

# Deportation 101

Detention, Deportation and the  
Criminal Justice System

March 2008  
New York City Training

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## About the Deportation 101 Curriculum

NYSDA Immigrant Defense Project and Families for Freedom originally developed the Deportation 101 curriculum in 2005 and used it to train several hundred staff and members of immigrant rights and criminal justice organizations in New York/New Jersey, Florida, Massachusetts, and Georgia.

In 2007, the National Immigration Project of the National Lawyers Guild and Detention Watch Network joined the Deportation 101 team and collaborated with IDP and FFF on an expanded curriculum and two trainings: for organizers and service providers in Maryland, Virginia and the District of Columbia and again for organizers across the Southeast region at the Southeast Regional Immigrant Rights Conference in North Carolina.

The original authors of Deportation 101 are Benita Jain of the NYSDA Immigrant Defense Project and Subhash Kateel and Aarti Shahani of Families for Freedom. Paromita Shah of National Immigration Project and Andrea Black of Detention Watch Network contributed to the manual's expansion in 2007. Janis Rosheuvel (FFF), Joanne Macri (IDP) and Michelle Fei (IDP) contributed to an update of the manual for New York City in 2008.

### ***What is the Deportation 101 training?***

Deportation 101 is an intensive, one or two-day training that educates individuals and communities about the deportation system, including the impact of raids and the role of the criminal justice system in deportation. Created by community organizers, legal experts and advocates, this curriculum teaches immigrant families, loved ones and communities to understand and develop individual and community responses to this system - inside and outside the courts. It is a proven vehicle for building the capacity of community institutions to assist families facing deportation and organize local challenges.

A Deportation 101 training provides:

- information about the deportation system and the people who run it
- information about individual rights and how to assert these rights
- proven tips and concrete tools for family members about navigating the deportation system
- the building blocks for an effective campaign or raids response plan to help individuals facing deportation
- comprehensive written materials for community organizations and individuals

### ***How Do I Get a Deportation 101 Training in My State?***

Each Deportation 101 training is sponsored by or coordinated with local organizers and service-providers, who commit to local outreach for the training. Trainers tailor the training to address local policies and practices as much as possible. For more information, contact one of the organizations listed on the cover.



# DEPORTATION 101

(New York, March 2008 Edition)

## TABLE OF CONTENTS

### **Introduction: Deportation History and Key Terms**

Deportation Timeline.....	9
Immigration Enforcement: Government Strategies, Future Trends.....	14
Definitions.....	15
MAP: Immigration in the Branches of Government.....	18

### **Basics of Detention and Deportation**

Who Can Be Deported?.....	21
“Trigger Sites” for Deportation.....	22
Local Policing.....	23
MAP: Deportation System (English & Español).....	25

### **Immigration in the Criminal Justice System**

MAP: Immigration in the Criminal Justice System.....	29
Immigration Impact of Convictions.....	30
TIPS: Immigration in Criminal Court.....	31
TIPS: Immigration in Jail.....	33
TIPS: Immigration in Prison.....	36
Conditional Parole for Deportation Only.....	37
Checklist: Immigration Consequences of Conviction.....	41
Checklist: Representing a Noncitizen in Criminal Cases.....	42
Immigrants and Pleas in Problem-Solving Courts.....	43

## **Deportation System: Strategies and Practical Tips**

TIPS: For Someone Facing Deportation (English & Español).....	51
Getting Out of Detention: Bond and Parole .....	53
Relief Checklist .....	55
Citizenship Checklist .....	59
When a Deportation is Imminent.....	61
Can I Return After Being Deported? .....	62
Detainee Abuse .....	65

## **Organizing to Fight Deportation:**

<b>ARM! Case Campaign and Organizing Manual .....</b>	<b>69</b>
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## **What's Next: Impact of Proposed New Laws**

Policy Map: Raids to Deportation (English & Español) .....	97
Child Citizenship Protection Act <i>HR 1176</i> (English & Español).....	99

## **Appendix: Sample Documents and Contact Lists**

Detention & Deportation Resource List.....	107
Government Contact List .....	108
Sample Intake .....	111
List of Key Documents .....	113
Sample Documents .....	115
Sample Letters to Criminal Defense Attorneys.....	137

# DEPORTATION TIMELINE

## (NEW YORK FOCUS)

TIME	EVENT
1981-1990	<b>People Deported: 213,071<sup>1</sup></b> (30,630 for criminal or narcotics violations) <sup>2</sup>
1986	<p><b>Immigration Reform and Control Act (“Amnesty”)</b>  Congress passes and Ronald Reagan signs the Immigration Reform and Control Act (IRCA), eventually giving legal permanent residency to 2.7 million undocumented immigrants who had continuously resided in the U.S. since before January 1, 1982, or who had been employed in seasonal agricultural work prior to May, 1986. IRCA is a trade-off, also creating new employer sanctions (penalties) for employers who hired immigrants without employment authorization.</p>
April 24, 1996 and Sept. 30, 1996	<p><b>Anti-Terrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)</b>  Congress passes and Bill Clinton signs the “1996 laws,” which replace a largely discretionary system with <i>mandatory detention</i> and <i>mandatory deportation</i>.</p> <ul style="list-style-type: none"> <li>• Grounds of deportation expanded to include a broad range of minor offenses, including vast expansion of “aggravated felony” term. This term now applies to more than 50 classes of crimes, many of which are neither “aggravated” nor “felonies.” Most of the new deportation grounds are applied <i>retroactively</i> (to crimes occurring before the laws’ passage).</li> <li>• Deportation becomes a mandatory minimum, where many immigrants will have no right to prove rehabilitation, family and community ties, and other reasons that they deserve to stay in the U.S., and the immigration judge will have no power to grant a pardon from deportation.</li> <li>• Immigrants lose their day in court and have severely restricted rights to seek federal court review of government mistakes.</li> <li>• New mandatory detention provisions prohibit an immigration judge from releasing certain immigrants on bond even if they pose no risk of flight or threat to society - this applies to immigrants (including lawful permanent residents) with any of a broad array of convictions and asylum seekers at ports of entry.</li> <li>• The Attorney General gets power to place asylum seekers and certain immigrants with past convictions into <i>expedited removal</i> – expulsion without court hearing.</li> <li>• Deportation becomes a point of no return, with long and sometimes lifetime bars to re-entry for those deported. Criminal penalties for illegal re-entry are increased.</li> </ul>
1997 1999	<p><b>Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA) and Haitian Refugee Immigration Fairness Act of 1999</b>  Allows Nicaraguan, Cuban and Haitian nationals who were continuously present in the United States since December 31, 1995 (or their spouses or children), to become lawful permanent residents if they applied for adjustment of status before April 1, 2000.</p>
June 25, 2001	<p><b>I.N.S. v. St. Cyr</b>  Supreme Court rules 5-4 that long-term greencard holders who pled guilty to crimes before April 24, 1996 remain eligible to apply for 212(c) relief (a pardon granted by the immigration judge). After the passage of the 1996 laws, the Justice Department retroactively stripped this relief from thousands of greencard holders with old crimes and deported them. The Justice Department maintains that the ruling cannot be used to bring these people back; nor can it be applied to those who went to trial.</p>

<p>June 28, 2001</p>	<p><b>Zadvydas v. Davis &amp; Reno v. Ma</b>  Supreme Court rules 5-4 that a law permitting indefinite detention raises serious constitutional issues, and that the government cannot indefinitely detain immigrants who have final orders of deportation but cannot be deported. Instead, such detention is limited to a “reasonable period” (6 months), after which the person should be released. The rulings turned on two men: Kestutis Zadvydas, a stateless man born in a German displaced persons camp; and Kim Ho Ma, whose home country, Cambodia, had no repatriation agreement with the U.S. In 2003, the U.S. signed an agreement and deported Ma and other Cambodians settled in the U.S. in the wake of the Vietnam War.</p>
<p>Sept 2001 to August 2002</p>	<p><b>Post 911 “Special Interest” round-ups</b>  Shortly after 9/11, the FBI and INS arrest at least 1,200 South Asians, Arabs, and North Africans.<sup>3</sup> Arrests are marked by heavy-handed tactics of entering people’s homes at early hours of the morning and carting them away in front of their families to several detention centers in NJ and Brooklyn. These men are initially held indefinitely, in secret, without charge, and with their immigration hearings closed to the public. Most are ultimately charged overstaying visas and minor immigration violations. The majority of this group has been deported. Soon after, the PATRIOT Act and regulations adopted by administration gives the government far-reaching authority to detain immigrants for extended periods and without charges.</p>
<p>December 2001</p>	<p><b>Operation Tarmac</b>  INS raids airports around the country with other law enforcement agencies, arresting more than 1,000 undocumented immigrants and immigrants with past convictions. Some of those arrested are charged criminally with document fraud.</p>
<p>January 25, 2002</p>	<p><b>Alien Absconder Apprehension Initiative</b>  Immediately after September 11th, the Justice Department initiated a hunt for more than 400,000 immigrants with old deportation orders and announces this initiative in 2002. Attorney General Ashcroft places the names of so-called “absconders” into the National Crime Information Center (NCIC) database, created in 1930 for <i>criminal</i> issues and warrants. Now when an immigrant gets pulled over by a local traffic cop, he could be turned over to DHS and deported in literally hours if his name appears in NCIC – even if he has citizen family, decades of residency, or property. “Absconders” often do not know they have been ordered deported and fall into the category, or how it is different from being plain undocumented. The Absconder Apprehension Initiative may be the first time in U.S. history that a half million people are fugitives without knowing it.</p>
<p>March 27, 2002</p>	<p><b>Hoffman Plastic Compounds, Inc. v. NLRB</b>  Supreme Court rules 5-4 that Jose Castro, a laborer fired unlawfully for union organizing, has no right to backpay – the usual remedy for unemployment due to an illegal termination – <i>because he is undocumented</i>. Upon an appeal by the Mexican government, the Inter-American Court of Human Rights advised that international law required that immigrant workers are entitled to the same labor protections as citizens.</p>
<p>October 2002</p>	<p><b>Special Registration (NSEERS)</b>  Engineered by the Bush administration, this executive branch program has two parts: “Call in” and “Port of Entry” registration. The “Call in” requires non-permanent resident men and boys age 16 and over from 25 primarily Muslim countries and North Korea to appear for interviews, at which INS interrogates them about political beliefs, immigration and financial information. Nationwide 80,000 people comply, and 14,000 are placed in deportation (3,000 in New York). Others face potential criminal prosecution, deportation for “special registration non-compliance,” and denial of adjustment of status. Port of Entry registration requires this same group of men to be fingerprinted and interviewed whenever leaving or entering the U.S. The government publicizes this policy only on its website and in the Federal Register. Community institutions take on the burden of educating communities. Entire neighborhoods choose to leave the country, afraid of government persecution.<sup>4</sup></p>



<p>March 1, 2003</p>	<p><b>Department of Homeland Security Act</b>  Congress dismantles the Immigration and Naturalization Service (INS) and transfers its responsibilities to a Department of Homeland Security (DHS). The DHS constitutes the largest reorganization of the federal government in 50 years.<sup>5</sup> Immigration functions are split into 3 separate bureaus of enforcement, border patrol, and services.</p>
<p>April 29, 2003</p>	<p><b>Demore v. Kim</b>  This Supreme Court case reviewed the constitutionality of <i>mandatory detention</i> – the jailing of a noncitizen during her deportation case, regardless of whether s/he is a risk of flight or threat to society, solely because the noncitizen belongs to a blanket category (in this case, immigrants with a past conviction). The Petitioner was Hyung Joon Kim, a young man who immigrated to the U.S. from South Korea at age 6, became a greencard holder at age 8, and was convicted of burglary and petty theft as a teenager. He was placed in deportation proceedings after completing his sentence, and held without a bond hearing as an “aggravated felon.” A federal court found his detention was unconstitutional and ordered the government to release him. The Supreme Court reversed this ruling (and those of several other Courts of Appeals) and upheld mandatory detention. This was the first time since Japanese internment during WWII that the Supreme Court upheld the government’s right to blanket incarceration.</p>
<p>September 17, 2003</p>	<p><b>Executive Order 41</b>  New York City Mayor Michael Bloomberg signs this executive order, prohibiting City agencies from inquiring into and disclosing the immigration status of individuals, <i>unless a law enforcement agency is investigating or other agency merely suspects illegal activity</i> other than mere undocumented status. This loophole is expansive, and the New York City Police Department and Department of Corrections continue to inquire about immigration status and collaborate with federal immigration agents (for example at Rikers Island).</p>
<p>October 2003</p>	<p><b>Operation Predator</b>  A major initiative designed to apprehend and deport non-citizens with past child sex-related offenses (who had already served their time). “Predator” uses the same tactics as the Absconder Initiative and the “Special Interest” sweeps, including visits to the workplace and home, and also gathers information from Megan’s Law databases. DHS claims that the program is “designed to protect young people from...predatory criminals...and those who exploit young people;”<sup>5</sup> however, its targets include people with low-level statutory rape convictions (consensual relationships with minors) from their teenage years, for which a criminal judge decided they deserve no jail time.</p>
<p>March 2004</p>	<p><b>Operation Endgame</b>  This is a strategic plan from DHS’s Bureau of Immigration and Customs Enforcement (ICE). Endgame sets out a ten-year goal to “remove all removable aliens” from the United States.</p>
<p>May 2004</p>	<p><b>New York Parole and Probation Raids</b>  500 officers from New York’s Division of Parole and ICE tag-team to identify and detain immigrants who are successfully complying with their parole requirements.<sup>6</sup> Some parole officers call parolees and former parolees, asking them to report for non-routine visits. Upon arriving, they are arrested by federal immigration authorities and transferred to immigration jails across the country. Division of Parole spokesman Scott Steinhardt claims its purpose is “solely to ensure the safe and timely transition of offenders to federal custody.” The first raid targets 138 immigrants - most of whom are Black and Latino and many of whom have greencards. These raids continue in September and January. Today, probation and parole departments across the country assist ICE in identifying and arresting non-citizens for deportation.</p>

November 9, 2004	<p><b>Leocal v. Ashcroft</b></p> <p>The Supreme Court unanimously decides that the government was misinterpreting immigration law and going beyond its plain meaning by categorizing certain drunk driving offenses as “crimes of violence” aggravated felonies, and thereby subjecting immigrants with certain DUIs to mandatory detention and mandatory deportation. The Court holds that DUI offenses that require mere accidental or negligent conduct are not “crimes of violence” because this denotes more active violent conduct. <i>Leocal</i> provides helpful guidance for immigrants convicted of other offenses involve negligent or perhaps reckless conduct, but that the government had been mislabeling as crimes of violence.</p>
December 12, 2004	<p><b>Intelligence Bill</b></p> <p>This bill is meant to legislate the recommendations of the 911 Commission, but becomes an embarrassing battle when Republicans try to tag on irrelevant immigration provisions. Families speak out against the party move, and ultimately Republicans are forced to drop certain provisions, like nationwide immigration requirements on drivers licenses and the suspension of habeas corpus for immigrants in deportation. But the bill does deliver two devastating blows: it doubles the border patrol and adds 40,000 new detention beds to the deportation system. The “leftover provisions” are later championed by politicians including Congressman James Sensenbrenner.</p>
January 12, 2005	<p><b>Clark v. Martinez &amp; Benitez v. Rozos</b></p> <p>Supreme Court rules that the government cannot indefinitely detain “Mariel” Cubans and other “parolees” who have final orders of deportation but cannot be deported (e.g., because the country of origin will not accept their return). This extends the rationale in <i>Zadvydas</i> (above) to noncitizens who were never lawfully “admitted” to the U.S.</p>
January 12, 2005	<p><b>Jama v. INS</b></p> <p>Supreme Court rules 5-4 that the government may deport a person to another country even without that country’s consent to accept him. In this case, the court held that the immigration laws did not prevent the government from deporting Mr. Jama, a Somali national, to Somalia despite the civil war in the country and the resulting lack of a central government there to accept his return.</p>
May 11, 2005	<p><b>REAL ID Act</b></p> <p>Congress eliminates immigrants’ ability to challenge deportation orders in federal district courts through habeas corpus petitions. Federal appeals must now meet a strict 30-day deadline and be brought to the federal Court of Appeals in the circuit in which the immigration proceedings took place. According to the government, people who have missed this deadline can no longer seek justice in federal court – even if the government clearly made a mistake or misinterpreted the law during their deportation case. The REAL ID Act also requires states to institute costly and burdensome drivers’ licenses regulations and deny licenses to undocumented and other immigrants.</p>
December 2005 through June 2006	<p><b>Immigration “Reform” – DC Legislates and Immigrants March</b></p> <p>With no debate, Wisconsin Congressman James Sensenbrenner rams H.R. 4437 through the House of Representatives. This legislation is the harshest immigration legislation in history: among other provisions, it criminalizes undocumented presence and humanitarian assistance to immigrants, expands detention facilities, further militarizes the border and greatly expands mandatory deportation as a second punishment for immigrants (undocumented and greencard holders) who have finished serving a sentence for a past conviction. The passage of H.R. 4437 ignites mass marches – more than one million immigrants and their families mobilize in Chicago, Los Angeles, New York and dozens of cities around the country . Months later, the Senate passes S.2611, which is billed as comprehensive immigration reform but includes many of the same detention and deportation expansions as H.R. 4437. Congressional Session ends without adopting either bill; however, Congress did pass legislation authorizing a 700-mile fence along the border with Mexico.</p>

December 2006	<p><b>Immigration Raids</b></p> <p>DHS begins a series of raids targeting immigrants at workplaces, homes and shopping centers. These raids result in the arrest and detention of thousands of immigrants across the country. Parents are shipped to detention centers around the country, children are left stranded at schools and day care centers, and communities scramble to respond to the crises. DHS charges some immigrants with “identity theft” or other document-related offenses for using false papers to work, fully knowing that convictions will likely result in their inability to apply for lawful status.</p>
December 5, 2006	<p><b>Lopez v. Gonzales</b></p> <p>Supreme Court decides 8-1 that the government was misinterpreting immigration law by categorizing a state conviction for “simple drug possession” as a “drug trafficking” aggravated felony – and was thereby denying many lawful permanent residents (including Petitioner Jose Antonio Lopez) the opportunity to apply for discretionary relief from deportation and denying immigrants who fear persecution in their countries of origin the opportunity to apply for asylum. The decision, which reads like a grammar lesson to the government, puts the brakes on this unlawful hyper-enforcement by the government and opens the way for many LPRs to present their individual circumstances equities to an immigration judge. As in past cases, however, the government maintains that immigrants who have already been unlawfully deported due to the government’s error have no remedy.</p>
2007	<p><b>Immigration Legislation</b></p> <p>Congress revives its attempt to pass immigration legislation. In the House of Representatives, Congressmen Guitierrez and Flake introduce the STRIVE Act, which includes provisions expanding detention and deportation as well as programs to give lawful status to some immigrants. Senate Democrats announce a “Grand Bargain” with the White House and Senate Republicans, resulting in a bill that includes provisions to increase detention space, expand deportation for past offenses and limit family-based immigration. The legalization programs in the Grand Bargain are linked to enforcement triggers, requiring the completion of a border fence and other border militarization activities before the legalization programs can begin. Like last year’s S.2261, the Senate and House bills include bars to legalization that narrow the number of immigrants who will be eligible for the legalization programs. Attempts to pass a large-scale immigration package fail and are replaced with intermittent attempts to pass pro- and anti-immigrant provisions mostly piecemeal.</p>
1997-2007	<p><b>People Deported: 2,051,250<sup>7</sup></b> (672,593 for criminal violations in 1997-2005<sup>8</sup>)</p>

<sup>1</sup> Department of Homeland Security, Office of Immigration Statistics, Table 38 of *2005 Yearbook of Immigration Statistics*. [www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS\\_2005\\_Yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS_2005_Yearbook.pdf) (accessed June 20, 2007).

<sup>2</sup> Immigration and Naturalization Service (INS), Table 69 of *Fiscal Year 1998 Statistical Yearbook*. <http://uscis.gov/graphics/shared/aboutus/statistics/enf98.htm>.

<sup>3</sup> See Office of Inspector General Report (<http://www.usdoj.gov/oig/igspeccr1.htm>) (accessed February, 2004).

<sup>4</sup> Asian American Legal Defense and Education Fund. *Special Registration: Discrimination and Xenophobia as Government Policy*. November 2003.

<sup>5</sup> ICE Website- [http://www.ice.gov/graphics/enforce/ops/predator\\_content.htm](http://www.ice.gov/graphics/enforce/ops/predator_content.htm) (accessed February, 2004).

<sup>6</sup> Daniela Gerson. “Parole System Used to Deport Immigrants.” *The Sun*. June 15, 2004.

<sup>7</sup> 1997-2005 statistics from Department of Homeland Security, Office of Immigration Statistics, Tables 38 and 40 of *2005 Yearbook of Immigration Statistics*.

[www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS\\_2005\\_Yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS_2005_Yearbook.pdf) (accessed June 20, 2007); 2006 statistics from *ICE Office of Detention and Removal Fact Sheet*, [www.ice.gov/pi/news/factsheets/dro110206.htm](http://www.ice.gov/pi/news/factsheets/dro110206.htm) (accessed June 20, 2007); 2007 statistics from ICE FY07 Accomplishments Fact Sheet.

<sup>8</sup>Parker, Allison, *Forced Apart* (Human Rights Watch 2007).

# IMMIGRATION ENFORCEMENT: GOVERNMENT STRATEGIES, FUTURE TRENDS

Overall Detention & Deportation

Mandatory deportation grounds

Mandatory detention grounds  
and detention spaces

Collaboration between local  
government and Immigration  
and Customs Enforcement (ICE)

Raids and enforcement  
presence in immigrant  
communities in public and  
private spaces, especially in  
homes, workplaces and streets

Use of criminal justice system

Racial profiling and targeting of  
the underground economy  
which poor/working communities  
rely upon for livelihood

Money for enforcement

Immigration judge's discretion  
to release immigrants from  
detention pending removal  
proceedings

Immigration judge's discretion  
to grant relief from deportation

Favorable grants of relief from  
deportation or release from  
detention (where discretion is  
available)

Legal protections available to  
detainees (e.g. rights to  
appeal)



# DEFINITIONS

## **287(g) AGREEMENT**

A Memorandum of Understanding between a local government and the Department of Homeland Security under Section 287(g) Of the Immigration and Nationality Act. Under this agreement, ICE *briefly* trains local enforcement agents, who are then granted limited immigration enforcement authority to investigate, apprehend and/or detain deportable immigrants. The scope of authority that a 287(g) agreement gives to local governments depends on the specific agreement and does not override Constitutional and due process protections. According to Congressional Quarterly, as of November 2007, 597 officers at 34 state and local agencies in 15 states participate in this program, and 80 more are seeking to join.

## **ABSCONDER**

A government term for a person with a prior deportation order that knowingly or unknowingly did not leave the country. Many “absconders” do not realize that they are considered fugitives and merely believe that they are undocumented. They are one of the most vulnerable categories of deportable immigrants. Once detained, absconders can be deported immediately and do not get a hearing in front of an immigration judge. Attorney General Ashcroft launched the “Absconder Apprehension Initiative” in January 2002 to locate and expel all absconders and began with those from predominantly Muslim countries. The government has categorized more than 400,000 noncitizens from across the world as “alien absconders.”

## **AGGRAVATED FELONY**

A federal immigration category that includes more than 50 classes of offenses, some of which are neither “aggravated” nor a “felony” (e.g. misdemeanor shoplifting with a one-year sentence, even if suspended). This term was first created by the 1988 Anti-Drug Abuse Act to include murder, rape, drug trafficking, and trafficking in firearms or destructive devices. Congress expanded this term numerous times over the years, and most extensively in 1996. This is one of the government’s most powerful tools for deportation because it strips an immigrant of most choices in the deportation process. An immigrant (including a lawful permanent resident) who is convicted of an offense categorized as an “aggravated felony” is subject to mandatory detention (no bond) and mandatory deportation (no Cancellation/pardon or asylum).

## **CONDITIONAL PAROLE FOR DEPORTATION ONLY (CPDO)**

Conditional Parole for Deportation Only (CPDO) is a program in New York State that allows an inmate to be deported before he/she completes a criminal sentence. If you qualify for CPDO, you will be paroled to the custody of the Department of Homeland Security to be deported. Once you are deported, you cannot legally return, to the United States for 5, 10, 20 years, or life (depending on your conviction).

## **“CONVICTION” (FOR IMMIGRATION PURPOSES)**

Immigration courts define “conviction” broadly to include dispositions where: (1) a formal judgment of guilt was entered by a court, *or* (2) (a) a judge or jury has found the defendant guilty, the defendant has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt and (b) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed. This broad definition has been held to even include some dispositions not considered a “conviction” by the criminal court, such as low-level violations and convictions that are vacated after successful completion of rehabilitation programs.

## **CRIME INVOLVING MORAL TURPITUDE**

Conviction or sometimes simple admission of one or more crimes involving moral turpitude may trigger deportation for some immigrants. Congress has not defined this immigration law term-of-art. Courts have interpreted it to include offenses which are “inherently” evil, immoral, vile or base. For example, crimes which require an intent to steal or defraud (such as theft and forgery offenses); crimes in which bodily harm is caused by an intentional act or serious bodily harm is caused by a reckless act (such as murder and certain manslaughter and assault offenses); and most sex offenses.

**CRIMINAL ALIEN**

A term used by the Department of Homeland Security for immigrants with convictions, no matter how minor or long ago. So-called “criminal aliens” are aggressively targeted for deportation, which is an additional penalty after they complete their criminal sentence. A “criminal alien” may be undocumented, applying for a green card, or a green card holder with U.S. citizen family. A wide range of offenses can make someone a “criminal alien” – including a single marijuana conviction, a shoplifting violation, offenses with no time in jail, or in some cases, even admission to a crime without a conviction. Criminal aliens are typically deported *after* they have served their sentence. Deportation is *not* part of the criminal sentence, and few immigrant defendants are properly advised that a guilty plea may result in deportation.

**DEPORTATION/REMOVAL**

Expulsion of a noncitizen from the United States. Persons who can be deported include noncitizens (including greencard holders) with past criminal convictions; visa overstays; refugee/asylum seekers; and those who entered without inspection (jumped the border).

**DETENTION**

Basically – jail. People are detained at every step of the immigration “process”: (1) awaiting adjudication of asylum or adjustment applications; (2) picked up and jailed without charges; (3) pending immigration proceedings; (4) after being ordered deported, while BICE is actively trying to remove; and (5) sometimes *indefinitely*, where BICE knows it may not be able to deport someone with an order of deportation

*Mandatory detention* (incarceration without the chance to apply for bond) applies to most people with past criminal convictions, asylum seekers, and all noncitizens considered “inadmissible” (people physically in the U.S., but never admitted legally at a port of entry). Detainees are housed in over 250 county jails, private prisons and federal facilities nationwide, often held with the general criminal population. They may be transferred from one part of the country to another, without regard for access to family and counsel.

**EXPEDITED REMOVAL**

Piece of 1996 laws meant to deport many noncitizens without a hearing before an immigration judge. Expedited removal can be effected against people the government finds “inadmissible” at any border entry point. It can also be affected against certain noncitizens with “aggravated felony” convictions. Under expedited removal, individuals can be removed on an order issued by an immigration officer, without the opportunity to go before an immigration judge. The U.S. Immigration and Naturalization Service (INS) began implementing the expedited removal provisions of IIRIRA on April 1, 1997.

**INSTITUTIONAL REMOVAL PROGRAM (IRP)**

In 1988 the government established the Institutional Hearing Program, now called the Institutional Removal Program (IRP). Under the IRP, immigration agents initiate and complete removal hearings while an immigrant is serving a criminal sentence, so that the person may be deported more quickly upon completion of the sentence. Under the IRP, hearings happen before an immigrant judge either in person at a courtroom set up within the jail, or *by a video linkup*, where the person facing deportation, judge, attorney(s) and witnesses may be in different locations. IRP in theory lessens the amount of time a noncitizen spends in immigration detention. In practice, it is even more difficult for immigrants to assert their rights and defenses during IRP hearings since they often come as a surprise to the immigrant facing deportation and take place in remote locations far from family and community – resulting in limited or no access to legal materials or legal representation and difficulty accessing witnesses. Video hearings are additionally often plagued with technical and other problems.

**LAWFUL PERMANENT RESIDENT (GREENCARD HOLDER)**

A noncitizen who has been lawfully admitted to the United States to live and work permanently, but still subject to deportation upon violation of the immigration laws. A “greencard” is the identification card for lawful permanent residents, but one does not lose the status just because the physical card expires or is misplaced.

