

**A GUIDE FOR
HAITIANS IN IMMIGRATION DETENTION**

**HOW TO ASK ICE TO RELEASE YOU FROM
DETENTION AND ALLOW YOU TO STAY IN THE U.S.
UNTIL POST-EARTHQUAKE CONDITIONS IN HAITI
IMPROVE**

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This packet includes:

- **Instructions**
- **Template for Writing Your Letter**
- **Sample Letter**

Part I: Instructions

This packet contains information on how you can ask immigration officials to release you from detention and not deport you to Haiti at this time, based upon sympathetic facts.

You can ask Immigration and Customs Enforcement (ICE) to grant you deferred action and release from detention on an order of supervision. Deferred action and orders of supervision are explained below. The packet provides (1) instructions on how to request deferred action from ICE, (2) a sample letter requesting deferred action, and (3) a template you can use to write your letter.

Asking ICE for deferred action is a last resort. Before you consider writing a request letter to ICE you should consider what other relief from deportation might be available to you. For example, if you already have a final order of removal you should consider whether your case can be reopened before the immigration court. This packet will *not* discuss motions to reopen, asylum, the Convention Against Torture, or other forms of relief from deportation. You should be able to find information about these topics in the law library of the detention center where you are detained.

1. What is deferred action?

ICE is the government agency in charge of prosecuting violations of immigration law, and deporting individuals who have been ordered removed from the United States. ICE has some flexibility in choosing whom they will and will not deport. The power to choose whom to deport is called prosecutorial discretion. “Deferred action” is a type of prosecutorial discretion. It is one of the ways that ICE can use its power to release immigration detainees from detention and to temporarily stop their deportation. You can ask ICE to stop your deportation and to release you by sending them a letter explaining why you should not be deported and attaching supporting documents showing why you should not be deported. If you are granted deferred action, you will continue to have a final order of removal, and you can be deported to Haiti if ICE chooses not to renew your deferred action.

2. What is an order of supervision?

An order of supervision is a document that ICE often gives someone when they are released from detention. It usually requires that you report to an ICE office on a regular basis and also usually requires that you not move outside the state without ICE’s permission. You must tell ICE of any change of address. With an order of supervision, you can apply for a work permit. But having an order of supervision does not give you legal immigration status. You will continue to have a final order of deportation and can be deported to Haiti in the future.

3. Does deferred action or an order of supervision make me “legal”?

If ICE grants you deferred action or releases you from detention on an order of supervision, you will *not* be a legal permanent resident. You will not have permanent immigration status of any kind. **You can still be deported to Haiti in the future.**

However, deferred action or an order of supervision does allow you to apply for employment authorization and a social security card. Employment authorization is not automatically granted if you are approved for deferred action or released from detention on an order of supervision. You would need to fill out an application to get a work permit.

4. What’s different about Haiti?

On April 1, 2011 ICE announced a new policy in response to the tragedy of the 2010 earthquake. *A copy of the April 1 policy is included in this packet.*

The April 1st policy describes how ICE will handle Haitian deportations while conditions are bad in Haiti. The policy requires ICE officials to consider the situation in Haiti before they decide to deport someone to Haiti. The policy tells ICE officials what kind of information should be considered before deciding to deport Haitians. Haitians requesting deferred action should highlight the facts in their case which are recognized by the April 1st policy. Those facts are outlined in *question number ten (10)* below.

5. How long does deferred action or an order of supervision last?

ICE may grant deferred action or an order of supervision for a year at a time, or for a longer or shorter period of time. You can apply to renew your deferred action or order of supervision before it expires. However, ICE can potentially revoke deferred action at any time and deport you.

6. Who can apply for deferred action or release on an order of supervision?

Anyone in the process of being deported from the United States can request deferred action or release on an order of supervision, including people with final orders of removal (deportation).

7. Who decides if I qualify for deferred action or get released from detention?

This decision is completely up to ICE, and courts do not review the decision. ICE has created guidelines for consideration of release from detention in the April 1, 2011 Haiti deportation policy. ICE decides whether applicants qualify for deferred action based on their application letter and the facts in their immigration case.

