because....).
 - b. The DCO sets up “call up” and monitors cases every month.

D. Quality Control

FODs or designees have overall responsibility for bond quality assurance. However, everyone involved with bond processing is responsible for checking for completeness and accuracy of a bond before it is posted. This includes:

- SDDOs
- Detention and Deportation Officers

- DOs
- Immigration Enforcement Agents
- Enforcement and Removal Assistants
- Bond Control Specialists

APPENDIX 4: Immigration Bond (Sample)

DEPARTMENT OF HOMELAND SECURITY U.S. Immigration and Customs Enforcement

IMMIGRATION BOND

OMB No. 1653-0022; Expires 06/30/2015

INSTRUCTIONS

(READ INSTRUCTIONS CAREFULLY)

This bond is posted as security for performance and fulfillment of the bonded alien's obligations to the government. An acceptable surety company or an entity or individual who deposits United States bonds, notes, or cash may execute the bond as surety. The surety is the obligor; the bonded alien is the principal; and DHS is the beneficiary of all bonds it authorizes. The obligor guarantees the performance of the conditions of the bond. The bond's guaranty is secured by the amount of the bond. An acceptable surety company is one that appears on the current Treasury Department Circular 570 as a company holding the requisite certificate of authority to act as a surety on Federal bonds. An agent of an acceptable surety company may execute the bond only if the agent attaches to the bond a currently valid power of attorney showing the authority of the agent to act for the surety company. Powers of Attorney do not have official form numbers. They differ from state to state and from company to company. Any agent of an acceptable surety company is a co-obligor on this bond, and he/she shall sign as a co-obligor in paragraph D. Failure of an agent to sign as co-obligor shall result in rejection of the bond. A co-obligor shall be jointly and severally liable with the surety company for any breach of this bond (i.e., the liability of a co-obligor is in addition to, not instead of, that of the obligor). DHS may refuse to accept any bond to the extent permitted by law.

Obligors and co-obligors (if any) shall state their full name and address in Paragraph A, and shall sign the bond where indicated in Paragraph D. Either the obligor or co-obligor, or both, may be corporate entities. In addition, an obligor who deposits United States bonds, notes, or cash must deposit the requisite security and execute the appropriate Power of Attorney (i.e., either Paragraph H or I). This deposit and execution may be made before two officers or employees of the Department of Homeland Security ("DHS") who have been authorized to administer oaths pursuant to 8 U.S.C. 1357, and who shall sign as witnesses in Paragraph J. A notary public may witness the obligor's signature in either Paragraph H or I by affixing his/her notarial seal where indicated and showing the date his/her commission expires. No seal is required when officers or employees of the DHS witness the transaction. When a notary public witnesses the obligor's signature, DHS witnesses must still acknowledge receipt of the security for the bond in Paragraph J.

Only the owner of record may deposit United States bonds or notes. Such bonds or notes must be negotiable and not redeemable within one year of the date of the deposit. Any charges made by the depository for accepting United States bonds or notes must be borne by the alien or the owner of the security.

PRIVACY ACT STATEMENT

Authority and Purpose: The Immigration and Nationality Act, as amended, (8 U.S.C. 1103, 1183, 1226, 1229c, and 1363) authorizes the collection of this information to provide for the posting, maintenance, cancellation, and breach of an immigration surety bond, and for associated financial management activities, including collection of unpaid monies, reimbursement of the bond principal, and the calculation, payment, and reporting of interest. The Internal Revenue Code (26 U.S.C. 6109) and Executive Order 9397 authorize the collection of the Social Security number (SSN).

Disclosure: Furnishing this information is voluntary; however, failure to provide it will result in the non-issuance of the immigration bond. For cash bonds, your SSN is necessary to pay interest through the U.S. Treasury Department and to comply with Internal Revenue Service requirements to report interest payments.

Routine Uses: This information will be used by and disclosed to DHS personnel and contractors or other agents who need the information to support the enforcement of immigration laws and the provision of immigration benefits. DHS may share this information with the U.S. Treasury Department to report interest paid to an obligor, and to facilitate payments to or collection of monies owed by an obligor. DHS may also share this information with the U.S. Justice Department and other Federal and State agencies for collection, enforcement, investigatory, or litigation purposes, or as otherwise authorized pursuant to its published Privacy Act system of records notice.

Public Reporting Burden. Under the Paperwork Reduction Act, an agency may not sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is 30 minutes per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Department of Homeland Security, U.S. Immigration and Customs Enforcement, 500 12th Street, S.W., Room 3138, Washington DC 20536. **(Do not mail your completed application to this address.)**

GENERAL TERMS AND CONDITIONS

The express language of the bond shall take precedence over any inconsistent policies or statements. Federal law shall apply to the interpretation of the bond, and its terms shall be strictly construed.

Provided it has the concurrence of the government and it does not change the amount of the bond, an obligor may re-bond the alien at any time and at no expense to the government. Cancellation of a bond issued as a delivery bond shall occur upon any of the following, provided they occur prior to the date of a breach: DHS' taking the alien back into its custody; deportation/exclusion/removal of the bonded alien; grant of permanent residence to the bonded alien; notice of the detention of the bonded alien for 30 or more days pursuant, or prior, to a conviction by local, state, or federal authorities; termination of deportation/removal proceedings (but not administrative closure or stay of such proceedings); death of the bonded alien; voluntary departure by the bonded alien as evidenced by valid proof thereof; or other circumstances as provided by statute or regulation. Cancellation for these reasons is automatic, and any subsequent appearance demand, or attempt to breach the bond, is null and void. The bond will not be canceled solely because the bonded alien is detained for less than 30 days by any local, state, or federal government agency.

DHS shall notify the obligor or co-obligor of a demand to produce the alien, the breach or cancellation of a bond, and any demand for payment of a bond. Notice sent to either the obligor or co-obligor is sufficient to trigger the duties and obligations under this bond. Any obligation or duty imposed on an obligor by this bond applies equally to all co-obligors.

DHS shall send notice of a breach of the bond to the obligor or co-obligor on Form I-323, Notice- Immigration Bond Breached, at the address of record. DHS regulations provide that upon notification of a breach the obligor has 30 days in which to file an administrative appeal or motion for reconsideration of the breach. Any obligor who contests a declaration of breach shall file an administrative appeal seeking review of the declaration of breach. A declaration of breach shall be administratively final if not timely appealed. Judicial review of any administrative declaration of bond breach is pursuant to the Administrative Procedures Act, 5 U.S.C. § 701, et seq.

Demands for amounts due under the terms of this bond will be sent to the obligor or co-obligor after a declaration of breach becomes administratively final. For bonds posted by acceptable surety companies, if the surety company or agent of the surety company does not make payment within 120 days of the demand for payment, DHS may notify the Department of the Treasury of such nonpayment. If payment is not made within 30 days of the date of the demand for payment, interest, penalty, and handling charges as provided by the Debt Collection Act, 31 U.S.C. § 3701, et seq., and the Federal Claims Collection Standards, 31 C.F.R. §§ 900-904, will accrue from the date of the first demand.

(Sample)

DEPARTMENT OF HOMELAND SECURITY U.S. Immigration and Customs Enforcement

IMMIGRATION BOND

OMB No. 1653-0022; Expires 06/30/2015

Power of Attorney Number _____

(Bonded Alien) File No. _____

Bond Receipt No. _____

A. Name of Obligor: _____ Street Address of Obligor: _____ City, State and Zip Code: _____ Telephone: _____ Name of Agent/Co-Obligor (if any-Surety Bonds only): _____ Address (if different from that of Obligor): _____ Telephone: _____ Address to use for notice purposes: ☐ Obligor ☐ Agent ☐ Both If this is executed by a surety company the rate of premium is: _____ % and the amount of premium is: _____ The name and address of the person who executed a written instrument with the surety company requesting it to post bond is: _____	
B. Information about alien for whom bond is furnished: Name: _____ Current Location (i.e., where detained): _____ Date and country of birth: _____ / _____ Nationality: _____ Date, port and means of arrival in the United States: _____ / _____ Alien to reside at: _____ Telephone number at alien's residence: _____	
C. In consideration of the facts recited in paragraph or paragraphs herein numbered _____ and captioned _____ (and in any rider or riders lettered _____ and captioned _____, the above named obligor and the agent acting on its behalf (if any), by subscribing hereto, hereby declare that they are firmly bound unto the United States in the sum of _____ dollars (\$ _____) unless the guarantee of the bond is that the alien shall not become a public charge, the obligor, and the agent acting on its behalf (if any), declare themselves bound in such amount or successive amounts as are prescribed in paragraph (G-2) herein as liquidated damages and not as penalty, which sum is to be paid to the United States immediately upon failure to comply with the terms set forth in any such paragraph or rider. The obligor and agent further agree that any notice to him/her in connection with this bond may be accomplished by mail, directed to him/her at the above address. The obligor acknowledges receipt of a copy of the executed bond and any attached rider or riders specified above.	
D. Signed and sealed this _____ day of _____ (Month/Year) _____ (Signature of Obligor) _____ (Signature of Agent/Co-Obligor (if any))	
E. Bond approved and accepted at _____ on _____ (City and State) _____ (Date) _____ (Field Office Director Printed Name) _____ (Field Office Director Signature)	
F. Surety Company _____ Taxpayer Identification Number _____ Agent-Bonding Company _____ Taxpayer Identification Number _____ Obligors-Cash/Treasury Bond _____ Taxpayer Identification Number _____ 31 U.S.C.A. § 7701(c)(1). The head of each Federal agency require each person doing business with that agency to furnish to that agency such person's taxpayer identifying number. It is the intent of the DHS to use such numbers for purposes of collecting and reporting information on any delinquent accounts arising out of such person's relationship with the Government. The obligor, surety, or agent must furnish its Taxpayer Identification Number (TIN) to DHS. Failure to furnish the TIN may result in a refusal of the bond.	

(Sample)

IMMIGRATION BOND

OMB No. 1653-0022; Expires 06/30/2015

Power of Attorney Number _____

(Bonded Alien) File No. _____

Bond Receipt No. _____

G.

(1) BOND CONDITIONED UPON THE DELIVERY OF AN ALIEN. In consideration of the granting of the application of the above alien for release from custody under a warrant of arrest issued by the Attorney General charging that he/she is unlawfully in the United States, provided there is furnished a suitable bond as authorized by Section 236 and/or Section 241 of the Immigration and Nationality Act, the obligor hereby furnishes such bond with the following conditions if: (1) the alien is released from custody and if the obligor shall cause the alien to be produced or to produce himself/herself to an immigration officer or an immigration judge of the United States, as specified in the appearance notice, upon each and every written request until exclusion/deportation/removal proceedings in his/her case are finally terminated; (2) the said alien is accepted by the DHS for detention or deportation/removal; or (3) the bond is otherwise canceled, this obligation shall terminate. If, however, the obligor fails to surrender the alien in response to a timely demand while the bond remains in effect, the full amount of the bond (see Paragraph C above) becomes due and payable. The obligor further agrees that no order issued by or under the authority of the Attorney General or Secretary of Homeland Security by virtue of which issuance or execution of any order of deportation/removal is or may be deferred, shall be in any manner construed to impair or render void this obligation or any part thereof.