**NATIONAL CRIME INFORMATION CENTER (NCIC) DATABASE**

The nationwide FBI-operated computerized database was originally created to enable federal, state, and local law enforcement to identify suspected criminals with outstanding warrants. In 2002, Attorney General Ashcroft authorized using this criminal tool for civil immigration purposes, by entering the names of absconders and individuals who did not comply with special registration into the NCIC system; this legality of this practice is being challenged.

**NONCITIZEN**

An individual who was born outside of the U.S. *unless* one of the following is true: (1) the individual was born outside of the U.S. but has a U.S. citizen parent(s) at birth and automatically *acquired* U.S. citizenship; (2) the individual was born outside of the U.S. to noncitizen parent(s) but automatically *derived* citizenship when the noncitizen parent(s) became U.S. citizen(s) while individual was still a minor; or (3) the individual was born outside of the U.S. but lawfully immigrated to the U.S. and later was *naturalized* (gone through the process of applying to citizenship, passing a civics test, and being sworn in). Noncitizens include greencard holders, refugees, asylees, temporary visitors, and the undocumented.

**PROSECUTORIAL DISCRETION**

The authority of the Departments of Justice and Homeland Security to not place a potentially deportable person in removal/deportation proceedings; suspend or even terminate a deportation proceeding; postpone a deportation; release someone from detention; or deprioritize the enforcement of immigration laws against an individual because it does not serve enforcement interests.

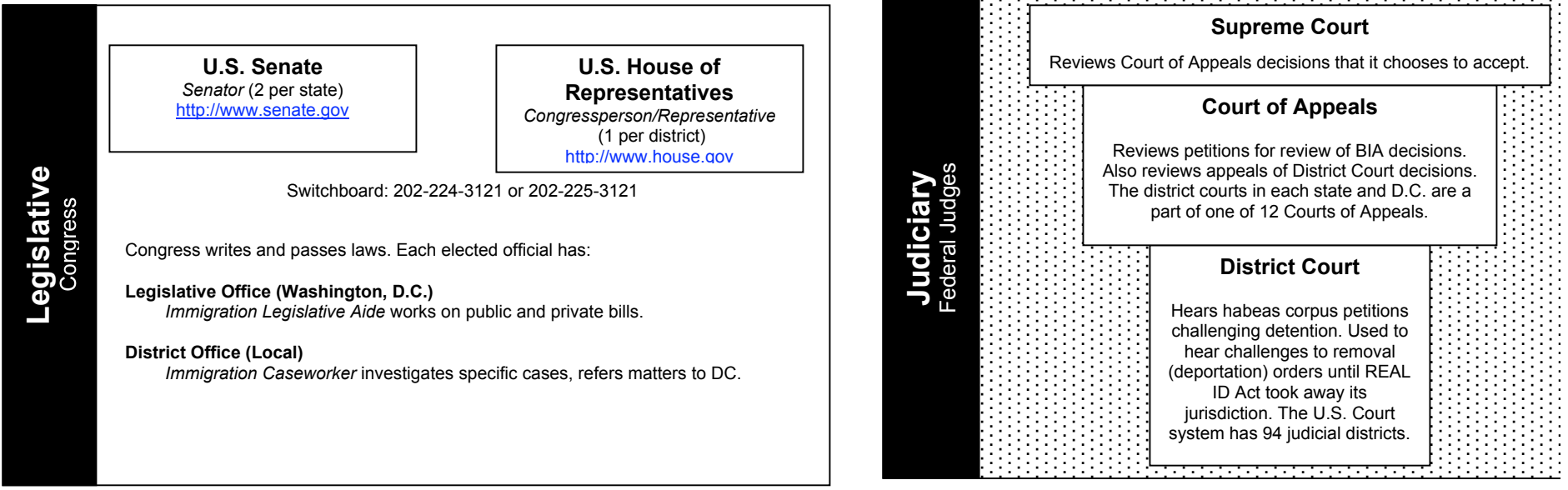
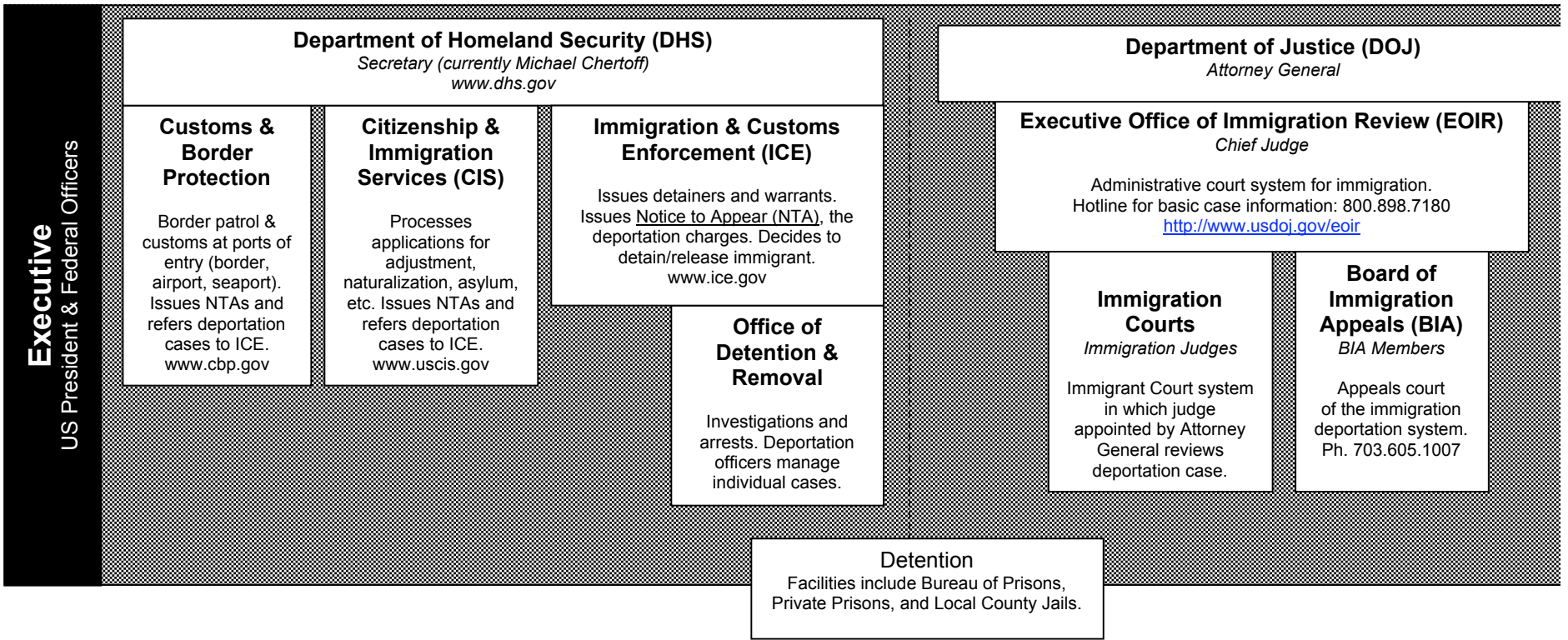
**RAIDS**

An informal term used to describe operations in which the Department of Homeland Security questions and/or arrests people whom they suspect may be deportable, often *en masse*. In late 2006, ICE escalated raids at workplaces, residences, and public areas, often in partnership with local parole, probation and other agencies. Typically, DHS claims to be looking for particular people and then arrests many more that agents happen to encounter. In the last year, raids have resulted in local crises as children have been left waiting for their detained parents and families have been permanently separated. Reports abound of ICE picking up U.S. citizens and non-deportable people. In several cases, local governments – including at least one which cooperated with DHS during a raid - complained about misinformation and sloppy and indiscriminate work by DHS agents.

**UNDOCUMENTED**

Noncitizen who may have many documents, but have no government authorization to be in this country. Undocumented people include people who crossed the border without permission, people who came on valid visas but then remained past their authorized period of stay and former LPRs/greencard holders who were ordered deported. An “undocumented” person might have received work authorization (for example, upon filing an application for asylum or other status), but that does not necessarily mean he is now out of this category.

# IMMIGRATION IN THE BRANCHES OF GOVERNMENT (PARTIAL CHART)





## WHO CAN BE DEPORTED?

The short answer is that any person who is not a citizen can be deported from the U.S. Certain immigrants are particularly at risk for deportation.

### **IMMIGRANTS WITH PAST CONVICTION (INCLUDING GREEN CARD HOLDERS)**

Immigrants with certain convictions may be deportable, barred from adjusting their status or prohibited from reentering the U.S. after a trip abroad. This includes:

- Lawful Permanent Residents (LPRs, or greencard holders)
- Asylees and refugees
- People who have been granted withholding of removal or temporary protected status
- People who are in the process of adjusting status
- People on student, business and other visas

The types of convictions leading to deportation are very broad, and even include some violations and offenses that the state or criminal court judge considered minor enough to warrant no time in jail. This deportation is an additional punishment that happens after a person finishes serving their criminal sentence, and can happen years after the conviction.

### **UNDOCUMENTED IMMIGRANTS**

Undocumented immigrants are deportable whether or not they have a conviction. However, any arrest or conviction will make them more likely to be discovered by DHS and may also affect whether they can adjust their status. This includes:

- People who “entered without inspection” (i.e. jumped the border)
- “Absconders,” or people with old deportation orders. Remember that some people may have old deportation orders, even if they don’t know it – for example, if asylum was previously denied and the person was not informed of an immigration hearing.
- People who have overstayed a visa

### **CAN U.S. CITIZENS BE DEPORTED?**

U.S. citizens cannot be deported. However, the government can attempt to take away the citizenship of a naturalized citizen if they can show that her naturalization was gained through fraud (for example, if a person did not disclose an arrest or conviction on the naturalization application). A person whose citizenship is stripped may again be vulnerable to deportation.

## TRIGGER SITES FOR DEPORTATION

The Department of Homeland Security (DHS) arrests immigrants in a number of public and private spaces. For immigrants who are at risk for deportation (see previous page), the following sites most often trigger detention and deportation:

### **AFTER LEAVING THE COUNTRY AND TRYING TO RE-ENTER**

At an airport, seaport, or at land borders, immigration agents may detain a non-citizen if they have an old conviction (even a violation or misdemeanor), false papers, no status or an old deportation order. Greencard holders with old convictions are often detained and placed into proceedings at this trigger site – even if they have traveled outside the U.S. many times since the conviction.

### **WHEN APPLYING FOR CITIZENSHIP OR ADJUSTMENT OF STATUS**

Many immigrants with old deportation orders or past convictions are detained when they apply for citizenship or a greencard. Some undocumented immigrants apply for benefits for which they do not qualify (for example, because of bad legal advice or to get a temporary work permit), putting them on immigration's radar and at greater risk.

### **UPON BEING STOPPED BY THE POLICE**

Some police departments are hesitant to enforce immigration laws. Other police departments or individual officers affirmatively investigate immigration status, in order to turn undocumented immigrants over to federal authorities. A police stop is most likely to result in immigration involvement if the person has an old order of deportation – especially since the Department of Justice began entering this information into the National Crime Information center (NCIC) database, which is accessed by law enforcement. Some local governments have entered into “Memorandums of Understanding” with the Department of Homeland Security, in order to enforce immigration laws. In New York and other states, federal agents interview immigrants at local jails and lodge detainers preventing release from custody. Green card holders with a past conviction or undocumented immigrants with no convictions may be turned over to immigration even if criminal charges are dropped, or the person is acquitted.

### **DURING OR UPON FINISHING A CRIMINAL SENTENCE (INCL. PAROLE, PROBATION)**

You may be sent to immigration after you complete a jail or prison sentence, a drug rehabilitation or other alternative program. You may also be sent to immigration while you are on parole or serving a sentence of probation – in fact, immigration authorities are increasingly coordinating with probation and parole departments.

### **EVERYDAY LOCATIONS: WORKPLACES, HOMES, STREETS, BUSES, TRAINS**

In late 2006, DHS increased its actions at workplaces, homes and on the streets. These raids have resulted in the detention of dozens or hundreds of mostly undocumented immigrants in one operation. In addition, DHS has been boarding Greyhound buses and Amtrak trains in upstate New York (near and far away from the Canadian border), demanding “status documents” and arresting those who cannot produce them.

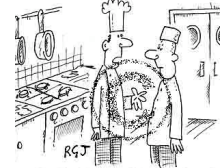
# LOCAL POLICING: HOW DOES IMMIGRATION TAKE MY NEIGHBORS?

## Deportable v. In Deportation

Well over 12 million people on American soil are at risk of deportation. But only a percentage is taken into the system annually. The government lacks the capacity and the will to expel everyone. It must prioritize. Enforcement varies from one region to another, depending on local rules and resources. “Raids” is a catch-all term for the many ways that immigrants enter the system. Leaders organizing against deportations should map how enforcement is happening, practically speaking.

### Do you know?

- **Sites:** where are deportable immigrants physically captured?
- **Laws:** what local (city, county, state) rules mandate or facilitate the federal deportation process?
- **Agencies:** how do local officials assist in identifying and processing deportable immigrants?



## Local Snapshot: New York

### Courts

In New York City, up to 85% of criminal cases are settled by a plea. Noncitizens taking pleas get deportation as a surprise, second punishment – after serving the criminal sentence. Defense attorneys, prosecutors and judges are not liable if they fail to warn a noncitizen that a criminal plea may result in deportation. In some cases, local prosecutors are trained on securing convictions that result in deportation. The courts share files (including pre-sentencing reports) with the feds. Federal authorities have also taken noncitizens directly from criminal court to immigration detention.

### Streets & Roads

In the last few years, dozens of local governments across the country have entered into “287g agreements” with the federal government, granting them authority to enforce federal immigration laws. Many others interrogate and detain immigrants without signing the agreements or being trained in immigration law. NYC’s Executive Order 41 – our “sanctuary” ordinance – allows local agencies and law enforcement to inquire and/or disclose immigration status when law enforcement is investigating illegal activity (beyond undocumented status). Sometimes, local police actively aid in the apprehension of people with old deportation orders at traffic stops and crime scenes – even though many people do not know they have been ordered deported. DHS regularly boards Greyhound buses and Amtrak trains *within New York State* to demand immigration/citizenship documents and arrest people who do not produce them.

### Home

Local police departments and ICE conduct joint pre-dawn raids at homes. They typically come in the very early morning, with or without a warrant, and take immigrants who happen to be there (often not even listed on warrants).

### Jails & Prisons

There are at least 8,000 foreign born inmates in the custody of NYC Corrections. Immigration agents at Rikers Island interview and place “holds” on 300 potentially deportable inmates weekly. Upstate prisons house the federal Institutional Removal Program (IRP), where noncitizens complete deportation proceedings while they serving time. Most inmates do not have counsel. Ironically, law libraries in these facilities lack basic immigration law books.

### Parole and Probation Offices

The NYS Division of Parole and the NYC Department of Probation help ICE identify deportable immigrants, and call people successfully complying with their parole and probation requirements into their offices for ICE apprehension. ICE also uses Megan’s law databases to identify noncitizen “sex offenders” who have already completed their sentences for deportation.

### Schools & Universities

Through the SEVIS program, universities have actively shared student information with Immigration. One New York school referred a student to the Joint Terrorism Task Force.

### Work

Workplace raids by immigration occur locally, sometimes prompted by employers in response to workers’ organizing efforts. Social Security is sending no-match letters too.

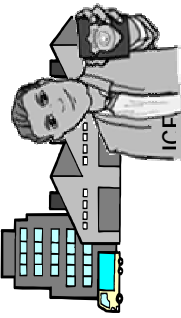
### DMV & Other Public Agencies

The Department of Motor Vehicles is referring cases directly to ICE and CIS, effectively terminating some asylees’ status. It is unclear whether immigrants are safe accessing public services connected to crime databases.



# DEPORTATION SYSTEM: RAIDS TO DEPORTATION

## ICE Raids and Sweeps



- Right to remain silent
- Access to counsel/union (no free lawyer)
- Initial ICE interrogation and detention
- Treatment of detainees

- Some ICE trigger sites: factories, day laborer sites, apartments, homes, streets
- Workplace: warrant or employer consent
- ICE may coordinate with local police, parole or probation officers
- Note: Traffic and police stops can also trigger ICE action. See Criminal Justice map.

## ICE Deportation Office

- Notice to Appear -48 hours?
- Assigned deportation officer
- Stipulated orders or voluntary departure
- Consulate help
- Old deportation orders
- ICE and law enforcement decides: *deportation* process and/or *criminal* prosecution

## Detention

- Facilities: federal, local/county, private
- Transfers
- Bond by ICE?
- Jail staff vs. ICE officers
- Abuse and detention



**Criminal Prosecution**  
See Criminal Justice Map

- Free lawyer available
- Deportation process happens simultaneously or after prosecution.

**Deportation**  
If immigrant has a final administrative order of deportation/removal, and no stay of deportation, ICE may deport him/her. Consulate usually issues travel documents first.



## What happens to my family?

- Separation and transfers
- Power of attorney
- Family detention
- Visitation/phone call

## Immigration Courts

NO FREE LAWYER		
<b>Bond Hearing</b> Sets bond (if eligible).	<b>Master Calendar</b> Decides deportability, relief eligibility. May order release/removal.	<b>Individual Hearing</b> Reviews relief applications. Orders release/removal.
To appeal this Court's decision: BIA must receive appeal within 30 days!		

## Federal Courts

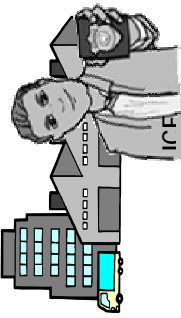
<b>District Court:</b> Challenging Detention (habeas).	<b>Court of Appeals:</b> Reviews BIA's deportation decision.
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## Board of Immigration Appeals (BIA)

- No free lawyer
- To appeal BIA decision: federal Court of Appeals must receive appeal within 30 days!

# EL SISTEMA DE DEPORTACIÓN: REDADAS PARA LA DEPORTACIÓN

## Redadas y Barridas del ICE



- Algunos lugares donde se active el ICE: fabricas, sitios para los trabajadores, apartamentos, hogares, calles
- Lugar de trabajo: orden o consentimiento del patrón
- El ICE puede coordinar con la policia local, o los oficiales de probación o de *parole*
- Nota: Detenciones por la policia regular o de transito tambien pueden activar al ICE. Véase el mapa de Justicia Criminal

- Derecho a quedarse callado
- Acceso legal/unión (no hay abogado gratuito)
- Interrogación inicial por parte del ICE y detención
- Trato de detenidos



- Noticia para Presentarse - ¿48 horas?
- Se asigna a un oficial de deportación
- Ordenes estipuladas o salida voluntaria del país
- Ayuda del consulado
- Ordenes de deportaciones viejos
- Las fuerzas de la ley y el ICE deciden: *el proceso de deportación* y/o el enjuiciamiento criminal

## Oficina de Deportación del ICE

## Detención

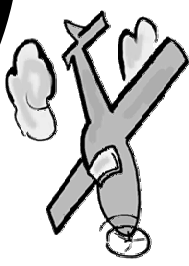
- Instalaciones: federales/locales, privadas
- Transferencias
- ¿Libertad bajo fianza?
- Carcelarios versus oficiales del ICE
- Abuso y detención

**Procesos Criminales**

- Vea el mapa de Justicia Criminal
- Abogado gratis disponible
- El proceso de deportación se da simultáneamente o después del enjuiciamiento

**Deportación**

Si el inmigrante tiene orden final de expulsión/deportación, sin suspensión de la deportación, el ICE puede deportarlo/la. Consulados usualmente preparan primero documentos de viaje



## ¿Qué pasa con mi familia?



- Separación y transferencias
- Poder de representación legal (abogado)
- Detención familiar
- Visitas/llamadas telefónicas

## Cortes de Inmigración

NO HAY ABOGADO GRATUITO	
<b>Audiencia de Fianza</b>	<b>Audiencia Individual</b>
La estable (si es elegible).	Examina aplicaciones de <i>relief</i> . Ordena la libertad/expulsión
Para apelar la decisión de la Corte: ¡BIA debe recibir la apelación dentro de 30 días!	

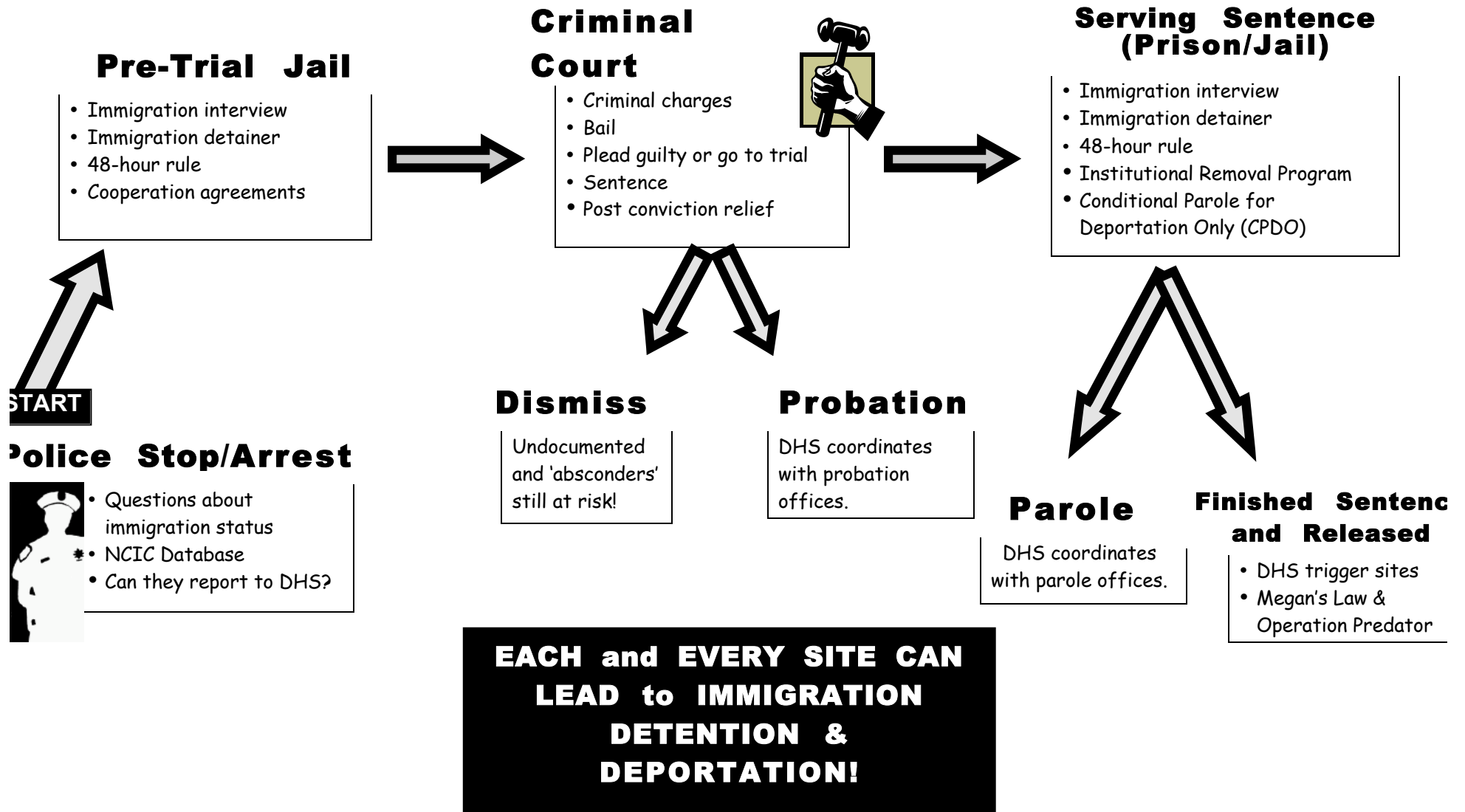
## Cortes Federales

<b>Corte del Distrito</b>	<b>Corte de Apelaciones:</b>
Para oponerse legalmente a la detención (habeas).	Examina las deportaciones de la BIA

## Junta para Apelaciones de Inmigración (BIA)

- No hay servicio legal gratis (abogado)
- Para apelar la decisión de la Corte: ¡BIA debe recibir la apelación dentro de 30 días!

# IMMIGRATION IN THE CRIMINAL JUSTICE SYSTEM



# IMMIGRATION IMPACT OF CRIMINAL CONVICTIONS

## How Might a Conviction Affect Immigration?

### POTENTIAL EFFECTS OF CONVICTION

- Removal (deportation, exile)
- Bar to U.S. citizenship – either for several years or permanently
- Inability to reenter the U.S. after leaving for trip abroad
- Inability to adjust status or obtain a greencard
- Ineligibility for asylum or withholding of removal
- Detention (immigration jail), which is sometimes prolonged and mandatory

## What Convictions Should I Avoid?

See attached Checklist for a partial list of convictions to avoid.

### DEPORTABILITY VERSUS INADMISSIBILITY

The effect of a conviction depends on current immigration status. So, the same offense may have different immigration consequences for undocumented and LPR/greencard holders. There are two main categories of removal - deportability and inadmissibility. Some crimes fit in both categories, while others make a person “inadmissible” but not “deportable” or vice-versa.

#### Deportability

- Applies to non-citizens who have been “admitted” to the U.S.
- LPRs who are in the U.S. should focus primarily on avoiding deportability.

#### Inadmissibility

- Applies to people who are seeking admission into the U.S.
- People who plan to adjust status/apply for a greencard should focus on avoiding inadmissibility.
- LPRs who are returning to the U.S. from a trip abroad will be subject to inadmissibility review.

### IMPORTANT!

**Assume that any conviction or disposition may create an immigration problem, until you learn otherwise! Speak to an expert on crime-related deportation!**

For example, any of the following offenses **could** lead to deportation:

- Almost any drug conviction – even violations and misdemeanors. This includes convictions for simple possession and includes marijuana.
- Theft offenses – even very minor offenses, like jumping a subway turnstile or shoplifting. The immigration consequences depend on the offense itself as well as the sentence and your immigration status.
- Convictions for domestic violence or violating an order of protection.
- Statutory rape convictions and other sex offenses – DHS’s Operation Predator is aggressively targeting people with convictions for sex offenses involving minors.
- Gun convictions
- Often, pleas in problem solving courts (like drug courts and domestic violence courts)

**THESE ARE ONLY EXAMPLES - SEE ATTACHED CHECKLIST & CONSULT WITH AN EXPERT IN CRIME-RELATED DEPORTATION FOR A THOROUGH ANALYSIS!**



# IMMIGRATION IN CRIMINAL COURT

## Should I Plead Guilty Or Go To Trial?

After someone is charged with a crime, that person is confronted with the choice: do I plead guilty to a [usually] lesser offense, or do I go to trial and risk a more serious conviction? There is a lot of pressure on defendants to plead guilty – this pressure may come from the defense attorney, the prosecutor, the judge and even the family. For an immigrant defendant, however, this choice can have a more serious effect that judges and defense attorneys may not know or care about.

### PRACTICAL STEPS BEFORE PLEADING GUILTY

- ❑ Tell your **defense lawyer** that you are not a citizen, and that you want to know the immigration consequences of the charges, a guilty plea, and possible trial conviction. Get the defense lawyer's response in writing. (See Appendix for sample letters to defense attorney.)
  - ❑ Seek an opinion from an **expert** in crime-related immigration law. You or your criminal defense lawyer can seek out your own expert or call the NYSDA Immigrant Defense Project hotline (212-725-6422). We do not represent people in court, but will do our best to return your call and discuss the possible effects of a conviction on immigration status.
  - ❑ **Structure your plea** to minimize immigration consequences. Many times, informed and creative pleading can help turn mandatory deportation into possibility of relief from deportation. It can also help preserve an LPR's chance to apply for naturalization. Sometimes this may require finding a different, non-deportable offense to which to plead guilty. Other times, it may require reducing the length of the proposed sentence. Sometimes, even a tougher sentence to a different offense can help minimize immigration consequences.
  - ❑ Explore whether your state has **dispositions for young people**. Some states have special courts, processes and/or dispositions for certain juveniles that are different than for those in adult court. *Some* such dispositions are not considered "convictions" for immigration purposes (although they may still become a problem for discretionary forms of relief or where "admitting to a crime" is enough). For example, in New York:
    - A "Youthful Offender" disposition for people under the age of 19 at time of conduct is not a "conviction" for immigration purposes. In fact, a Y.O. for a more serious offense is *sometimes* better than a straight conviction for a lesser offense.
    - A "Juvenile Delinquency" disposition in Family Court for people under age 16 at time of conduct is not a "conviction" for immigration purposes.
    - However, a "Juvenile Offender" disposition is considered a conviction for immigration purposes and does not have the same benefits.
- Note:** The federal government and every state has its own system for treating juveniles in the criminal justice system – some will be safer for immigrant youth, and some will not. Every state also has its own rules for the maximum age at which a young person may qualify for this treatment – for example, one state may place a 15-year-old in adult court with no special dispositions, while another state may place a 17-year old in the juvenile justice system.
- ❑ **Consider going to trial** instead of pleading guilty. This is not always the best option, but you may want to consider it if, for example, the evidence against you is weak and/or the benefits of the plea offer are not worth the immigration consequences to you.

