

Defender's Guide to HB10 & Sample Motion for Immediate Release

Updated: March 3, 2025

HB10 Background:

Following a legislative override of the Governor's veto, [S.L. 2024-55](#), now chaptered as G.S. 162-62(b1), became law and went into effect on December 1, 2024. The law is more widely known as HB10. This guide and the attached sample Motion for Immediate Release is intended as a resource for defense counsel whose clients are detained under the auspices of HB10.

HB10 seeks to compel local sheriffs to cooperate with Immigration and Customs Enforcement (ICE). When ICE issues a detainer and administrative warrant for someone in a North Carolina jail, HB10 requires state judicial officials to issue custody orders upon the officials' verification that the person in custody is the person named in the ICE detainer and warrant. The required verification concerns the person's identity alone, without inquiry into the validity of the legal basis for the hold.

The law then mandates detention of the person named in the ICE detainer for 48 hours from receipt of the detainer and only with a [state judicial custody order](#). In other words, custody pursuant to an ICE detainer under HB10 is authorized only when three conditions are met:

- (1) there is a judicial order verifying the identity of the person named in the ICE detainer;
- (2) 48 hours have not elapsed since the ICE detainer and administrative warrant was received by the sheriff's department; and
- (3) there is no state law basis for continued custody.

Motion for Immediate Release & Motion for Appropriate Relief [see attached sample motions]:

HB10 provides two primary opportunities for defense counsel to contest the continued detention of impacted clients. The attached sample Motion for Appropriate Relief, Motion for Immediate Release, and outline below set out the general contours of likely scenarios.

Scenario 1: No proper identity hearing or judicial order ([Form AOC-CR-662](#))

G.S. 162-62(b1) requires, prior to the issuance of an HB10 detention order, both:

- (1) Presentment "without unnecessary delay before a State judicial official" and;
 - (2) A determination that "the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant."
- Seek to represent clients in these hearings or contest prior findings:
 - Do not admit or stipulate to client's identity
 - Refer to client as "person charged as Mr./Ms. _____"
 - Request the opportunity to examine any documents, photographs, and database search information relied upon to determine identity

- Request the opportunity to cross-examine any witness relied upon in determining identity
- Confirm that the date and time the detainer was received is accurate on the judicial order
- Request that judicial official includes date & time that the custody order expires based on the 48-hour limit set out in the statute

Scenario 2: 48 hours to hold your client has expired

If a client continues to be held following posting bond, obtaining an unsecured bond, dismissal of charges or completion of an imposed sentence, etc. defense counsel should move for their immediate release.

- Seek terms of release of your client and post bond to eliminate state basis for custody. Local bond funds may be able to help.
- Either through a first appearance or after the bond hearing, depending on local practice, defense counsel can seek release of their clients under HB10.
- HB10 only allows detention for 48 hours from *receipt* of the ICE detainer and administrative warrant. This 48-hour period includes weekends and holidays.
 - The 48-hour clock will not necessarily align with the time when the judicial order was issued. The clock starts when the facility receives the documents from ICE, which is necessarily prior to when the sheriffs' department seeks the judicial custody order.
 - The receipt time and how sheriffs receive and process these detainees will likely differ by jurisdiction and may be difficult to ascertain. Defense counsel should move for client's immediate release based on information and belief, even if the receipt time of the detainer is unknown, so long as at least 48 hours have elapsed since the client was booked into jail.
 - If 48 hours have elapsed since the detainer was received as noted in the judicial order or since the judicial order was issued, your client should be released
 - E-Courts entries may be helpful here
 - If still within the 48-hour window of receipt of the detainer, defense counsel should still request a finding ordering
 - the date/time the custody order expires; and
 - your client's immediate release thereupon

Resources & Additional Support

This guide and sample motion were prepared by the Immigrant Rights Clinic and Criminal Defense Clinic at Duke Law in partnership with the Southern Coalition for Social Justice.

For technical assistance or to set-up a training and strategy session for your office, please reach out to: HB10questions@scsj.org.