(2) BOND THAT ALIEN SHALL NOT BECOME A PUBLIC CHARGE. In consideration of the granting of the application of the above alien for permission to enter the United States, providing there is furnished a suitable bond that he/she will not become a public charge, the obligor hereby furnishes such bond with the following conditions: if the alien is admitted to the United States and accepts any form of prohibited public assistance the obligor shall pay to the United States or to any State, Territory, county, town, municipality or district thereof, which shall have provided such public assistance any or all charges or expenses arising therefrom up to the total amount of the bond. In the event that the public authority providing the assistance is not authorized to accept reimbursement, the obligor agrees that he/she will promptly pay the actual expenses to the Department of Homeland Security. If the obligor fails to pay all charges or expenses within 30 days after notice to him/her by the DHS that the alien received a form of prohibited public assistance that was considered in making a determination that the alien has become a "public charge" provided that in no event shall the liability of the obligor exceed the total amount of bond, then DHS may cease to do business with the obligor or co-obligor. Any such amounts collected by the DHS, which are not turned over to the public authority providing the assistance will be deposited in the Breached Bond Detention Fund. Notwithstanding any violation of this bond and any payment made pursuant to the terms thereof, this obligation shall remain in full force and effect as to the remainder of the liability of this obligation until the departure, naturalization or death of the alien. It is further agreed that suit to enforce any of the conditions of this bond may be instituted by either United States, or any interested State, Territory, county, town, municipality, or district thereof.

(3) BOND CONDITIONED UPON THE VOLUNTARY DEPARTURE OF AN ALIEN. In consideration of the granting by the Attorney General of an application of the above alien to depart voluntarily from the United States, provided there is furnished a suitable bond as authorized by 8 U.S.C. 1229c the obligor hereby furnishes such bond with the following conditions if: (1) the obligor ensures that the alien departs the United States on or before the date specified in the order granting voluntary departure, and provides probative documentation of the departure within 30 days of the date specified in the order granting voluntary departure; or (2) the alien is actually accepted by the DHS for detention or deportation/removal, this obligation shall terminate. Otherwise the amount of the bond specified in Paragraph C above shall become due and payable.

(4) ORDER OF SUPERVISION BOND. In consideration of the granting of the release of the above alien pursuant to a post removal period order of supervision, the obligor hereby furnishes this guaranty with the condition that: if the alien fully performs all of the conditions of the order of supervision and surrenders for removal, then this obligation shall terminate; but if the alien fails to fully perform all of the conditions of the order of supervision, or the alien fails to surrender for removal, the full amount of this bond shall become due and payable by the obligor.

(Sample)

IMMIGRATION BOND

OMB No. 1653-0022; Expires 06/30/2015

(Bonded Alien) File No. _____

Bond Receipt No. _____

H. Pledge and Power of Attorney for Use When United States Bonds or Notes Are Deposited As Security

I hereby pledge the United States Bond/Notes described in the following schedule as security for the performance and fulfillment of the obligations described in paragraph C above in accordance with 6 U.S.C. 15, 31 CFR part 225, and Treasury Department Circular 154. I appoint the Attorney General of the United States as my attorney to collect, sell, assign, and transfer said United States Bond or Note. In the case of any default in performance of conditions herein, my attorney shall have the power to collect without appraisal or valuation notice, and to apply the proceeds to the satisfaction of any damages, demands, or deficiencies arising from such default. I waive my right to redeem this security.

Title of Bond/Notes	Coupons Attached	Face Value	Interest Rate	Serial No.	Interest Dates

(Affix Seal Here if Required)

(Signature of Person Pledging Bonds or Notes)

I. Pledge and Power of Attorney For Use When Cash Is Deposited as Security

I hereby pledge the amount of _____ (\$ _____)

United States currency as security for the performance and fulfillment of the obligations described in paragraph C above. I appoint the Attorney General of the United States as my attorney to collect or to assign and transfer the said sum of money. I agree that, in case of default in the performance of any of the conditions herein to which I have subscribed, said attorney shall have full power to collect said sum of money or any part thereof or to assign and transfer said sum or any part thereof deemed appropriate by said attorney to the satisfaction of any damages, demands, or deficiencies arising by reason of such default. I further empower said attorney, in the event all the conditions herein to which I have subscribed have been complied with and the bond is canceled, to deliver the said sum of money plus any interest accrued thereon, to me at my risk and expense by such means as said attorney shall select.

(Affix Seal Here if Required)

(Signature of Person Pledging Cash)

J. Before me, within the county/city/parish of _____ in _____.

The above named individual personally appeared before us, acknowledged the execution of the foregoing power of attorney, and deposited the security described above. Witness our hands this _____ day of _____, _____.

(Signature)

(Title)

(Signature)

(Title)

APPENDIX 5: Delivery Bonds

- A. Delivery bonds** are the most common type of immigration bond. They are similar to criminal bail bonds and require the obligor to surrender the alien in response to a demand notice issued by ICE. The **minimum amount** for a delivery bond is \$1,500. 8 U.S.C. § 1126(a)(2)(A).
- B. Multiple demands possible** – Under the terms of Paragraph G.(1) of the bond form, an obligor will be liable for the face amount of the bond if s/he “fails to surrender the alien in response to a timely demand when the bond remains in effect,” and the obligor “shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until exclusion/deportation/removal proceedings in his/her case are finally terminated.”

While demand notices typically are issued after a final order of removal, ICE may, in its discretion, issue more than one demand notice on a delivery bond. For example, if ICE needed to question the alien about some aspect of his immigration status, the field office could issue a demand notice for an “interview” and later issue another demand notice for “removal” once the final order of removal had been issued.

APPENDIX 6: Voluntary Departure (VD) Bonds

A. VD bonds require the alien to leave the United States on or before the voluntary departure date set by the IJ or BIA.

1. When an alien is granted permission to voluntarily depart the United States, the alien must pay his or her own transportation costs, thereby saving the Government the time and expense of removing the alien. 8 C.F.R. § 1240.26 sets forth the rules governing the IJ's authority to grant voluntary departure.
2. Depending on whether the IJ grants voluntary departure prior to completion of removal proceedings or at the completion of removal proceedings, the VD period set by the IJ will usually range from 60 to 120 days. If the alien files an appeal with the BIA, the BIA may reinstate the voluntary departure period in its order.
3. When the IJ grants the alien's request for voluntary departure, the judge also enters an "alternate order of removal." This means that if the alien fails to depart on or before the VD date, the alternate order of removal automatically goes into effect, and the alien can be removed from the United States after the VD date.

B. IJ Order Requiring a VD Bond

1. VD bonds are posted after an IJ issues an order requiring the alien to post a VD bond. The minimum amount of a VD bond is \$500, 8 C.F.R. § 1240.26(c)(3)(i), but on occasion IJs have incorrectly ordered a bond at a lower amount. When that happens, consult an OCC attorney.
2. The alien must post the bond within five business days of the IJ's order granting VD. The Field Office Director may, in his or her discretion, keep the alien in ICE custody until the bond is posted. Additionally, the FOD may accept a bond posted more than five business days after the IJ's order if there are unusual circumstances.
3. If the alien files an appeal of the IJ's order with the BIA, the alien must submit within 30 days of filing the appeal proof of having posted the required VD bond. If the alien fails to submit this proof, the BIA will not reinstate the voluntary departure period in its order. 8 C.F.R. § 1240.26(c)(3)(ii).
4. If the alien does not post a VD bond and evidence of the alien's departure is received, consult 8 C.F.R. § 1240.26(c)(4). If the alien does not post bond and fails to depart, consult an attorney in the OCC before determining whether this is a final order of removal.

C. Conditions Imposed by VD Bonds

1. When a VD bond is posted, paragraph C on the bond form reflects that the bond is conditioned upon the voluntary departure of the alien. Paragraph G.3 of the bond form (voluntary departure) applies.

2. Two conditions must be satisfied to fulfill the conditions of a VD bond: 1) The alien must leave the United States on or before the voluntary departure date set by the court; and 2) the obligor must submit valid proof that the alien did, in fact, timely leave the United States. The obligor must submit this proof within 30 days of the voluntary departure date.
3. Even if the bond obligor fails to submit valid proof of departure, VD bonds can be canceled when electronic records, such as the ATS-P, show that the alien left the United States on or before the VD date. The field office has the discretion to follow up on such cases by checking passenger manifests in TECS before concluding that the alien has departed. However, once the field office accepts the electronic evidence of departure and cancels the bond, the cancelation is final.

D. Valid Proof of Departure

The following, when fully and properly completed, are examples valid evidence of departure:

- Form I-210 – *Voluntary Departure and Verification of Departure*
- Form G-146 – *Nonimmigration Checkout Letter*
- Form I-392 – *Notification of Departure of Alien (Bonded)*
- eVIP Notice from Department of State
- Electronic records, such as ATS-P, showing the alien's departure.

Note: The Field Office has discretion to determine whether to follow up on such evidence by accessing passenger manifests in TECS or seeking additional evidence, as indicated above.

- Plane tickets or travel itineraries, standing alone, do **not** constitute valid proof of departure.

E. Delivery Bond Posted Before VD Bond

Often a delivery bond is posted on behalf of the alien before the IJ orders a VD bond to be posted.

1. Under current version of the bond form (March 2008 and later), both a delivery bond and a VD bond can be in effect at the same time for the same alien.
2. Earlier versions of the bond form, however, may require that the delivery bond be canceled upon the posting of a VD bond. For further guidance on this issue, please review the chart at the end of this appendix. Follow the contract language.

3. If the obligor is an Amwest signatory (bonds posted by G&G on behalf of Farwest, Amwest, and American Surety), cancel the delivery bond when a VD bond is posted for the same alien.

F. Automatic Termination Rule – Applies When Alien Files MTR or PFR

For all immigration cases pending before an immigration judge, the BIA, or U.S. Courts of Appeals on or after January 20, 2009, the “automatic termination” rule applies. 8 C.F.R. § 1240.26.

The automatic termination rule means that:

1. Filing an MTR with the IJ or the BIA within the VD period automatically terminates the VD period and the alternate order of removal goes into effect. In this situation, the VD bond must be canceled and the Field Office should issue Form I-391 to cancel the VD bond.
2. Filing a petition for review (PFR) with a Federal Court of Appeals within the VD time period automatically terminates the VD period and the alternate order of removal goes into effect. In this situation, the VD bond must be canceled and the Field Office should issue Form I-391 to cancel the VD bond.
3. Do not confuse filing an MTR or a PFR with filing an appeal to the BIA. The alien may file an appeal of the IJ’s decision with the BIA without triggering the automatic termination rule.
4. In some cases, an alien files a BIA appeal and subsequently becomes eligible for an additional form of relief, and files a motion to remand while the case is pending at the BIA. This is different from a motion to reopen in that the alien files this motion without waiting for the BIA to rule on the appeal. The filing of this motion has no effect on the outstanding voluntary departure bond. However, if the BIA grants the motion to remand, the voluntary departure bond should be canceled.

APPENDIX 7: Order of Supervision (OSUP) Bonds

When ICE issues an OSUP (Form I-220B) to an alien, it may also require the alien to post an OSUP bond.

The bond is conditioned on the alien complying with the terms of the OSUP:

1. If the alien violates a material term of the OSUP, the bond is breached. Ensure that Form I-352 contains the following section “C”: “Bond conditioned upon compliance with an alien’s Order of Supervision, Form I-220B attached.”
2. Often, an OSUP bond is posted after a final order of removal has been entered and ICE is waiting for travel papers or other documents so that the alien may be removed. See 8 C.F.R. § 241.4 & 241.5.
3. Exercise sound judgment in determining whether a condition of the OSUP bond has been violated. Remember that the applicable breach standard is whether the alien “substantially” violated a term in the OSUP bond.
4. Delivery bonds cannot be converted into OSUP bonds. When it is appropriate to require the alien to post an OSUP bond, any pre-existing delivery bond should be canceled. A new OSUP bond must be posted.
5. If an alien is already on a delivery bond and is placed on an OSUP without an OSUP bond, the delivery bond should remain in effect. This should be rare, as persons released on OSUP are usually first taken into custody and once an alien is taken into custody, any delivery bond should be canceled.