## Post-Conviction Relief

### DIRECT APPEAL

- Every state has its own deadlines and procedures for appealing a criminal conviction.

#### Why do a Direct Appeal?

- In many (but not all) federal circuits, a conviction that is on direct appeal is no longer a conviction for immigration purposes. So, if the conviction is the only basis for an immigration detainer/hold or for a charge that you are deportable, then a pending direct appeal can remove that basis – this might then enable you to be released from custody or have your removal proceedings terminated. If you lose your appeal and have a final conviction once again, then the removal proceedings may be reinitiated.

### VACATING CONVICTION

If you are able to get a conviction vacated, then it might no longer be considered a conviction for immigration purposes.

- Try to get the conviction vacated on the basis of some procedural or constitutional errors in the underlying criminal proceeding.
- A vacatur order that states that it is based on rehabilitation or to avoid immigration consequences will continue to be considered a conviction for immigration purposes.
- If you have already been ordered deported/removed based only on a conviction, then vacating that conviction will not automatically stop your deportation! You will need to get your immigration case reopened first.

### CERTIFICATE OF RELIEF FROM DISABILITIES AND CERTIFICATE OF GOOD CONDUCT

Many states have versions of these certificates. For example, in New York State, these certificates are granted by either the criminal court or Division of Parole. If you get a certificate of relief from disabilities, it will generally not change the fact that you have a conviction. However, this could help your applications for certain forms of discretionary relief that depend on your equities (e.g. cancellation of removal, deferred action).

# IMMIGRATION IN JAIL

**The Department of Homeland Security increasingly has a presence at federal and local jails.**

In New York City, immigrants at Rikers Island are routinely questioned by and turned into the custody of federal immigration agents. In fact, Rikers Island is one of the main entry points to deportation for New York City residents. Once federal immigration agents take custody, New Yorkers are routinely transferred to county jails or facilities across the country – such as New Jersey, Pennsylvania, Alabama, Louisiana and Texas.

## Immigration Interviews

While you are at a local jail, you may be visited by a federal immigration agent. This person may ask you questions in order to determine whether you might be deportable – for example, your name, country of birth, citizenship, immigration status, age, parents' citizenship, and prior convictions. This information will be used to help DHS deport you! If you think you are being questioned by immigration agents or asked immigration information, follow 4 simple rules:

### 1. DON'T SAY ANYTHING

Do not answer ANY question – not even your name, country of origin, or immigration status. Immigration agents may threaten you with jail or deportation if you do not answer questions. They may tell you that if you answer, everything will be fine. Do not be fooled. Ask for the agent's identification, like a business card or badge. Be persistent. Record the name and agency of the person talking to you.

### 2. DON'T SIGN ANYTHING

If the agents ask for your signature, ask for a copy of the papers but do **NOT** sign. Show the papers to an immigration expert or your attorney.

### 3. DON'T LIE

Say nothing, or say, "I need to speak with a lawyer first." You can be criminally prosecuted or barred from immigration benefits if you give incorrect information (for example, erroneously claiming that you are a U.S. citizen).

### 4. ASK TO SPEAK WITH YOUR ATTORNEY

Ask your attorney for a letter stating that s/he does not permit immigration agents to interview you. Give a copy of this letter to the immigration agents. If you do not have an attorney, tell them that you will find one first. If they keep pushing you to answer questions, just repeat, "I want to talk to an attorney first. I want to stop this interview now." Then ask to be sent back to your cell.

## IMMIGRATION DETAINER

### What is an Immigration Detainer?

At any point during your time in jail, DHS may place a detainer or “immigration hold” on you. This detainer means that when the criminal system no longer has a right to jail you – for example, because you were granted bail, were acquitted or finished your sentence – the jail/prison may decide to keep you in custody to give DHS an opportunity to pick you up. This hold may also prevent you from participating in some programs and getting some privileges (like work release).

### Who is at Risk of an Immigration Detainer?

The government may place a detainer on a non-citizen in government custody who is inadmissible or deportable. This includes:

- **“Absconders”** – people with old orders of deportation/removal, even if there is no conviction.
- **Out-of-Status Immigrants** – this includes people who came across the border without any papers, people who overstayed their visas, people who lost their asylum or adjustment hearings, and even previously undocumented people who are now applying to adjust their status. A detainer can apply to out-of-status immigrants even if there is no conviction.
- **LPRs/greencard holders with convictions** – even LPRs who have never been charged with being deportable can get immigration holds if they have been convicted of a deportable offense! The basis for the detainer can be a past or recent conviction.

**Note:** if you have an old deportation order, are out-of-status, or are a greencard holder with a past deportable offense, your immigration hold will not be lifted even if your current criminal case is dismissed. However, in most cases, if you are in status and have no final convictions, you should not have an immigration detainer.

### What Can You Do?

- **Direct Appeal of Your Conviction** – Especially if the government’s only basis to hold you is the conviction, then you may want to appeal your conviction [See Section on Post Conviction Relief].
- **48 Hour Rule** – Even if DHS has issued a detainer and asked a local jail/prison to temporarily detain you, the jail/prison is not authorized to hold you on that detainer for more than 48 hours after you would normally be released, not counting weekends and holidays (8 C.F.R. 287.7). If DHS hasn’t picked you up within the 48 hours, then you yourself can demand release or file a *habeas* petition in state court, asking the court to demand release. Be aware that sometimes, this may just result in DHS finally coming to take you into custody. In *some cases* it is preferable to remain in criminal custody with an immigration detainer than to be transferred to immigrant detention right away. Especially if you may qualify for relief, being in criminal custody sometimes provides valuable time to secure representation, collect key documents and develop favorable factors before being transferred to an immigration facility that may be far away. You should weigh these factors when deciding to file a state habeas petition challenging a hold longer than 48 hours.

## INFORMANT AGREEMENTS

A non-citizen in criminal proceedings may find himself in a situation where prosecutors seek her cooperation. Sometimes, a prosecutor will offer an immigration benefit in exchange for this cooperation. For instance, a district attorney prosecuting a non-citizen for drug possession may offer to help get a greencard or “not to deport” the defendant in exchange for testimony against another defendant. Should the defendant accept such an offer? Can a prosecutor even grant immigration benefits?

### Are these agreements binding?

This is not clear. First of all, it is unlikely that a city or state prosecutor can bind the federal government. Additionally, it is unclear whether one federal agency (DHS) can be held to promises made by a different federal agency (DOJ). Some federal courts have held such agreements binding, while others have refused to do so.

### What Can You Do to Increase the Effectiveness of Agreement?

- **Work out details of any agreement to cooperate prior to providing assistance.**  
After cooperating, the government has no incentive to grant anything at all.
- **Get the agreement in writing.**  
Verbal agreements, regardless of who made them, will almost never be enforced. It is very important to demand a formal, written agreement.
- **Demand that DHS be a party to the agreement.**  
Some courts will only enforce an agreement conferring immigration benefits where DHS is a signatory. This will probably be very difficult to get, but you could demand it anyway.
- If you can't get such a formal commitment not to deport, but decide to cooperate anyway, get a **written recommendation** from a prosecutor not to deport. This might support future immigration applications where discretionary relief is available.

### Other agreements to cooperate with the government:

A few recently-created special visas grant temporary immigration status with a possible future opportunity to apply for LPR status in exchange for cooperation. They all have very specific requirements and require some formal assistance from the prosecutors.

- **S-Visas**—available to some people willing and able to provide information against certain types of criminal organizations. The government must apply for you! Make sure they will fulfill their end of the deal before you fulfill yours!
- **T-Visas**—may be available to certain people determined to be victims of trafficking in persons and willing to cooperate with prosecutions against traffickers.
- **U-Visas**—may be available to victims of certain crimes such as domestic violence, sexual assault or rape (among others) who help prosecute those cases.

If you already cooperated, and fear for your life if deported (for example, from the individual and/or groups on which you informed), consider developing a solid argument for a persecution-based claim under the Convention Against Torture.

# IMMIGRATION IN PRISON

## Institutional Removal Program & Video Hearings

### WHAT IS THE INSTITUTIONAL REMOVAL PROGRAM?

The **Institutional Removal Program** (IRP) is a nationwide collaboration between the Department of Homeland Security, the Executive Office of Immigration Review (EOIR – the immigration court system), and federal, state and local penal institutions. Established in 1988, it forces incarcerated non-citizens into deportation proceedings while they are serving their sentences and from within the facilities in which they are confined. Any non-citizen can face the IRP, including undocumented immigrants and lawful permanent residents.

The IRP operates in dozens of facilities across the country and in most states, including in Federal Bureau of Prisons, state and municipal facilities. In Fiscal Year 2006, the IRP operated in 75 facilities. In New York State, the IRP operates at Fishkill Correctional Facility in Beacon, Ulster Correctional Facility in Napanoch and the Bedford Hills Correctional Facility for Women.

### PROBLEMS WITH THE INSTITUTIONAL REMOVAL PROGRAM

Because these facilities are often located in remote locations without legal materials and because the deportation proceedings happen quickly and come as a surprise to many immigrants, many immigrants are forced to defend themselves with little access to legal information or legal assistance.

Some of these prisons have immigration courts and judges inside the prison facility itself. At several other prisons, IRP proceedings take the form of “video hearings.” Instead of being in a courtroom, a prisoner sees a video camera and television monitor from a room within prison. The person may thus be isolated from some or all other parties, including the judge, DHS lawyer, the interpreter, witnesses and sometimes even her own lawyer (if she even has a lawyer). Because prisons in many states are located remotely in less-populated areas, IRP proceedings often create obstacles for the immigrant’s family members and other to help the person prepare for the hearing, bring important legal documents and especially to attend the hearing to testify on her behalf or show their support.

### OBJECTING TO VIDEO HEARINGS

If you are facing a video hearing, you can object to the video hearing. You should object the first time a video hearing is scheduled and again at the beginning of the actual video hearing. Immigration judges will probably move forward with the video hearings despite any objections, but an objection “on the record” ensures that you might later be able to challenge the fairness of the hearing. Some issues to cite when objecting to the video hearings include (but are not limited to):

- Video conferences serve to further isolate detainees already held in distant prisons, detached from family, community, legal and other support.
- There are many inherent problems with testimony given on camera, including: difficulties presenting and examining evidence, communication difficulties, the general unfamiliarity of all parties to interacting via videoconference and even basic technical problems.
- Accurate interpretation is difficult enough in person; interpreting via video-conference creates even more communication problems.

*For more information on IRP and video-hearings, see the AILF Practice Advisory, “Objecting to Video Merits Hearings” at [www.aifl.org](http://www.aifl.org).*

# STEP BY STEP GUIDE TO NEW YORK'S ECPDO & CPDO

## (EARLY/CONDITIONAL PAROLE FOR DEPORTATION ONLY)

by Peter Markowitz, Bronx Defenders, 2004  
(updated by Immigrant Defense Project, 2008)

### 1. What is ECPDO & CPDO?

The Board of Parole has the power to release some New York State prisoners into Immigration custody for the sole purposes of being deported.

- ***Early Conditional Parole for Deportation Only (ECPDO)***  
ECPDO releases an inmate to Immigration for deportation before s/he has served her minimum sentence, but only after s/he has served at least one half of his or her minimum.
- ***Conditional Parole for Deportation Only (CPDO)***  
CPDO releases an inmate to Immigration for deportation after s/he has served his or her minimum sentence.

### 2. Can I Get ECPDO or CPDO?

- ***You are eligible for ECPDO if you...***
  - a. Have served at least one half of the minimum term of your sentence, AND
  - b. Have a Final Order of Deportation issued against you, AND
  - c. Have used up, or given up, all of your immigration appeals, AND
  - d. Have NOT been convicted of a Violent Felony offense, AND
  - e. Have NOT been convicted of an A-I felony (except A-1 drug offense), AND
  - f. Have no other unsettled criminal charges or appeals pending.
- ***You are eligible for CPDO if you...***
  - a. Have served the minimum term of your sentence, AND
  - b. Have a Final Order of Deportation issued against you, AND
  - c. Have used up or given up all of your immigration appeals, AND
  - d. Have no other unsettled criminal charges or appeals pending.

### 3. Is ECPDO or CPDO a Good Decision For Me?

Getting ECPDO or CPDO has some very large advantages and also some very large disadvantages. Only after thinking about all the advantages and disadvantages can you decide whether it is a good decision for you to try and get ECPDO or CPDO.

- ***Advantages of ECPDO and CPDO***
  - a. Getting ECPDO should allow you to serve less time in New York State custody.
  - b. Getting granted ECPDO or CPDO should mean that you will not have an extended period of incarceration in Immigration custody.
  - c. Some people think that it is easier to get CPDO than regular parole when you have an immigration hold. Therefore, CPDO can also allow you to serve less time in New York State custody.

- ***Disadvantages of ECPDO or CPDO***
  - a. Getting granted CPDO or ECPDO means that you will be deported.
  - b. For many people, when you are deported **you will never be allowed to return to the United States**. This includes virtually anyone convicted of a drug crime or anyone who was sentenced to a year or more for a theft or violent crime.
  - c. Having family members in the U.S. does *not* mean that you can return.
  - d. People you reenter the U.S. illegally after being deported are often caught, prosecuted and sentenced to jail terms of up to 20 years.

***If you want to fight your deportation, ECPDO and CPDO are NOT for you. Seeking CPDO or ECPDO means giving up any chance to stop your deportation.***

#### **4. How Do I Get Granted ECPDO or CPDO?**

There are two steps to getting granted ECPDO or CPDO. First, you must get Immigration to issue a Final Order of Deportation. Second, you must get the Parole Board to grant you ECPDO or CPDO.

- ***How Do I Get A Final Deportation Order?***

Usually Final Orders of Deportation are issued by Immigration Judges. People serving felony time in New York State usually have their deportation hearing while serving their New York time. Here is what you can do to get a final order of deportation:

- a. If you are brought before an Immigration Judge you should: (1) admit that you are deportable; (2) state that you “would like to be deported and would NOT like to apply for relief”; and (3) state that you “accept your deportation order as final and waive your right to appeals.”
- b. If an Immigration Officer asks you to sign a paper agreeing to be deported you should sign the paper.
- c. If you have not been offered a paper to sign for your deportation and have not been scheduled for a hearing before an immigration judge you or your friends or family can call the Deportation Office at 845-831-1576 x 300/400, or call your Deportation Officer and tell them that you want to be deported and ask them to make that happen quickly. Be sure to call with your alien number (A#).

***CAUTION: Once you get a Final Deportation Order it is likely that you will NEVER be able to return to the United States. Do NOT try to get a Final Deportation Order if you want to fight your deportation. It is a good idea to consult with an immigration attorney before attempting get yourself ordered deported.***

- ***How Do I Get the Parole Board to Grant Me ECPDO or CPDO?***

NYS Division of Parole should automatically notify the Parole Board of inmates who are eligible for ECPDO or CPDO, and you should be scheduled for a hearing. If you have a Final Order of Deportation and believe you are eligible for either ECPDO or CPDO and you have not been scheduled for a hearing you can contact your facilities parole officer and you can also call NYS Department of Parole Immigration Liaison at 845-647-1670 x1121 and point out your eligibility and ask for a hearing. Once you are given a hearing it is up to the Parole Board whether or not to grant you ECPDO or CPDO.



## **5. I Have Been Granted ECPDO or CPDO, Now How Do I Get Immigration to Pick Me Up and Deport Me?**

There are two things that must happen before Immigration will pick up people with ECPDO or CPDO from New York State custody and deport them. First, your country must issue travel documents for you, giving the Immigration authorities permission to return you. Second, the immigration authorities must make arrangements to transport you to your country. If you have been granted ECPDO or CPDO and are waiting for immigration to pick you up, you must find out whether step one or step two is holding up your removal. To find out you can call the Buffalo Deportation Office at 716-551-4741 ext. 2512 (make sure you have your A# when you call).

- ***How Do I Get My Country to Issue Travel Documents for Me?***

If you find out that the delay is because your country has not yet issued travel documents you can do two things:

- a. Collect all the documents you have which help show that you are from your home country (i.e. birth certificate, passport, national id card, school records, etc.) and send one copy to your nation's consulate (see Appendix) and send one copy to:

U.S. D.H.S  
Ulster Correctional Facility  
Berme Road  
Napanoch, NY 12458

Make sure to include a cover letter with your A#, explaining that you have been granted ECPDO or CPDO, and asking that travel documents be issued.

- b. You or your friends or family can also call your country's consulate and request that travel documents be issued. (see next page). It may take several phone calls – be persistent, keep calling.

- ***My Country Has Issued Travel Documents But Immigration Still Won't Pick Me Up, What Can I Do?***

After you are granted ECPDO or CPDO and Immigration receives your travel documents from your home country, Immigration should pick you up and deport you. Unfortunately, they often take a long time and there is very little you can do about it. You can call, and have friends and family members call 716-551-4741 x 2512 (make sure you have your A# when you call). Again, it may take several phone calls, be persistent.

## **6. Once Immigration Picks Me Up, How Long Will I Have to Wait to Be Deported?**

If you have been granted ECPDO or CPDO and are taken into Immigration Custody before you finish serving your maximum sentence, you should be deported quickly and should not have to spend a lot of time in Immigration detention. Usually people are deported in days or weeks after Immigration takes them into custody.

## Contact Numbers for Foreign Consulates (to obtain Travel Documents)

Afghanistan	202-483-6487	Kenya	202-387-6101
Albania	202-628-7342	Liberia	202-723-0437
Argentina	202-238-6400	Mexico	202-728-1600
Bangladesh	202-244-5366	Nicaragua	202-939-6570
Belarus	202-986-1604	Nigeria	202-986-8400
Belgium	202-333-3079	Pakistan	202-939-6205
Belize	202-332-9636	Panama	202-483-1407
Bolivia	202-483-4410	Paraguay	202-483-6960
Brazil	202-238-2700	Peru	202-833-9860
Bulgaria	202-387-7969	Philippines	202-333-6000
Burma	202-332-5577	Russia	202-298-5700
Cambodia	202-726-7742	Singapore	202-537-3100
Chile	202-785-1746	Syria	202-232-6313
China	202-328-2500	Thailand	202-944-3611
Columbia	202-387-8338	Trinidad and Tobago	202-467-6490
Dominican Rep.	202-332-6280 ex. 2504	Turkey	202-612-6700
Ghana	202-686-4520	Ukraine	202-333-0817
Guyana	202-265-6900	United Kingdom	202-588-6500
Haiti	202-332-4090 ex. 112		
India	202-939-7000		
Jamaica	212-935-7504		

## NYSDA Immigrant Defense Project

### Immigration Consequences of Convictions Summary Checklist\*

<b>GROUND OF DEPORTABILITY</b> (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR)—greencard holder)	<b>GROUND OF INADMISSIBILITY</b> (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)	<b>INELIGIBILITY FOR US CITIZENSHIP</b>
<b>Aggravated Felony Conviction</b> ➤ <i>Consequences</i> (in addition to deportability): <ul style="list-style-type: none"> <li>◆ Ineligibility for most waivers of removal</li> <li>◆ Ineligibility for voluntary departure</li> <li>◆ Permanent inadmissibility after removal</li> <li>◆ Subjects client to up to 20 years of prison if s/he illegally reenters the US after removal</li> </ul> ➤ <i>Crimes covered</i> (possibly even if not a felony): <ul style="list-style-type: none"> <li>◆ Murder</li> <li>◆ Rape</li> <li>◆ Sexual Abuse of a Minor</li> <li>◆ Drug Trafficking (may include, whether felony or misdemeanor, any sale or intent to sell offense, second or subsequent possession offense, or possession of more than 5 grams of crack or any amount of flunitrazepam)</li> <li>◆ Firearm Trafficking</li> <li>◆ Crime of Violence + 1 year sentence**</li> <li>◆ Theft or Burglary + 1 year sentence**</li> <li>◆ Fraud or tax evasion + loss to victim(s) &gt; \$10,000</li> <li>◆ Prostitution business offenses</li> <li>◆ Commercial bribery, counterfeiting, or forgery + 1 year sentence**</li> <li>◆ Obstruction of justice or perjury + 1 year sentence**</li> <li>◆ Certain bail-jumping offenses</li> <li>◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.)</li> <li>◆ Attempt or conspiracy to commit any of the above</li> </ul>	Conviction or <i>admitted commission</i> of a <b>Controlled Substance Offense</b> , or DHS has reason to believe individual is a drug trafficker ➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)  Conviction or <i>admitted commission</i> of a <b>Crime Involving Moral Turpitude (CIMT)</b> ➤ Crimes in this category cover a broad range of crimes, including: <ul style="list-style-type: none"> <li>◆ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery)</li> <li>◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes)</li> <li>◆ Most sex offenses</li> </ul> ➤ <i>Petty Offense Exception</i> —for one CIMT if the client has no other CIMT + the offense is not punishable > 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months  <b>Prostitution and Commercialized Vice</b>  Conviction of <b>2 or more offenses</b> of any type + <b>aggregate prison sentence of 5 years</b>	Conviction or admission of the following crimes bars a finding of good moral character for up to 5 years: <ul style="list-style-type: none"> <li>➤ <b>Controlled Substance Offense</b> (unless single offense of simple possession of 30g or less of marijuana)</li> <li>➤ <b>Crime Involving Moral Turpitude</b> (unless single CIMT and the offense is not punishable &gt; 1 year (e.g., in New York, not a felony) + does not involve a prison sentence &gt; 6 months)</li> <li>➤ <b>2 or more offenses</b> of any type + <b>aggregate prison sentence of 5 years</b></li> <li>➤ <b>2 gambling offenses</b></li> <li>➤ <b>Confinement</b> to a jail for an aggregate period of 180 days</li> </ul> <b>Aggravated felony</b> conviction on or after Nov. 29, 1990 (and murder conviction at any time) <i>permanently</i> bars a finding of moral character and thus citizenship eligibility
<b>Controlled Substance Conviction</b> ➤ EXCEPT a single offense of simple possession of 30g or less of marijuana	<b>CONVICTION DEFINED</b>  A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where: <ul style="list-style-type: none"> <li>(i) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, AND</li> <li>(ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed.</li> </ul> <b>THUS:</b> <ul style="list-style-type: none"> <li>➤ A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)</li> <li>➤ A deferred adjudication disposition without a guilty plea (e.g., NY ACD) is NOT a conviction</li> <li>➤ A youthful offender adjudication (e.g., NY YO) is NOT a conviction</li> </ul>	
<b>Crime Involving Moral Turpitude (CIMT) Conviction</b> ➤ For crimes included, see Grounds of Inadmissibility ➤ One CIMT committed within 5 years of admission into the US and for which a sentence of 1 year or longer may be imposed (e.g., in New York, may be a Class A misdemeanor) ➤ Two CIMTs committed at any time “not arising out of a single scheme”		
<b>Firearm or Destructive Device Conviction</b>		
<b>Domestic Violence Conviction</b> or other domestic offenses, including: <ul style="list-style-type: none"> <li>➤ Crime of Domestic Violence</li> <li>➤ Stalking</li> <li>➤ Child abuse, neglect or abandonment</li> <li>➤ Violation of order of protection (criminal or civil)</li> </ul>		
<b>INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL</b>		
<ul style="list-style-type: none"> <li>➤ Aggravated felony conviction</li> <li>➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the United States</li> </ul>		
<b>INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL</b>		
<b>“Particularly serious crimes”</b> make noncitizens ineligible for asylum and withholding. They include: <ul style="list-style-type: none"> <li>➤ Aggravated felonies               <ul style="list-style-type: none"> <li>◆ All will bar asylum</li> <li>◆ Aggravated felonies with aggregate 5 year sentence of imprisonment will bar withholding</li> <li>◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding</li> </ul> </li> <li>➤ Other serious crimes—no statutory definition (for sample case law determination, see Appendix F)</li> </ul>		

\*For the most up-to-date version of this checklist, please visit us at <http://www.immigrantdefenseproject.org>.

\*\*The 1-year requirement refers to an actual or suspended prison sentence of 1 year or more. [A New York straight probation or conditional discharge without a suspended sentence is not considered a part of the prison sentence for immigration purposes.]

## NYSDA Immigrant Defense Project

### Suggested Approaches for Representing a Noncitizen in a Criminal Case\*

Below are suggested approaches for criminal defense lawyers in planning a negotiating strategy to avoid negative immigration consequences for their noncitizen clients. The selected approach may depend very much on the particular immigration status of the particular client. For further information on how to determine your client's immigration status, refer to Chapter 2 of our manual, *Representing Noncitizen Criminal Defendants in New York* (4th ed., 2006).

For ideas on how to accomplish any of the below goals, see Chapter 5 of our manual, which includes specific strategies relating to charges of the following offenses:

- ◆ Drug offense (§5.4)
- ◆ Violent offense, including murder, rape, or other sex offense, assault, criminal mischief or robbery (§5.5)
- ◆ Property offense, including theft, burglary or fraud offense (§5.6)
- ◆ Firearm offense (§5.7)

#### 1. If your client is a **LAWFUL PERMANENT RESIDENT**:

- First and foremost, try to avoid a disposition that triggers deportability (§3.2.B)
- Second, try to avoid a disposition that triggers inadmissibility if your client was arrested returning from a trip abroad or if your client may travel abroad in the future (§§3.2.C and E(1)).
- If you cannot avoid deportability or inadmissibility, but your client has resided in the United States for more than seven years (or, in some cases, will have seven years before being placed in removal proceedings), try at least to avoid conviction of an "aggravated felony." This may preserve possible eligibility for either the relief of cancellation of removal or the so-called 212(h) waiver of inadmissibility (§§3.2.D(1) and (2)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid conviction of a "particularly serious crime" in order to preserve possible eligibility for the relief of withholding of removal (§3.4.C(2)).
- If your client will be able to avoid removal, your client may also wish that you seek a disposition of the criminal case that will not bar the finding of good moral character necessary for citizenship (§3.2.E(2)).

#### 2. If your client is a **REFUGEE** or **PERSON GRANTED ASYLUM**:

- First and foremost, try to avoid a disposition that triggers inadmissibility (§§3.3.B and D(1)).
- If you cannot do that, but your client has been physically present in the United States for at least one year, try at least to avoid a disposition relating to illicit trafficking in drugs or a violent or dangerous crime in order to preserve eligibility for a special waiver of inadmissibility for refugees and asylees (§3.3.D(1)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid a conviction of a "particularly serious crime" in order to preserve eligibility for the relief of withholding of removal (§3.3.D(2)).

#### 3. If your client is **ANY OTHER NONCITIZEN** who might be eligible now or in the future for **LPR status, asylum, or other relief**:

**IF your client has some prospect of becoming a lawful permanent resident** based on having a U.S. citizen or lawful permanent resident spouse, parent, or child, or having an employer sponsor; being in foster care status; or being a national of a certain designated country:

- First and foremost, try to avoid a disposition that triggers inadmissibility (§3.4.B(1)).
- If you cannot do that, but your client may be able to show extreme hardship to a citizen or lawful resident spouse, parent, or child, try at least to avoid a controlled substance disposition to preserve possible eligibility for the so-called 212(h) waiver of inadmissibility (§§3.4.B(2),(3) and(4)).
- If you cannot avoid inadmissibility but your client happens to be a national of Cambodia, Estonia, Hungary, Laos, Latvia, Lithuania, Poland, the former Soviet Union, or Vietnam and eligible for special relief for certain such nationals, try to avoid a disposition as an illicit trafficker in drugs in order to preserve possible eligibility for a special waiver of inadmissibility for such individuals (§3.4.B(5)).

**IF your client has a fear of persecution** in the country of removal, or is a national of a certain designated country to which the United States has a temporary policy (**TPS**) of not removing individuals based on conditions in that country:

- First and foremost, try to avoid any disposition that might constitute conviction of a "particularly serious crime" (deemed here to include any aggravated felony), or a violent or dangerous crime, in order to preserve eligibility for asylum (§3.4.C(1)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid conviction of a "particularly serious crime" (deemed here to include an aggravated felony with a prison sentence of at least five years), or an aggravated felony involving unlawful trafficking in a controlled substance (regardless of sentence), in order to preserve eligibility for the relief of withholding of removal (§3.4.C(2)).
- In addition, if your client is a national of any country for which the United States has a temporary policy of not removing individuals based on conditions in that country, try to avoid a disposition that causes ineligibility for such temporary protection (TPS) from removal (§§3.4.C(4) and (5)).

