

- A. The scenario arises when a defendant is confined in a North Carolina jail on both a Release Order entered for a pending State proceeding and a “detainer” issued by Immigration and Customs Enforcement (ICE) of the U.S. Department of Homeland Security.
- B. Article 26 (Bail) of Chapter 15A of the General Statutes does not account for federal immigration actions, whether in setting conditions of release or determining whether or not to allow a defendant or surety to execute a bond.
1. The procedures for setting conditions of release for a State proceeding and taking a bond to satisfy those conditions are independent of the federal action.
  2. A judicial official presented with a bond for the defendant’s State proceeding should proceed as if the detainer did not exist; the defendant or surety may execute a bond as normal.
  3. Although the detainer has no direct effect on whether or not to take the bond for the State proceeding, the judicial official taking the bond may wish to inform the defendant and any surety that the detainer exists and that posting bond will not secure the defendant’s immediate release. However, satisfying the State conditions of release is a necessary precedent to begin ICE’s 48-hour window in which to take custody of the defendant, as described below.
- C. A detainer is a directive issued by ICE to the law enforcement agency having custody of the defendant. 8 C.F.R. §287.7. When taking a bond for a defendant with a detainer, the judicial official taking the bond should be aware that the detainer accomplishes two things:
1. It requests that the law enforcement agency inform ICE when the person is about to be released from custody, 8 C.F.R. §287.7(a); and
  2. It directs the law enforcement agency to hold a person “not otherwise detained” by the agency for up to 48 hours (excluding Saturdays, Sundays, and holidays), to permit ICE to take custody of the person. 8 C.F.R. §287.7(d).
  3. As long as the conditions of release for the pending State proceeding have not been met, the defendant is “otherwise detained,” so ICE’s 48-hour deadline does not begin to run.
- D. “Refund” of bonds posted for ICE detainees.
1. An ICE detainer has no effect on the surety’s obligation to ensure the defendant’s appearance in a State proceeding (though defendant’s detention by ICE at the time of a future failure to appear may constitute grounds for setting aside any forfeiture of the bond, pursuant to G.S. 15A-544.5(b)(7)). Therefore the defendant or surety is not entitled to a refund or cancellation of the bond based solely on the existence of an ICE detainer.
  2. If a surety, upon learning of the detainer, wishes to be relieved of the bond obligation, he must meet one of the conditions of G.S. 15A-534(h). Because the defendant’s case likely is not disposed entirely when the surety learns of the detainer, as a practical matter this requires either:
    - a. A judge’s order releasing the surety from the obligation, G.S. 15A-534(h)(1), or
    - b. Surrender of the defendant. G.S. 15A-534(h)(2).

3. If the surety is released from the obligation or he/she carries out an effective surrender, the bond should not be destroyed or given to the former surety.
  - a. Once executed, a bond and all associated material must be delivered to the clerk's office for filing. G.S. 15A-537(b).
  - b. All records associated with the bond, including professional bondsmen's seals (the gold stickers) and insurance company power of attorney certificates are part of the record and may not be destroyed or removed from the court.
  - c. Any refund of any cash bond will be processed by the clerk's office and sent via check to the person identified on the Appearance Bond as the owner.