APPENDIX 8: Bond Worksheet (Sample)

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT BOND WORKSHEET

DETAINED ALIEN INFORMATION INFORMACION DEL DETENIDO

Alien "A" File Number: _____ Name: _____

Date and Country of Birth: _____ / _____
(Fecha y Pais de Nacimiento)

Date, Place and Manner of Entry: _____ / _____ / _____
(Fecha, Lugar y Forma de Entrada)

U.S. Address: _____
(Direccion en los EEUU)

Phone: _____ Bond Amount _____
(Numero de Telephone) (Cantidad de Fianza)

OBLIGOR INFORMATION INFORMACION DEL FIADOR

Name: _____ Social Security Number: _____
(Nombre) (Numero de Seguro Social)

Address and Telephone: _____ / _____
(Direccion y Telefono)

Status in the United States: ☐ U.S. Citizen ☐ Legal Permanent Resident or _____
(Estado Del Fiador) (Cudadano) (Residente Permanente o')

Government Issued ID and Number: _____
(Forma de Identification y numero)

Message for Detainee:

(Mensaje para el Detenido)

This section for DHS/ICE Use Only (Para Uso De DHS/ICE – No Escriba abajo de Esta Arca)

☐ Cash	\$10.00 x _____	= \$ _____	
	\$20.00 x _____	= \$ _____	
	\$50.00 x _____	= \$ _____	
	\$100.00 x _____	= \$ _____	
			TOTAL \$ _____

☐ Cashier's Check	_____	\$ _____
Bank Name		Amount

Serial # _____

U.S. Postal Money Order _____

Amount / Serial Number

FCO: _____ POC: _____ Phone: _____ Fax: _____
Address: _____ Time of Contact: _____
Person Taking Bond: _____ Officer: _____

APPENDIX 9: Notice to Cash Bond Obligors: IRS Backup Withholding Rules

(Sample)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

NOTICE TO CASH BOND OBLIGORS IRS "BACKUP WITHHOLDING" RULES

A "cash bond obligor" is the person who has paid the money to post an immigration bond. By law, immigration cash bonds can earn simple interest at the rate of 3% per year. ICE calculates interest payment and possible backup withholding after (1) the cash bond is canceled or breached and (2) the obligor submits INS Form W-9 or W-8BEN.

In certain circumstances, U.S. Immigration and Customs Enforcement (ICE) maybe required by the Internal Revenue Service (IRS) to withhold tax from some of the interest payable to you as a cash bond obligor. This requirement is based on IRS backup withholding rules. To assist DHS in determining whether some of the interest must be withheld, please complete and return to ICE either IRS Form W-9 or IRS Form W-8BEN, based on the instructions below. ICE will use the information you provide to determine whether or not you are subject to the IRS backup withholding rules.

Consequences of not returning the IRS Form: If you fail to return the appropriate IRS form, ICE may withhold tax at a rate prescribed in IRS rules based on your apparent status as a citizen, resident, or non-resident alien and on information provided, such as your address, to us during the immigration bond process. If ICE does not have a valid taxpayer identification number for you, and it appears you are a U.S. citizen or lawful permanent resident, ICE may withhold 28% from interest payments made to you that equal or exceed \$600.00 within a calendar year. If it appears that you are a non-resident alien, federal backup withholding will be deducted at the rate of 30% on any interest payments made.

INSTRUCTIONS:

- If you are a U.S. citizen or lawful permanent resident, please complete Form W-9.
- If you are a non-resident alien, please complete Form W-8BEN.
- You may obtain Form W-9 or Form W-8BEN from the IRS website: www.irs.gov. A Spanish version of Form W-9 and its instructions are available on the IRS website under the "Español" link.
- If you have questions about how to fill out Form W-9 or Form W-8BEN, you may call the IRS Toll Free at 1-800-829-1040.
- After completing the appropriate form, please send it to:

Burlington Finance Center
U.S. Immigration and Customs Enforcement
P.O. Box 5000
Williston, VT 05495-5000
Attn: Bonds Branch

APPENDIX 10: OTCnet Scanner Processing of Cash Bond Deposits

A. OTCnet check scanning satisfies Treasury's mandate that all government deposits be made electronically by 2013. Comprehensive training on using OTCnet is available on Treasury's website at: (b)(7)(E)

B. PROCEDURES:

1. Log into OTCnet – select Check Processing Tab.
2. Select Check Scan. You will then see a white box with the message “Automated terminal detection in progress...”
3. On the right-hand side of the screen, under “Processing Method,” use drop down menus to select “Back Office” and under “Item Type” select “Non-Personal.”
4. Click Star Scan under “Scan Controls.”
5. Insert check to scan it.
6. Insert one check at a time, face up, with the MICR line (the check tightly against the right side of the scanner).
 - MICR stands for Magnetic Ink Character Recognition
 - The MICR line is the line of numbers at the bottom of checks that includes the account number and routing number. Scanner will stamp the check and a green light will briefly appear if the scan was successful
7. Rescan the check if the scan was not successful. Manually key MICR line if necessary.
8. When the check has been scanned, an image of the check will appear on the screen. Click the arrow button to view the back of the check.
9. Enter the amount of the check, the deposit number and the bond number.
 - Only one deposit number should be used throughout the day.
 - Click save and repeat steps for each check.
 - Note: I-246 deposits are included in deposits.
 - Bond number should be in this format: SNAC123456.
10. At the end of the day, all batches scanned that day must be closed and approved. They will not be sent to Treasury unless they are closed and approved. To Close/Approve a batch of checks:

- Click the “Check Processing” tab and then click “Batch Management.”
- Under “Cashier ID,” enter the ID/OTCnet user ID of the person who created the batch & under “Batch Status,” click the box for “OPEN” batches.
- Click ENTER – This will bring up all batches for this user that are in OPEN status.
- Select the batch by clicking on the blue hyperlink that appears under Batch ID.
- Enter the Batch Control Count (number of checks) and Batch Control Amount (amount of checks scanned in batch) and then click Balance button.
- A pop-up box will appear asking if you want to “CLOSE THE BATCH” – click “OK.”
- Print Batch Summary Report (NEW) at the bottom of the page (CTL + P).
- Once printed, click “Confirm Report Print to Approve” button.
- Click “Return to Batch Summary” to approve other batches.

11. Print the SF-215 Report.

- You may print a SF-215 Report after 9:30 EST the next business day after the batches were scanned & closed.
- All batches that were closed the previous day will appear on the SF-215 as one “deposit.”
- The G-254 will be completed as usual and contain all of the batches that were prepared and closed the previous day.
- On the OTCnet home screen, click on the Reports tab and select the “215 Deposit Ticket Report.”
- Under “Start Date,” enter current date.
- Under “Report Format,” select HTML from drop down menu.
- Under “OTC Endpoint,” select FOD.

12. Once the deposit has been completely processed, send to FINOPS-BURLINGTON the G-254, SF-215, and the Batch Summary.

13. In the event that your OTCnet check scanner is unable to process your deposit within the required timeframes established in the Treasury Financial Manual, Title 6, Chapter 8000, Section 8030.20, deposit receipts totaling **\$5,000** or more on the **same day** received prior to depositary cutoff time.

14. Collections totaling **less than \$5,000** may be accumulated and deposited when the total reaches \$5,000. However, make deposits by Thursday of each week, regardless of the amount accumulated, except in extremely remote Field Offices.

15. Make all non-OTCnet scanner deposits or mail-in deposits to **U.S. Bank**.

16. Each deposit should be accompanied by and **OTCnet Deposit Ticket** created under the Deposit Processing tab in OTCnet.

17. Deposits should be enclosed in a **tamper-proof bag** and placed inside another mailing envelope or box. If you are depositing cash, cash deposits (or a mixture of cash and checks) may be sent via Registered Mail. Postal regulations require that the full value of the cash being shipped be declared and insured.

18. Mail USPS deposits to:

U.S. Bank
Cleveland Cash Vault Mail-In TGA P.O. Box 89455
Cleveland, OH 44101

19. Deposits containing checks only may be sent via FedEx or UPS to:

U.S. Bank
Cleveland Cash Vault Mail-In TGA CN-OH-MSCL
1300 E 9th St, Lower Level
Cleveland, OH 44114

20. You may call the **Government Customer Service Unit** for any questions related to OTCnet confirmation, return items or processing issues at 314-425-(b)(7)(E) You will need to provide the following information to your OTCnet coordinator:

Routing number: (b)(7)(E)

Account number:

21. You may also contact the **OTCnet Helpdesk** at 866-945-(b)(7)(E)

APPENDIX 11: Notice – Immigration Bond Canceled (Sample)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

NOTICE - IMMIGRATION BOND CANCELLED

O
B
L
I
G
O
R

Alien File No.	_____
Cancellation Notice Date	_____
IMMIGRATION BOND	
Bond Type:	☐ Cash ☐ U.S. Bonds ☐ Surety
Bond Post Date	_____
Bond Receipt No.	_____
Amount	_____
Alien's Name	_____

The conditions of the above-described immigration bond appearing to have been satisfied, the bond is canceled. Any deposit of cash or U.S. bonds will be refunded to you upon receipt of proper documentation. Please comply with these instructions to complete your application. Inquiries regarding this form or your deposit should be addressed to the Department of Homeland Security Debt Management Center (DMC) at the address below.

SAVE THIS FORM. You must submit a COPY of this Form I-391 along with the ORIGINAL Form I-305, Receipt of DHS Official - U.S. Cash Accepted as Security on Immigration Bond (Delivery Confirmation recommended) to: Department of Homeland Security, Debt Management Center, P.O. Box 5000, Williston, VT 05495-5000. If you have lost your original Form I-305 you will be given an opportunity to submit an Original notarized Form I-395 Affidavit in Lieu of Lost Receipt.

If you wish to designate another person to receive the deposit on your behalf, you must complete a Designation of Attorney in Fact, Form I-312, designating that person and include the completed original notarized form in your application to the DMC.

If your address has changed you must furnish notice of the change of address to Department of Homeland Security, Debt Management Center, P.O. Box 5000, Williston, VT 05495-5000.

_____	_____
Authorized DHS Signature	Print Name/Title

You may use a copy of this form to change your address. Complete the information below and mail the Completed form to the above address.

My address has changed. Please send all further correspondence to:

Street Address _____ City or Town, State _____ Zip Code _____

Signature of Obligor _____ Date _____

APPENDIX 12: Final Orders of Removal

1. Under 8 C.F.R. § 1241.1, an Order of Removal issued by an IJ becomes final when the:
 - Alien does not attend the IJ hearing, and the IJ therefore issues the order in absentia.
 - Alien attends the hearing, is ordered removed, and waives appeal of the IJ's decision.
 - Alien is ordered removed by the IJ, fails to file a timely appeal (30 calendar days after the mailing of a written decision, the rendering of an oral decision, or the service of a summary decision, 8 C.F.R. § 1240.15).
 - BIA dismisses the appeal. Similarly, if the IJ certifies the removal order to the BIA, then it becomes final upon the date of the BIA's decision on removal.
 - Alien overstays the VD period granted by the IJ or the BIA.
 - IJ grants an alternate order of removal in connection with the grant of VD, and the alien fails to post a required VD bond within five business days of the IJ's decision, and subsequently does not depart within 25 days of the order. See 8 C.F.R. 1240.6(c)(4)(i).
 - Alien files an appeal with the BIA after the IJ grants VD, and the BIA orders removal or the alien overstays any VD period granted or reinstated by the BIA.
 - BIA dismisses alien's appeal without reinstating VD.
2. For in absentia orders, if an alien files a motion to reopen or reconsider (MTR) with the IJ or the BIA, the removal order is "stayed." For all other removal orders, an MTR will not stay the execution of any decision made in the case unless either the IJ or the BIA grants a stay.
3. If an alien files a PFR with a U.S. Court of Appeals and that court grants a stay of the removal proceedings, the alien cannot be removed even though the order of removal is administratively final. If the Court of Appeals does not grant a stay, the deportation officer should consult an OCC attorney before determining whether it is appropriate to proceed with removal.