\*References above are to sections of our manual.

# **IMMIGRANTS & PLEAS IN PROBLEM-SOLVING COURTS: A GUIDE FOR NONCITIZEN DEFENDANTS & THEIR ADVOCATES**

*Prepared by the New York State Defenders Association Immigrant Defense Project  
Last Updated August 2007*

*This guide is for information purposes only and is not a substitute for legal advice.  
The information here may no longer be up-to-date.  
You should talk to a qualified immigration expert before agreeing to enter any plea or program.*

Problem-solving courts can give some defendants a chance to participate in rehabilitation programs and rejoin their communities rather than face time in jail or prison.

However, if you are a noncitizen, you might face deportation or other negative immigration consequences if you participate in certain problem-solving court programs. This guide explains why you are at risk, and what you and your attorney or reentry service provider can do to help you avoid these risks when working with problem-solving courts.

## **What are problem-solving courts and how do they work?**

“Problem-solving courts” are courts that focus on treatment and rehabilitation rather than long prison sentences. Examples of “problem-solving courts” are drug courts, domestic violence courts, mental health courts, and community courts.

Defendants who participate in these special courts are often required to plead guilty to the criminal charges against them and/or admit to committing a crime. Instead of being immediately sentenced to prison, however, the defendant is ordered to attend a program (for example, drug treatment or anger management/batterer classes). The court carefully monitors the defendant’s progress. In some courts, if the defendant completes the program successfully, the criminal charges are reduced or even dropped. In other courts, the defendant may end up with a low-level criminal conviction or non-criminal violation or regulatory offense.

## **If my charges are dismissed or if I only end up with a non-criminal violation or offense, why would participation in a problem-solving court lead to deportation or other negative consequences for me?**

The definition of “conviction” in immigration law is broader than the definition of “conviction” in criminal law. Immigration law defines a conviction as:

“A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where:

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, AND
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.”

This definition of “conviction” for immigration purposes can cover some charges or offenses that are not even considered “crimes” in criminal law. Furthermore, even if your charges are dropped because you successfully participated in a program, immigration law might still treat the combination of your plea in court and the court order requiring you to attend a program as a “conviction” for immigration purposes. That “conviction” might make you deportable or unable to get permanent resident status or citizenship.

Before you plead guilty to anything, you should check with an immigration attorney to find out if there are immigration consequences to your plea. If you already pled guilty to something, check with an immigration attorney to find out whether you are deportable and if you might have a way to fight deportation.

### **What if I didn’t have to plead guilty or admit any guilt to a crime?**

If you are told that you do not have to plead guilty or admit guilt to any crime, then you probably will not have a “conviction” for immigration purposes. An Adjournment in Contemplation of Dismissal (ACD) in New York law is an example of the kind of result that will not lead to deportability. However, you should be careful about what you do before your case is actually dismissed.

Even if you are not deportable, any interaction with the criminal justice system, even an arrest or case not yet dismissed, can give the Department of Homeland Security a reason to scrutinize your application for permanent residence or citizenship more closely, or cause problems when you are trying to travel to and from the United States. Always talk to an immigration attorney to be sure about what to expect, and if possible, avoid traveling or submitting applications to the Department of Homeland Security until your case is actually dismissed.

### **What if I have old convictions?**

Any old convictions might get you into trouble, even if your current court case results in an outright dismissal or an Adjournment in Contemplation of Dismissal (ACD). Immigration law has changed in recent years, and some old convictions are now deportable offenses even though they were not deportable offenses in the past. You should talk to an immigration attorney to find out what risks you face now.

### **How can I, or my attorney, find out whether my case in problem-solving court or old convictions will cause immigration problems?**

You or your lawyer should speak to an experienced immigration attorney to find out whether what’s happening in court (the plea offer, an agreement to attend a program, etc.), or old convictions you already have, will result in immigration problems. As explained above, even pleas to some misdemeanors and non-criminal violations might result in deportation or other immigration problems. Your risk of being deported might also depend on your immigration status (whether you are a greencard/permanent resident card holder, a refugee/asylee, or undocumented), your criminal record (even if your convictions are very old), how many years

you had been living in the United States before committing any crimes and/or whether you have relatives in the United States.

You or your advocate can get free advice from the NYSDA Immigrant Defense Project, (212) 725-6422. For more written information, please see “Understanding the Immigration Consequences of Your Criminal Charges” by the NYSDA Immigrant Defense Project.

**When might the government start deportation proceedings against me if I’ve already pled guilty to a deportable offense in a problem-solving court or have an old conviction that makes me deportable?**

Even if your case is going to be dismissed and sealed, you may still be at risk for deportation if you pled guilty or admitted that you committed a crime in court and then are ordered into a program, or have an old conviction that makes you deportable. The government might find out about the current plea/admissions of guilt or the old conviction in the following circumstances:

- (1) When you are in jail or prison, even if only for a short period of time (including if you are imprisoned for a few days as a “sanction” for failure to comply with the rules of your treatment program)
- (2) If you are returning to the United States from an international trip
- (3) If you apply for a lawful permanent resident card (greencard) or citizenship
- (4) If you renew your greencard
- (5) If you have other interactions with government officials (including police, border agents, and others)

If you do not follow the rules of your court-ordered program, the court might send you to jail for a few days (this is a common sanction in drug treatment courts, for example). Many jails permit immigration officials to interview people being held there. You should not answer any questions without your lawyer present, but you can avoid this situation altogether if you comply with the rules of your court-ordered program, so that you are not sent back to jail or prison. Also, before you decide to travel outside the U.S. or submit any immigration/citizenship applications to the government, you should consult with an immigration attorney to find out if you could face deportation or other negative immigration consequences.

**What are some examples of how noncitizen defendants have been placed in deportation proceedings following participation in problem-solving courts?**

Consider these examples, taken from New York State law:

Example 1: Jane is a lawful permanent resident (i.e., a green card holder) and has been charged with Criminal Possession of a Controlled Substance in the 5<sup>th</sup> degree, a class D felony (NYPL 220.06). She pleads guilty to this charge as part of a drug court program and is ordered into drug treatment. Upon her successful completion of the program requirements, the charges are dismissed. She believes that she does not have a conviction on her criminal record. A year later, Jane applies for citizenship. The application form instructs her to disclose if she has ever been placed in a rehabilitative or diversion program. She explains the

drug treatment order. The Department of Homeland Security initiates removal proceedings against her, saying she can be deported because of her conviction.

Example 2: John is a noncitizen and does not have legal status. He has been married to a United States citizen for five years. John has been charged with Aggravated Harassment, 2<sup>nd</sup> degree, a Class A misdemeanor. He pleads down to Harassment in the 2<sup>nd</sup> degree (Penal Law 240.26), a violation. It is his second such conviction. He is sentenced to a conditional discharge and a batterer program. He completes the program successfully and receives a discharge. A few months later, his wife sponsors his adjustment of status application so that he can receive lawful permanent resident status (a green card). He is placed in removal proceedings, and told that he might be deported on the basis of his status and his convictions.

### **What options in problem-solving court will give me the best chance of rejoining my family and community in the U.S. rather than being deported?**

Some problem-solving courts and prosecutors may be willing to consider certain alternative arrangements for noncitizen defendants who want to preserve their opportunity to rejoin their families and communities. These alternatives help fulfill the objectives of problem-solving courts because they permit the defendant to seek rehabilitation and return to his or her family as a law-abiding caretaker and wage earner.

You can ask your criminal defense attorney and/or reentry advocate to approach the court with the following alternatives:

#### **1. Ask to enter the program without pleading guilty**

Some courts will permit defendants to participate in court-ordered treatment without pleading guilty to the initial criminal charges (for example, through an Adjournment in Contemplation of a Dismissal (ACD)). Your criminal defense attorney should ask the court to consider that option in your case. If the court seems unwilling to drop the plea requirement, your attorney can offer something else instead of a guilty plea or on-the-record admission. For example, with the assistance of your attorney, you could sign a contract with the prosecutor in which you agree to give up certain trial rights in exchange for entering the court-ordered program without any admission of guilt.

For examples of the kinds of alternative arrangements that have been successfully used in problem-solving courts, contact the Immigrant Defense Project at (212) 725-6422.

#### **2. Ask to plead to a different charge**

Some courts will not be willing to consider letting you participate in the treatment program without some kind of guilty plea. In that case, you should talk to your criminal defense attorney about whether another plea might be appropriate given the facts of your case. For example, while a plea to a drug offense will almost certainly make you subject to possible deportation, a plea to another charge in your case might leave you in a better position to face



any future immigration issues (such as a low-level simple trespass or resisting arrest offense, which might be a safer option in some states).

Contact the Immigrant Defense Project at (212) 725-6422 for advice about possible alternative pleas in your case.

### **3. Ask to enter the program without a court order requiring your participation**

If you are never formally ordered by the court to attend a program as part of your criminal case, you might be able to argue that you do not have a “conviction” for immigration purposes. Some courts may permit you to enter a program voluntarily or through an off-the-record agreement with the prosecution, and then later will dismiss the charges without having ordered you to do anything. Thus, you may be able to argue that there is no court-ordered “punishment, penalty or restraint on liberty” in your case, and thus it is not a “conviction” under immigration law. However, there has not been much litigation on this issue, so we do not know if you will be safe from deportation simply by entering a program on your own or through an off-the-record agreement. But, if the court is willing to let you enter the program without a court order and either does not require a plea or allows an alternative plea, you will be in a strong position to argue that you do not have a “conviction” for immigration purposes.

**The law on these issues is not fully developed. You should always contact an immigration attorney for advice before accepting any plea or diversion program. We are available to help you make these decisions. Contact the Immigrant Defense Project at (212) 725-6422.**



# TIPS FOR HELPING SOMEONE FACING DEPORTATION

The first step in helping someone (or yourself) on a deportation matter is to get the right information about their case. Once a person has the right information they can get the right help. Begin by asking the right questions.

**\*\*Note:** Asking these questions requires the ability to keep the responses confidential, if a person, agency, or organization feels that they cannot keep these response confidential, then they should seriously reconsider asking for the following information.

## Finding Out Their Immigration Status

Does the person have a green card, asylum/refugee status, a valid visa (tourist, work, business etc.-not just a work permit) or some other legal reason to be here? If so when did they get this status and how?

If the person has no legal status, did they overstay a visa, or enter the country illegally (via the border or false papers)? When and how?

Does the person have an old order of deportation? When did they get it and how?

Sometimes immigration orders an immigrant deported but does not tell them. They may have an old order if they lost their asylum case, skipped an immigration interview or skipped an immigration hearing. One way to find out if you have an old order of deportation is:

1. Find your Alien Registration Number (A#). It is on the I-94 card on your passport, greencard, work permit or any other document from immigration. It looks like: A99 999 999.
  2. Call 1-800-898-7180. This is the hotline for the immigration court (EOIR).
  3. Press "1" for English or "2" for Spanish.
  4. Enter your A-number and listen for instructions. If your number is in the system, then this means that you had a deportation case at some time.
  5. Press "3" to find out if an immigration judge ordered deportation (removal) against you.
  6. If the hotline says you have a deportation/removal order, consult a lawyer specializing in immigration deportation before you go to the immigration office, leave the country, or try to adjust your status.
- People with old orders of deportation do not see a judge and can be ordered deported immediately.

*(note: the EOIR hotline number may not contain information about deportation orders that are several years old. Some individuals may also have more than one Alien number)*

## Gathering the Right Documents

Collect the following information about your loved one/client/member facing deportation. The person in proceedings along with the primary person handling their case should keep a copy:

- Full name and aliases
- "Alien Registration Number." It is on most immigration papers, including the I-94 card on your passport, greencard, or any other document that immigration gives you. The A# looks like: A99 999 999. If you do not know your alien number attempt to contact your loved one's consulate, and see if they have a record of detention that contains the A#
- Your loved one's first (or next) immigration court date. If you do not know call the Immigration court hotline at (800) 898-7180 and enter the A#.
- Date person entered the U.S. and how (visa, cross border, greencard through marriage, etc.)
- Criminal Record. You must have a list of the precise criminal convictions (e.g. 4th degree Criminal possession of a controlled substance, NYPL §220.09). Include the date of arrest, the place of arrest (City, State), date of conviction, and the sentence. If possible, get a copy of the rap sheet. Get a Certificate of Disposition for each conviction from the court clerk's office in the courthouse where the criminal case was heard.
- A copy of your Notice to Appear (NTA) and all other immigration paperwork. If the person has any old orders of deportation you want to gather the documents related to the old immigration case.
- Favorable Factors: collect documents showing that the person facing deportation has family, community ties and a "good character". (see the Favorable Factors sheet)
- Your loved ones location (jail, federal detention center, etc.)
- Information about family members: children, elderly parents, etc. Information about important finances.

## Finding a detained loved one:

It often takes weeks to find someone that has just been detained by immigration. Immigration agents are often unresponsive and families, out of fear shell out thousands of dollars to attorneys *just* to find a detained loved one. There are some simple steps a person can take to find a detainee. Be persistent and call frequently.

Information you will need:

- The person's full name (including all aliases)
  - Their date of birth,
  - Their "A" number ("Alien Registration Number.") The A number is on most immigration papers, including a work permit, green card, or any other document that immigration provides. It looks like: A99 999 999.
- ❑ Contact Immigration and Customs Enforcement Deportation and Removal Office (ICE-DRO). See partial phone list below. The website provides information about different local ICE-DRO offices. Start with the facilities closest to the arrest location. If you can't find a local office, call the Washington, DC main number for more information: 202-305-2734. Website: <http://www.ice.gov/about/dro/contact.htm>
  - ❑ Ask to speak with a supervisory deport officer or the Field Office Director (head of ICE-DRO). Give them your loved one's full name and A#. (Note: Deportation officers may be mean and not speak to anyone besides an attorney or the person being deported. You should still try.)
  - ❑ Contact your Consulate. Consulates are often required by international convention or treaty to be notified when one of their nationals is detained. Many consular offices have caseworkers that work specifically on deportation cases. Furthermore, Consular officials are sometimes (but not always) a little nicer to talk to than deportation officers. Contact the relevant embassy (see <http://www.embassy.org/embassies/>) to get the local consular contact information.
  - ❑ The last resort is always to contact the different county detention facilities or wait for your loved one to call. Remove any blocks on your phone for collect calls by calling the phone company. This way your loved one has a greater chance of contacting you.
  - ❑ Detention Watch Network: DWN has created a map of detention centers, and contact info for ICE-DRO offices and legal service providers. Website: [www.detentionwatchnetwork.org](http://www.detentionwatchnetwork.org)

**\*\*Alert!!!** If you are out of status and want to visit a family member in Detention contact an immigration expert to see if it may pose a danger to you.

## DEPORT OFFICE (IMMIGRATION AND CUSTOMS ENFORCEMENT, DETENTION AND REMOVAL OFFICES)

If Detained or Arrested in:

Call ICE Office:

New York	212-264-5854 or 212-620-3441, 2, 3
New Jersey	973-645-3666 x 0

## What A Detainee Should Know When They Are Inside...

Because most detainees do not have lawyers or resources, they often do not immediately know their rights. There are some basic steps that detainees can take on their own without an attorney:

- ❑ They should know they have the right to NOT sign any statements or documents, especially ones giving up your right to an immigration hearing in front of an immigration judge. If necessary they can say they want to speak to a lawyer first.
- ❑ Request bond or parole from an immigration officer immediately (even if you think you don't qualify). This may help keep you in the state in which you were arrested.
- ❑ If they have an old order of deportation, they will not see a judge and can be deported *immediately*. They should ask for a **Notice of Reinstatement of Deportation Order**.
- ❑ Make sure their family members outside have a copy of all of their immigration paperwork, including the **Notice to Appear (NTA)**, and their criminal certificates of disposition.
- ❑ They should ask a jail for a copy of the inmate handbook, detainee handbook, and the ICE Detention Standards.
- ❑ If they are able to see an immigration judge but do not have an attorney, they should tell the judge that you need more time to find someone to represent them. If the judge insists that they proceed without a lawyer against their better judgment, they should insist *on the record* that they would like more time.
- ❑ If forced to proceed without an attorney, they have the right to NOT concede or admit to the Immigration Services charges against them on the NTA. They also do NOT have to go into details about their case. Anything they say can and will be used against them – even their country of birth.

- ❑ If they think they may be transferred to a detention center far from your home, and already have a lawyer, have them file an immigration form with DHS saying that they are representing the detainee. This form is called a G-28. Go to [www.uscis.gov](http://www.uscis.gov) and click on Forms. Scroll down and download form G-28. . Fax the form to the Deportation Officer immediately. This form may convince the officer to stop their transfer.
- ❑ If they think they are about to be transferred, remind them to order jail and ICE officers to make sure that papers, and personal property (including info about medication) travel with you. Always ask for a receipt for your personal property.

## When Searching For An Immigration Lawyer...

People often rush to hire any lawyer when a loved one is detained. It is often a bad idea to rush to hire an attorney without having a basic idea about a loved ones case or without knowing anything about an attorney. First learn as many facts about your loved one, and then approach an attorney. Some tips when looking for an attorney:

- ❑ Stay informed about your immigration case, and do not just rely on the attorney.
- ❑ Hire someone specializing in deportation. Many attorneys do not know immigration law and many immigration attorneys do not know deportation very well. If the lawyer does real estate, business and immigration, they are most likely not deportation specialists.
- ❑ If facing deportation, make sure your lawyers looks at your Notice To Appear (NTA) before giving you advice
- ❑ Keep the full name and contact information of EVERY lawyer that has ever represented you.
- ❑ Get a written contract before you give the lawyer money. Ask the lawyer for a “retainer agreement.” Read it carefully. Make sure you understand it. Also make sure that it contains the same promises the lawyer is making.
- ❑ If you are in Criminal Proceedings ask your lawyer to provide you written information about the immigration consequences of your conviction *in writing* before you plead guilty.
- ❑ If you have an old order of deportation and are attempting to adjust your status, get written information from your lawyer explaining how s/he will manage to keep you from being deported.
- ❑ If your attorney ever refuses to provide information he promises you in writing, send a certified mailed letter to him outlining the promises he made to you and asking for written verification or clarification of those promises.
- ❑ Make sure you and your family receives a copy of everything your lawyer files.
- ❑ File a complaint with the Attorney Grievance Committee immediately if you feel your lawyer cheated you (see attorney grievance state contact list below).
- ❑ If you face automatic deportation because of your crime, consult a criminal immigration attorney about the positives and negatives of Vacating, Appealing, or Reopening your Criminal Case. This is very complicated, but may be your only way to avoid deportation.

### ATTORNEY GRIEVANCE COMMITTEE

Manhattan, Bronx	212-401-0800
Brooklyn, Queens, Staten Island	718-923-6300
New Jersey	800-406-8594

## How Do I Take Care of My Children and Property?

Someone detained by ICE should consider giving legal power to someone they trust to make important decisions on their behalf while they are detained. This is called a “power of attorney” or a proxy and varies from state to state. This may help you ensure that your children are not placed into child protection services or that they can travel with you if you are deported. It can also help you control your finances, e.g. making payments on a mortgage. Do it ahead of time and include it with your immigration papers. Make sure that you have birth certificates and passports for children. If you need to get a U.S. passport for your minor child, go to [http://travel.state.gov/passport/get/minors/minors\\_834.html](http://travel.state.gov/passport/get/minors/minors_834.html). For birth certificates, contact the Office of Vital Statistics in your state.

# GETTING OUT OF DETENTION: BOND AND PAROLE

**How does someone get out of detention? These are some of the ways you can get out of detention.**

**1. Bond:** A bond is an amount of money paid to the government (ICE) as a guarantee that you will attend all hearings, obey conditions of release, and obey the judge's final order even if you have to leave the U.S.. Your deportation officer may set a bond amount in your case soon after your arrival in detention. If it is too much for you to pay or your deportation officer has not set a bond, you can ask an immigration judge for a bond or a lower bond amount. See more about bond hearings below.

**2. Release on your own recognizance:** In some limited cases, ICE or the immigration judge can release you without having to pay any money. You must comply with the terms of release, otherwise you risk being re-detained. This is usually granted to individuals with special conditions, like pregnancy.

**3. Parole: ICE has the authority to release any individual from detention on "parole."** There is no way to appeal denial of a parole request to an immigration court. Sometimes, they ask you to pay money as part of the parole guarantee, and sometimes conditions are attached to the parole.

**When should I ask for bond or parole?** You can ask for a bond hearing in front of an immigration judge at any time. You can ask for parole from ICE at any time.

**How do I ask for bond or parole?** You can ask ICE to release you by writing them a letter. You can ask for a bond hearing by sending the Immigration Judge and the government attorney a "bond motion," which is a legal request for bond. Asking for bond or parole can be very complicated. If possible, get representation from a lawyer experienced in deportation defense.

**Do I get a bond hearing?** You should always request a bond hearing, even if you think are not eligible for it. You may not be eligible for bond if you: (1) have a previous deportation order, (2) have certain criminal convictions, (3) were arrested at the border/airport or (4) the government suspects you have terrorist ties. Always get a copy of your criminal record and immigration documents so that you can figure this out. In some cases, you may want to challenge a judge's decision that you are not eligible for bond in federal court.

**What do I have to prove at the bond hearing?** In this hearing, the judge considers whether you present a danger to the community, are a national security threat, or a flight risk. You should submit any documents that show your favorable factors, such as a permanent address, stable employment, relatives with legal status in the United States, and any evidence of strong ties to the community. You should also ask family and friends to attend the hearing and to testify to these issues or send written letters of support.

**What if I lose my bond hearing?** You can appeal the decision to the Board of Immigration Appeals. If your situation changes, for example, a criminal conviction is dismissed, you can ask for another bond hearing. Until the Board of Immigration Appeals makes a decision on your case, you will stay in detention. Waiting for an appeal may take a very long time, and some individuals have challenged their detention in cases of prolonged detention.

**The judge granted bond but the government attorney filed an "automatic stay."** Sometimes, if a judge grants bond and the government attorney opposes the bond decision, the government attorney files an "automatic stay." This stops the judge from releasing you on bond. If this happens to you, you may want to challenge this decision in federal court.

**What if I cannot afford to pay the bond?** You can ask the immigration judge to lower your bond at the bond hearing. The judge has the power to decrease the bond to \$1,500.

**How do I pay bond?** Use a certified or cashiers' checks from banks or U.S. Postal money orders payable to the Department of Homeland Security. NO CASH! You have to pay all of it at once. He/she can pay the bond at any ICE office. Detained persons may have trouble posting bond for themselves if they cannot show where they will live.

**What information does a family member need to post/pay bond?**

For the person detained, you will need their full name, A-number, home address, date of birth, and country of birth. The person posting bond must have immigration status. ICE may also ask for a driver's license.

**Can ICE add conditions to the bond?** Yes. They may require that you report weekly to the office or call in to a specific officer. The order may require that you cannot leave the state. Make sure you understand the conditions on your bond because you may be re-detained if you violate the conditions. Also, if you move, make sure you notify your deportation officer.

**If I am ordered deported (and I don't appeal), how long can ICE detain me?** ICE has 90 days to deport you under the law. Depending how difficult it is to obtain travel documents or whether your government will accept you, it may take several days to several months. The Supreme Court has said that six months (in most cases) is too long to hold someone in detention after they have been ordered deported.

**For more information on bond, go to:** <http://www.firrp.org/kyrindex.asp>.

**See Appendix for important phone numbers for New York-area courts and deportation offices.**

## FORMS OF RELIEF TO PREVENT REMOVAL\*

*\*The chart referenced below is not an exclusive list and does not expressly provide all requirements and bars to the forms of relief discussed above. Further analysis is recommended when seeking to pursue any of the below-listed forms of relief. The original below-referenced chart was originally produced by Bryan Lonegan, Immigration Law Unit of the Legal Aid Society of New York. Revisions of the chart were provided by Paromita Shah of the National Immigration Project and the New York State Defenders Association Immigrant Defense Project.*

<p><b>SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)</b></p> <ul style="list-style-type: none"> <li>• A child is eligible for SIJS if: The child is deemed to require long term foster care (i.e., under age of 18 yrs and a juvenile court has determined that family reunification is no longer viable) or</li> <li>• Child was committed to the custody of a state agency or dep't due to abuse, neglect or abandonment.</li> <li>• The applicant must also be under 21 yrs of age and unmarried at the time of obtaining SIJS.</li> <li>• If a juvenile is in DHS custody, DHS' consent to the juvenile court's jurisdiction must be obtained before dependency proceedings are initiated.</li> <li>• Must establish:             <ul style="list-style-type: none"> <li>• juvenile's date and place of birth</li> <li>• date and manner of entry into US</li> <li>• current immigration status</li> <li>• whereabouts and status of parents</li> <li>• evidence of abuse, neglect or abandonment</li> <li>• reasons why not in child's best interest to return to native country</li> <li>• type of proceedings before the juvenile court.</li> </ul> </li> </ul>	<p><b>SPECIAL VISAS</b></p> <p><b>T VISA: TRAFFICKING VICTIMS PROTECTION ACT OF 2000</b></p> <ul style="list-style-type: none"> <li>• Subject to "severe trafficking"</li> <li>• Agree to assist in enforcement or is less than 18 yrs old and</li> <li>• Would suffer "extreme hardship involving unusual and severe harm upon removal"</li> <li>• Limited waiver for crimes</li> </ul> <p><b>S VISA: INFORMANT VISA</b></p> <ul style="list-style-type: none"> <li>• For alien who provides important information on a criminal org or terrorist org</li> <li>• Need written agreement with law enforcement</li> </ul> <p><b>U VISA: VICTIM OF A CRIME</b></p> <ul style="list-style-type: none"> <li>• Suffered substantial physical or mental abuse as a result of being a crime victim for certain crimes (i.e., trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation)</li> <li>• Possesses information of crime</li> <li>• Helpful in prosecution as certified by gov't official</li> </ul>	<p><b>ADJUSTMENT OF STATUS</b></p> <p>If the alien is admitted, paroled and has an approved petition, he/she may adjust if:</p> <ul style="list-style-type: none"> <li>• The alien is eligible to receive an immigrant visa</li> <li>• The alien is admissible, and</li> <li>• An immigrant visa is immediately available</li> </ul> <p><b>*NOTE:</b> If alien entered without inspection, petition must be filed on or before April 30, 2001 pursuant to INA §245(i)</p> <p><b>FAMILY PREFERENCE CATEGORIES:</b></p> <ul style="list-style-type: none"> <li>• Spouse of USC</li> <li>• Parent of USC (USC child +21 yrs)</li> <li>• **Child of USC (child unmarried &amp; -21 yrs)</li> </ul> <p><b>**AGING OUT PROBLEM:</b></p> <p><b>**Immediate Relative Child</b> must be -21 yrs of age <b>ONLY</b> at the time petition (i.e., Form I-130 Petition) is filed pursuant to CSPA</p> <p><b>OTHER FAMILY PREFERENCES:</b></p> <ul style="list-style-type: none"> <li>1st • Unmarried child (+21 yrs) of USC</li> <li>2A • Spouse of LPR and unmarried child (-21 yrs) of LPR</li> <li>2B • Unmarried child (+21 yrs) of LPR</li> <li>3rd • Married child of USC</li> <li>4<sup>th</sup> • Siblings (+21 yrs) of USC</li> </ul>
<p><b>CANCELLATION OF REMOVAL FOR LPRs</b></p>	<p><b>WAIVERS</b></p> <p><b>INA §212(c) WAIVER FOR LPR</b></p>	<p><b>CANCELLATION OF REMOVAL FOR NON-LPRs</b></p>