If you are seeking support for civil rights violations for impacted clients (prolonged detention, inhumane conditions in custody, inadequate language access, etc.) North Carolina Justice Center and the ACLU of North Carolina Immigrant have created a Civil Rights Assistance Request Form: <https://forms.office.com/r/DGKQBqnPrS>

**NORTH CAROLINA
XYZ COUNTY**

**GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO(s):**

STATE OF NORTH CAROLINA

v.

**MOTION FOR APPROPRIATE
RELIEF**

NOW COMES Defendant, by and through counsel, and pursuant to N.C.G.S. § 15A-14115 and other applicable laws, for a Motion for Appropriate relief in the above numbered actions.

As grounds for this motion, Defendant states the following:

1. On _____, Defendant was arrested/issued a citation in alleged violation of _____ under File No(s). _____.
2. Defendant is in the custody of the _____ facility.
3. On _____, an Order After Receipt of ICE Detainer and Administrative Warrant (Form AOC-CR-662) was entered by _____ (judicial official), finding that:
 - a. the judicial official was provided with a detainer and administrative warrant, or copies thereof, issued by the Immigration and Customs Enforcement Agency of the United States Department of Homeland Security;
 - b. the detainer and administrative warrant were received by the facility at _____ on _____; AND
 - c. Defendant is the same person as the person subject to the detainer and administrative warrant.
4. Defendant was not represented by counsel when appearing before the judicial official on _____.
5. Defendant did not receive or have the opportunity to review the detainer and administrative warrant relied upon in ordering Defendant's hold in custody.
6. Defendant did not have the opportunity to examine the documents, photographs, database searches, or witnesses relied upon in determining Defendant's identity as the person named in the detainer and administrative warrant.

Wherefore, the Defendant, by and through counsel, requests this Court allow this Motion for Appropriate Relief and grant that the Order After Receipt of ICE Detainer and Administrative Warrant be reopened and heard immediately as to the:

☐ production of a valid Immigration and Customs Enforcement detainer and administrative warrant

☐ date and time of receipt by the facility of the Immigration and Customs Enforcement detainer and administrative warrant

☐ determination that the defendant named above is the same person as the person subject to the detainer and administrative warrant

☐ determination that the defendant named above is the same person as the person subject to the detainer and administrative warrant

Respectfully submitted this the ____ day of _____, 2025.

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served upon the Office of the District Attorney by email/efile and serve/hand-delivery to Assistant District Attorney

_____.

Date Served: _____

Attorney for Defendant

STATE OF NORTH CAROLINA

COUNTY OF XXX

GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

FILE NUMBER: 25CR0000

STATE OF NORTH CAROLINA)

v.)

JOHN DOE)

Defendant)

MOTION FOR IMMEDIATE
RELEASE

NOW COMES the Defendant, _____, by and through his undersigned counsel _____, and respectfully moves this honorable Court for review of his continued detention and to order his immediate release.

In support of this motion, the Defense asserts:

1. Defendant was arrested on _____, 202__ for allegedly violating _____ and held on a \$ _____ bond.
2. Defendant's ☐ pending case was resolved/dismissed
☐ bond was unsecured
☐ bond was posted
☐ bond was reduced to _____ and paid.
3. The person charged as Mr./Ms. _____¹ is confined in the XYZ County Detention Center pursuant to:
☐ a judicial order
☐ an "ICE hold" or detainer issued pursuant to 8 CFR § 287.7.
4. The current edition of ICE's detainer, DHS Form I-247A (2/25) states that "[t]he individual must be served with a copy of this form for the detainer to take effect." Further, DHS makes clear, "This detainer arises from DHS authorities and should not impact decisions about the individual's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters."
5. 8 CFR § 287.7 does not provide independent state authority to detain individuals in the XYZ County Detention Center on the basis of an alleged violation of U.S. immigration laws. Rather, N.C.G.S. § 162-62 (b1) provides state law authority, subject to enumerated statutory limitations, to confine a person pursuant to a judicial order.