APPENDIX 13: Completing and Sending Demand Notices (Form I-340)

1. Review Part A of Form I-352 to determine the obligor(s).
 - a. For surety bonds, two obligors are listed: the surety company and the agent.
 - b. For cash bonds, one obligor is listed: the person or organization that funded the bond.
2. Determine whether demand notices need to be sent to more than one obligor.
 - a. Part A contains three boxes: "Obligor," "Agent," and "Both."
 - b. When the "Both" box on Form I-352 is checked, send demand and breach notices to both the surety and the agent.
 - c. If the agent is out of business, send the demand notice to the surety regardless of which box is checked.
3. Determine the current address for the obligor(s).
 - a. Because the Form I-352 is sometimes completed years before a demand notice is sent, do not rely on the address on the bond form.
 - b. Form I-333, "Obligor Change of Address," may be used by obligors to notify ICE of a new address. Check for new addresses before sending notices.
 - c. For cash bond obligors, review the A-file and check BMIS for the obligor's current address.
 - d. For surety bond obligors, check BMIS for the obligors' current addresses. If you are unsure of the surety or agent's current address, check with FinOps-Burlington.
 - e. If a certified mail receipt comes back as "Returned to Sender," you must take further action to try to deliver a copy of the demand notice to the obligor. See Appendix 14 for details.
4. Select an appropriate date to use as the surrender date.
 - a. Set a date that is at least 10 business days after the date the demand issue was issued. As a best practice, give the obligor at least 30 calendar days to surrender the alien.
5. Include the purpose for issuing the demand notice:
 - **"Removal"** - the alien is subject to a final order of removal
 - **"Interview"** - you need to ask the alien immigration status questions

- **“Custody”** – you need to take the alien into custody
6. Complete a **“Questionnaire and Worksheet”** (Form I-340A) to send with the demand notice for bonds posted by G&G when it serves as the agent for American Surety Company.
 - a. Review the A-file to determine the alien's last known address (current address). Do not rely solely on the alien's address on the bond form as this address may be out of date. If you cannot tell which address is the most current, you may include more than one address on Form I-340A.
 - b. Include a photograph of the alien on Form I-340A if a photograph is available.
 - c. Review the A-file to determine whether additional charges were added to the Notice to Appear (Form I-261). If so, send a copy of Form I-261 to the surety and G&G with the demand notice. Complete the section of the Questionnaire and Worksheet that addresses amendments to the Notice to Appear.
 - d. Send the Questionnaire and Worksheet to the surety and agent with the demand notice. Include copies of the Questionnaire and Worksheet in the A-file. Be sure to date the Questionnaire and Worksheet to establish it was sent with the demand notice of the same date.
 7. Send all demand notices by **certified mail**. Either print or affix the certified mail receipt number on the bottom of the demand notice (I-340) & staple “white” certified mail receipt to the copy of the demand notice filed in the A-file. When the certified mail receipt (“greenie”) is received confirming delivery to the obligor, staple the “greenie” to the demand notice in the A-File.

Note: Most breach rescissions are required because of errors made in issuing demand notices.

If you have any questions, please ask your supervisor, BCS, or the BMU for additional guidance. An annotated copy of Form I-340 follows to show you how to fill out the form.

When "notice to both" box checked on bond form, send I-340 to surety & agent (avoid cc: on same document)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

Date & A#

(Sample)

NOTICE TO OBLIGOR TO DELIVER ALIEN

Date:

- ☐ To Obligor
☐ To Alien

File Number:

Name(s) of Alien(s):

Address of Obligor

To Obligor:

Under the terms of the Delivery Bond you posted for the above alien(s), Immigration and Customs Enforcement (ICE) is making a demand upon you to deliver or cause to appear the above alien(s) at:

Date: 00/00/0000

Date

Place:

Place to report

Time:

Time

Purpose:

Proper Purpose

Warning: Failure to deliver or cause the appearance of the alien(s) in accordance with this demand may result in A DECLARATION OF A BREACH OF BOND, its forfeiture to the government, and a warrant for the arrest of the alien may be issued.

DHS official (mailer) Date/Method

FOD's Designee →

Name & Signature of

Authorized DHS Official
CERTIFICATE OF SERVICE

This notice was served on the obligor by me on _____, in the following manner.

- ☐ In person (Obligor, alien, attorney of record)
☐ By USPS certified mail, returned receipt requested (obligor)
☐ By USPS delivery confirmation (recommended for alien, attorney of record and additional copy to Obligor)
☐ Attached is a list of field offices and their contact information

Obligor/Individual personally served:

Signature: X

Authorized DHS Official

Printed Name: _____

Title: _____

Signature: X _____

Date: _____

ICE Form 1-340 (08/07)

DEPARTMENT OF HOMELAND SECURITY

Staple "white" certified mail receipt and record
certified mail number

(Sample)

U.S. Immigration and Customs Enforcement

Last
Known
Address

QUESTIONNAIRE AND WORKSHEET

This form is to be completed on the basis of information available to the surety company and mailed along with Form 1-340.

ALIEN'S IDENTITY INFORMATION

A. Name: (or any alias) _____

B. A#: _____

C. Alien's last known address _____

D. Photo (if there is a photograph of the alien, attach a copy to this form)

CRIMINAL BACKGROUND/DETENTION

A. Is there any evidence in the file to indicate that the alien has been detained by a penal, mental or other institution, subsequent to posting of bond: ☐ Yes ☐ No If yes, provide information: _____

(1) Dates of detention: _____

(2) Identifying Information:

a. State or Federal index: _____

b. CII#: _____

c. Court Booking #: _____

d. State Dept. Of Correction #: _____

(3) Was detainer (I-247) lodged with any agency:

Check ☐ Yes ☐ No If no, explain why not _____

Detention
Information

Amended
NTA

MISCELLANEOUS ISSUES

A. Has the original OSC/NTA been amended: Check ☐ Yes ☐ No If yes, provide information: _____

(1) Was the obligor advised of the amended and/or additional charges: _____

☐ Yes ☐ No

(2) Date obligor was notified of amended OSC/NTA: _____

I certify as an Officer of ICE, that the information provided on this form was obtained from the alien's administrative file and is correct as of the date of review to the best of my knowledge.

	Date of Review _____	Name and Title _____	
Date →			
		Photo →	
			Attach a copy of photo

APPENDIX 14: Re-sending Demand Notices Returned as Undeliverable

ICE must take **additional, reasonable steps** to deliver a demand notice to an obligor when a demand notice sent by certified mail is returned to sender as undeliverable. This is in accordance with the due process clause of the U.S. Constitution and a court of appeals ruling. *Echavarria v. Pitts*, 641 F.3d 92, 96 (5th Cir. 2011).

When a demand notice is returned as undeliverable, take the following steps to try to deliver the demand notice to the bond obligor:

1. Double check the A-file to make sure the demand notice was sent to the obligor's current address. Thoroughly review the A-file, BMIS, ENFORCE, USCIS, and any other relevant records to determine whether a **more current address** for the obligor can be found.
2. If you find a more recent address for the obligor, send a new demand notice with a new surrender date by **certified mail** to the obligor.
3. If you do not find a more recent address for the obligor, send another demand notice by **regular mail** with a new surrender date. This step is necessary because sometimes the obligor is at the same address, but fails to claim the certified mail.
4. In the **A-file**, place a copy of the envelope by which the regular mail was sent, the date the notice was sent, and who sent it.
5. If a **breach notice** was issued before you realized that the demand notice was not delivered, issue a breach rescission (MTR) and follow the steps above.

APPENDIX 15: Timing for Issuing Form I-323: Notice — Immigration Bond Breached

Bond Type	Timing Requirement	How Breach Date Determined
All bonds covered by the Amwest agreements (Gonzales & Gonzales acting as an agent for Farwest, Amwest, or American Surety)	I-323 must be issued within 180 days of breach event	<u>Delivery bonds</u> — breach date is surrender date specified on Form I-340 <u>VD bonds</u> — breach date is 30th day after date by which alien was to depart

The following information applies to non Amwest signatories (all obligors except Farwest, Amwest, American Surety, and G&G):

Bond Form issued 03/08	No 180-day requirement, but best practice is to promptly issue Form I-323 to assist collection efforts	<u>Delivery bonds</u> — breach date is surrender date specified on Form I-340 <u>VD bonds</u> — breach date is 30th day after date by which alien was to depart
Bond Form issued 4/13/04 (rarely, if ever used)	I-323 must be issued within 180 days of breach date	<u>Delivery bonds</u> — breach date is surrender date specified on Form I-340 <u>VD bonds</u> — breach date is 30th day after date by which alien was to depart
Bond Form issued 06/23/00	I-323 must be issued within 180 days of breach date	<u>Delivery bonds</u> — breach date is surrender date specified on Form I-340 <u>VD bonds</u> — breach date is 30th day after date by which alien was to depart
Bond Form issued 12/08/99	I-323 must be issued within 180 days of breach date	<u>Delivery bonds</u> — breach date is surrender date specified on Form I-340 <u>VD bonds</u> — breach date is 30th day after date by which alien was to depart
Bond Form issued 05/27/97	I-323 must be issued within 180 days of breach date	Breach date is when obligor fails to produce alien as demanded or fails to comply with any other term of the bond
Bond Form issued 06/01/84	No 180-day requirement	No mention of date when breach occurs

APPENDIX 16: Breached Surety Bonds -- Referral to the ICE Chief Financial Officer for Collection

(Sample)

The following claim is being referred to the ICE Chief Financial Officer for collection against:

[_____]

obligor

for breach of immigration bond [_____]

A-Number

in the principal amount of [_____] posted on [_____]

bond dollar mount

date posted

posted for [_____] [_____].

alien's first name

alien's last name

Attached is a copy of a fully completed Form I-323, *Notice - Immigration Bond Breached*. The information contained in Form I-323 is true and correct and is fully supported by copies of valid, executed and delivered ICE documents and other memoranda as contained in the alien's A-file including but not limited to the following:

- Form I-323 with evidence of mailing to obligor(s) checked on Part A of Form I-352 (not more than 180 days after the date of breach when required by terms of the bond form)
- Form I-352 with valid power of attorney attached
- Form I-340 with proof of mailing in accordance with the box checked on Part A of Form I-352, (e.g. Postal Service Form 3811 ("greenie") or website tracking form)

If Form I-340 was not sent within 60 days after the final order of removal, the delay was due to one of the following reasons:

- Based on current BMU procedures, Form I-166 was not sent to bonded alien
- For aged bonds, Form I-166 was mailed to the alien no sooner than 3 days after service of Form I-340
- The A-file contains no evidence that the alien was outside the United States on the delivery date
- The A-file contains no evidence that any of the conditions requiring cancelation of the bond listed in the General Terms and Conditions of Form I-352 exist (e.g., death of the alien)

If the alien was surrendered by an obligor after the demand date specified on Form I-340 but within 90 days of that date, Form I-323 was annotated with the date the alien was surrendered and the percentage of mitigation to which the obligor is entitled.