<ul style="list-style-type: none"> <li>• LPR for 5 yrs</li> <li>• 7 years residence in US before: <ul style="list-style-type: none"> <li>* served Notice to Appear or</li> <li>* commits inadmissible or deportable offense</li> </ul> </li> <li>• No Aggravated Felony conviction</li> <li>• Positive outweighs negative factors</li> </ul>	<ul style="list-style-type: none"> <li>• LPR</li> <li>• 7 yrs domicile in US</li> <li>• Pled guilty before 4/24/96 to an inadmissibility or deportable offense referred to in inadmissibility grounds</li> <li>• Not served 5 yrs or more term of imprisonment</li> <li>• Positive outweighs negative factors</li> </ul> <p><b>INA §212(h) WAIVER</b></p> <ul style="list-style-type: none"> <li>• If a crime renders alien inadmissible, waiver is available for certain inadmissible offenses if <ul style="list-style-type: none"> <li>• Not a drug offense (except for one time simple possession of 30 gms of marihuana)</li> <li>• not murder or torture</li> <li>* Alien is spouse, parent, son or daughter of USC or LPR and</li> <li>* Denial of alien's admission would be an extreme hardship for relative</li> <li>* AG must consent</li> </ul> </li> </ul> <p style="text-align: center;">-OR-</p> <ul style="list-style-type: none"> <li>• Activities of inadmissibility occurred more than 15 years before the date of admission, visa application or adjustment of status and admission is not contrary to the national welfare, safety or security of the US. Applicant must show rehabilitation. (<i>exception: 15 years not required to waive inadmissibility for prostitution</i>).</li> </ul> <ul style="list-style-type: none"> <li>• If LPR, needs 7 yrs. residence + no Agg Fel</li> <li>• VAWAs don't need to show hardship to relative</li> </ul>	<ul style="list-style-type: none"> <li>• 10 years presence required:</li> <li>• 10-yr presence stops when: <ul style="list-style-type: none"> <li>* served Notice To Appear or</li> <li>* commits inadmissible or deportable offense</li> <li>* single absence of +90 days or</li> <li>* aggregate absence of +180 days</li> </ul> </li> <li>• Good moral character for 10 yrs</li> <li>• To depart would cause extreme hardship to LPR/USC spouse, child, parent</li> </ul> <p><b>VAWA CANCELLATION</b></p> <ul style="list-style-type: none"> <li>• If USC or LPR spouse or parent is abusive, alien can get cancellation</li> <li>• Continuous presence for 3 years</li> <li>• Good moral character</li> <li>• Be admissible and no Aggravated Felony</li> </ul>
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ASYLUM	WITHHOLDING OF REMOVAL	CONVENTION AGAINST TORTURE
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<ul style="list-style-type: none"> <li>• Unable or unwilling to return where alien persecuted or has a well founded fear of persecution on account of: <ul style="list-style-type: none"> <li>• race,</li> <li>• religion,</li> <li>• nationality,</li> <li>• membership in a particular social group, or</li> <li>• political opinion</li> </ul> </li> <li>• Generally, rule requires that an application be filed within one year of arrival in US (absent certain exceptions such as “changed circumstances”)</li> <li>• Barred if convicted of an Agg Fel</li> <li>• Barred if convicted of “particularly serious crime” (drug trafficking is presumptively a PSC)</li> <li>• Asylees can apply to adjust status after one year and use 209(c) waiver of inadmissibility, if necessary</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibits return of alien where life or freedom would be threatened because of: <ul style="list-style-type: none"> <li>• race,</li> <li>• religion,</li> <li>• nationality,</li> <li>• membership in a particular social group, or</li> <li>• political opinion</li> </ul> </li> <li>• Barred by PSC</li> <li>• Barred by Agg Fels w/ aggregate sentence of five years</li> </ul>	<ul style="list-style-type: none"> <li>• Would suffer severe pain and suffering</li> <li>• Intentionally inflicted</li> <li>• For an illicit purpose</li> <li>• By or at the instigation of or with acquiescence of a public official who has custody and control of victim</li> <li>• Not arising from lawful sanction</li> </ul>
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<p><b>TEMPORARY PROTECTED STATUS (TPS)</b></p> <ul style="list-style-type: none"> <li>• For designated countries</li> <li>• Must be admissible</li> <li>• Barred by felony or any 2 misdemeanors</li> </ul>	<p><b>VOLUNTARY DEPARTURE</b></p> <ul style="list-style-type: none"> <li>• Not for arriving aliens</li> <li>• No Aggravated Felony conviction</li> <li>• No prior removal order</li> <li>• Granted up to 120 days to depart</li> </ul> <p><i>If requested at end of proceedings:</i></p> <ul style="list-style-type: none"> <li>• Physically present for 1 yr+</li> <li>• Good moral character for 5 yrs+</li> <li>• Granted up to 60 days to depart</li> </ul>	<p><b>MANDATORY DETENTION</b></p> <ul style="list-style-type: none"> <li>• Applies only to those released from custody after 10/9/98</li> <li>* <b>Arriving aliens</b> are ineligible for bond</li> <li>* <b>For LPR</b> <ul style="list-style-type: none"> <li>* 2 CIMTs</li> <li>* 1 CIMT w/1yr sentence</li> </ul> </li> <li>within 5 years of admission</li> <li>* Agg Fel</li> <li>* Controlled substance offense</li> <li>* Firearms offense</li> <li>* <b>For EWI</b> <ul style="list-style-type: none"> <li>* One CIMT (subject to petty offense exception)</li> <li>* Controlled substance offense</li> <li>* Drug trafficking offense</li> <li>* 2 or + offenses with aggregate of 5 yrs</li> <li>* Prostitution</li> <li>* Domestic violation or violation of protection order</li> </ul> </li> </ul>
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## SEEKING U.S. CITIZENSHIP: OVERVIEW

A person might be a citizen if:

- Born in the United States
- Have a parent or grandparent born in the United States
- Have a parent or grandparent who became a U.S. citizen before alien was born.
- One parent became a U.S. citizen before the alien turned 18 years of old.
- Through naturalization.

<u>NATURALIZATION</u>	<u>ACQUISITION OF CITIZENSHIP UNDER THE CHILD CITIZENSHIP ACT OF 2000:</u>
<p>General criteria for seeking naturalization are:</p> <ul style="list-style-type: none"> <li>• Must be an LPR.</li> <li>• Must be 18 years of age.</li> <li>• Must be a resident continuously for five yrs (or three years if married to a US citizen and evidence of continued marital union is available) subsequent to obtaining LPR status.</li> <li>• Must have resided for at least 3 months within the state in which the naturalization petition is filed.</li> <li>• Must be physically present within the US from the date of application filed up to the admission to citizenship.</li> <li>• Must not be absent from the US for a continuous period of more than one year during the periods for which continuous residence is required.</li> <li>• Must be a person of good moral character for the requisite 5 yr (or 3 yr) period of residence (as defined pursuant to INA § 101(f); good moral character barred for certain crimes (e.g. certain moral turpitude, drug offenses except poss. of 30g or less of marijuana, 2 gambling offenses) within the 5 (or 3) years or aggravated felony at any time).</li> <li>• Must be attached to the principles of the Constitution and well disposed to the good order and happiness of the US</li> <li>• Must be willing to bear arms on behalf of the US.</li> <li>• Must not otherwise be barred (<i>i.e., not a member of a communist party, not in removal proceedings or have a final order of removal</i>).</li> <li>• Must demonstrate elementary level of reading, writing and understanding of English language</li> <li>• Must have knowledge and understanding of the fundamentals of US history and government.</li> </ul> <p><b><i>*NOTE: Exceptions of some of the above-listed requirements exist for veterans and persons enlisted in military service, physically or developmentally disabled persons, persons with mental impairment and persons either over 50 yrs of age living in the US for 20 yrs with LPR status; 55 yrs of age and living in the US for 15 yrs with LPR status or 65 yrs of age living in the US with 20 yrs as an LPR.</i></b></p>	<p>Pursuant to INA §320, and as of February 27, 2001, <b>if the child is UNDER 18 yrs of age on or after February 27, 2001, the child is a U.S. citizen if:</b></p> <ul style="list-style-type: none"> <li>• At least one parent is a U.S. citizen by birth or by naturalization;</li> <li>• The child is residing in the U.S.;</li> <li>• The child is residing in the legal and physical custody of the U.S. citizen parent; and</li> <li>• The child was lawfully admitted to the U.S. for permanent residence.</li> </ul> <p><b>** If person was already 18 years of age by February 27, 2001, then she/he must meet a different set of requirements to have gain citizenship through their parents.</b></p>

### ACQUIRING CITIZENSHIP AT BIRTH

A child born outside of the US where one or both parents are US citizens or is born out-of-wedlock may acquire US citizenship at birth pursuant to INA §§301(c)-(e), (g)-(h), 309.

#### **Birth Abroad to Two US Citizen Parents**

- Child born on or after 12/25/1952 and
- One parent resided in the US prior to child's birth

#### **Child Born Out of Wedlock to US Citizen Mother**

- Child born on or after 12/25/1952
- Mother physically present in US continuously 12 months prior to child's birth

#### **Child Born Out of Wedlock to US Citizen Father and Alien Mother**

- Child born on or after 11/14/1986
- Father physically present in US 5 yrs prior to child's birth, 2 yrs of which were after his 14<sup>th</sup> birthday
- Blood relationship established
- Father US citizen at time of child's birth
- Father agrees in writing to support child until 18 yrs of age and
- While child is under 18 yrs of age:
  - (i) child is legitimated,
  - (ii) father acknowledges paternity, or
  - (iii) paternity is established by court order

### EXPEDITED NATURALIZATION OF CHILDREN

#### **The Issuance of a Certificate of Citizenship (INA §322)**

As of February 27, 2001, children of US citizens who don't acquire citizenship at birth abroad or derive it through naturalization of their parent(s) automatically may still obtain a certificate of citizenship upon the application of a US citizen parent if:

- one parent is a US citizen;
- the child is temporarily physically present in the US pursuant to lawful admission;
- the child is in lawful status while physically present in the US;
- the child is -18 yrs of age and
- the child is residing outside the US in the legal and physical custody of the US citizen parent
- the US citizen parent has been in the US 5 yrs, 2 yrs of which were after his/her 14<sup>th</sup> birthday\*  
**or** child's grandparent (i.e., parent of the US citizen parent) has been physically present in the US for 5 yrs, 2 yrs of which were after the grandparent's 14<sup>th</sup> birthday (even if grandparent is deceased at the time of filing).

(\* **NOTE:** *The child may even obtain a certificate if his/her parent is deceased if the US citizen parent died within 5 yrs of filing the application and there exists a citizen grandparent or citizen legal guardian.*)

•If the child is **adopted**, the adoption must have been adopted (unless the child was a natural sibling of an adopted child and was adopted while under 18 yrs of age by the same person/family).

•A child **born out of wedlock** who has not been legitimated is also eligible for the certificate of citizenship when the mother of such child becomes a naturalized citizen.

## When a Deportation is Imminent\*

You may be deported immediately if you have exhausted all appeals/legal options. You are subject to immediate deportation if: you are detained because of having an old/outstanding order of deportation; an Immigration Judge orders you deported and you do not appeal; the Board of Immigration Appeals orders your deportation and *not* have a stay of deportation in place with any federal court; or a federal court rules against you and you do not have a stay in place.

In some cases when a deportation is imminent, the family needs additional time to gather belongings, make arrangement in the “home” country, or pursue legal arguments. To obtain additional time when deportation is about to happen (imminent):

- **Contact the Deportation Office.** Deport Officers have the best information about when a person may be deported (even if they often refuse to tell you). An attorney who has filed a G-28 for a detainee can more easily talk to a deportation officer than a friend or family member. Nevertheless, some Deport Officers may talk to loved ones. If you need more time (because you are filing court papers, or are preparing housing arrangements in the home country) **some** deport officers may be willing to help a little. But in many cases, Deport Officers are unresponsive, uncooperative, or just believe they cannot do anything. If you feel that a person has a particularly compelling case, you can speak directly with the Field Office Director.
- **Contact your Consular Office.** Detainees typically need travel documents from the consulate before they are deported. Consulates can often tell you whether or not travel documents have been issued for the person, if a flight is scheduled for them, and their location in the system. They can also tell you where the person may go after being deported (e.g. the local Police station). Call the national consulate of the detainee and ask for the caseworker that handles deportation. Provide copies of pending litigation to the consulate, to show that deportation would be premature because the national is awaiting a court ruling; ask them to ensure that the deportation complies with the country’s law; and to verify that the person being deported is indeed a national of that country. **IMPORTANT:** Because the consulate has the power to expedite, delay, or simply decline issuing travel documents, make sure that your actions are not deemed “obstruction” by the US government.
- **Talk to an attorney about filing papers to the court.** If you feel that there are still legitimate legal claims in a person’s case, it is important talk to a *deportation specialist* about filing papers in the courts. Depending on *where* someone’s case is legally, you can file an:
  - Emergency Motion to Reopen and Stay to an Immigration Judge or the BIA
  - Petition to Review with a Stay of Deportation to Federal Court
  - A Stay of Deportation with BICE
- **Other Pressures (Congress & Media).** If a person’s case is very compelling, or you feel that there is nothing to lose, supportive elected officials and journalists can be instrumental in stopping deportations. Members of Congress should contact the Field Officer Director directly to raise concerns around a deportation.

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\* Important Note: Individuals that have physically prevented themselves from being put on planes for deportation have been physically assaulted, sedated and, in some cases, criminally prosecuted.

## CAN I RETURN TO THE U.S. AFTER BEING DEPORTED?

The United States deports approximately 200,000 people every year, tearing apart families, friends and businesses. Naturally, many people want to return to the communities that they were forced to leave behind.

Unfortunately, it is very difficult to return to the United States after being deported. Many people will never be able to return, but you can apply to the Department of Homeland Security for readmission. Furthermore, families in the United States can begin to collectively pressure the U.S. government to return their loved ones. **Also, remember that if a deported person returns to the U.S. without authorization, s/he faces strict criminal prosecution and imprisonment.**

In order to win the return of your deported loved one, you must overcome two barriers: Your loved one must have a basis to apply for permission to come to the U.S., and he or she must apply for and receive one or more waivers to remove any applicable bars to reentry. There are no "official steps" that, upon completion, will win return, and it does not happen often. Generally, however, someone who is deported will have to take the following steps:

1. **Apply for permission to enter the U.S.** This requires that you have a basis for coming back to the U.S. For example, you might get a family member in the U.S. to sponsor you for a green card, find a U.S. employer to sponsor you, apply for a tourist visa, or apply for some other visa.
2. **Determine bars to reentry.** Every deported person is barred from returning to the U.S. for a certain number of years. People with criminal convictions have additional bars that prevent admission to the U.S. You will have to determine which grounds of inadmissibility and bars to entry/re-entry apply to you. Some of these bars are summarized in attached chart.
3. **File waivers for bars, if available.** For each bar to entry, you will have to file a waiver, asking the U.S. government to waive the ground of inadmissibility or bar to reentry, to allow you to return earlier than allowed. Possible forms you may need to file include: Form I-601 (Application for Waiver of Ground of Excludability) or Form I-212 (Application for Permission to Reapply for Admission into the United States after Deportation or Removal). Most applications require payment of a fee, and your particular situation might require other forms or applications as well. Some people may not have waivers available to them for the type of visa they are seeking.
4. In some situations, it may be useful to take additional steps to support your application - for example, through media coverage and political advocacy.

This packet provides general information about returning to the U.S. after being deported. However, remember that immigration law changes frequently and everyone's situation is different. Therefore, the information in this packet may not be complete in your particular situation.

## **ANALYZE ELIGIBILITY FOR READMISSION: COLLECTING DOCUMENTATION**

- ❑ Submit Freedom of Information Act (FOIA) requests to get copies of your deported family member's immigration file. You should submit one request to the Department of Homeland Security and one request to the Executive Office of Immigration Review. The government generally takes several months (at least) to respond to FOIA requests, so you should do this right away. There is usually no fee, unless the file is very large.
- ❑ Collect all immigration and criminal records. Many should be in the immigration file you are requesting through FOIA (above). The following documents are particularly important:
  - \_\_\_\_\_ Order to Show Cause or Notice to Appear (lists immigration charges)
  - \_\_\_\_\_ Every decision of the Immigration Judge
  - \_\_\_\_\_ Every decision of the Board of Immigration Appeals
  - \_\_\_\_\_ Every federal court decision in the immigration case
  - \_\_\_\_\_ Warrant/Notice of Deportation or other papers given by government upon deportation
  - \_\_\_\_\_ Record of conviction/Disposition for every criminal arrest
  - \_\_\_\_\_ Rap sheet. If you can't get a rap sheet, then ask your family member to list every arrest, its date, and the outcome (as much as they remember).
- ❑ Begin to collect documentation of the "favorable factors" in your loved one's life. This is a list of all of the positive aspects of that person's life, such as school and employment records, involvement with religious or community groups, evidence of rehabilitation if applicable. You should also gather information about your U.S. citizen and legal permanent resident family members, and documentation about how your absence creates financial, emotional and other hardships for them. Some waivers require evidence of this hardship, and it will strengthen most applications.



People who have been deported face a number of obstacles in returning to the U.S. These charts list bars to re-entry and common criminal grounds of inadmissibility. Other inadmissibility grounds and their waivers are not discussed here (for example, inadmissibility relating to HIV and other health-related grounds, document fraud). Remember, if more than one bar applies to you, then every bar must be waived in order to be readmitted to the U.S.

<b>SUMMARY OF BARS TO RE-ENTRY for PEOPLE WHO HAVE BEEN DEPORTED</b>			
	<b>Bar to Re-entry</b>	<b>Waiver for Immigrant Visa</b>	<b>Waiver for Non-Immigrant Visa</b>
<b>Unlawful presence in US for less than 6 months</b>	No Bar		
<b>Unlawful presence in US for over 6 months and less than 1 year</b>	3 years	Yes. Form I-601.	Most bars can be waived for non-immigrant visa applicants under INA Section 212(d)(3). May need Forms I-192 and/or I-212.
<b>Unlawful presence in US for one year or longer</b>	10 years		
<b>Ordered removed on inadmissibility grounds</b>	5 years	Yes. Form I-212.	
<b>Ordered removed on deportability grounds</b>	10 years		
<b>Ordered excluded/deported under pre-1996 laws</b>	10 years		
<b>Ordered removed two times</b>	20 years		
<b>Failed to attend removal hearing</b>	5 years	Probably yes.	
<b>Ordered removed after a conviction for an aggravated felony</b>	Permanent	Maybe.	

\*There may be arguments that the bars to re-entry for people deported under pre-1996 laws is shorter.

<b>SUMMARY OF SOME COMMON CRIMINAL GROUNDS OF INADMISSIBILITY</b>		
A wide range of offenses makes a person inadmissible, or ineligible to be admitted to the U.S. This is a summary of <u>some</u> of these grounds of inadmissibility, and whether they can be waived.		
	<b>Waiver for Immigrant Visa</b>	<b>Waiver for Non-Immigrant Visa</b>
<b>Crime Involving Moral Turpitude</b> Not inadmissible if a) only 1 CIMT, which had maximum possible sentence of one year or less and actual sentence of 6 months or less; or b) only 1 CIMT committed by minor and conviction and jail more than 5 years before application for admission.	212(h) waiver available. Form I-601. This waiver requires showing one of the following: a) denial of admission will cause extreme hardship to U.S. citizen or LPR spouse, parent, or child OR b) crime is at least 15 years old (not required for prostitution/ commercial vice), you have been rehabilitated and allowing you into US would not harm its safety or security. Additional waivers for domestic violence situations.	Most grounds of inadmissibility can be waived for non-immigrant visa applicants under Section 212(d)(3) of the INA. However, "212(d)(3)" cannot waive some "national security" inadmissibility grounds (e.g. espionage).
<b>2 or more offenses of any kind, for which you received total sentences of 5 years or longer.</b>		
<b>Prostitution, commercialized vice</b>		
<b>Drug offense</b>	212(h) waiver available only for single conviction for simple possession of 30 grams or less of marijuana. Form I-601.	

## Detainee Abuse

Immigration detainees are scattered throughout a network of county jails & prisons, federal detention centers, and private prisons. Incidents of abuse at the hands of corrections officers and even other inmates are rampant (see *American Gulag*, by Mark Dow). If you feel that a member or loved one is being abused, follow some basic steps:

- ❖ **Get the story straight.** It is never enough to just say “someone beat up my daughter/son.” It is important to document
  - Date and approximate time of the incident
  - Names, A#s, and inmate #'s of everyone that was assaulted
  - Names and titles of everyone that assaulted the detainee
  - Names, A#'s of people who witnessed the event (including sympathetic officers)
  - Detailed description of the assault and the official response to the assault
  
- ❖ **Write a *one-page* letter of concern.** It is always important to have written correspondence to government or jail officials. This is much easier than anyone thinks it is (see sample letters). Including whatever relevant information you are able to collect above, write a one-page letter with a *clear* description of events and *clear* demands for recourse. Different people write letters in different styles. Some suggestions:
  - Address the letter to people with immediate jurisdiction over the facility, including the Warden, BICE Field Office Director, and DHS Office of Inspector General.
  - Copy (cc) the letter to at least one member of Congress, and organizations that may care. Make sure that you have some relationship with the individuals on the cc: line, so that they may follow-up. **\*\*We advise you to *not* copy the letter to the press just yet.**
  - Describe the incident as documented in bullet point format. Begin the description with “This is our understanding of the facts” and end with “We would like some clarity on this matter.” Also use language like “alleged.” This type of language gives you some flexibility in highlighting allegations that are not immediately confirmable. Be very careful to only highlight events you have heard from trusted or multiple sources. Your credibility is important, and if the case goes to court in the future, your written words may help or hurt.
  - Identify and present clear demands. Make sure that officials can meet demands immediately. Demands may include releasing people from segregation, contacting their attorneys, giving them medical attention, etc.
  - Request a direct response in your conclusion (e.g. “We have yet to go public with this matter and are awaiting a response.”). Include a phone and fax number where you can be reached.
  - Verify delivery to all parties (fax confirmations, certified mail receipts), follow-up to make sure they received it, and keep in touch with inmates in the facility to document progress.
  - Get a partner (one party in the CC line) to also document and confirm the incident. Then make a determination about going to media with the inmates involved.



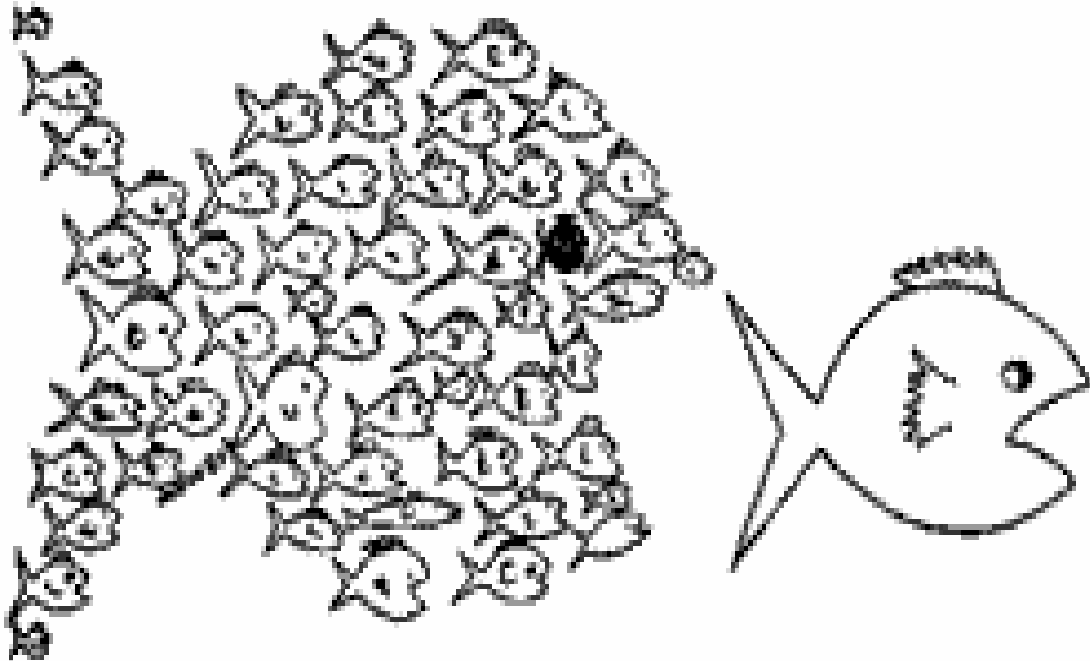
**A**ssist Ourselves

**R**aise awareness

**M**ake 'em Bleed!

## CASE CAMPAIGN & ORGANIZING MANUAL

*Prepared by Families for Freedom, Inc.*



If you have to leave, don't leave quietly!  
Make THEM lose sleep the same way we do!

# A.R.M. Case Campaign & Organizing Manual

## **Table of Contents-Tools & Targets**

- Introduction to Organizing and Advocacy**  
Key concepts and common challenges to organizing for people facing deportation (especially with past crimes).
- Prosecutorial Discretion (PD): Asks**  
How to pressure the Department of Homeland Security to drop the case against you.
- Prosecutorial Discretion (PD): Building Your Campaign**  
How to get other players to support your demands on the Department of Homeland Security
- Favorable Factors**  
Prove that you are neither a flight risk nor a threat to society.
- Letters of Support**  
Get help from family, friends, community leaders and elected officials.
- Congress**  
Make elected officials work for you.
- Petitions**  
Educate your community and build support.
- Media**  
Expose how your detention or deportation is UNJUST.
- Foreign Consulates**  
Push your home country government to protect your family's rights.
- New Sanctuary Movement (NSM)**  
Give Witness, Gain Religious Support
- Sample Letters and Articles**  
Use these samples to guide you.
- Begin organizing with Families Facing Deportation**  
The FFF model

## INTRODUCTION: WHY USE THIS MANUAL?

Raids and arrests are devastating communities. Over 2 million people have been deported in the last decade. Deportation is a crisis, possibly the biggest one you've ever faced. And as soon as you start looking for help, doors close on you. The judges cannot grant you a pardon. The prosecutors have the final word. And powerful people act as though they are powerless.

But here's a secret: those with *and* without power *can* help.

**A.R.M. Case Campaign and Organizing Manual** is meant to assist anyone organizing to fight a deportation case and change the laws. We show you how to push lawmakers, foreign consulates, media, leaders and neighbors to join your campaign to keep your family together. Community support is a key factor in pressuring Immigration to treat your loved ones with justice. Countless families and leaders have used this how-to guide to build local and national support.

**A.R.M.** stands for **A**ssist Ourselves, **R**aise Awareness, **M**ake 'em Bleed. It is the organizing strategy developed by Families for Freedom to build the power of individuals and communities fighting against raids and deportations. Just like political candidates build a campaign when they want to get elected, you can also build a campaign to help protect yourself. You can speak out, make headlines, and get community leaders to back you up.

The **GOALS** of this document are to teach you:

- Why it is vital to take action on your own case;
- Who in government has the power to grant your demands for relief; and
- How to build community support.
- How to begin organizing communities directly impacted by deportation.

Today thousands around America are standing up against deportations. Regular people are using their stories to educate others and gain support. We hope this manual helps you to fight smart and win big.

# Organizing & Advocacy: Everyone must take a stand!

When beginning your case campaign, it is important to be mindful of what you are asking for and who has the power to give you what you want. While the ultimate goal is to keep your family safe and together, there may be several steps in between that will help move you toward this goal.

For each step in your campaign, the key is to identify what you want (**your ASK**) and the person that has the power to give it to you (**the TARGET**).

There are various people that have power in determining the outcome of your case. Several asks and targets are discussed in the following section about Prosecutorial Discretion.

Once you've identified your asks and targets, the next sections in this manual offer different ways to approach your targets and build support for your family. Make a plan for your case campaign and be sure that the strategy you use for each target is the best option given the status of your case.

## **\*THINGS TO CONSIDER AS YOU BEGIN YOUR CASE CAMPAIGN\***

- **Get all your documents in order**
  - *Find, read and understand all your immigration and criminal paperwork.*
- **Be specific about your demands**
  - *E.g., If you want someone released from detention, say so and tell targets how they can assist in making this happen.*
- **Write up your story in your own words**
  - *This allows you to frame you and your loved one's story the way you want it told and not the way the media wants to tell it.*
- **Strategize with your family & loved ones about the pros & cons of being involved in a case campaign (i.e. going public with leaders & media)**
  - *Know why you are going public and what you want this to accomplish. Also, consider starting off targeting local press and leaders that can help you build your case campaign. This may allow your story to be picked up and supported by national press and leaders.*
- **Make sure your legal & advocacy work compliment each other**
  - *The aims of your legal case should be incorporated into your advocacy work - e.g., if you need to get a stay of deportation, use your advocacy strategy to build community support to win this goal.*

# Common Challenges to Organizing Against the System

Dispelling some commonly held myths about the system is often one of the first steps to tackling some of the roadblocks to getting support for your case:

## **MYTH: “I can’t do anything”**

Elected officials and other government officials often say that they cannot get involved in deportation issues. The number one reason they cite is that they do not intervene in court or judicial matters for “ethical” reasons.

- **Quick Response:** Immigration deportation (even Immigration “Court”) is a function of the Executive Branch of the government, *not* the Judicial Branch. Most immigrants facing deportation never see a real court. Elected officials intervene in executive branch use and abuse of power all the time. You can encourage an executive body to exercise discretion.