8. How do you apply for deferred action or release on an order of supervision?

There is no official application form for requesting deferred action or release on an order of supervision. In order to apply you must send a letter to ICE explaining why you should not be deported. You should attach as much evidence as possible to your letter.

When you write your letter it is very important that you are completely honest. When ICE officials consider your request they will check the information you give them with the information in their files. Any inconsistency could prevent you from being granted deferred action.

9. What can my family do to help?

You can write the letter yourself, or you can ask for help from family or friends. Your family and friends can also help you to collect evidence to support your letter.

For more information about how your family and friends can help, see question 12, “What kind of evidence should I include?”

Family and friends who want more information on deportations to Haiti can also go to www.StopHaitiDeportations.org.

10. What should the letter say?

The April 1, 2011 Haitian deportation policy states how ICE will decide whom to deport at this time. The list below suggests information you could include to demonstrate why you should not be deported.

You do not need to include information about all of the bullet points, but you should include as much detail as possible about any of the points that relate to your situation.

Start your letter by writing your **name and A#**.

Specifically request “**deferred action**” and **release from detention under the April 1, 2011 policy**.

Then explain why ICE should grant this request. You should organize your letter so that the most important points come first. For example:

A. Basic Facts about you and your family:

- How long you have lived in the U.S.
- Family members in the United States, especially children
 - How old are your children?
 - Are any of your family members U.S. citizens or lawful permanent residents?

- Whether you were a lawful permanent resident (greencard holder) or had other immigration status
- Brief description of how you came to the United States. If you were a child when you came to the United States, mention that here.
- Brief description of what happened in your deportation case

B. Facts that show why deportation would be hard for your family.

- If you lived with or supported your children or partner before you went to jail
- How will your deportation affect your family's ability to pay for housing, food, medical care, or other basic needs in the U.S.?
- How will your deportation affect your family emotionally?
- Would it be hard for your family if they were to go back to Haiti?

C. Facts that show why being sent to Haiti would be hard for you.

- If you do not have family members in Haiti . . .
 - . . . to pay Haitian police to get you out of jail
 - . . . to bring you food, clean water, or other supplies while you are in a Haitian jail.
- Any medical conditions you might have that would not be treated in Haiti
- Any difficulties you would have speaking Kreyol
- Any difficulties you would have getting a job in Haiti
- Fear of going back to Haiti (and the reasons you are afraid)

D. Facts that show that you are important to your community. For example,

- Your involvement in community organizations
- Your job history, current employment, future job opportunities
- History of paying your taxes
- Your education or your support for your family's education
- Your U.S. military service or that of your immediate family
- Whether you have been a victim of domestic violence, were held or forced to work against your will in the United States, or have been a victim of other violent crimes
 - (If these crimes happened in the United States, you might be eligible for a U-visa or T-visa. These visas are not discussed in this packet, but you should be able to find information about them in the law library of your facility.)
- Your cooperation with police or other law enforcement in the United States
 - Do any government agencies want you in the United States for any reason? For example, to testify at a criminal trial.

E. Facts that show that you are not a threat to the community:

- A brief, honest description of your criminal convictions. ICE will run a criminal background check on you and will be aware of your entire criminal record. If your crimes are minor or non-violent, mention that here.

- The number of years that have passed since your last conviction
- Your age when the convictions occurred, if you were young
- Any evidence of rehabilitation, such as anger management, drug programs, or counseling

This packet also has a template to help you write your letter (Part II) and a sample letter (Part III).

11. Is a letter enough, or should I give them more evidence?

If you can, you should attach documents to your letter that demonstrate the strong facts about your case. While it is always better to have proof of the facts of your case, you should mention all of the important facts in your letter if they apply to you even if you do not have evidence. The supporting evidence is not required, but it will make your application stronger.

12. What kind of evidence should I include?

Here are some examples of documents you might include to show why you should not be deported:

- Letters of support describing how your deportation will cause harm
 - From your family
 - From people in your community
 - From organizations in which you are involved
 - From your boss or co-workers
 - From your church or other religious organizations
- Medical Information
 - Letters from doctors describing your medical conditions or those of your family members
 - Medical records
- Photographs of you with your U.S. citizen family members
- Articles or other information about the conditions in Haiti
- Copies of your birth certificate and the birth certificates of your U.S. citizen family members
- Copies of your social security card and the social security cards of your U.S. citizen family members
- Any other documents that support the points you make in your letter

13. What should I do after I send the letter?

ICE does not have a specific time limit for responding to your letter. There is no rule requiring ICE to inform the applicant of its decision. Sometimes ICE sends a decision by letter, sometimes

they make a phone call, and sometimes no response is given at all. You may want to follow up with your deportation officer if you do not get a response.