If the bond was posted by Gonzales & Gonzales on behalf of American Surety, Amwest Surety, or FarWest Surety, the following additional requirements were met:

- Any amended notice to appear was sent to the obligors
- The A-file contains a properly completed "questionnaire & worksheet" containing the alien's photo and the alien's most current address, sent to the obligors with Form I-340
- Form I-340 lists a proper purpose (e.g., removal is not listed as the purpose for demanding the alien's appearance when the order of removal is not final)

The declaration of breach and the information contained in the foregoing forms comply with the most current Bond Management Procedures. Copies of the above forms or other A-file documents, including proof of occurrence or non-occurrence of an event, are available and will be furnished upon request.

I certify that the foregoing statements are true and correct. I further certify that the obligor's breach of the conditions of the bond caused the bond to be due and payable as a valid claim or debt owed to the United States.

Date: _____ Name: _____

Field Office Director

Field Office Location

Signature: _____ Bond Number: _____

This memorandum is an internal operating document of ICE. It is not intended to and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

APPENDIX 17: Notice – Immigration Bond Breached (Delivery Bond) (Sample)

This example
applies to a
Delivery Bond

DEPARTMENT OF HOMELAND SECURITY U.S. Immigration and Customs Enforcement NOTICE - IMMIGRATION BOND BREACHED

Date I-323 sent ☐ FINANCIAL CASUALTY & SURETY, INC. ☐ 3131 Eastside, Suite 600 ☐ Houston, TX 77098 ☐ I ☐ G ☐ O ☐ R	Surrender date on Form I-340	Breach Number <u>SNA-14828</u>
		Alien File Number <u>000 000 000</u>
		Breach Notice Date <u>06/22/2010</u>
		IMMIGRATION BOND
		Bond Type ☐ Cash ☐ U.S. bonds ☒ Surety
Date of Demand Notice (Form I-340)		Bond Post Date <u>07/03/2007</u>
		Bond Receipt No. <u>HOI-S-15692</u>
		Amount <u>\$10,000.00</u>
		Alien's Name <u>Coe, Jane</u>

The condition of the above-described immigration bond having been violated by the above-named alien(s), it has been determined that said bond has been breached on 06/16/2010 for the following reason:

- ☐ Demand was made upon you on 05/16/2010, to deliver the above-named alien(s) at 1717 Zoy St., Harlingen, TX. Your failure to deliver the above-named alien as directed constitutes a substantial violation of the conditions of the bond.
- ☐ On _____ the above-named alien was granted Voluntary Departure, requiring departure from the United States on or before _____. You have failed to submit, within 30 days of the expiration of the voluntary departure period, valid proof that the alien departed the United States on or before the expiration of the voluntary departure period, which constitutes a substantial violation of the conditions of the bond.
- ☐ The above named alien failed to comply with the conditions of the above described order of supervision bond by a breach of the following condition(s) of the bond, to wit: _____
- ☐ The above named alien failed to comply with the conditions of the above described public charge bond by becoming a public charge, to wit: _____
- ☐ The above named alien failed to comply with the conditions of the above described maintenance of Status & Departure bond by a breach of the following condition(s) of the bond, to wit: _____

Any cash or U.S. bonds pledged as security for the above-described bond will be forfeited to the United States, or in the case of a Surety Bond, the surety involved for the full amount of the bond, if this decision is not appealed in accordance with the procedures described below.

You have a right to appeal this decision by completing the enclosed Form I-290B "Notice of Appeal" and filing the form together with the appropriate filing fee and a brief written statement setting forth the reasons and evidence supporting the appeal to the nearest Enforcement and Removal Office (for location information, go to <http://www.ice.dhs.gov/contact/removal/index.htm>) within 30 days from the date of this Notice. If no appeal is filed within the time allowed this decision is final.

Authorized DHS Officer	Bond Control Specialist	<i>Susan Smith</i>
Susan Smith		Signature
Printed Name	Title	

ICE Form I-323 (7/11)

Page 1 of 1

6/22/10 - SENT BY REGULAR MAIL TO FIN. CAS.

Mailing Notation

APPENDIX 18: Notice – Immigration Bond Breached (Voluntary Departure Bond) (Sample)

This example applies to a Voluntary Departure bond

DEPARTMENT OF HOMELAND SECURITY U.S. Immigration and Customs Enforcement NOTICE - IMMIGRATION BOND BREACHED

Date I-323 sent →

Date of IJ's Order →

Breach Date - 30th day after VO date →

VO Date →

Breach Number SNA-14628

Alien File Number 000 000 000

Breach Notice Date 06/22/2010

IMMIGRATION BOND

Bond Type ☐ Cash ☐ U.S. bonds ☒ Surety

Bond Post Date 07/03/2007

Bond Receipt No. BOU-S-15892

Amount \$10,000.00

Alien's Name Jana Doe

O FINANCIAL CASUALTY & SURETY INC.
B 3131 EASTSIDE, SUITE 600
L HOUSTON TX 77098
I
G
O
R

The condition of the above-described immigration bond having been violated by the above-named alien(s), it has been determined that said bond has been breached on 05/16/2010 for the following reason:

☐ Demand was made upon you on _____, to deliver the above-named alien(s) at _____. Your failure to deliver the above-named alien as directed constitutes a substantial violation of the conditions of the bond.

☒ On 01/06/2010 the above-named alien was granted Voluntary Departure, requiring departure from the United States on or before 05/17/2010. You have failed to submit, within 30 days of the expiration of the voluntary departure period, valid proof that the alien departed the United States on or before the expiration of the voluntary departure period, which constitutes a substantial violation of the conditions of the bond.

☐ The above named alien failed to comply with the conditions of the above described order of supervision bond by a breach of the following condition(s) of the bond, to wit:

☐ The above named alien failed to comply with the conditions of the above described public charge bond by becoming a public charge, to wit:

☐ The above named alien failed to comply with the conditions of the above described maintenance of Status & Departure bond by a breach of the following condition(s) of the bond, to wit:

Any cash or U.S. bonds pledged as security for the above-described bond will be forfeited to the United States, or in the case of a Surety Bond, the surety involved for the full amount of the bond, if this decision is not appealed in accordance with the procedures described below.

You have a right to appeal this decision by completing the enclosed Form I-290B "Notice of Appeal" and filing the form together with the appropriate filing fee and a brief written statement setting forth the reasons and evidence supporting the appeal to the nearest Detention and Removal Office (for location information, go to www.ice.dhs.gov/about/ice/contact.htm) within 30 days from the date of this Notice. If no appeal is filed within the time allowed this decision is final.

Authorized DHS Officer
Susan Smith Bond Control Specialist *Susan E. Smith*
Printed Name Title Signature

6/22/10 - sent by regular mail to Financial Casualty/S&S →

Mailing Notation

ICE Form I-323 (06/07)

APPENDIX 19: Notice – Immigration Bond Breached (Order of Supervision Bond) (Sample)

This example applies to a Order of Supervision Bond

DEPARTMENT OF HOMELAND SECURITY U.S. Immigration and Customs Enforcement NOTICE - IMMIGRATION BOND BREACHED

Date I-323 sent

O FINANCIAL CASUALTY & SURETY
B 3131 Eastside, Suite 600
L Houston, TX 77098
I
G
O
R

Breach Date -
Day the OSUP
was violated

Breach Number	SNR-14828
Alien File Number	000 000 000
Breach Notice Date	06/22/2010
IMMIGRATION BOND	
Bond Type	☐ Cash ☐ U.S. bonds ☒ Surety
Bond Post Date	07/03/2007
Bond Receipt No.	RCU-S-15892
Amount	\$10,000.00
Alien's Name	Doe, Jane

The condition of the above-described immigration bond having been violated by the above-named alien(s), it has been determined that said bond has been breached on 06/16/2010 for the following reason:

- ☐ Demand was made upon you on _____, to deliver the above-named alien(s) at _____. Your failure to deliver the above-named alien as directed constitutes a substantial violation of the conditions of the bond.
- ☐ On _____ the above-named alien was granted Voluntary Departure, requiring departure from the United States on or before _____. You have failed to submit, within 30 days of the expiration of the voluntary departure period, valid proof that the alien departed the United States on or before the expiration of the voluntary departure period, which constitutes a substantial violation of the conditions of the bond.
- ☒ The above named alien failed to comply with the conditions of the above described order of supervision bond by a breach of the following condition(s) of the bond, to wit:
Did not remain within State of Texas as required by OSUP para. 1.3
- ☐ The above named alien failed to comply with the conditions of the above described public charge bond by becoming a public charge, to wit:
- ☐ The above named alien failed to comply with the conditions of the above described maintenance of Status & Departure bond by a breach of the following condition(s) of the bond, to wit:

Note the specific
act that violated
OSUP

Any cash or U.S. bonds pledged as security for the above-described bond will be forfeited to the United States, or in the case of a Surety Bond, the surety involved for the full amount of the bond, if this decision is not appealed in accordance with the procedures described below.

You have a right to appeal this decision by completing the enclosed Form I-290B "Notice of Appeal" and filing the form together with the appropriate filing fee and a brief written statement setting forth the reasons and evidence supporting the appeal to the nearest Enforcement and Removal Office (for location information, go to <http://www.ice.gov/contact/info/efo.htm>) within 30 days from the date of this Notice. If no appeal is filed within the time allowed this decision is final.

Authorized DHS Officer	Bond Control Specialist
Susan Smith	<i>Susan Smith</i>
Printed Name	Signature

ICE Form I-323 (7/11)

Page 1 of 1

6/22/10 - SENT BY REGULAR MAIL TO FIN. CAS., *ds*

Mailing Notation

APPENDIX 20: Notice of Bond Breach Reconsideration Decision (Sample)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

NOTICE OF BOND BREACH RECONSIDERATION DECISION

Alien's Name: _____

A-File Number: _____

Date: _____

Surety/Obligor Name and Address

Co-Obligor Name and Address

The ICE Field Office Director on his/her own motion or at the request of the bond obligor has reconsidered the decision declaring the bond breached because:

- ☐ the decision was based upon an incorrect application of law or policy; or
- ☐ the decision was based upon an incorrect assessment of available evidence; or
- ☐ the available evidence has been supplemented by new facts.

Explanation:

In accordance with 8 C.F.R.103.5(a)(5)(i), the motion to reopen or reconsider is granted. The decision declaring the bond breached on form I-323 is rescinded and:

The bond is:

- ☐ Reinstated – The original bond is still in effect.
- ☐ Cancelled – A form (I-391) is attached cancelling the bond.

BREACHED BOND:

Surety/Obligor Name: _____

Agent/Co-Obligor Name: _____

Bond # _____

Date Bond Posted: _____

Breach #: _____

Declaration of Breach Date: _____

A copy of this decision was served on the above addressees by regular mail on the above date.

(Printed Name of Field Office Director)

(Signature of Field Office Director)

(Office)

APPENDIX 21: Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE



Notice of Appeal or Motion Department of Homeland Security U.S. Citizenship and Immigration Services

USCIS
Form I-290B
OMB No. 1615-0095
Expires 01/31/2017

For USCIS Use Only	Returned	Reloc Sent	Receipt	Remarks
	Date / /	Date / /		
	Date / /	Date / /		
	Resubmitted	Reloc Rec'd		
	Date / /	Date / /		
	Date / /	Date / /		

Please see the USCIS Web site at www.uscis.gov/I-290B to view appeal and/or motion eligibility by form type.