## **MYTH: “I am just doing my job”**

BICE officials often publicly say, “We are just doing our jobs.” Immigration Judges always state (somewhat correctly) that the 1996 laws “tie their hands.”

- **Quick Response:** BICE (formerly INS) has large amounts of **Prosecutorial Discretion** when determining whether or not to enforce the immigration laws against a specific person. Even if they feel they cannot do anything, BICE, Immigration Judges and *anyone* that is asked to help can *at least* state for public record that they believe a person’s deportation is wrong.

Example:

*“In a way the court is very sympathetic to the respondent. I honestly believe that the respondent’s criminal infraction is minute and should have no bearing in the respondent’s right to remain in the United States... The respondent is an honest individual who did not [embellish] his facts.”*

U.S. Immigration Judge Alberto J. Riefkohl, in his ruling ordering Hemnauth Mohabir’s deportation, Sept. 25, 2002 (www.npr.org)

## **FACT: “DHS has a culture of no”**

It’s true. DHS does have a culture of saying no to immigrants, even when they have the power to say yes.

- **Quick Response:** There are instances even after 9/11 of DHS granting favorable discretion to immigrants.



# Prosecutorial Discretion (PD): Asks

Prosecutorial Discretion (PD) is authority that Homeland Security's Bureau of Immigration and Customs Enforcement (BICE) has to act favorably in a person's immigration case. It is a legal way of asking BICE to not enforce the law against a specific person. PD is often a last resort when all legal options have been exhausted or when cases are overwhelmingly sympathetic. Receiving PD may mean that you remain on lifelong parole. Getting PD comes down to pressure and politics. Often the best way to get it is to involve your community and elected officials in your immigration case.

**NOTE: Prosecutorial Discretion is...**

<p><i>NOT given by courts and judges</i>  <i>NOT a way to obtain legal status (i.e. lifelong parole)</i></p>	<p><i>NOT always more effective with presswork</i>  <i>NOT a solution for everyone</i>  <i>NOT something you can appeal</i></p>
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Doris Meissner, the former Commission of the INS under Clinton, wrote a memo on Prosecutorial Discretion outlining when the agency should use it favorably. Although dated and deeply underused, Homeland Security maintains it is still valid. Factors taken into consideration include:

<p>Immigration status          Length of residence in U.S.          Criminal history          Humanitarian concerns          Immigration history          Likelihood of ultimately deporting the immigrant          Likelihood of achieving enforcement goal by other means</p>	<p>If the person is (likely to become) eligible for relief          Effect of action on future admissibility          Current or past cooperation with law enforcement          Honorable U.S. military service          Community <b>attention</b>          Resources available to the INS          If interest served by prosecution would not be substantial</p>
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When seeking PD, you have to know exactly what and who to ask. Some examples are:

When	ASK Department of Homeland Security	TARGET <i>*Some Former INS officials may not have DHS Equivalents.</i>
<b>Before Removal Proceedings</b>	ICE should not conduct arrests/raids or should conduct in line with x principles and regulations	<ul style="list-style-type: none"> <li>Special Agent-in-Charge</li> <li>ICE Field Office Director</li> </ul>
	ICE should not transfer detainees across the country	<ul style="list-style-type: none"> <li>ICE Field Office Director (head of local ICE office)</li> </ul>
	ICE should not issue <b>Notice To Appear (NTA)</b>	<ul style="list-style-type: none"> <li>ICE Field Office Director</li> <li>Other DHS officer authorized to issue NTA*</li> </ul>
	DHS should cancel NTA before it is filed at the Immigration Court	
	Move to dismiss the NTA	<ul style="list-style-type: none"> <li>District Counsel or Trial Attorney</li> </ul>
<b>In Removal Proceedings</b>	Ask DHS for release on bond, or parole (when someone is technically not bond eligible)	<ul style="list-style-type: none"> <li>Field Office Director</li> <li>District Counsel</li> </ul>
	Ask to support you in the other type of relief you're seeking before IJ, for example a Joint Motion to Terminate Proceedings	
<b>After Removal Proceedings (But Before Removal)</b>	Ask for an agency <b>stay of deportation.</b>	<ul style="list-style-type: none"> <li>Field Office Director</li> <li>Detention And Removal Operations-DC (if in detention 180 days after deport order)</li> </ul>
	Ask for <b>deferred action</b> (even if you have a removal order, the government can choose not to deport you.)	
	Ask for a release under an order of supervision	

*Prosecutorial Discretion Chart made with the invaluable help of City University of New York Immigrant Rights Clinic.*

# Building Your Campaign

It's not enough to identify what Homeland Security can do for you. You have to **make** them do it by getting the support of other players.

Primary Targets	Possible Tactics (Not an exhaustive list)	Demands (Individual)	Demands (Collective)
<ul style="list-style-type: none"> <li>▪ ICE Field Office Director-head of local ICE office</li> <li>▪ Special Agent in Charge-oversees arrests/investigations</li> <li>▪ Supervisory Deportation Officer-in charge of detainees</li> <li>▪ Trial Attorney or District Counsel-prosecutes deportation cases</li> <li>▪ Detention and Removal Operations (DC office)-in charge of most post deport order detention cases</li> <li>▪ Office of Refugee Resettlement (handles detention for children)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Congressional/Consulate support</li> <li>▪ Community and Clergy delegations to Deportation Office</li> <li>▪ Media Work</li> <li>▪ Phone/Fax Action Alerts</li> <li>▪ Press Conferences after major enforcement actions</li> <li>▪ Demonstrations outside ICE office or detention center (inside detention center too)*</li> </ul>	<p>See Prosecutorial Discretion (PD): Asks</p>	<ul style="list-style-type: none"> <li>▪ Acts them to follow their own regulations</li> <li>▪ Ask them to exercise their full prosecutorial discretion</li> <li>▪ Ask them to NOT racially profile</li> <li>▪ Ask them to take in consideration family concerns before arrests</li> <li>▪ Ask them to investigate detention center abuses</li> </ul>
<ul style="list-style-type: none"> <li>▪ Immigration Judge-presides over deportation cases in immigration court</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pack the court</li> <li>▪ Letter writing campaign to the court</li> <li>▪ Demonstrations outside court</li> </ul>	<ul style="list-style-type: none"> <li>▪ Exercise discretion</li> <li>▪ Public Record in Support</li> <li>▪ Ensure fair hearing</li> </ul>	<ul style="list-style-type: none"> <li>▪ Take a public stand against their lack of discretion and for increased discretion (e.g., CCPA)</li> </ul>
Secondary Targets			
<ul style="list-style-type: none"> <li>▪ Congressional Offices</li> <li>▪ City Councilmembers or Local Government Officials</li> <li>▪ State Legislators or State Officials or State Agencies (e.g., child welfare or domestic violence agencies)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Congressional Visits</li> <li>▪ Call-ins</li> <li>▪ Crash Congressional Press Conferences</li> <li>▪ Co-Sponsor Press Conference</li> <li>▪ Ask for Public Comment</li> <li>▪ Letter requesting support</li> <li>▪ Congressional Memos</li> </ul>	<ul style="list-style-type: none"> <li>▪ Write a Letter of Support (esp. for Prosecutorial Discretion Package)</li> <li>▪ Sponsor a Private Bill (Congress)</li> <li>▪ Conduct an Investigation</li> <li>▪ Attend press conference</li> <li>▪ Support a pardon (state leg.)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Call for a Congressional Hearing, General Accounting Office audit, or Office of Inspector General investigation</li> <li>▪ Introduce a local/state resolution or ordinance-esp. against local enforcement</li> <li>▪ Issue statement denouncing ICE actions</li> <li>▪ Sponsor Legislation</li> <li>▪ Sponsor Local Hearings</li> <li>▪ Draft Legislation (e.g., CCPA)</li> </ul>
<ul style="list-style-type: none"> <li>▪ Consulates</li> </ul>	<ul style="list-style-type: none"> <li>▪ Vigils</li> <li>▪ Community Meetings</li> <li>▪ Ethnic Press work</li> </ul>	<ul style="list-style-type: none"> <li>▪ Help locate detainee</li> <li>▪ Investigate detention abuse</li> <li>▪ Ensure that all international laws and norms are followed (ind.)</li> <li>▪ Ensure people who want to leave are allowed a speedy deportation</li> <li>▪ Prevent illegal deportations</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ensure that all international laws and norms are followed (collect.)</li> <li>▪ Investigate detention abuse Create protocols to Prevent illegal deportations (e.g., checklists)</li> <li>▪ Notify nationals of rights once arrested or at risk</li> <li>▪ Visit detention centers</li> <li>▪ Join in class action litigation</li> </ul>

## Other Important Targets

<p>Criminal Justice Actors</p> <ul style="list-style-type: none"> <li>▪ Judge</li> <li>▪ Prosecutor</li> <li>▪ Law Enforcement Officials (Sheriff's , Police, Department of Corrections)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Post Card Campaigns</li> <li>▪ Letter to the Judge/Prosecutor (see letter re: Jamaican Deportees)</li> <li>▪ Public Meetings</li> <li>▪ Consular Intervention</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ask for some people to be charged as YO's (NY only)</li> <li>▪ Reopen, Vacate or Re-sentence</li> <li>▪ Take immigration into consideration when charging, convicting or sentencing</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ask for policies that take immigration into consideration when charging, convicting or sentencing</li> <li>▪ Ask local law enforcement NOT to work with ICE</li> </ul>
<ul style="list-style-type: none"> <li>▪ Public Schools and Other Public Agencies (ACS, School Principals, etc.), Religious Institutions, Unions, PTA, etc.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Group Visits</li> <li>▪ Letter Writing Campaign</li> </ul>	<ul style="list-style-type: none"> <li>▪ Letter of Support</li> <li>▪ Assist in creating support</li> <li>▪ Letters documenting hardship of family</li> </ul>	<ul style="list-style-type: none"> <li>▪ New Sanctuary Movement**</li> <li>▪ Join and support public actions and press conferences</li> <li>▪ Draft responses to raids/detention/deportations</li> <li>▪ Support legislation that TRULY helps people facing deportation</li> </ul>

\*Detainees who organize hunger strikes, petitions, or other forms of protest inside detention are often subject to solitary confinement, transfer to another facility, and other forms of punishment. Many detainees do these things despite the risk. People on the outside should work to ensure the safety of detainees engaging in such action without necessarily being the ones initiating these actions on the outside.

# Favorable Factors

You can't just say that you or your loved one is a good person. To fight deportation, you have to PROVE IT. The more paper, the better. For example, don't just say, "I have 3 US citizen kids." Copy their birth certificates or naturalization certificates. Below is a list of factors that judges, Immigration and Congress offices consider when they see your case. Collect whatever you have. Keep all your proof in one folder.

FAVORABLE FACTOR	PROOF
<input type="checkbox"/> Family Ties in the United States	<ul style="list-style-type: none"> <li>- copies of family members' naturalization certificates and/or greencards</li> <li>- letters of support from family members</li> </ul>
<input type="checkbox"/> Long-term residence in the United States, especially if residence began at a young age	<ul style="list-style-type: none"> <li>- US school diplomas</li> <li>- letters of support from long-term friends in US, former teachers, neighbors, landlords</li> </ul>
<input type="checkbox"/> Hardship to yourself and/or to family members if deportation occurs	<ul style="list-style-type: none"> <li>- reports from counselors. Whenever possible, actively seek therapy and get a letter from therapist documenting psychological hardship on you and family members (especially children)</li> <li>- letters from schools of younger children, documenting any change in behavior since deportation started</li> <li>- medical reports showing material dependence of family member on you (the person being deported)</li> <li>- medical reports documenting your own health problems and need for family support here</li> <li>- written proof that elderly parents, young children, pregnant spouse, etc. will suffer if you are deported</li> <li>- written household budget that highlights family's dependence on you for payment of rent/mortgage, children's educational expenses, child support, medical expenses, utilities and food</li> </ul>
<input type="checkbox"/> Service in U.S. Armed Forces	<ul style="list-style-type: none"> <li>- enlistment and honorable discharge papers (DD 214)</li> <li>- certificates for all service given and honors received</li> <li>- letters of support from fellow enlistees, officers and superiors in Armed Forces</li> </ul>
<input type="checkbox"/> History of Employment	<ul style="list-style-type: none"> <li>- letters of support from current/former employer(s) discussing your merits as a worker</li> <li>- tax returns, W-2 Forms</li> </ul>
<input type="checkbox"/> Property or Business Ties	<ul style="list-style-type: none"> <li>- deed/mortgage/lease of home</li> <li>- letters of support from employees</li> <li>- ownership documents of business (especially if business supports family expenses and/or provides jobs to other people)</li> </ul>
<input type="checkbox"/> Service to Community	<ul style="list-style-type: none"> <li>- letters of support from religious groups, PTAs, and other local organizations with which your family is involved</li> <li>- awards for or documentation of community service</li> </ul>
<input type="checkbox"/> Genuine Rehabilitation	<ul style="list-style-type: none"> <li>- proof of programs and work in prison/jail</li> <li>- proof of attendance for rehabilitation program, or support groups like Alcoholics Anonymous (including letters from counselors/group leaders documenting your progress)</li> <li>- certificates for (or proof of enrollment in) continuing education (e.g., GED, college courses, business and/or trade skills)</li> </ul>
<input type="checkbox"/> Good Character	<ul style="list-style-type: none"> <li>- tax returns documenting consistent payment and good tax history</li> <li>- letters of support from Correction/Parole/Probation Officers, judges, lawyers, community leaders, local elected officials, clergy</li> </ul>
<input type="checkbox"/> Political Support	<ul style="list-style-type: none"> <li>- letters of support &amp; phone calls from elected officials (councilmembers, mayors, members of Congress)</li> </ul>

# Letters of Support

Fill the blanks below with the name of the person being deported. Put your name is the last line, and a deadline for people to write and return their letters. Make a list of everyone you know and give the request for a letter of support to each of them. Follow up with phone calls and reminders. Get a close friend to help you collect letters. All letters of support should be in English or, if in another language, you should get an accurate English translation.

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**URGENT!**  
**Letters of support needed for \_\_\_\_\_**

\_\_\_\_\_ is facing deportation. We, as family members and loved ones, are fighting it. Our success depends on your help! We need you to write a one-page letter of support **IN YOUR OWN WORDS**. Please neatly write or type the letter. If possible, put it on *\*organizational\** letterhead. You may begin the letter:

*[Today's Date]*

*To Whom It May Concern:*

*I am writing with regards to \_\_\_\_\_. He is currently at risk of being deported to \_\_\_\_\_. His family and community are here, and we need him to stay with us.*

Continue the letter including these points:

- **Background:** who are you (profession, place you live, etc), how long you have known \_\_\_\_\_ (use his first name), and what is your relationship (friend, family, attended same church, etc).
- **Community support:** describe the good things \_\_\_\_\_ has done in the community or for you personally. BE SPECIFIC.
- **Family:** talk about the effects deportation and detention are having on the family. If you know them well, describe them and how they got along with \_\_\_\_\_. If possible, describe how the family depends on \_\_\_\_\_ financially and emotionally.
- **Safety:** Explain *briefly* why \_\_\_\_\_ is not a threat to society.
- Sign the letter with your full name. Get it notarized whenever possible.
- Put letter on company letterhead if possible and include your work title.

We need your letters to save our loved one.  
Please return your letter of support to \_\_\_\_\_ by \_\_\_\_\_. Thank you!

# Congress

Nearly every case campaign requires the support of elected officials – especially members of Congress. After you analyze points of prosecutorial discretion, reach out to your representative and senators.

## Identify your representatives.

Congress has 2 parts: the Senate and the House of Representatives. Members of Congress keep offices in Washington D.C. and the local district they represent. Find out who are your Senators (2) and Congressperson (1), to target for help.

1. Call the Congressional switchboard 202-224-3121 or 202-225-3121. Tell them your home address, and they can tell you who are your 2 Senators and 1 Congressperson.
2. Call your elected officials' offices and get the names of the **Immigration Caseworker** (local district office) and **Immigration Legislative Aide** (D.C. office).

	Senate		House of Representatives
	Senator 1	Senator 2	Congressperson
Name			
Immigration Caseworker (District Office)			
Immigration Legislative Aide (DC Office)			

## Set up an appointment.

When you speak with the Immigration Caseworker or Legislative Aide, they will almost always insist that they can't get involved in deportation matters. That's a lie! They can do lots. But don't waste time arguing. Avoid discussing details over the phone. Just demand a meeting in person. A good line to use is, "I am a constituent. I have the right to a meeting. I don't feel comfortable talking on the phone."

## Prepare ASKS.

You can't go into the congressional office and say, "Stop my deportation!" Congress *cannot* tell a judge what to do. But they *can* tell Homeland Security to exercise power to not deport you. Before you go to your congressional office, figure out what you are asking them to do. Review **Prosecutorial Discretion (PD): Asks**. And bring the legal papers and favorable factors you have to document your case.

## Always Demand Responses In Writing

Remember, much of our goal in gathering support is to make decision-makers take a stand. Always prepare your requests for a Congressional office in writing and always demand a written response, *especially* if the office tells you they cannot help you. This way you can seek out help from other Congressional offices. More importantly, it is more difficult for them to articulate what they can't do for you in writing. Congressional offices often do not want to be on record saying they can't help you.

# Petitions

Create a general petition in support of your detained/deported loved one. Collect signatures on the streets, at school or your place of worship. The petition will educate others about immigration. Lots of signatures will pressure your congressional office to get involved. Below is a sample, which has been signed by hundreds of community members.

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June 26, 2004

To Whom It May Concern:

As a community member and supporter of Juan Diego Jimenez Rijo, I urge you to do all you can in your power to bring Juan Diego back to United States so that he can be with his community and family who love him.

On September 3rd, 2003, two days after Juan turned 19, he went to New York Federal Plaza thinking he was getting his naturalization certificate. Instead he was put in shackles. The next day at sunrise, he called home from John F. Kennedy airport to say, "They're deporting me to the Dominican Republic."

Juan came to the US when he was 13. He loved this community and loved New York. Throughout Washington Heights, neighbors only say good things about him. Juan worked for United Parcel Service (UPS), planned to join the US Armed Forces within months, and wanted to go to college. He was excited that he was becoming a US citizen. He did not know that when he was just 15 years old, the government revoked his greencard and ordered him deported. He had no chance to fight his case. Now in the Dominican Republic – far from New York and far from his loved ones – his dreams are shattered.

What happened to Juan is a disgrace. Juan deserves to have his case reopened and given a chance to get his legal status and citizenship in the United States. This is what he thought he was doing when he went to Federal Plaza on September 3<sup>rd</sup> before he was taken away from us. We urge you to do all within your power to bring Juan Diego back now.

Yours truly,

<i>Printed Name</i>	<i>Address</i>	<i>Signature</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

# Media

Deportation tears apart families. It wastes taxpayer dollars. It's double, even triple jeopardy, as people get deported for settled matters and then face persecution again back home. Most people don't know anything about how the system really works. Media can be a great weapon in your fight against deportation.

But before you try calling newspapers or TV stations, make sure you know: why am I speaking out? What is my message? Who should I contact? Below are some strategic points.

## WHY AM I GOING TO THE PRESS?

To pressure my Congressperson to help me.

To educate others at risk about deportation.

Other: \_\_\_\_\_

To educate the general public about deportation.

To expose specific people/agencies abusing my loved one.

## GET YOUR FACTS STRAIGHT.

Sometimes people feel ashamed of the reasons they are being deported. For example, if you have criminal convictions, you may be tempted to lie about them. But when speaking publicly, you have to be prepared to be honest. If you are caught lying, it will hurt you more. So get your side down. If you have a lawyer, you may want to ask him/her for help. Figure out what you do and don't want to disclose, and the facts you want in focus. Role-play with friends.

## MAKE TALKING POINTS.

Reporters are busy (or at least they think they are). They want to hear in **30 seconds** why they should cover your story. Before you call, think up a few sentences to explain:

**News hook:** what JUST happened that must be covered. Why is your issue timely? Sometimes an anniversary or recent/upcoming event gets journalists interested.

**Key facts:** what or who is the story about? This should include facts about the person/family in focus, and about the bigger system that's the issue.

**Message:** why does it matter? This is an opportunity to propose how the journalist should write about the story. Don't just repeat the facts. Frame them. If you have demands (e.g., that your Congressperson speaks out against your deportation; that Homeland Security gives you prosecutorial discretion; that the jail guards stop beating you), make them clear. Most journalists know nothing about the deportation system. Help them to focus, focus, focus.

## MAKE A PRESS LIST.

There are thousands of newspapers, TV and radio stations. You can't call them all. And bigger is not always better. Tips for getting strategic and helpful coverage:

Decide whose attention you want. For example, if you are trying to influence local leaders and community members, the Hometown Paper may be a better choice than the *New York Times*.

Identify any reporters assigned to your specific issue (e.g. immigration, prison beat). You can call the media outlet and ask, "May I have the name of the reporter who covers immigration issues in Brooklyn?"

Watch out for journalists who give your issues a bad spin. For example, if John Imaracist only talks about immigrants as rapists, you **don't** want to call him!

## CALL!

You've done a lot of work to prepare. You know your facts and your message. Now make the calls! Reporters are so used to getting calls from boring professionals, they will be thrilled hear a real person. Keep an organized record of who you spoke with and each conversation. Follow up when you say you will.



# Foreign Consulates

There are several ways that your home country can intervene in immigration proceedings. These recommendations can be used to push foreign consulates to protect the rights of their nationals. Use these recommendations to help hold consulates accountable for the obligations they have to protecting their nationals' rights in the deportation process

## CRIMINAL ARREST

***Most immigration problems begin when nationals are given inadequate advice about the criminal system.***

### **Recommendation One: REQUIRE NOTIFICATION OF ARRESTS AS PROVIDED FOR BY THE VIENNA CONVENTION**

- Persuade all law enforcement agencies (including the Department of Corrections) to notify *all* arrestees of the rights of foreign nationals to contact their consulates.
- Mandatory notification: consulates should insist that law enforcement agencies contact them immediately upon discovering that an arrestee is a foreign national.
- Insist that law enforcement notify consulates *before* sharing information about detainees with Immigration and Customs Enforcement (ICE).
- Develop a pocket card informing nationals of their right to contact the consulate upon arrest and distribute it to nationals.

### **Recommendation Two: TAKE ACTION ONCE A NATIONAL IS ARRESTED**

- Inform arrestees that criminal convictions – even pleas to misdemeanors – may have potential immigration consequences and that they should obtain legal representation.
- Implement a standard written policy that details the actions that a consulate is required to take immediately upon notification that a national has been arrested. These actions should include:
  - Provide all arrested nationals with a written warning about the potential deportation consequences of a conviction. Include self-help resources.
  - Communicate with the arrestee or family members to help them obtain information or legal representation.

***Though similar to criminal arrests, immigration arrests require heightened vigilance: procedural protections of rights are lower and lifelong exile is a possible outcome.***

## IMMIGRATION ARREST

### **Recommendation Three: TAKE ACTION WHEN A NATIONAL IS DETAINED BY IMMIGRATION**

- Provide all detained nationals with deportation assistance resources immediately when they are detained. The materials should also explain the deportation process.
- Prevent ICE from transferring detainees to distant locations where consulates would be inaccessible.
- Provide an 800 number for detained nationals to contact their consulate.
- Implement a standard written policy that details the actions that a consulate is required to take immediately upon notification that a national has been detained by immigration. These actions should include:
  - Always provide family members with information about a detained national's location and alien registration number (A#). Consulates can locate a detained national more quickly than his or her family.
  - Write letters of support for nationals who would suffer hardship due to illness or other reasons if deported. These letters can help convince government lawyers to exercise prosecutorial discretion in favor of a national, or convince judges in immigration court to grant discretionary relief.

## TRAVEL DOCUMENTS

***The U.S. deports people to non-continuous countries only if a deportee's home country issues travel documents.***

### **Recommendation Four: IN-PERSON INTERVIEW WITH NATIONAL**

- Interview nationals in-person.
- Verify every national's identity.
- Check that the national is not being deported prematurely.
- Check that the national not been subject to abuses or other rights violations in detention.

### **Recommendation Five: REQUIRE TRAVEL DOCUMENTS BEFORE EVERY DEPORTATION**

- Require that a travel document be issued prior to every deportation, even if a national has a passport.
- Before issuing travel documents, make sure all the national's rights in the deportation process have been exercised and that national has exhausted all legal and judicial remedies, including appeals.

### **Recommendation Six: MAKE REQUIREMENTS FOR ISSUING TRAVEL DOCUMENTS**

- Require *verification before* issuing travel documents.
- Hold travel documents until *all* legal remedies have been exhausted.
- Ensure that nationals are not deported prematurely and in violation of their rights.
- Provide U.S. officials with a *Verification Checklist* and require U.S. officials to answer *in writing* all of the following:
  - Whether the national has exhausted all legal remedies, including all judicial remedies;
  - Whether the impact of deportation on a national's U.S. citizen family has been taken into consideration;
  - Whether the national has access to his/her financial assets in the U.S., including accrued retirement savings and pensions; and
  - Whether the national has been permitted to contact his/her relatives in the home country.

### **Recommendation Seven: NOTIFY FAMILIES OF DEPORTATION DATES**

- Provide family members with the date of their loved one's deportation, even if DHS requests to the contrary. Families may make arrangements in preparation for deportation, alleviating the burden on home governments.

***People in immigration detention are often subject to the same harsh conditions as criminal prisoners, but they may have less protection from abuse because people assume "detention" is not "prison."***

## DETENTION CONDITIONS

### **Recommendation Eight: INTERVENE AGAINST ABUSE OF NATIONALS IN JAILS AND DETENTION CENTERS.**

- Visit detention centers to investigate complaints of abuse.
- Intervene when detention facilities do not accommodate detainees' religious beliefs, language needs, and dietary needs.
- Ask U.S. government officials to conduct official investigations into detainee abuse. Even when official investigations do not produce official findings, the treatment of detainees in facilities subject to investigation improve dramatically.

## Recomendaciones para los Consulados

### DETENCIÓN POR CARGOS CRIMINALES

*La mayoría de los problemas de inmigración comienzan cuando los ciudadanos reciben consejo inadecuado sobre el sistema de justicia criminal.*

#### **Recomendación Uno: Solicite notificación de arrestos según indica la Convención de Viena.**

- Asegurarse de que todas las agencias de aplicación de la ley cumplan en notificar a *todos* los arrestados de su derecho como extranjeros a ponerse en contacto con sus consulados.
- Los consulados de notificación obligatoria deben insistir en que las agencias de aplicación de la ley se pongan en contacto con ellos *inmediatamente* después de descubrir que un arrestado es ciudadano extranjero.
- Insistir en que las agencias involucradas notifiquen al consulado *antes* de compartir la información sobre detenidos con Immigration and Custom Enforcement (ICE).
- Desarrollar una tarjeta de bolsillo informando a los ciudadanos de su derecho a contactarse con su consulado en caso de detención y distribuirla entre los ciudadanos.

#### **Recomendación Dos: Actuar una vez que un ciudadano es arrestado**

- Informar a los arrestados que las condenas por cargos criminales pueden tener consecuencias en materia de inmigración y que deben obtener representación legal.
- Implementar una política escrita que detalle las acciones que el consulado debe tomar inmediatamente cuando se le notifica que un ciudadano ha sido arrestado. Estas acciones deben incluir:
  - Hacer llegar a todos los ciudadanos arrestados una advertencia escrita sobre las posibles consecuencias en materia de deportación de una condena. Incluir recursos de autoayuda.
  - Comunicarse con el arrestado o miembros de su familia para ayudarlos a obtener información o representación legal.

### DETENCIÓN POR INMIGRACIÓN

#### **Recomendación Tres: Actuar una vez que un ciudadano es arrestado por inmigración**

*Aunque similares a las detenciones por cargos criminales, las detenciones por inmigración requieren más vigilancia: las protecciones procedimentales son menores y está presente la posibilidad de ser exiliado para siempre.*

- Proveer a todos los ciudadanos detenidos de recursos explicando el proceso de deportación inmediatamente después de la detención.
- Evitar que ICE transfiera a los detenidos a lugares lejanos donde no hay consulados accesibles.
- Proveer un número telefónico 800 para que los ciudadanos detenidos puedan contactarse con su consulado.
- Implementar una política escrita que detalle las acciones que el consulado debe tomar inmediatamente cuando se le notifica que un ciudadano ha sido arrestado. Estas acciones deben incluir:
  - Siempre proveer a la familia de información sobre la ubicación del detenido y su “alien registration number” (A#). Los consulados pueden localizar a un detenido más rápido que su familia.
  - Escribir cartas de apoyo para ciudadanos que sufrirían por enfermedades u otros motivos en caso de ser deportados. Estas cartas pueden ayudar a convencer a los abogados del gobierno de que ejerzan discreción procesual a favor de un ciudadano, o convencer a los jueces en el tribunal de inmigración de que concedan un alivio discrecional.