Even if you are waiting for a response to your letter, it is important that you keep up with any deadlines in your immigration court case and that you continue to apply for any other relief from deportation that is available to you.

14. Where should I send the letter?

You should give the letter to your deportation officer. You can mail the letter if you cannot deliver it in person. If you have family members who can help you, they can send the letter to your deportation officer by certified mail or FedEx so that you receive a delivery confirmation. You should keep this confirmation as evidence that your letter was received by ICE. If you send your request by mail, you should also try to ask your deportation officer in person whether he or she received the letter.

Make sure to keep a copy of any letters you submit. If you submit documents, you should keep the original documents and give copies to your deportation officer.

In case you send your letter by mail rather than delivering it by hand, here are addresses for some ICE offices. You should put your deportation officer's name on the envelope.

- If you are detained in **Alabama, Arkansas, Louisiana, Mississippi, or Tennessee**, you can send your request to:

U.S. Immigration and Customs Enforcement
New Orleans Field Office
1250 Poydras Suite 325
New Orleans, LA 70113

- If you are detained in **Florida, Puerto Rico, or the U.S. Virgin Islands**, you can send your request to:

U.S. Immigration and Customs Enforcement
Miami Field Office
Krome SPC
18201 SW 12th St
Miami, FL 33194

- If you are detained in **Massachusetts**, you can send your request to:

U.S. Immigration and Customs Enforcement
Boston Field Office
10 New England Executive Park
Burlington, MA 01803

- If you are detained in **New Jersey**, you can send your request to:

U.S. Immigration and Customs Enforcement
Newark Field Office
614 Frelinghuysen Ave., 3rd Floor
Newark, NJ 07112

- If you are detained in **New York City**, or **Dutchess, Nassau, Putnam, Suffolk, Sullivan, Orange, Rockland, Ulster**, or **Westchester counties in New York**, you can send your request to:

U.S. Immigration and Customs Enforcement
New York Field Office
26 Federal Plaza, Room 1105
New York, NY 10278

- If you are detained in **other parts of New York**, you can send your request to:

U.S. Immigration and Customs Enforcement
Buffalo Field Office
130 Delaware Avenue
Buffalo, NY 14202

- If you are detained in **Georgia, North Carolina, or South Carolina**, you can send your request to:

U.S. Immigration and Customs Enforcement
Atlanta Field Office
180 Spring Street SW, Suite 522
Atlanta, GA 30303

- **For other ICE offices, please check:** <http://www.ice.gov/contact/ero/index.htm>.

Part II: Letter Template

(For more details, please see Instructions)

[Date]

Deportation Officer _____

[Deportation Officer Mailing Address] *(See question 14 of Instructions)*

RE: [Your Name and A #]

Request for Deferred Action and Release under the April 1, 2011 ICE Haiti Policy

Dear Deportation Officer _____:

I am writing to request that U.S. Immigration and Customs Enforcement (“ICE”) grant me deferred action or otherwise exercise its prosecutorial discretion to not deport me. I am also asking for ICE to review my case under the April 1, 2011 Haiti Policy and to release me from detention. I believe that I should not be deported because my case meets the criteria for deferred action and for release under the April 1, 2011 Policy for Resumed Removals to Haiti.

[**First**, write about how long you have lived in the U.S. If you came to the U.S. as a child, mention that here. If you were a lawful permanent resident or had other lawful status, mention that too. Include one or two sentences about what happened in your immigration court case, if you had one.]

[**Second**, write about your family in the U.S. State what family members you have in the U.S.—spouse, children, parents, and siblings. If your relatives are U.S. citizens or lawful permanent residents, mention that here. Write the ages of your children if they are under 21.]