► **START HERE** - Type or print in black ink.

Part 1. Information About Petitioner/Applicant

- 1.a. Family Name (Last Name)
- 1.b. Given Name (First Name)
- 1.c. Middle Name
2. Complete Name of Business/Organization (if applicable)
3. Alien Registration Number (A-Number, if applicable)
► A-
4. Receipt Number
5. USCIS ELIS Account Number (if any)

Mailing Address (or Military APO/FPO Address, if applicable)

- 6.a. In Care Of Name
- 6.b. Street Number and Name
- 6.c. Apt. ☐ Ste. ☐ Flr. ☐
- 6.d. City or Town
- 6.e. State 6.f. ZIP Code
- 6.g. Postal Code
- 6.h. Province
- 6.i. Country

Part 1. Information About Petitioner/Applicant

Contact Information

7. Daytime Telephone Number (Area or Country Code) Extension
() -
8. Mobile Telephone Number (if any)
() -
9. E-mail Address (if any)
10. Fax Number (if any)
() -

Part 2. Information About Person/Organization Filing Appeal or Motion on Behalf of Petitioner/Applicant

(Attorney or Board of Immigration Appeals (BIA) Accredited Representative filing appeal or motion on behalf of the petitioner/applicant)

If you are the petitioner or applicant filing an appeal or motion without an attorney or representative accredited by the BIA, skip this part, and proceed to **Part 3**.

1. ☐ I am an attorney or representative accredited by the BIA. (If you check this box, you must attach a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the attorney or representative named on Form G-28.)

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name
3. Complete Name of Business/Organization (if applicable)

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE

Part 2. Information About Person/Organization Filing Appeal or Motion on Behalf of Petitioner/Applicant

4. Daytime Telephone Number Extension
() -
5. Mobile Telephone Number (if any)
() -
6. E-mail Address (if any)
7. Fax Number (if any)
() -

Part 3. Information About the Appeal or Motion

You must check only one box indicating that you are filing an appeal or a motion, not both. If more than one box is selected, your filing will be rejected.

(DO NOT use this form if you are filing an appeal of a denial or a revocation of an approved Form I-130 (Petition for Alien Relative), or a Petition for Widow(er) filed on a Form I-360. Those appeals must be filed with the Board of Immigration Appeals (BIA) using Form EOIR-29.

1. Appeal

- a. ☐ I am filing an **appeal** to the Administrative Appeals Office (AAO). My brief and/or additional evidence is attached.
- b. ☐ I am filing an **appeal** to the AAO. My brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal.
- c. ☐ I am filing an **appeal** to the AAO. No supplemental brief and/or additional evidence will be submitted.

2. Motion

- d. ☐ I am filing a **motion to reopen** a decision. My brief and/or additional evidence is attached.
- e. ☐ I am filing a **motion to reconsider** a decision. My brief is attached.
- f. ☐ I am filing a **motion to reopen and a motion to reconsider a decision**. My brief and/or additional evidence is attached.

3. USCIS Form for Which You Are Filing an Appeal or Motion to Reopen/Reconsider (e.g., I-140, I-360, I-129, I-485, I-601, etc.)

Part 3. Information About the Appeal or Motion

4. Specific Classification Requested (e.g., H-1B, R-1, O-1, EB-1, EB-2, EB-3, etc., if applicable)
5. Date of Adverse Decision
(mm/dd/yyyy) ▶
6. USCIS Office Where Last Decision Issued

Part 4. Basis for the Appeal or Motion

On a separate sheet of paper, you must provide a statement regarding the basis for the appeal or motion. You must include your name and A-Number or USCIS ELIS Account Number on the top of each sheet.

Appeal: Provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed.

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence that establish eligibility at the time the underlying petition or application was filed.

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision.

Part 5. Signature of Person Filing the Appeal/Motion or His or Her Authorized Representative

By signing below, I certify under penalty of perjury under the laws of the United States of America that the information provided on this form, and the documents submitted in support are true and correct.

1.a. Signature

1.b. Family Name (Last Name)

1.c. Given Name (First Name)

1.d. Date of Signature (mm/dd/yyyy) ▶

NOTE: Make sure your appeal or motion is complete before filing.

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE



Instructions for Notice of Appeal or Motion

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-290B
OMB No. 1615-0095
Expires 01/31/2017

What Is the Purpose of Form I-290B?

Form I-290B, Notice of Appeal or Motion, is used to file an appeal or motion to reopen or reconsider certain decisions under the immigration laws.

When Should I Use Form I-290B?

Visit the U.S. Citizenship and Immigration Services (USCIS) Web site at www.uscis.gov/I-290B to view appeal and motion eligibility by form type.

For most appeals and motions, Form I-290B must be filed within 30 calendar days after personal service of the decision, 33 calendar days if the decision was mailed. An appeal relating to a revocation of an immigrant petition must be filed within 15 calendar days after personal service of the decision, 18 calendar days if the decision was mailed. The date of service is normally the date of the decision.

Late filed appeals that do not meet the requirements for a motion to reopen or reconsider will be rejected. Late filed motions may be dismissed, however, a late filed motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and beyond the applicant's/petitioner's control.

Form I-290B may be used in the following circumstances:

1. To file an appeal with the Administrative Appeals Office (AAO); or
2. To file a motion to reconsider a decision (i.e., the AAO, a field office or service center); and/or
3. To file a motion to reopen a decision (i.e., the AAO, a field office or service center), including decisions under the Northwest Immigrant Rights Project (NWIRP) Settlement, or the Special Immigrant Juvenile (SIJ) *Perez-Olano* Settlement Agreement (POSA).

Who May Not File Form I-290B?

1. Per DHS regulations, the beneficiary of a visa petition that is denied or revoked by USCIS MAY NOT file an appeal or a motion of that visa petition. Only a petitioner or applicant may file an appeal or motion. Similarly, an attorney or Board of Immigration Appeals (BIA)-accredited representative MAY NOT file an appeal or motion on the behalf of a beneficiary.
2. A petitioner whose Petition for Alien Relative (Form I-130) or Petition for Widow(er) filed on Form I-360 was denied or was revoked by USCIS MAY NOT use Form I-290B to file an appeal with the BIA. Instead, the petitioner or the petitioner's attorney or BIA-accredited representative must file Form EOIR-29 in accordance with the instructions included in the denial or notice of revocation.
For filing instructions of Form EOIR-29, visit the USCIS Web site at www.uscis.gov/eoir-29 or the Department of Justice Web site at www.justice.gov/eoir/eoirforms/eoir29.pdf.
3. Do not use this form to file an appeal or motion for a Form I-601A (Provisional Unlawful Presence Waiver) or Form I-821D (Consideration of Deferred Action for Childhood Arrivals) denial. There are no appeal or motion rights for Form I-601A or Form I-821D.
4. Do not use this form to appeal a Department of State overseas consular officer's denial of your visa application (i.e., DS-156, DS-156E, DS-156K, DS-117, DS-157, DS-230, or DS-260). For information about visa application denials, please reference the Department of State Web site.
5. Do not use this form to file an appeal on a Special Agricultural Worker (SAW) or Legalization Application. Appeals on these case types must be filed on Form I-694, Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act.

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE

General Instructions

Each appeal or motion form must be properly signed, filed and accompanied by the appropriate filing fee. An appeal or motion is not considered properly filed until it is accepted by USCIS.

Evidence

Motion:

- (a) If you file a motion to reopen, the motion must be accompanied by new facts and/or documentary evidence that establish eligibility at the time of filing the initial petition or application.
- (b) If you file a motion to reconsider, you must provide the citations to the statute, regulation, or precedent decisions that serve(s) as the basis for your motion to reconsider. The motion must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of the decision.
- (c) No additional time will be permitted to submit supplementary arguments or evidence in support of a motion to reopen or reconsider after the Form I-290B has been filed.

Appeals:

1. Brief

You do not need to submit a brief in support of your appeal. If you do submit a brief and/or additional evidence, you may submit these materials at the time of initial filing of Form I-290B or within 30 days of filing.

Any brief and/or additional evidence submitted after the initial filing of Form I-290B must be submitted directly to the AAO at the following address:

USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS2090
Washington, DC 20529-2090

Any brief and additional evidence must specifically reference the appeal for which it is being submitted. If an affected party has filed multiple appeals with the AAO, separate copies of the brief and evidence must be provided for each individual appeal. Failure to do so may result in the return of the brief or evidence to the individual or entity that submitted it and preclude such material from consideration.

If you need more than 30 calendar days to submit a brief, you must make a written request to the AAO within 30 calendar days of filing the appeal. The AAO may grant more time to submit a brief for good cause.

2. Oral Argument

You may request an oral argument before the AAO in Washington, D.C. in a letter attached to Form I-290B. The letter must explain specifically why an oral argument is necessary (i.e., why your argument cannot be adequately addressed in writing). If your request is granted, the AAO will contact you about setting the date and time. The U.S. Government does not furnish interpreters for oral arguments.

Copies. Unless specifically required that an original document be filed with an appeal or motion, a legible photocopy may be submitted. Original documents submitted when not required may remain a part of the record, and will not be automatically returned to you.

Translation. Any document submitted to USCIS with information in a foreign language must be accompanied by a full English language translation. The translator must certify that the English language translation is complete and accurate, and that he or she is competent to translate from the foreign language into English.

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE

How to Fill Out Form I-290B

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach a continuation sheet, indicate the name and Alien Registration Number (A-Number) of the petitioner/applicant, USCIS Electronic Immigration System Account Identifier Number (USCIS ELIS Number), if electronically filed, the Receipt Number of the underlying petition or application, the Item Number to which your answer refers, and date and sign each sheet.
3. Answer all questions fully and accurately. If an item is not applicable, leave it blank.
4. Do not make any changes or amendments to the form. Failure to properly fill out and sign the form will result in a rejection.

Specific Instructions

Form I-290B is divided into Parts 1 through 5. The following information should help you fill out the form.

Part 1. Information About Petitioner/Applicant

Provide information about the individual upon whose behalf the appeal or motion is being filed.

Item Numbers 1.a. - 1.c. Full Name

Provide the full legal name of the petitioner/applicant. If the petitioner/applicant has two last names, include both and use a hyphen (-) between the names, if appropriate.

Item Number 2. Complete Name of Business/Organization, if applicable

Provide the complete name of the business or organization, without abbreviations, if applicable.

Item Number 3. Alien Registration Number (A-Number)

This is the USCIS (or Immigration and Naturalization Service (INS)) file number. It begins with an "A" and can be found on a Permanent Resident Card or on correspondence that has been received from the Department of Homeland Security (DHS) or USCIS. If the person does not have an A-Number, leave this blank.

Item Number 4. Receipt Number

Provide the form receipt number for the petition or application that was denied by USCIS (e.g., EAC, SRC, NSC, NBC (MSC), WAC XXXXXXXXXXXX).

Item Number 5. USCIS ELIS Account Number (if any)

If you have previously filed a benefit request using the USCIS ELIS, provide the USCIS ELIS Account Number you were issued by the system in the space provided. The USCIS ELIS Account Number is not the same as an Alien Registration Number (A-Number). If you do not have an ELIS account, leave this blank.

Item Numbers 6.a. - 6.i. Mailing Address

Provide the petitioner's/applicant's complete mailing address (including military APO/FPO address if applicable).