¹ All references to the Defendant as Mr./Ms. _____ are intended for clarity and brevity in reference to the charging and detention documents, not a true admission of the Defendant's identity.

6. N.C.G.S. § 162-62 (b1) provides that: when “the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the United States Department of Homeland Security has issued a detainer and administrative warrant... [a] judicial official shall issue an order directing the prisoner be held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant.”
7. N.C.G.S. § 162-62 (b1)(3)(a) then provides that: “Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order under this subsection shall be released upon...the passage of 48 hours from **receipt** of the detainer and administrative warrant.” (emphasis added).
8. N.C.G.S. § 162-62 (c) provides that, except as authorized by N.C.G.S. § 162-62 (b1), “nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.”
9. Mr./Ms. _____ is “not otherwise detained by a criminal justice agency” and is “otherwise eligible for release.”
10. Mr./Ms. _____ has been detained in the **XYZ** County Detention Center

[] pursuant to an ICE detainer, DHS Form I-247A, that was not served on Mr./Ms. _____ and therefore has not taken effect and does not authorize detention under N.C.G.S. § 162-62 (b1).

[] for a period exceeding 48 hours from the receipt of the detainer and administrative warrant, in violation of the plain meaning of N.C.G.S. § 162-62 (b1).

Wherefore, Mr./Ms. _____ respectfully requests that this Honorable Court set the matter for immediate hearing and

[] grant this Motion for Immediate Release

[] order Mr./Mrs. _____ release 48 hours from receipt of the ICE detainer and administrative warrant.

This the ____ day of _____, 202__.

Attorney for
Office of the Public Defender

STATE OF NORTH CAROLINA
COUNTY OF XYZ

GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NUMBER: 25CR0000

STATE OF NORTH CAROLINA)
)
 v.)
)
 JOHN DOE)
 Defendant)

PROPOSED ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned judge presiding, and the Court, having reviewed the file in this matter and having heard arguments of counsel makes the following Findings of Fact:

1. Defendant was arrested for allegedly _____ on _____, 202__ and held on a \$ _____ secured bond.
2. Defendant's ☐ pending case was resolved/dismissed, or
☐ bond was unsecured
☐ bond was posted
☐ bond was reduced to _____ and posted.
3. Defendant is confined in the XYZ County Detention Center pursuant to:
☐ a judicial order
☐ an "ICE hold" or detainer issued pursuant to 8 CFR § 287.7.
4. The current edition of ICE's detainer, DHS Form I-247A (2/25), requires the individual to be served with a copy of this form for the detainer to take effect.
5. N.C.G.S. § 162-62 (b1) provides state law authority to execute holds upon judicial order.
6. N.C.G.S. § 162-62 (b1) provides that: when "the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the United States Department of Homeland Security has issued a detainer and administrative warrant... [a] judicial official shall issue an order directing the prisoner be held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant."
7. N.C.G.S. § 162-62 (b1)(3)(a) then provides that: "Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order under this subsection shall be released upon...the passage of 48 hours from receipt of the detainer and administrative warrant."

8. N.C.G.S. § 162-62 (c) provides that, except as authorized by N.C.G.S. § 162-62 (b1), “nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.”

9. Mr./Ms. _____ is “not otherwise detained by a criminal justice agency” and is “otherwise eligible for release.”

11. Mr./Ms. _____ has been detained in the XYZ County Detention Center

☐ pursuant to an ICE detainer, DHS Form I-247A, that was not served on Mr./Ms. _____ and therefore does not authorize detention under N.C.G.S. § 162-62 (b1).

☐ for a period exceeding 48 hours from the receipt of the detainer and administrative warrant, in violation of the plain meaning of N.C.G.S. § 162-62 (b1).

Wherefore the undersigned judge HEREBY ORDERS AND DECREES that

☐ _____ be released immediately.

☐ Mr./Ms. _____ is to be released on _____ day of _____, 202__ at _____:_____ a.m./p.m., which is 48 hours from receipt of the ICE detainer and administrative warrant.

This the _____ day of _____, 202__.

Presiding Judge