[**Third**, explain any medical or mental health problems from which you and/or your family members suffer. State the medical or mental health diagnosis if you know it or describe the problem, and state what medications and treatments you and/or your family member are receiving if you know.]

[**Fourth**, write about what would happen if you are sent back to Haiti. For example,

- How would your deportation be hard for your family?
 - Were you supporting children or other family before you went to jail?
 - How will your deportation affect their ability to pay for housing, food, medical care, or other basic needs?
 - How will your deportation affect your family emotionally?
 - Would it be hard for your family if they were to go back to Haiti with you? For example, if your spouse or child suffers from a medical or mental health condition, will he/she receive treatment, medicine or the care that he/she needs in Haiti? If not, explain that here.
- What would happen to you if you returned to Haiti?

- o If you do not have any family members in Haiti who can pay Haitian police to get you out of jail, mention that here.
 - o Also mention if you do not have any family in Haiti to bring you food, clean water, or other critical supplies while you are in a jail in Haiti.
 - o If you have a medical condition that would not be treated in Haiti, explain that here.
 - o If you do not speak Kreyol, or if you think you would have trouble finding a place to live or a job in Haiti, explain that here.]
- If you are afraid for your safety in Haiti, explain why.

[Fifth, you can write about any other reasons you are important to your community in the U.S. For example,

- o Your U.S. military service or that of your immediate family.
- o Your involvement in community organizations;
- o Your job history, current employment, future job opportunities;
- o History of paying your taxes;
- o Whether you have been a victim of domestic violence, were held or forced to work against your will in the United States, or have been a victim of other violent crimes
- o Any cooperation with law enforcement in the United States (e.g., if a government agency wants you to testify at a criminal trial against someone else).

[Sixth, depending on your situation, you might want to explain BRIEFLY why you are not a danger to your community. For example:

- o If you have convictions for minor or non-violent crimes, you should write that the crimes are minor or non-violent. (Remember that ICE will have your criminal record).
- o Write about any rehabilitation, such as anger management classes, substance abuse programs, or counseling.
- o If your convictions are very old or happened when you were young, explain how you have changed your life since then.]

[Finally, write about the conditions in Haiti. *For example:*]

The devastating conditions in Haiti weigh in favor of granting me deferred action. It is almost two years after the powerful earthquake that destroyed much of Port-au-Prince in January of 2010, and hundreds of thousands of people are still living in camps for the displaced. A cholera epidemic has affected many people and caused thousands of deaths. As you may know, one man who was deported to Haiti, Wildrick T. Guerrier, died after falling ill while in a Haitian jail for 8 days, even though ICE determined he was healthy before he was deported. The conditions in Haiti's jails, where people deported from the United States are held, are life-threatening.

Thank you for your time and consideration of this matter.

Sincerely,

[*Your name and signature*]

January 2, 2012

Deportation Officer Smith
U.S. Immigration and Customs Enforcement
[Address]

RE: John Doe, 012-345-678
Request for Deferred Action, Prosecutorial Discretion, Deferred Action, and
Deprioritization Under the April 1 Haiti Policy

Dear Deportation Officer Smith:

I am writing to request that U.S. Immigration and Customs Enforcement ("ICE") grant me deferred action or otherwise exercise its prosecutorial discretion to not deport me and to release me. In the alternative, I am asking for ICE to deprioritize my deportation under the April 1, 2011 Haiti Policy and to release me. I am the sole supporter for my lawful permanent resident wife and two U.S. citizen children. I have been detained by ICE in Louisiana for 10 months.

I have many strong factors that connect me to the United States. I was paroled into the United States in 1992 after the coup d'état in Haiti in September of 1991 that ousted President Aristide from office. I have worked since 1992 as a mechanic in John's Garage in Little Haiti. In 2000, I met my wife in Miami. She is also from Haiti and is a lawful permanent resident of the United States. My wife gave birth to our two sons in Miami. Before my detention, I was the only person in our house working and making money to support our family. Since I have been in immigration detention, my wife has had to work two jobs and our children have suffered. My kids have not come to see me since I was detained and most days do not get to see their mother because she does not come home from work until the children are in bed.