Item Number 7. Daytime Telephone Number (Country or Area Code)

Provide a telephone number with area code and extension (if any) where you can be reached during the day. If you reside within the United States, provide an area code. If you reside outside the United States, provide a country code.

Item Number 8. Mobile Telephone Number, if any

Provide a mobile telephone number with area code.

Item Number 9. E-mail Address, if any

Provide the petitioner's/applicant's E-mail address.

Item Number 10. Fax Number, if any

Provide a fax number with area code.

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE

Part 2. Information About Person/Organization Filing Appeal or Motion on Behalf of Petitioner/Applicant

If you are the petitioner or applicant filing an appeal or motion without an attorney or representative accredited by the BIA, skip this part, and proceed to Part 3.

NOTE: The Form G-28 must be properly completed with new dates and be properly signed by the petitioner or applicant and attorney or BIA-accredited representative. If the petitioner or applicant wishes, he or she may be represented at no expense to the U.S. Government by an attorney or BIA-accredited representative. If the appeal or motion is filed by an attorney or a BIA-accredited representative without a properly executed Form G-28, it may be rejected or dismissed.

Provide information about the individual or the organization filing the appeal or motion on behalf of the petitioner or applicant.

Item Number 1. Attorney or BIA-Accredited Representative

If you are an attorney or a BIA-accredited representative, you must check the box and attach a new Form G-28 even if you submitted a Form G-28 with the underlying petition/application.

Item Numbers 2.a. - 2.c. Full Name

Provide your full legal name. If you have two last names, include both and use a hyphen (-) between the names, if appropriate.

Item Number 3. Complete Name of Business/Organization, if applicable

Provide the complete name of your business or organization, without abbreviations, if applicable.

Item Number 4. Daytime Telephone Number

Provide a telephone number with area code and extension (if any) where you can be reached during the day.

Item Number 5. Mobile Telephone Number, if any

Provide your mobile telephone number with area code.

Item Number 6. E-mail Address, if any

Provide your E-mail address.

Item Number 7. Fax Number, if any

Provide a fax number with area code.

Part 3. Information About the Appeal or Motion

Provide the following information:

Item Numbers 1 and 2. Appeal or Motion Request (*Select only one box*)

Check a single box from items "a. - f." Do not check more than one box or make any changes to the form.

You must clearly indicate if you are filing an appeal or a motion. The adverse decision will indicate whether you may file an appeal or a motion. Although the adverse decision may indicate that you can file an appeal and a motion, you can only file one or the other using a single Form I-290B. The requirements for motions to reopen and motions to reconsider are located at 8 CFR 103.5. If you file an appeal, the reviewing office will either take favorable action or forward the appeal to the AAO. See 8 CFR 103.3. The reviewing office is the USCIS office that denied the petition or application.

NOTE: An adverse decision from the AAO may not be further **appealed** to the AAO. However, you may file a motion to reopen and/or reconsider an AAO decision to the AAO.

Item Number 3. Form for Which You Are Filing an Appeal, or Motion to Reopen/Reconsider

Provide the form number for the denied petition or application (e.g., Form I-140, Form I-360, Form I-129, Form I-485, Form I-601, etc.). If you use the dropdown menu and the form number is not listed, select "other" in the dropdown menu.

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE

Item Number 4. Specific Classification Requested

Provide the specific classification requested (e.g., H-1B, R-1, O-1, EB-1, EB-2, EB-3, etc., if applicable.) If you use the dropdown menu and the status is not listed, select "other" in the dropdown menu.

Item Number 5. Date of Adverse Decision

Provide the date of the decision that is the basis for your appeal or motion.

Item Number 6. USCIS Office Where Last Decision Was Issued

Provide the name of the office that denied or revoked the petition or application. If you are filing a motion on an adverse AAO decision, the correct office is "Administrative Appeals Office (AAO)". If you are using the dropdown menu and the office name is not listed, select "other" in the drop down menu.

Part 4. Basis for the Appeal or Motion

Write the basis for the appeal or motion on a separate sheet of paper. You must provide your name and A-Number or USCIS ELIS Account Number on the top of each sheet.

Appeal: Provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed.

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition or application was filed.

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions when filed and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision.

Part 5. Signature of Person Filing the Appeal/Motion or His or Her Authorized Representative

You or your legal representative must sign and date Form I-290B. Form G-28, Notice of Entry of Appearance as Attorney or Representative, must be attached if Form I-290B is signed by an attorney or accredited representative.

What Is the Filing Fee?

The filing fee for Form I-290B is \$630. The fee will not be refunded, regardless of the action taken in your case.

Use the following guidelines when you prepare your check or money order for the Form I-290B fee:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and

2. Make the check or money order payable to U.S. Department of Homeland Security.

NOTE: Spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

3. If you live outside the United States, contact the nearest U.S. consulate or embassy for instructions on the method of payment.

Notice to Those Making Payment by Check

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times.

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE

How to Check If the Fees Are Correct

The Form I-290B filing fee is current as of the edition date appearing in the lower left corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit the USCIS Web site at www.uscis.gov, select "FORMS" and check the appropriate fee; or
2. Call the USCIS National Customer Service Center at 1-800-375-5283 and ask for fee information. For TDD (deaf or hard of hearing) call: 1-800-767-1833.

NOTE: The fee will be the same when either an appeal or motion is filed from the denial of a petition or application with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision.

For additional information on fees, fee waivers, and refunds, visit the USCIS Web site at www.uscis.gov.

Fee Waiver

The fee for Form I-290B may be waived under 8 CFR 103.7(c) if the applicant can show an inability to pay and:

1. The appeal or motion is from a denial of an immigration benefit request where the applicant or petitioner was not required to pay a fee; or
2. The fee for the underlying application or petition could have been waived.

If you believe you are eligible for a fee waiver, complete Form I-912, Request for Fee Waiver, (or a written request that complies with 8 CFR 103.7(c)), and submit it and the required evidence of your inability to pay the form fee with this form. You can review the fee waiver guidance at www.uscis.gov.

No fee is required when Form I-290B is filed to appeal a denial of a petition for a special immigrant visa by a Special Immigrant Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan.

Where to File?

File the appeal or motion as indicated on the USCIS Web page Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion at www.uscis.gov/i-290b-addresses.

Form I-290B is not considered received by USCIS unless filed at the proper location.

If you are filing a motion to reopen/reconsider an AAO decision, file the motion with the address as indicated on the chart located at www.uscis.gov/i-290b-addresses.

DO NOT FILE FORM I-290B DIRECTLY WITH THE AAO. Your form will be rejected if you improperly file it.

See the USCIS Web site at www.uscis.gov/I-290B or call the USCIS National Customer Service Center at 1-800-375-5283 for the most current information about where to file this benefit request. For TDD (deaf or hard of hearing) call 1-800-767-1833.

Address Changes

You must inform USCIS of any change of address on Form AR-11 within 10 days of such a move. For information on filing a change of address on Form AR-11 visit the USCIS Web site at www.uscis.gov/AR-11 or contact the USCIS National Customer Service Center at 1-800-375-5283. For TDD (deaf or hard of hearing) call 1-800-767-1833.

NOTE: Do not submit a change of address request to the USCIS Lockbox facilities because the USCIS Lockbox facilities do not process change of address requests.

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE

If you change your address while your appeal is pending, you should also send a written notice of your change of address to the AAO to ensure that you receive the decision. Include the type of case that was denied and any available tracking number (receipt number and/or A-Number).

Mail the notice to:

USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS2090
Washington, DC 20529-2090

If you change your address after you file a motion, the address where you should send your notice depends on where your motion is pending. If your motion has been forwarded to the AAO, send a written notice of your change of address to the address above. If your motion has remained with the office where you submitted it, send the notice to that office. Include the type of case that was denied and any available tracking number (receipt number and/or A-Number).

To find out where your case is currently located, call the USCIS National Customer Service Center number at 1-800-375-5283. For TDD (deaf or hard of hearing) call 1-800-767-1833.

To find out the status of your case, visit the USCIS Web site at <https://egov.uscis.gov/cris/Dashboard/CaseStatus.do>.

Processing Information

An appeal or motion that is not signed or is not accompanied by the proper fee will be dismissed or rejected with a notice that the appeal or motion is deficient. If time permits, you may correct the deficiency and resubmit the appeal or motion.

Once the appeal or motion is accepted, it will be reviewed. If you do not have any standing to file the appeal or motion, or if the decision is not appealable, the appeal or motion will be dismissed or rejected without further review. Further, late filed appeals that do not meet the requirements of a motion to reopen or reconsider will be rejected. Late filed motions may be dismissed.

Decision. You will be notified in writing of any action taken on your appeal or motion.

USCIS Forms and Information

To ensure you are using the latest version of this form, visit the USCIS Web site at www.uscis.gov where you can obtain the latest USCIS forms and immigration-related information. If you do not have internet access, you may order USCIS forms by calling our toll-free number at 1-800-870-3676. You may also obtain forms and information by calling our USCIS National customer Service Center at 1-800-375-5283. For TDD (deaf or hard of hearing) call 1-800-767-1833.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through the USCIS Internet-based system, **InfoPass** (infopass.uscis.gov). To access the system, visit the USCIS Web site. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-290B, we will deny your Form I-290B, and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Notice of Appeal or Motion and Instructions (Form I-290B)

SAMPLE

USCIS Privacy Act Statement

AUTHORITIES: 8 CFR Sections 103.3 and 103.5 authorize USCIS to collect the information and the associated evidence on this benefit application.

PURPOSE: USCIS will use the information you provide on this form to adjudicate appeals or motions on decisions under immigration laws, except for appeals of Form I-130, Petition for Alien Relative and Form I-360, Petition for Amerasian, Widow(er), or special Immigrant, (widow(er) only) denials in which the Board of Immigration Appeals (BIA) has appellate jurisdiction. The information you provide will be used to make a determination on an appeal or a request for a motion.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision or result in denial of your appeal or motion.

ROUTINE USES: The information you provide on this benefit application may be shared with other Federal, State, local, and foreign government agencies and authorized organizations in accordance with approved routine uses, as described in the associated published system of records notices DHS/USCIS-001 - Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 - Benefits Information System and DHS/USCIS-015 - Electronic Immigration System-2 Account and Case Management System of Records which can be found at www.dhs.gov/privacy. The information may also be made available, as appropriate for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 90 minutes per response, including the time for reviewing instructions and completing and submitting the form and 80 minutes for the electronic submission of this request. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave., NW, Washington, DC 20529-2140; OMB No. 1615-0095. Do not mail your completed Form I-290B to this address.