## **DOCUMENTOS DE VIAJE**

### **Recomendación Cuatro: Entrevista personal con los ciudadanos**

***Estados Unidos sólo puede efectuar deportaciones a países no limítrofes si el país de origen emite documentos de viaje.***

- Entrevistarse con los ciudadanos personalmente.
- Verificar la identidad de cada ciudadano.
- Chequear que el ciudadano no esté siendo deportado prematuramente.
- Chequear que el ciudadano no sufra abusos u otras violaciones de sus derechos mientras se encuentra detenido.

### **Recomendación Cinco: Requerir documentos de viaje antes de cada deportación**

- Requerir que se emitan documentos de viaje antes de cada deportación, incluso si el ciudadano tiene pasaporte.
- Antes de emitir documentos de viaje, asegurarse de que se hayan respetado todos los derechos del ciudadano en el proceso de deportación y que se hayan extenuado todas las posibilidades jurídicas, incluyendo apelaciones.

### **Recomendación Seis: Pedir requisitos para emitir documentos de viaje**

- Requerir *verificación* antes de emitir documentos de viaje.
- No entregar documentos de viaje hasta que *todas* las posibilidades legales estén exhaustas.
- Asegurarse de que los ciudadanos no sean deportados prematuramente o sus derechos sean violados.
- Proveer a los oficiales del gobierno de los Estados Unidos con una *Verification Checklist* y requerir que contesten *por escrito* todo lo siguiente:
  - Si el ciudadano ha extinguido todas sus posibilidades legales y judiciales;
  - Si el impacto de la deportación sobre los miembros de la familia que sean ciudadanos de los Estados Unidos ha sido tenido en cuenta;
  - Si el ciudadano tiene acceso a sus activos financieros en los Estados Unidos, incluyendo ahorros para su retiro y pensiones; y
  - Si al ciudadano se le ha permitido estar en contacto con sus parientes en su país de origen.

### **Recomendación Siete: Notificar a las Familias sobre las Fechas de Deportación**

- Informar a la familia la fecha de deportación de su ser querido, incluso si el DHS solicita lo contrario. Las familias pueden así prepararse para la deportación, aliviando la carga del gobierno en los países de origen.

## **CONDICIONES DE DETENCIÓN**

### **Recomendación Ocho: Intervenir en casos de abusos contra ciudadanos en cárceles o centros de detención**

- Visitar los centros de detención para investigar reportes de abuso.
- Intervenir cuando los centros de detención no respetan las necesidades de los detenidos, sea en materia de religión, lenguaje, o alimentación.
- Solicitar al gobierno de los Estados Unidos que lleve adelante investigaciones oficiales sobre abusos cometidos contra los detenidos. Incluso cuando las investigaciones oficiales no reportan hallazgos, el tratamiento de los detenidos en los centros de detención investigados mejora dramáticamente.

***Los detenidos por inmigración son a menudo sujetos a las mismas condiciones que los detenidos por cargos criminales, pero están menos protegidos de los abusos, en parte porque suele asumirse que los centros de detención son distintos de las prisiones.***

# New Sanctuary Movement (NSM)

## **Background**

In the early 1980's, thousands of Central American refugees poured into the United States, fleeing life-threatening repression and extensive human rights violations by their governments.

At the time, federal immigration policy would have denied the majority political asylum simply because their governments were allies of the U.S. Many of these refugees had actively participated in the liberation theology movement and naturally sought protection from congregations.

Many Catholic, Protestant and Jewish congregations and temples responded positively -- offering these refugees social services and advocacy support as well as engaging actively in efforts to change federal immigration policy. These congregations, united under the banner of the Sanctuary Movement, also pledged that they would not reveal the identities of these refugees, even if they were arrested or jailed for doing so.

The Sanctuary Movement was ultimately successful both in changing national policy and in protecting tens of thousands of individuals and families, enabling them to start a new life in the U.S.

Now, over 25 years later, religious leaders across a broad spectrum of denominations from 10 states are coming together to begin a New Sanctuary Movement to accompany and protect immigrant families who are facing the violation of their human rights in the form of hatred, workplace discrimination and unjust deportation.

As an act of public witness, the New Sanctuary Movement will enable congregations to publicly provide hospitality and protection to a limited number of immigrant families whose legal cases clearly reveal the contradictions and moral injustice of our current immigration system while working to support legislation that would change their situation.

## **Get Involved**

Families for Freedom joined the New Sanctuary Movement in April 2007, when two of our members became the first families in New York to seek sanctuary. Since our partnership began, we have been working closely with religious leaders and congregants to build anti-deportation campaigns.

Sanctuary is not a community service. It is an invaluable, mutual support network grounded in faith and justice. To get involved, visit <http://newsanctuarymovement.org/> or contact FFF at (646) 290-5551 for information.

# Sample Letters

December 12, 2003

## Elected Official

Re: XXXXX SXXX (A# \_\_\_\_\_)

Dear SenatorXXXX:

I am writing from \_\_\_\_\_ to request your support for our member and your constituent, XXXXXX. She currently faces deportation to Trinidad for a 1990 drug possession conviction. She has legal resident and citizen family in the United States, including her only grandchild. \_\_\_\_\_ entered the country as a legal permanent resident in 198X. She holds fulltime employment as a \_\_\_\_\_ at \_\_\_\_\_. She has strong community ties, is fully rehabilitated and poses no threat to society.

In 1990 \_\_\_\_\_ she was found guilty of a one time nonviolent drug offense upon trial. She was sentenced to fifteen years to life under the Rockefeller Drug Laws. She was released from Bedford Hill Correctional Facility in 2001, five years before her minimum sentence, because of good behavior.

\_\_\_\_\_ was placed in deportation proceedings while in Bedford Hill Correctional Facility, after passage of the 1996 immigration laws. The Immigration Judge ordered her deported in XXXX. The Board of Immigration Appeals dismissed her case on April X, 1998. \_\_\_\_\_ filed a habeas petition to challenge the court's decision to deny her a hearing for 212(c) – a discretionary form of relief available to greencard holders with pre-1996 convictions. The Department of Homeland Security (DHS) is granting 212(c) hearings to people who pleaded guilty to crimes before 1996, but not to those who (like \_\_\_\_\_) went to trial. She will receive a judgment from the federal court any day now, and almost certainly lose this appeal.

We are now appealing to the DHS to allow \_\_\_\_\_ to remain here, despite her deportation order. The Bureau of Immigration and Customs Enforcement, within the DHS, has the power to grant \_\_\_\_\_ prosecutorial discretion – a non-binding agreement in which the noncitizen lives and works in the U.S. and reports regularly to the immigration office. It may be revoked whenever the government wishes. We are submitting a request for prosecutorial discretion to District Director XXXXXX. Congressional support would greatly strengthen our request.

XXXX fully understands and accepts that she has made mistakes. But she deserves a second chance. She is quickly re-establishing herself in New York and becoming a model citizen. XXXX is successfully putting her life back together. She does not deserve to see it torn apart now. We ask for your support so that XXXX may remain in this country.

Sincerely,

\_\_\_\_\_

# Letterhead

---

December 20, 2005

Attn: Immigration Caseworker  
Office of Rep. NXXX MXXXX  
222 Address  
NY, NY 1XXXX

Dear Congressman \_\_\_\_\_,

We would like thank you for meeting with us on October 23 to discuss the case of our co-founder, church sister and family member, XXXXXX. We are writing you now with an urgent plea for help. This week, my mother, XXXX had all open criminal charges dropped. However she still has an immigration detainer because she is out of status and has one past conviction. Our family has retained XXXX the criminal attorney, to represent her in immigration proceedings.

According to every immigration expert we have spoken to, because of her controlled substance offense in 1988, XXXXX has no options for relief in immigration court. Her only chance for staying in the country is if the Department of Homeland Security decides to exercise Prosecutorial Discretion in the case. As we have been advised, prosecutorial discretion is most effective when exercised before immigration court proceedings begin. More importantly, prosecutorial discretion is most affective when there is significant community attention, including from elected officials.

To remind you of the details of the case, XXXXX and the XXXXXX were married in Trinidad at a very young age, while Ms. XXXXX was pregnant, her husband abandoned his family and went to the United States. Heartbroken, Ms. XXXXX came to the United States illegally in 198X to look for her husband. She became involved with another man in an abusive relationship. The man coerced her into legal activity and also had a child with her. She was arrested in 1988 and convicted of attempted criminal sale in the third degree. She was sentenced to probation. She was rearrested in 1989, made bail, fled her abusive relationship and the authorities.

Her estranged husband however, had made a 360 degree conversion to Christ and brought her and her new son back into the family for all of the family to heal together. Eventually, Mr. XXXX would become an ordained minister and Ms. XXX and him would establish their own church in XXXX. 10 years later that church now has over a hundred congregants and is a vital service to the community. Pastor XXXX and his wife have counseled many people in the community about the dangers of drugs and gangs.

Mrs. XXXX has not had an arrest in the past 16 years. Ms. XXXX has been a blessed part of this community since she helped found this church 10 years ago. Every person she touches feels her presence and her positive energy. She is not the same person she was 16 years ago and is not in the same relationship. She is now in a loving relationship with Pastor XXX, her family of three children and her church.

Our church and our community need XXXX. We ask that your office write a letter of support urging Homeland Security to exercise favorable prosecutorial discretion in her case. If she is deported, it will not only hurt her children and husband, it will hurt the entire congregation and the community. Please respond to this request in writing. Thank you very much for your time.

Sincerely,  
XXXXXX  
The Congregation of Spanish United Pentecostal Church

May 25, 2005

Craig Robinson  
Field Office Director, New Orleans  
Bureau of Immigration and Customs Enforcement  
701 Loyola Avenue  
Rm. T-8011  
New Orleans, LA 70113  
Nancy Hooks  
Field Officer-in-Charge  
Bureau of Immigration and Customs Enforcement  
1010 East Whatley Road  
Oakdale, LA 71463  
Re: XXXXX (A# XXXXX)

Dear District Director Robinson and Officer Hooks:

I write to urge your office to grant supervised release and deferred action to XXXX XXXX, a long-term green card holder currently detained at Oakdale Federal Detention Center. Mr. XXXX has been married to a naturalized U.S. citizen, XXXX XXXX, for sixteen years. The couple has a beautiful eight-year-old daughter XXX, born and raised in Brooklyn. He has overwhelming community support, documented through support letters and petitions. The imminent removal of Mr. XXXX to Guyana would devastated his family financially, emotionally, and spiritually. Please exercise discretion to reunite them.

Prior to detention, Mr. XXXX was supporting his family and organizing activities with children at his wife's church. Mr. XXXX himself is a devout Rastafari. His religious practice to date has included being a strict vegetarian, growing his hair, reading the Bible, and smoking marijuana as part of his sacraments. This last practice is in violation of our laws, and as a result Mr. XXXX faces imminent deportation. Since his detention, Mr. XXXX has promised that he will stop *all* use of marijuana, because his family is more important to him. He has taken responsibility for his mistakes, and the effects that his mistakes have caused on his family.

Since Mr. XXXX's detention, his wife XXXX has been struggling to maintain a normal, healthy life for their daughter. But the family is suffering tremendously. As the sole income provider, XXXX is a chronic diabetic who takes insulin daily. She earns \$6.50 per hour as a home health aide. XXXX and XXXX were nearly evicted during Christmas 2003. XXX's grades are dropping and her teachers see a notable difference in her ability to concentrate and get along with her peers. XXXX has even seen a pro bono child psychologist, who has insisted that XXXX's emotional problems will become permanent if she is not reunited with her father.

XXXX and XXX came to our office in Washington D.C. last September, desperate for help. They have been garnering community support, to demonstrate that Mr. XXXX deserves a second change. They are now filing for deferred action. In no way is the family trying to excuse his past mistakes. If granted deferred action, he is committed to observing the terms of his supervised release, and his family and community supporters are committed to helping him reintegrate into society. Mr. XXXX fully understands the severe consequences should he violate these terms, and is committed to meeting the terms set by the Department of Homeland Security.

We urge you to use the discretion you have under the law to return Mr. XXXX to his life as a father and breadwinner. His release serves the best interests of his family, and society at large. Should you have any questions, please contact me at \_\_\_\_\_.

Yours truly,  
XXXX XXXX  
Congressman



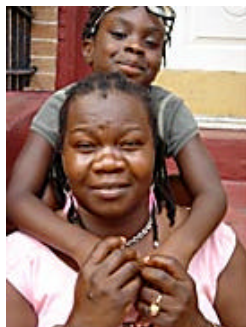
## Bring Back Our Husbands

By Barbara Facey and Carol McDonald, ColorLines RaceWire  
Posted on June 8, 2004 on Alternet.org (<http://www.alternet.org/story/18904/>)

We have not seen our husbands since September 2003. Homeland Security took them away without warning, maybe forever. Even though we are both naturalized US citizens, immigration laws deny our basic right to be with our life partners. We are now single mothers, fighting to keep our children, our jobs and our homes -- and on the verge of losing our minds.

Since Congress changed the deportation laws in 1996, over 1 million people have been deported. Since September 11, 2001 the government has launched an initiative to go after everyone with an old deportation order, even when they have families with US citizenship, tearing apart hundreds of thousands of families including ours.

My name is Carol MacDonald. My husband Linden Corrica and I are Guyanese New Yorkers. We married ten years ago, and raised our daughter Natasha in Bushwick, Brooklyn. Last year Linden, a Rastafarian, was arrested with a joint. The lawyer told him to plead guilty, without warning that he could get deported. A day after Linden began his two-week sentence at Rikers Island penitentiary, immigration officers came for him. They marked him for deportation, and transferred him to a Louisiana jail.



Immigration agents are stationed at Rikers to screen noncitizens -- including greencard-holders like Linden -- and hand them off for deportation. When Immigration detains and deports people after they finish their sentence, even for misdemeanors, that's double jeopardy.

Linden has now been in immigration prison for nine months -- eighteen times longer than the sentence he received for his underlying crime. He calls home every week from detention. Once no one heard from him for a month because he was put in solitary. In January, our daughter Natasha picked up a letter from her father, postmarked from Louisiana. She said, "Mommy, where is Louisiana?" I had to lie and say it was in Guyana.

Raising a daughter without any help is a struggle. Natasha got sick last week and begged "Mommy, I need you, I need you. Don't leave." She started to throw up. No matter how much it hurt, I had to send her to school and go to work as a home health aid. Our landlord tried to evict us three days before Christmas because he wanted more money. We had to fight to stay in the apartment, and must now pay a higher rent.

\*\*

My name is Barbara Facey. I married Howard Facey in 1997. I immediately filed an immigration petition for Howard, but didn't hear anything for six years. Last summer, a lawyer advised Howard to check on his paperwork at Federal Plaza. Immigration officers there told him to return the next Monday for work authorization. When he did, he was detained and

shipped to Jamaica based on a 1995 deportation order from Alaska. Howard never saw a judge.



Howard called home from JFK airport at 6 a.m. to say that he was being deported.

My heart sank, but I did not have the time to break down. I had to get our three kids ready for school, and rush to work at a local drugstore. Letisha, Kristina, and Christopher ask for their dad everyday. Their grades are dropping, and the school counselor says they are depressed. Childcare is really hard. When a family friend who was supposed to get Christopher from school was late a few times, the principal threatened to call Children's Services. With all this pressure, I don't have the time to properly treat my heart condition.

Life has turned upside down since our husbands were taken away. Our husbands are not a threat to anyone. They used to help with everything: pick up the kids from school; take them to the library, the park, McDonald's. It is so hard to raise kids as single mothers, but you have to push yourself for them. We're both terrified of people saying we are bad parents and taking our babies away. All our personal ambitions -- to get better jobs, make real careers -- are out the window while we just try to make it. Our husbands cannot help. In detention, you make one dollar a day for full-time work. Back home in the Caribbean, no one will hire a US deportee.

When our families were first torn apart, we had no idea what was happening or where to turn for help. Now we know our rights, and protect ourselves from scam attorneys and deceitful immigration officers. We want other families to protect themselves the same way we are learning to, and speak out. Silence is killing us.

Faith is helping us get through our situations. Even though our husbands have already been taken, we will not give up. And we refuse to let this happen to other families. We are dedicated to changing the laws that ruined our homes, to overcome the fear controlling every part of our lives.

Right before September 11, Republicans and Democrats pledged support for a Fix '96 campaign that would repeal the laws that are tearing apart our families. It's time to revive this effort, and to stop punishing people solely for being immigrants. Our husbands may not be citizens, but they and we remain human beings.

Barbara Facey and Carol McDonald are members of **Families for Freedom**, an immigrant defense network of people facing deportation. For more information, call 718-858-9658 x204.

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View this story online at: <http://www.alternet.org/story/18904/>

## Deportation Is a Life Sentence

By Maria Muentes, Families for Freedom

*This speech was delivered at the Still We Rise Poor People's March, and published in El Diario La Prensa. (See El Diario La Prensa. Sept 14, 2004. Opinion pg. 21)*

In 1996, a Republican Congress and Democratic President changed the law, so that 1 million people would end up being deported. One million black and brown people exiled for life. One million families torn apart. The criminal justice system doesn't just eat up black and brown people from our communities. If you are an immigrant, it spits you out to another country you may have never known. Deportation is a life sentence, and in New York almost any immigrant that gets arrested faces exile for life.

To the Republicans that targeted our city for their politicking, and the Democrats who just sit back and watch, we have one question: Why is it that you can break the law and get a second chance, but when we break the law, you separate our families?

I want to tell you about a young woman, "Joyce." She was arrested with a small bag of weed. Her "crime" was so small that she was just ordered nothing more than to pay a fine. A year later, she traveled abroad to see her grandmother. When she returned, she was detained at the airport and spent the next three years in seven different detention centers. "Detention" is prison. For those inside and their families, it is hell. Joyce is still in the country because her mother fought with every bone in her body against a government that wanted to deport her child for the same thing that their kids do everyday. The Department of Homeland Security is robbing immigrants of our basic security.

George Bush got arrested three times and still ended up in the White House. But if one of us gets arrested, we are banished, cut off from our loved ones and our livelihood.

We are immigrants and we are tired of being scapegoats, no matter who our next President is. Today we declare: NO to the destruction of our families! Stop Deportation!

*Maria Muentes is a member of Families for Freedom, a multi-ethnic defense network by and for immigrants facing deportation. For more information, call 212-898-4121.*

## La deportación es una sentencia por toda la vida

María Muentes. *El Diario La Prensa*. Sept 14, 2004. Opinion pg. 21

En el 1996 los republicanos y los demócratas cambiaron las leyes, y como resultado más de un millón de personas han sido deportadas. Un millón de personas de color exiliadas por vida. Un millón de familias destruidas. En Nueva York, la mayoría de inmigrantes arrestados enfrentarán la deportación por vida.

Para los republicanos que estuvieron aquí para la convención, y los demócratas que se sientan con los brazos cruzados mientras destruyen nuestras familias, tenemos una pregunta: ¿Porqué ustedes pueden violar la ley y le dan una segunda oportunidad, pero a nosotros nos separan de nuestra familia?

Les quiero contar sobre una joven, "Joyce". Ella fue arrestada por tener una pequeña cantidad de marihuana. El "crimen" de ella fue tan menor que nada más se le exigió que pagara una multa. Un año después, ella viajó fuera del país a visitar a su abuela. Cuando regresó, fue detenida en el aeropuerto y pasó los próximos tres años en siete centros de detención. Detención es una cárcel. Para los que se encuentran adentro y sus familias, es un infierno. Joyce está en el país todavía, porque su madre luchó hasta el fin contra el gobierno que quería deportarle su hija por el mismo "crimen" que otros jóvenes cometen a diario. El departamento de Seguridad Nacional roba la seguridad familiar a los inmigrantes.

George Bush fue arrestado tres veces y se encuentra en la Casa Blanca. A nosotros nos arrestan y nos separan de nuestra familia y comunidad.

Somos inmigrantes y no queremos que nos culpen más por todos los problemas del país, sea quien sea el próximo presidente. Hoy decimos ¡no a la destrucción de nuestras familias! ¡Paren las deportaciones!

*María Muentes es miembro de Familias para Libertad, un grupo de familias confrontando la deportación. Llámanos a (212) 898-4121.*

# Begin Organizing with Families Facing Deportation *(the FFF model)*

Detainees, deportees and families facing deportation are NOT just victims. Many have been forced to navigate one of the most complex processes by themselves. We have often circulated petitions, coordinated detention center visits, and even organized hunger strikes and sanctuary. Our involvement in advocacy should not end at them either being clients or just being mouthpieces at press conferences. Families should be supported when they organize to confront the problems facing them. Families for Freedom has a specific model of organizing families facing deportation as an organization by and for families facing deportation. Although there are different ways to help families organizing to fight deportation, there are some basic tips to get started.

## **STEP 1: Setting up a meeting**

Set up a meeting *only* for families facing deportation (including former detainees) to meet each other. One of the worst parts of the deportation process is the isolation. You often feel alone and feel like no one else can possibly understand what you are going through. The first step to organizing then is to always set up a meeting of at least three people that are either facing deportation or have family facing deportation. This meeting should only be for the families and someone directly impacted should be co/facilitating the meeting. With a possible exception of a facilitator or translator, there shouldn't be any advocates, social workers, or community activist in the room that aren't facing deportation. Community meetings are important but they come at a different time. This should be a space where people facing deportation should be talking to each other. If there are advocates in the room, people often start talking to or through advocates, and not to each other.

*What is on the agenda of the first meeting?*

Hopefully there will be 2-3 hours available for the meeting. The meeting should have three basic components: Support (Assist ourselves), Education (Raise awareness), and Action (what we call Make 'em bleed!).

- **Support:** This component is basic support group stuff with a twist. People should be responding to questions like "How are you feeling?" and "What are your main struggles right now?" This part is always hard emotionally. But people should be specific. Finally the question should come up (Make sure you have a chalk board or a butcher paper to right down one word responses): Who is causing you struggles? (Ask for one or two word answers). Save these responses for later

- **Education:** A lot of people facing deportation feel like we don't know anything, but we actually know quite a bit. For example a lot of detainees did their own legal cases. A lot of families created carpools to detention centers. Whenever you ask people what's a solution to any problem (war, pollution, a stupid president), they always answer "education." But some education is disempowering if it is not based on what you already know. And too many families facing deportation feel like we don't know enough. Start a curriculum building exercise. Ask everyone a basic question (if the room is able to write, do a free-write): What do you know now about the deportation process that you wish you knew before you were in it? Save these responses for later.

- **Action:** Give yourself at least an hour to identify actions. Set out a timeline for 3-6 months. Ask the families in the room to brainstorm, What is one thing each WE can do together in the next 3-6 months to a) support one another, b) educate the community, c) act to change the policies/laws/practices affecting us and d) be seen as the experts we are in this process. Try to get the room to agree on one thing per category. Set a plan of action, and then designate roles. Make sure that each thing has a beginning and end within the 3-6 months.

- **Set a next meeting:** At each meeting evaluate the plan of action and revise. Continue to incorporate different support, education, and action components into each meeting. Have family members collaborate to prepare the agenda and co/facilitate the meeting.

- **Identify new people to come:** Ask people to identify new people to invite, whether people they were detained with, people they met in the detention visitation line or at their church/mosque, etc.

## **STEP 2: Develop Know-Your-Rights curriculum**

When working with families facing deportation, everyone wants to educate the community. Many make the mistake of just relying on legal workers to educate their communities, forfeiting the knowledge they have

developed in the deportation process. Lawyers are incredibly important in the Know-Your-Rights process, but aren't the only people that can develop community education projects.

Develop a Know-your-rights curriculum starting first with the answers to the question under "STEP 1: Education" above. Ask legal workers to review the documents to make sure the curriculum isn't making legal errors or unlawfully engaging in the practice of law. From there, the group should identify people they want to educate. It should include people and institutions they know (churches/temples, community centers, PTA meeting). The families from the meetings should be the primary ones conducting the trainings in the community.

### **STEP 3: Identifying actions and campaigns**

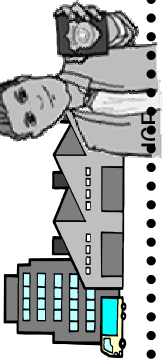
After a few months people start getting impatient and want to do more and learn more. Go back to the first meeting (see STEP 1: Support). Find the answers to the question, "Who is causing your struggles." Try coming to an agreement about a collective target. Strategize how you plan to move that target within the year, and what you need to know to move that target. In the meanwhile continue to keep growing the meetings and building membership based upon people's primary contacts.



# RAIDS TO DEPORTATION: POLICY MAP

(Including selected proposals from recent Congressional proposals)

## ICE Raids and Sweeps



- Proposals increase ICE collaboration with local police, turn police into immigration agents and allow local governments to detain immigrants without charges
- Local proposals use laws (e.g. trespassing, housing codes) to target immigrants at day labor sites, workplaces & homes
- Good-intentioned sanctuary ordinances have loopholes for local police to turn immigrants into ICE when suspected of illegal acts
- Proposals would require stricter verification of workers' status, stricter penalties for hiring undocumented workers, and additional money for worksite enforcement
- Communities are building worker centers to create safe spaces for day laborers and pushing for greater protection of day labor sites
- A few congressional proposals to deal with treatment of immigrants in raids

## What happens to my family?

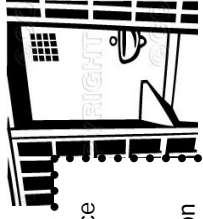


- CCPA explicitly allows judges to consider a deportation's effect on U.S. citizen kids before ordering parents' deportation

## ICE Deportation Office

- No proposals force ICE to exercise prosecutorial discretion
- Proposals would expand expedited and administrative removal, allowing low-level agents to order deportation
- Proposals increase information sharing among federal agencies

## Detention



- Proposals increase detention space and authorize mandatory and indefinite detention
- Proposed regulations and legislation would make detention standards enforceable, increase alternatives to detention and parole

## Criminal Prosecution

- Proposals would increase criminal penalties for immigrants (document fraud, unlawful presence, illegal entry)
- State proposals would require advisal of immigration consequences

## Deportation

- More deportation to countries where immigrants face torture
- DHS/courts still don't allow deportees to reunite with families or to reopen cases after courts find government action to deport unlawful.



## Immigration Courts/BIA

- Proposals would expand grounds of deportation and make people unable to get green cards - reduces who would benefit from legalization programs
- Proposals restrict motions on immigration cases
- Proposals would expand expedited removal (deportation w/o hearing)
- No legislation to fix access to counsel
- CCPA and other proposed waivers may give judges more power to consider circumstances, families, etc.

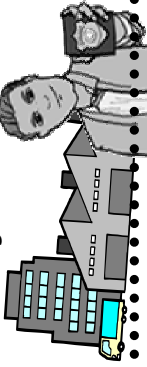
## Federal Courts

- Proposed legislation would:
- Eliminate habeas to challenge detention
  - Further restrict federal review of deportation decisions and make it more difficult to stop deportation during an appeal - more immigrants would be deported due to government mistakes

# REDADAS PARA LA DEPORTACIÓN: MAPA DE LAS POLÍTICAS

(Incluye ejemplos de propuestas tomadas de propuestas recientes en el Congreso)

## Redadas y Barridas del ICE



- × Las propuestas aumentan la colaboración del ICE con la policía local, convirtiendo a los policías en agentes de inmigración y permitiendo que los gobiernos locales detengan a los inmigrantes sin hacerle cargos judiciales.
- × Propuestas locales utilizan leyes (por ejemplo contra el traspaso, códigos de vivienda) para acosar inmigrantes en sitios laborales, lugares de trabajo, y hogares
- × Ordenanzas bien intencionadas para el santuario son defectuosas y permiten que la policía local entregue a inmigrantes sospechosos de actos ilegales al ICE
- × Propuestas requerirán verificación más estricta del estatus laboral, penas más estrictas por contratar trabajadores indocumentados, y fondos adicionales para esforzar las leyes en los lugares de trabajo
- × Comunidades están construyendo centros laborales para crear lugares seguros para los trabajadores temporales y presionando para más protecciones en los sitios que sirven a los mismos
- ✓ Algunas propuestas ante el Congreso con el trato a los inmigrantes en las redadas

¿Qué pasa con mi familia?

