



The Implementation of “Secure Communities” Throughout New York May Drastically Alter Your Noncitizen Clients’ Decisions at Arraignments¹

What is “Secure Communities” (S-Comm)?

“Secure Communities” (S-Comm) is an Immigration and Customs Enforcement (ICE) agency program that requires state and local law enforcement agencies to automatically forward the fingerprints of all people arrested through immigration databases at booking. ICE then coordinates with local law enforcement to target people suspected of immigration violations for detention and deportation.

What does this mean for your representation of a client at arraignment?

1. Determine whether ICE has lodged a detainer against your client.
 - The implementation of S-Comm across New York State makes it much more likely that ICE will have lodged a detainer² against your noncitizen client prior to arraignment. It is important to determine if this is the case.³
2. If your client has an immigration detainer at arraignment, it may be in his interest NOT to resolve his case at arraignments.
 - If your client with a detainer resolves his case at arraignment (i.e. the case is dismissed, the client receives an ACD, the client accepts a plea with no jail sentence, the client is ROR’d, etc.), the client will likely not be freed from the court, but will be held for ICE to assume custody of him. Your client may then face removal proceedings and immigration detention anywhere in the country.
 - Discuss with your client whether he prioritizes avoiding possible immigration detention and deportation proceedings or avoiding criminal jail.
 - If your client with a detainer prioritizes avoiding possible immigration detention and deportation proceedings, ask the judge to set bail.

¹ This practice advisory was last updated June 8, 2012. None of the information provided here should be taken as legal advice.

² An immigration detainer is a request from ICE to DOC to detain your client for up to 48 hours (excluding Saturdays, Sundays, and holidays) after he would otherwise be released, in order to provide ICE an opportunity to assume custody of your client and initiate deportation proceedings. *See* 8 C.F.R. § 287.7 Detainers are also sometimes referred to as “immigration holds” or mistakenly referred to as “immigration warrants”.

³ As of the date of this advisory, there has not been a uniform method by which defense attorneys are learning of detainers lodged against their clients at arraignments. “Immigration” may be listed under the “warrants” section of the rap sheet. There may be a notation in the NYPD file. The district attorney or a court officer may also raise it on or off the record.

Why might your client with an immigration detainer **NOT** want to resolve his case at arraignments?

1. New York City's detainer discretion law, Local Law 2011/62⁴, only applies to noncitizens in Department of Correction (DOC) custody. If your client has a detainer at arraignments and resolves his case at arraignments, he will not enter DOC custody and not benefit from the law. The law does not currently cover NYPD, and the NYPD has been honoring ICE detainers. Your client will benefit from the detainer discretion law **ONLY** if he enters DOC custody **AND** fits within all of the following criteria:

- Has no misdemeanor or felony priors;
- The current case is dismissed, resolved in a not guilty verdict, or resolved with a NYS violation, ACD, YO or JD adjudication;
- Has no pending misdemeanor or felony cases or warrants from any jurisdiction;
- Does not have an order of removal; and
- Is not on a gang or terrorist watch list

To benefit from this law, your client may want to:

- Spend more time in DOC custody to receive a violation, vacate prior convictions, or correct a RAP sheet (rap sheet errors may result in transfer to ICE)
- Reject non jail sentence misdemeanor or felony pleas after a detainer is lodged
- Take the risk of going to trial

2. Even if your client with an immigration detainer at arraignments would not benefit from this law, it might be in his interest **NOT** to resolve his case at arraignments so that he has time to:

- Consult with an immigration lawyer and prepare for his immigration case while remaining geographically close to his defense counsel, family, and evidence
- Pursue post-conviction relief for prior convictions.
- Resolve his pending criminal case (once in ICE custody, your client may not be able to resolve his pending criminal case, which could negatively impact chances of relief in immigration court.)

What are the downsides of asking the judge to set bail for your client with an immigration detainer at arraignments?

1. The District Attorney might withdraw an otherwise favorable offer.

TIP: If your client would want to accept the offer but needs to enter DOC custody to avoid being held for ICE, see if the DA would be willing to keep the offer on the table until the next court date.

2. Your client will have to spend time in criminal jail.

TIP: You can ask the judge to set the next court date soon to minimize this time, though the judge may be unwilling to do so.

More Information

If you have questions about this law or if DOC has violated the 48-hour detainer rule for your client, please contact:
Immigrant Defense Project Legal Hotline, (212) 725-6422, info@immigrantdefenseproject.org

⁴ For more information about how this legislation impacts your clients and how to correct rap sheets, please see IDP's Practice Advisory, *New York City's New Immigration Law (Local Law 2011/62) May Protect Your Undocumented Clients from Immigration Detention and Deportation*, available at http://immigrantdefenseproject.org/wp-content/uploads/2012/04/IDP_detainer_advisory-FINAL-20120427.pdf.