APPENDIX 22: Record of Proceeding (ROP) for Breached Bond Appeals

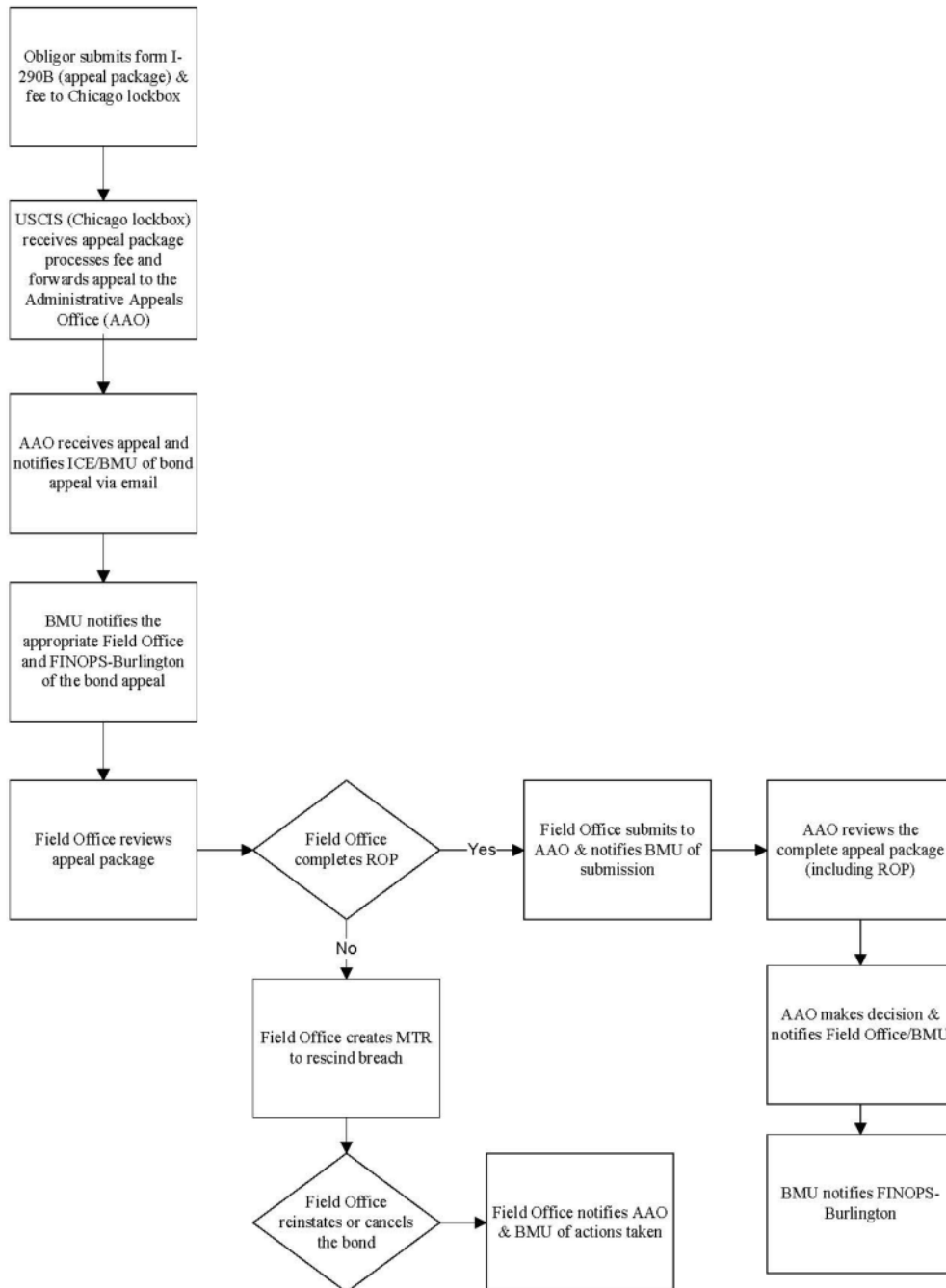
When a bond obligor appeals a bond breach determination to the AAO, the Field Office assembles the **ROP** and forwards it to the AAO for review and decision.

The USCIS Adjudicator's Field Manual, Chapter 10.8(a)(3), Preparing the Appellate Case Record, requires (at a minimum) the following documents to be included in the ROP:

- G-28 Notice of Appearance (submitted with appeal if attorney is representing bond obligor)
- I-290B Notice of Appeal Form (with any brief & other attachments)
- Form I-323 Breach Notice
- Form I-166 (if any)
- Form I-340 Demand Notice
- U.S. Postal Service Form 3811, confirming delivery of the Form I-340 or printout of delivery confirmation from the USPS.com website
- Questionnaire and Worksheet (if in the A-file – not always required)
- Power of Attorney for surety bonds, or Form I-305 for cash bonds
- Form I-352 Immigration Bond
- Appellate decision of the Board of Immigration Appeals (if appeal taken)
- Final Order of the Immigration Judge
- Form I-862 Notice to Appear

The ROP is the administrative record for bond breach appeals. Therefore, also send to the AAO any other documents in the A-File that are relevant to the bond or the breach determination, such as the Form I-286 Notice of Custody Determination, any Petition for Review (PFR) filed with a U.S. Court of Appeals, and any documents showing the alien's last known address (for a bond posted by G&G). You should include in the administrative record any documents that you reviewed or considered when issuing the breach determination.

Bond Appeal Process



APPENDIX 23: Best Practice Regarding Use of Form I-166

I. Best Practice

ERO uses Form I-166, Notice to Deportable Alien, to notify aliens of the date scheduled for their removal and to provide information about how much luggage they may carry and other details of the removal process. **As a result of court rulings, the best practice is not to send Form I-166 to bonded aliens because doing so may invalidate a later breach determination.** Although it is permissible under the terms of the bond contracts and the Amwest settlement agreements to send Form I-166 to the alien after waiting three days once a demand notice has been sent to the bond obligors, the best practice is **not** to send Form I-166 to any alien who was released on a delivery bond.

This guidance applies to bonds which have already been breached since it remains possible that a breach may be rescinded. If a deportation officer determines that there is a need to send Form I-166 to a bonded alien in any particular case, guidance should be sought from the BMU. A field office has discretion to send Form I-166 to a previously bonded alien without consulting the BMU only when the bond already has been canceled.

Note: Regulatory changes are under consideration which, if approved, would make it clear that an alien who is ordered removed has an affirmative obligation to surrender even if not served with Form I-166. If this draft regulation receives final ICE approval, it will be submitted for review to DHS Headquarters and OMB and may thereafter be subject to a public comment process.

II. Rationale Supporting Best Practice – the “Three-Day Rule”

The “Three-Day Rule” states that ICE may **not** send Form I-166 to an alien unless it has waited at least three days after having sent a demand notice to the bond obligors. The purpose of this rule was to give the bond obligors an opportunity to locate the alien before the alien might abscond upon receipt of Form I-166. While it is debatable whether receipt of Form I-166 actually causes aliens to “run,” the Three-Day Rule was included in the terms and conditions of the 1997, 1999, and 2000 bond forms and in the Amwest settlement agreements. For example, paragraph 6 of the 1995 Amwest agreement states:

“INS agrees that if INS intends to notify the alien of the date and time of deportation, such notice will not be mailed to the alien before, and not less than three days after, the demand to produce the alien is mailed to the bond obligor.”

Court decisions have interpreted the language in the bond forms to mean:

If ICE sends a demand notice to the obligors at any time after it has sent Form I-166 to an alien, any breach of that bond cannot be enforced.

It is irrelevant whether the alien actually receives Form I-166. The Form I-166 addressed to the alien can be returned to sender, address unknown, yet the breach of the bond can still not be enforced.

Safety Nat'l Cas. Corp. v. United States Dep't of Homeland Sec., No H-05-cv-2159, 2010 WL 2219162, at *6 (S.D. Tex. May 28, 2010), *aff'd in part*, *AAA Bonding Agency Inc. v. U.S. Dep't of Homeland Sec.*, 447 Fed. App'x 603, 611 (5th Cir. 2011).

Based on the courts' rulings, the best practice is **not** to send Form I-166 to any bonded alien whose bond has not been canceled because doing so may make a breach unenforceable.

APPENDIX 24: Sample Mitigation

Mitigated ___ % by Name/Title Signature/Date Alien Surrendered on Date 	DEPARTMENT OF HOMELAND SECURITY U.S. Immigration and Customs Enforcement NOTICE - IMMIGRATION BOND BREACHED
---	--

Mitigation Annotation

Be sure to send Form I-323 showing mitigation to BFC

MITIGATOR

FINANCIAL CASUALTY & SURETY INC.
3131 EASTSIDE, SUITE 600
HOUSTON TX 77099

Breach Number <u>98A-14829</u>	
Alien File Number <u>000 000 000</u>	
Breach Notice Date <u>06/22/2010</u>	
IMMIGRATION BOND	
Bond Type	☐ Cash ☐ U.S. bonds ☒ Surety
Bond Post Date	<u>07/03/2008</u>
Bond Receipt No.	<u>BOP-S-15892</u>
Amount	<u>\$8,000.00</u>
Alien's Name	<u>John Doe</u>

The condition of the above-described Immigration bond having been violated by the above-named alien(s), I have been determined that said bond has been breached on 04/14/2010 for the following reason:

- ☒ Demand was made upon you on 03/10/2010, to deliver the above-named alien(s) at 1717 Zoy St. Harlingen, TX. Your failure to deliver the above-named alien as directed constitutes a substantial violation of the conditions of the bond.
- ☐ On _____ the above-named alien was granted Voluntary Departure, requiring departure from the United States on or before _____. You have failed to submit, within 30 days of the expiration of the voluntary departure period, valid proof that the alien departed the United States on or before the expiration of the voluntary departure period, which constitutes a substantial violation of the conditions of the bond.
- ☐ The above named alien failed to comply with the conditions of the above described order of supervision bond by a breach of the following condition(s) of the bond, to wit:
- ☐ The above named alien failed to comply with the conditions of the above described public charge bond by becoming a public charge, to wit:
- ☐ The above named alien failed to comply with the conditions of the above described maintenance of Status & Departure bond by a breach of the following condition(s) of the bond, to wit:

Any cash or U.S. bonds pledged as security for the above-described bond will be forfeited to the United States, or in the case of a Surety Bond, the surety involved for the full amount of the bond, if this decision is not appealed in accordance with the procedures described below.

You have a right to appeal this decision by completing the enclosed Form I-290B "Notice of Appeal" and filing the form together with the appropriate filing fee and a brief written statement setting forth the reasons and evidence supporting the appeal to the nearest Detention and Removal Office (for location information, go to www.ice.gov/about/dro/contact.htm) within 30 days from the date of this Notice. If no appeal is filed within the time allowed this decision is final.

Authorized DHS Officer	Bond Control Specialist	
Susan Smith		Signature
Printed Name	Title	

6/22/10 - sent by regular mail to Financial Casualty/SBS

ICE Form I-323 (08/07)

APPENDIX 25: Creating a Manual Bond When eBONDS System is Off Line

If the eBONDS system crashes and is not available electronically:

1. Create a manual bond number log for your office to manually track bonds.
2. Use the following format for bond numbers:

XXX	3-letter Field Office
S/C	Surety or Cash
FY	2-digit Fiscal Year
M	Manual bond
9999	4-digit track number starting with 0001
Example:	LOSC13M0001

3. Manually process the bond by completing the paper version of Form I-352 (and I-305 for a cash bond). Use the bond number from your office's manual bond number log.
4. Fax or email the deposit with the I-352 (and the I-305 for a cash bond) to FINOPS-BURLINGTON.
5. Wait for FINOPS-BURLINGTON to process the bond.
6. Enter the bond in the eBONDS module. Do not submit a Helpdesk ticket.
7. The "eBONDS Admin" user for the "DCO" opens the cash bonds tab and selects the un-posted bond.
8. The eBONDS Admin may need to first create an "Action/Decision" in order to create the un-posted bond.
9. The eBONDS Admin selects "Post bond" from the BMIS Bond Actions.
10. The user links to the posted bond with the manual bond number to the bond from the BMIS Web.

Note: Since the bond was completed on paper, a PDF copy of the I-352 (and I-305 for a cash bond) will not be available electronically in the Bond Documents section. The data from these forms is not needed to perform other bond actions, such as cancelling or breaching the bond.

11. Upload the bond documents into EARM once the system is back on line. The bond will appear just like a bond that was completed on line, but with a bond number entered manually.