I have been convicted of several misdemeanors (trespassing, disorderly conduct, DUI) and the felony of grand theft of an automobile. Because of my criminal record, I face detention in life-threatening conditions upon arrival in Haiti. I have no contact with my family in Haiti, and have no idea whether they survived the earthquake in January of 2010. I will have no one to pay the Haitian authorities to release me and no one to bring me food, clean water, and other life-saving supplies while I am in detention.

I believe my case meets the criteria for deferred action and/or deprioritization and release under the April 1, 2011 Haitian policy. I do not pose a danger to national security. Additionally, I have lived in the United States for 19 years. This country has become a home for me and my family. I work in Miami, and my children go to school in Miami.

The devastating conditions in Haiti weigh in favor of granting me deferred action. It is almost two years after the powerful earthquake that destroyed much of Port-au-Prince in January of 2010, and hundreds of thousands of people are still living in camps for the displaced. A cholera epidemic has affected many people and caused thousands of deaths. As you may know, one Haitian deportee, Wildrick T. Guerrier, died after falling ill while in Haitian detention for 8

days, even though ICE determined he was healthy before he was deported. The conditions in Haiti's jails remain life-threatening.

Thank you for your time and consideration of this request.

Sincerely,

John Doe

SAMPLE ONLY DO NOT COPY

Appendix:

Policy for Resumed Removals to Haiti-April 1, 2011

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News Releases

APRIL 1, 2011

Policy for resumed removals to Haiti

Following the tragic January 12, 2010 earthquake in Haiti, U.S. Immigration and Customs Enforcement (ICE) temporarily ceased removing criminal Haitian nationals to Haiti. Pursuant to the U.S. Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), ICE has the presumptive authority to detain aliens with final orders of removal for up to 180 days. After six months, with limited exceptions, continued detention is no longer presumptively lawful and ICE may extend the detention of aliens with final orders of removal only when their removal is significantly likely in the reasonably foreseeable future. The moratorium on removals to Haiti therefore meant that ICE was required to release some detained Haitian nationals with significant criminal records into U.S. communities, which in turn poses a significant threat to the American public. As a result, after a year of suspended removals, the U.S. government made the difficult decision to restart removals of a limited group of Haitian nationals to ensure the safety of U.S. communities.

Going forward, in coordination with the Government of Haiti and the U.S. Department of State, ICE is resuming limited removal of convicted criminal Haitians with final orders of removal. The removal of Haitian nationals will be conducted in a manner that comports with the March 2, 2011 ICE memo entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* which prioritizes the removal of aliens with final orders who pose a threat to public safety. Consistent with that memo, ICE will prioritize the removal of Level 1 and Level 2 offenders. Removals will be guided by that memorandum's Section D, "Prosecutorial Discretion" which focuses on the exercise of sound judgment and discretion in exercising decision making with respect to these priorities. At this time, ICE is not removing non-criminal Haitian nationals (unless they are determined to be a significant national security threat). Haitians who have pending applications for temporary protected status (TPS) are not subject to removal. Individuals who have been convicted of any felony as defined in 8 C.F.R. §244.1 are not eligible for TPS, and, as a result, an application for TPS from such an individual will not prevent removal. ICE also will not remove any Haitian national who has TPS or is otherwise present in the United States in a lawful status.

When prioritizing aliens for removal, ICE will make decisions on individuals to remove through the consideration of adverse factors, such as the severity, number of convictions, and dates since convictions, and balance these against any equities of the Haitian national, such as duration of residence in the United States, family ties, or significant medical issues. In certain cases, where there are compelling medical, humanitarian, or other relevant factors, supervised release or other alternatives to detention programs may be appropriate. ICE will minimize transferring Haitian nationals to remote facilities to the greatest degree possible, and, where possible, detain individuals in facilities close to family and representation, except to facilitate the actual removal process.

ICE and the Department of State have been working with the Government of Haiti and other key partners to resume removals in as safe, humane, and minimally disruptive a manner as possible and to develop a comprehensive reintegration strategy that encompasses a range of services for returned Haitians to smooth their transition into Haitian society, including healthcare assistance and skills training to enhance employment prospects.

The resumption of removals to Haiti will continue to take place in a measured manner with a limited number of eligible aliens removed to Haiti each month, addressing the public safety needs of both the United States and Haiti.

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