- ✓ La CCPA explícitamente permite que jueces consideren los efectos de la deportación en los niños ciudadanos antes de ordenar la deportación de sus padres



## Oficina de Deportación del ICE

- × Ninguna propuesta ordena al ICE ejercer discreción en el procesamiento de casos
- × Las propuestas aumentarán las expulsiones inmediatas y administrativas, permitiendo que agentes de bajo nivel ordenen deportaciones
- × las propuestas aumentan la distribución de información entre agencias federales

## Detención

- × Las propuestas incrementan los espacios para la detención y autorizan la detención indefinida
- ✓ Las regulaciones y legislación propuestas harían mandatorio el cumplimiento de los estándares para la detención, creando más alternativas para la detención y libertad condicional

## Deportación

- × Más deportaciones a países donde inmigrantes encaran la tortura
- × Las cortes del DHS aún no permiten que los deportados reingresen al país para reunirse con sus familias o para reabrir casos antes las cortes para determinar si las deportaciones fueron legales o no.



## Cortes Federales

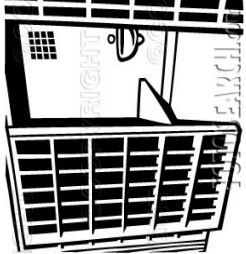
- La legislación propuesta:
- × Eliminaría el habeas contra la detención
  - × Restringiría más la revisión federal de las decisiones de deportación, haciendo más difícil para la deportación durante la apelación - más inmigrantes serían deportados como resultado de errores gubernamentales

## Procesamiento Judicial

- ✓ \* Las propuestas incrementarán las penas criminales para los inmigrantes (fraude de documentos, presencia ilegal, entrada ilegal)
- ✓ \* Propuestas estatales requieren notificación de las consecuencias migratorias

## Cortes de Inmigración/BIA

- × Las propuestas incrementarían las razones para la deportación, haciendo que la gente no pueda tener tarjetas verdes - reducen quiénes pueden beneficiarse de los programas de legalización
- × Las propuestas restringirían mociones judiciales en casos de inmigración
- × Las propuestas incrementarían la expulsión acelerada (deportación sin audiencia)
- × Ninguna legislación ayudará al acceso a la asesoría legal
- ✓ La CCPA y otras propuestas de exención (waivers) darán más poder para que los jueces tomen en cuenta circunstancias, familias, etc.



# Valuing Our Families and Our Children: Child Citizen Protection Act (H.R. 1176)



Every immigrant’s story is a story about family. As the immigration debate heats up across the nation, one group of citizens has a unique stake in it: the American-born children of immigrants.

## MYTHS vs. FACTS...

**MYTH:** “The immigration debate doesn’t affect me, because I am a U.S. citizen.”

**FACT:** Immigration affects all of us.

Immigration is not just about green cards, borders or someone else’s family. It affects all of us. Immigrants do not live in isolation. We share zip codes, jobs, schools, places of worship and families. Nearly 1 in 10 American families are of mixed immigration status: at least one parent is a non-citizen, and one child a citizen. An estimated 3.1 million US citizen children have at least one parent who is undocumented.

**MYTH:** “Our immigration system considers US citizen children before deporting an immigrant parent.”

**FACT:** Today’s immigration laws force parents to abandon their US citizen children.

In 1996, our immigration system made deportation a mandatory punishment for many non-citizens—including long-term and legal permanent residents. When punishment is mandatory judges do not have a say in deciding if deportation is fair, robbing immigrant families of a day in court and a chance to show how permanent exile from the U.S. would impact their family.

The result? Every year, nearly 200,000 non-citizens—many with kids who are U.S. citizens—are deported and torn away from their families *even when a judge thinks they deserve to stay in the U.S.* to help raise and support those families. Under mandatory deportation, the judge’s hands are tied. Families must choose between splitting up, resulting in more single parent households and psychological and financial hardship, or forcing their U.S. citizen children into deportation with them. These American children may have to start over in a country with a new language, fewer resources and an uncertain future. America’s immigration laws force American children to lose their parent, or their country.

Mandatory deportation is a life sentence of exile. Such a severe, "one size fits all" punishment cannot be the basis of our immigration system.

## WHAT’S THE SOLUTION?

Congressman Jose Serrano (D-NY) introduced the Child Citizen Protection Act (H.R. 1176), a limited bill to restore justice to our immigration system by allowing U.S. citizen children to be heard before a parent is taken away. The Child Citizen Protection Act would repeal the harshest provisions of the 1996 laws and allow immigration judges to consider whether deportation is "clearly against the best interests of a US citizen child". It preserves the basic notion of fairness that should define the U.S. justice system. It allows judges to judge, and families to have a day in court.

The Child Citizen Protection Act is an opportunity for our leaders to show that they truly value families, that the health, safety and well being of our nation’s children are a top priority.

\*\*\*\*\*



Since the immigration laws changed in 1996, members of Congress from both parties, Immigration Judges, religious leaders, media and American children have criticized the cruel and unintended consequences of mandatory deportation on families.

Our Leaders	Our Children
<p>"Federal officials came to our house to arrest my mother while my father was at work. It was a frightening situation for my entire family that occurred through no fault of my mother, who had lived in America for more than 30 years. I believe that we can, and must, do our best to prevent situations like this from occurring in the future."  <b>—Senator Pete Domenici (R-NM)</b></p> <p>"[Non-citizens who] clearly rehabilitated themselves . . . are no longer a threat to society, and have started families. In these cases, deportation seems an extreme remedy."  <b>—Representative Henry Hyde (R-IL)</b>, an original supporter of the 1996 laws.</p> <p>"We grant due process rights to citizens and non-citizens alike; not out of some soft-hearted sentimentality, but because we believe that these rights form an important cornerstone to maintaining civilized society."  <b>—Representative John Conyers (D-MI)</b></p> <p>"While immigration is a complicated economic, political, and cultural issue, it is also a stark moral challenge for our nation. It is our view that immigration is a moral issue because it impacts the human dignity of the person."  <b>—Reverend Jaime Soto, Auxiliary Bishop of Orange, California</b></p> <p>"We advocate for just policies that respect human rights of immigrants and preserve the unity of the immigrant family, including due process . . ."  <b>—Statement from the Roman Catholic Bishops of the U.S.</b></p> <p>"We must stop hauling away parents in the middle of the night in front of their children and denying . . . the most basic constitutional rights that we in American believe everyone should have. That is exactly what the 1996 laws did."  <b>—Representative Bob Filner (D-CA)</b></p> <p>"How I wish parents, lawyers, judges would put so high a priority on determining a child's interests."  <b>—Senator Hillary Clinton (D-NY)</b></p>	<p>"I never saw my dad. I felt sad and mad at the government that he got deported and never saw him again before he was killed in El Salvador. Something else could be done, because kids need their fathers. My mom is single, and she's gonna have to work two jobs. With her kids, it's hard for her because their father has been deported."  <b>—Junior, 13-year old U.S. citizen whose father was deported to El Salvador (Los Angeles, CA)</b></p> <p>"I wonder every day when will I have to leave my family to be sent to Cambodia. I find myself distancing from the ones I love and wondering why I even have a family, when someday I may have to leave them. I hope we'll have a day in court to show the immigration judge that our daughter, who is a U.S. citizen, deserves the best from the American justice system: to be with her family."  <b>—Many Uch, lawful permanent resident whose daughter is a U.S. citizen (Seattle, WA)</b></p> <p>"I haven't seen my daddy for a few years. I talk to him on the phone sometimes. I miss him a lot. He used to take me to McDonald's and church and play with me. Mommy works too much. I want Daddy back so we can be a family again."  <b>—9-year-old Natasha Corrica, whose father was detained for 3 years (Brooklyn, NY)</b></p> <p>"I love my father. I'm very sad they came and took my papi away in handcuffs and deported him to Mexico. My papi never got a parking ticket, he never gets drunk, he works everyday. I want to tell the judge how good he is, but they won't let me. I want Santa to give me back my father".  <b>—6-year-old Alejandra Barrios whose father was deported to Mexico (Chicago, IL)</b></p>

**Child Citizen Protection Act (HR 1176)**

Let's Bring Our Immigration Laws in Line with Common Sense and Family Values

# Valorando Nuestras Familias y Nuestros Niños: Acta para Protección de Niños Ciudadanos (H.R. 1176)



Cada historia de inmigrante es una historia sobre la familia. Así como el debate migratorio está cada vez más sobre el tapete, a través de lo EU un grupo de ciudadanos están siendo puesto en peligro y ellos son: Los niños nacidos en los Estados Unidos de padres inmigrantes.

## CREENCIAS/MITOS Vs. REALIDADES

**CREENCIA: “El debate de inmigración no me afecta porque yo soy ciudadano”**

**REALIDAD: Inmigración nos afecta a todos.**

Inmigración no es solamente sobre la tarjeta de residencia, las fronteras o alguien en la familia. Este tema nos afecta a todos. Inmigración no es un tema aislado. Nosotros compartimos código postales, trabajos, escuelas, lugares de adoración y familiar. Casi en cada 1 de 10 familias americanas, existe un estatus migratorio mezclado: Por ejemplo, por lo menos un padre **no es ciudadano** de este país, y uno de sus hijos **lo es**. Se calcula que 3.1 millón de niños que son ciudadanos tienen por lo menos uno de sus padres que está sin papeles.

**CREENCIA: “Nuestro sistema de inmigración considera a los niños ciudadanos antes de deportar a los padres.**

**REALIDAD: Las leyes de inmigración actuales empujan a los padres al abandono involuntario de sus hijos que son ciudadanos americanos**

En el 1996, nuestro sistema de inmigración convirtió las deportaciones como un castigo obligatorio para muchos que no son ciudadanos—incluyendo residentes de permanencia a largo plazo y legal. Cuando el castigo es obligatorio, los jueces no tienen el poder en decidir si la de deportación es justa o no, robando así a las familias inmigrantes del derecho de un día en los tribunales y la oportunidad de presentar como el exilio permanente fuera de los Estados Unidos lastimaría a sus familias.

El resultado final? Cada año, casi 200,000 personas que no son ciudadanos de EU—muchos con hijos que son estadounidenses—son deportados y separados de sus familias aun cuando un juez considera que ellos merecen quedarse en los Estados Unidos, para ayudar con el apoyo y la crianza de sus familias. Bajo la deportación obligatoria, las manos de los jueces están indiscutiblemente atadas. Las familias tienen que elegir entre la separación, teniendo como efecto hogares con un solo padre, con una carga emocional y financiera o forzar que sus hijos, que son ciudadanos americanos, sean también deportados con ellos. Estos niños americanos tendrán que comenzar de nuevo en un país con un idioma diferente, escasos recursos, y un futuro incierto. Las leyes americanas de inmigración empujan a que estos niños pierdan a sus padres o en caso de deportación a su país.

Las deportaciones obligatorias es una sentencia de vida en el exilio. Es tan severo, que el castigo “una sola talla para todos” no puede ser la base de nuestro sistema de inmigración.

## CUAL ES LA SOLUCION AL PROBLEMA?

El congresista José Serrano (Demócrata de NY) presentó el Acta para Protección de Niños Ciudadanos (H.R. 1176), un proyecto de ley limitado para reponer la justicia a nuestro sistema de inmigración, permitiendo así a los niños que son ciudadanos de los Estados Unidos que sean escuchados antes de que les quiten a sus padres. **La Acta para Protección de los Niños Ciudadanos** abrogara las duras provisiones de las leyes del 1996 y permitirá a los jueces de inmigración a considerar si las deportaciones son o no “claramente en contra de los mejores intereses del niño ciudadano de EU.” Este proyecto de ley preservara el entendimiento básico de lo que es justo y que deba de ser definido por el sistema de justicia de Estados Unidos. También permitirá que los jueces puedan juzgar y a las familias la oportunidad de ser presentado ante los tribunales.

La Acta para Protección de los Niños Ciudadanos es una oportunidad para nuestros líderes mostrar que ellos realmente valoran las familias, que la salud, seguridad y bien estar de los niños de una nación están como primeras prioridades.



HR 1176 IH

110th CONGRESS

1st Session

**H. R. 1176**

To provide discretionary authority to an immigration judge to determine that an alien parent of a United States citizen child should not be ordered removed, deported, or excluded from the United States.

**IN THE HOUSE OF REPRESENTATIVES**

**February 16, 2007**

Mr. SERRANO (for himself, Mr. ACKERMAN, Mr. TOWNS, and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary

**A BILL**

To provide discretionary authority to an immigration judge to determine that an alien parent of a United States citizen child should not be ordered removed, deported, or excluded from the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DISCRETIONARY AUTHORITY WITH RESPECT TO REMOVAL, DEPORTATION, OR EXCLUSION OF PARENTS OF CITIZEN CHILDREN.**

Section 240(c)(4) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(4)) is amended by adding at the end the following:

^ (D) DISCRETION OF JUDGE IN CASE OF CITIZEN CHILD- In the case of an alien subject to removal, deportation, or exclusion who is the parent of a child who is a citizen of the United States, the immigration judge may exercise discretion to decline to order the alien removed, deported or excluded from the United States if the judge determines that such removal, deportation, or exclusion is clearly against the best interests of the child, except that this subparagraph shall not apply to any alien who the judge determines--

^ (i) is described in section 212(a)(3) or 237(a)(4); or

^ (ii) has engaged in conduct described in paragraph (8) or (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).'

[NEW SEARCH](#) | [HOME](#) | [HELP](#) | [ABOUT COSPONSORS](#)**H.R.1176**

**Title:** To provide discretionary authority to an immigration judge to determine that an alien parent of a United States citizen child should not be ordered removed, deported, or excluded from the United States.

**Sponsor:** [Rep Serrano, Jose E.](#) [NY-16] (introduced 2/16/2007)      [Cosponsors](#) (30)

**Latest Major Action:** 3/19/2007 Referred to House subcommittee. Status: Referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.

**COSPONSORS(30), ALPHABETICAL** [followed by Cosponsors withdrawn]:      (Sort: [by date](#))

[Rep Ackerman, Gary L.](#) [NY-5] - 2/16/2007  
[Rep Baca, Joe](#) [CA-43] - 3/30/2007  
[Rep Becerra, Xavier](#) [CA-31] - 3/30/2007  
[Rep Cardoza, Dennis A.](#) [CA-18] - 4/20/2007  
[Rep Clarke, Yvette D.](#) [NY-11] - 3/30/2007  
[Rep Crowley, Joseph](#) [NY-7] - 3/21/2007  
[Rep Cuellar, Henry](#) [TX-28] - 3/30/2007  
[Rep Filner, Bob](#) [CA-51] - 3/30/2007  
[Rep Gonzalez, Charles A.](#) [TX-20] - 3/30/2007  
[Rep Grijalva, Raul M.](#) [AZ-7] - 3/6/2007  
[Rep Gutierrez, Luis V.](#) [IL-4] - 3/15/2007  
[Rep Hinojosa, Ruben](#) [TX-15] - 3/30/2007  
[Rep Honda, Michael M.](#) [CA-15] - 5/8/2007  
[Rep Jackson, Jesse L., Jr.](#) [IL-2] - 9/27/2007  
[Rep Kucinich, Dennis J.](#) [OH-10] - 7/27/2007  
[Rep Lee, Barbara](#) [CA-9] - 3/15/2007  
[Rep Nadler, Jerrold](#) [NY-8] - 2/16/2007  
[Rep Napolitano, Grace F.](#) [CA-38] - 3/30/2007  
[Rep Ortiz, Solomon P.](#) [TX-27] - 4/20/2007  
[Rep Pastor, Ed](#) [AZ-4] - 3/30/2007  
[Rep Rangel, Charles B.](#) [NY-15] - 6/21/2007  
[Rep Reyes, Silvestre](#) [TX-16] - 3/30/2007  
[Rep Rodriguez, Ciro D.](#) [TX-23] - 3/30/2007  
[Rep Roybal-Allard, Lucille](#) [CA-34] - 3/30/2007  
[Rep Salazar, John T.](#) [CO-3] - 3/30/2007  
[Rep Sires, Albio](#) [NJ-13] - 4/20/2007  
[Rep Solis, Hilda L.](#) [CA-32] - 4/20/2007  
[Rep Towns, Edolphus](#) [NY-10] - 2/16/2007  
[Rep Velazquez, Nydia M.](#) [NY-12] - 3/30/2007  
[Rep Weiner, Anthony D.](#) [NY-9] - 6/25/2007

# DETENTION & DEPORTATION RESOURCE LIST

This list is limited to New York City organizations that focus on crime-related deportation issues and some national organizations with resources in this area. Many other organizations in NYC provide services generally in other areas, such as naturalization, adjustment of status, and asylum, or engage in advocacy and organizing.

## Technical Assistance and Self-Help Materials

### **NYSDA Immigrant Defense Project**

3. W. 29<sup>th</sup> St. Suite 803  
New York, NY 10001  
(212) 725-6422

[www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org)

- Provides resources, trainings and case analysis to immigrants facing criminal charges or conviction-related deportation, or planning to apply for citizenship or residency.
- Website has Know Your Rights materials.

### **National Immigration Project**

14 Beacon St, Suite 602  
Boston, MA 01208  
(617) 227-9727

[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)

- Website has materials on raids response.

### **Florence Immigrant & Refugee Rights Project**

2601 North Highway 79, PO Box 654  
Florence, AZ 85232  
(520) 868-0191

[www.firrp.org/pubs.asp](http://www.firrp.org/pubs.asp)

- Website has excellent self-help materials.

## Family Support and Advocacy

### **Families for Freedom**

3. W. 29<sup>th</sup> St. Suite 1030  
New York, NY 10001  
(646) 290-5551

[www.familiesforfreedom.org](http://www.familiesforfreedom.org)

- Organizes families in NY and NJ

### **Detention Watch Network**

[www.detentionwatchnetwork.org](http://www.detentionwatchnetwork.org)

- DWN is a national coalition working to educate the public, media and policymakers about the detention and deportation systems and to advocate for humane reform.

## Pro Bono Legal Representation

### **Legal Aid Society Immigration Unit**

(212) 577-3300

(212) 577-3456 (Detention Hotline)

- Limited to deportation cases in New York City.
- For cases in Immigration Court at 26 Federal Plaza, call to get the dates of the Immigration Representation Project's free screenings.

### **New Jersey Legal Services**

(732) 572-9100

- Limited to deportation cases in NJ, where many NYC residents are detained.

### **Bronx Defenders**

(718) 838-7878

- Representation in immigration court is limited to people they represented in Bronx criminal court.

# GOVERNMENT CONTACT LIST

This list focuses on government offices and facilities that New Yorkers facing detention and deportation may find most useful. Some New Yorkers will be detained in facilities or face deportation in courts that are not included in this list. For a detailed map listing immigration detention facilities and ICE offices located throughout the United States, go to the Detention Watch Network website at [www.detentionwatchnetwork.org](http://www.detentionwatchnetwork.org).

## DHS: United States Citizenship and Immigration Services & Customs and Border Protection

### USCIS National Customer Service Line

(800) 375-5283

[www.uscis.gov](http://www.uscis.gov)

- Provides information on filing of immigration applications, case status reports on pending applications and updates on changes in practices and policies of U.S. Citizenship and Immigration Services (i.e., announcements of TPS extensions; processing times for petitions, etc.).

### Customs and Border Protection

Pre-Flight Inspection at JFK Airport  
(718) 553-1688

Rainbow Bridge, Niagara Falls, NY Port of Entry  
(716) 282-3141

Peace Bridge, Buffalo, NY Port of Entry  
(716) 885-3367

Queenston-Lewiston Bridge, Niagara Falls, NY  
(716) 285-1676

Champlain, New York Port of Entry  
(518) 298-3221

## Executive Office for Immigration Review (Immigration Courts)

### Executive Office for Immigration Review (Case Status Hotline)

[www.usdoj.gov/eoir](http://www.usdoj.gov/eoir)

(800) 898-7180

- Require Alien Registration Number (A#) for case status update to obtain case information on the Hotline.
- The website offers updated listing of free legal services that are provided by the Immigration Courts.

### Executive Office for Immigration Review - NYC

26 Federal Plaza, 12<sup>th</sup> Floor, Room 1237

New York, NY 10278

(917) 454-1040

- Conducting most non-detained removal cases in NY City area.

### Executive Office for Immigration Review - Varick Street, NYC, NY

201 Varick Street, Room 1140

New York, NY 10014

(212) 620-6279

- Conducting removal cases involving detained persons.

### Executive Office for Immigration Review - Ulster Correctional Facility of the NYS DOCS

Ulster Correctional Facility

Berme Road, P.O. Box 800

Napanoch, NY 12458

(845) 647-5506

- Conducting removal cases involving persons incarcerated by the New York State Department of Correctional Services.

**Executive Office for Immigration Review -  
Buffalo Federal Detention Facility**

Buffalo Federal Detention Facility  
4250 Federal Drive  
Batavia, NY 14020  
(585) 345-4300

- Conducting removal cases involving persons detained by immigration authorities in Upstate New York.

**Executive Office for Immigration Review -  
Buffalo, New York**

130 Delaware Avenue, 4<sup>th</sup> Floor  
Buffalo, NY 14202  
(716) 551-3442

- Conducting removal cases involving non-detained persons in contact with immigration authorities in Upstate New York.

**Board of Immigration Appeals**

5107 Leesburg Pike , Suite 2000  
Falls Church, VA 22041  
(703)-605-1007

**DHS: Immigration and Customs Enforcement (ICE)**

**ICE Deportation/Removal Offices in New York City**

- Non-Detained Unit, 26 Federal Plaza, Room 9-110, (212) 264-3248
- Detained Unit, 201 Varick St., (212) 863-3401

**ICE Deportation/Removal Offices in Upstate New York**

- Non-Detained Unit, 130 Delaware Ave., Buffalo, NY, (716) 551-4741 (ext. 2500)
- Detained Unit, Buffalo Federal Detention Facility, 4250 Federal Dr., Batavia, NY, (585) 343-0814 (ext. 0)

**Intensive Supervision Appearance Program, New York City**

52 Duane Street,  
New York, NY  
(212) 385-7940  
Business Hours: 8 a.m. to 5 p.m.

**US Department of Homeland Security Office of Chief Counsel**

**Office of Chief Counsel for USDHS**

**Theresa A. Pauling, Chief Counsel**  
26 Federal Plaza, Rm # 1130  
New York, NY  
(212) 264-5916

**USDHS Deputy Chief Counsel, Randa Zagzough**

26 Federal Plaza, Rm # 1130  
(212) 264-2443

- Involved in Special Interest Cases (i.e., detained and non-detained juvenile cases, asylum, etc.).

**USDHS Deputy Chief Counsel, Lloyd Sherman**

26 Federal Plaza, Rm # 1130  
New York, NY  
(212) 264-2658

- Reviews NTA's; BIA decisions and investigations.

**USDHS Deputy Chief Counsel, Wen Cheng**

201 Varick St., 11<sup>th</sup> Floor  
New York, NY  
(212) 337-3192

- Involved in IRP program (Varick St. and Castlepoint) and bond issues.



## Immigration Detention Facilities

### **Varick Street Field Office**

201 Varick St.  
New York, NY  
(212) 863-3401

- Detained Unit, 201 Varick St., (212) 863-3401

### **ICE Deportation/Removal Offices in Upstate New York**

- Non-Detained Unit, 130 Delaware Ave., Buffalo, NY, (716) 551-4741 (ext. 2500)
- Detained Unit, Buffalo Federal Detention Facility, 1450 Federal Dr., Batavia, NY, (585) 343-0814 (ext.0)

### **Buffalo Federal Detention Center**

4250 Federal Dr.  
Batavia, New York 14020  
(585) 343-0814

### **Monmouth County Jail**

1 Waterworks Road  
Freehold, NJ 17728  
(732) 431-7860

### **Hudson County Jail**

35 Hackensack Ave.  
Kearney, NJ 07032  
(973) 491-5566

### **Bergen County Jail**

160 South River St.  
Hackensack, NJ 07601  
(201) 527-3000

### **Pike County Prison**

175 Pike County Blvd.  
Lords Valley, PA 18428  
(570) 775-5500

### **York County Prison**

3400 Concord Rd.  
York, PA 17402  
(717) 840-7580

### **Oakdale Federal Detention Center**

2105 East Whatley Rd.  
P.O. Box 5010  
Oakdale, LA 71463  
(318) 335-4466

### **Etowah County Jail**

827 Forrest Ave.  
Gadsden, AL 35902  
(256) 549-5410

### **Port Isabel SPC**

27991 Buena Vista Blvd.  
Rt. 3 Box 341  
Los Fresnos, TX 78566  
(956) 547-1700

### **El Paso County Detention Facility**

601 East Overland Ave.  
El Paso, TX 79901  
(915) 351-6027

# FAMILY INTAKE

Personal & Confidential

Completed by: \_\_\_\_\_

Date: \_\_\_\_\_

**FAMILIES FOR FREEDOM (FFF)** is a human rights organization for immigrants facing deportation. We are **NOT** part of the government. We are **NOT** lawyers. We are the family members of deportees/detainees, trying to help one another and change the laws. The information you provide here will **NOT** be shared with anyone else without your permission.

## About YOU

1. Name: \_\_\_\_\_ 2. Date of Birth: \_\_\_\_\_ 3. Gender: \_\_\_\_\_

4. Home #: \_\_\_\_\_ 5. Work #: \_\_\_\_\_ 6. Cell/Other#: \_\_\_\_\_

7. Home Address: \_\_\_\_\_  
\_\_\_\_\_

8. E-mail: \_\_\_\_\_ 9. Relationship to person in Deportation: \_\_\_\_\_

10. You were born in (country): \_\_\_\_\_ 11. You are a citizen of (list all countries): \_\_\_\_\_

12. Languages you speak: \_\_\_\_\_ 13. Would you like to join our mailing list? \_\_\_\_\_

## About the PERSON IN DEPORTATION

13. A#: \_\_\_\_\_

14. Name: \_\_\_\_\_ 15. Date of Birth: \_\_\_\_\_ 16. Gender: \_\_\_\_\_

17. You were born in (country): \_\_\_\_\_ 18. You are a citizen of (list all countries): \_\_\_\_\_

19. Date entered the US: \_\_\_\_\_ 20. Immigration Status *at entry*: \_\_\_\_\_

21. Current Location (Riker's, NYS Prison, immigration facility, free): \_\_\_\_\_

22. *If in immigration detention:* Date taken \_\_\_\_\_  
From where? \_\_\_ Riker's \_\_\_ Prison \_\_\_ Home \_\_\_ Airport \_\_\_ Other (\_\_\_\_\_)  
If from criminal custody, did Immigration take more than 48 hours to get you? Yes / No

23. Ordered deported in the past? \_\_\_ No \_\_\_ Yes (details: \_\_\_\_\_)

24. Current Immigration Status of: Person in deportation \_\_\_\_\_ Spouse: \_\_\_\_\_  
Children: \_\_\_\_\_ Siblings: \_\_\_\_\_  
Parents: \_\_\_\_\_

**more →**

## CRIMINAL HISTORY

25. Do you have prior convictions?  No  Yes. If YES, please provide the following details about EACH conviction:

Arrest Date	Conviction Date	State	Section (e.g. NYPL § 220.10)	Sentence	Plea OR Trial

(continue on back for additional convictions):

26. Name and contact information of last criminal defense attorney: \_\_\_\_\_

27. Are any convictions on appeal? \_\_\_\_\_

28. Were you ever an informant for the government? \_\_\_\_\_

## DEPORTATION CASE

29. Next hearing date (if applicable): \_\_\_\_\_

30. Do you have the **Notice to Appear (NTA)**?  Yes  No      31. Date **NTA** issued: \_\_\_\_\_

32. Charged as:  deportable  inadmissible      33. Charged with: \_\_\_\_\_

34. Immigration Judge decision & date: \_\_\_\_\_

35. Board of Immigration Appeal decision & date: \_\_\_\_\_

36. Federal Court action (check all):  Circuit Courts (details: \_\_\_\_\_)

District Courts (details: \_\_\_\_\_)

37. Do you have an immigration attorney? Yes / No      38. Name & Contact Info: \_\_\_\_\_

39. **Notes** (include any fear of persecution back home; family concerns; problems with attorneys; and questions)

### CASEWORKER NOTES

Help Given

---

Next Steps

# KEY DOCUMENTS

## CRIMINAL PROCEEDINGS

- Charging document, indictment or complaint
- Court minutes (especially plea allocution and sentencing minutes)
- Written plea agreement
- Certificate of criminal disposition
- Defense attorneys' contact info & retainer agreement(s)
- Informant agreement
- Immigration interview paperwork copy (if interviewed by ICE at jail)

## DEPORTATION PROCEEDINGS

- Copies of any documents signed during immigration arrest or interview
- Notice To Appear (NTA) or Order to Show Cause (OSC)
- Immigration Judge decision
- Board of Immigration Appeals (BIA) decision
- Federal court decision(s)
- All briefs submitted to immigration and federal courts
- Immigration lawyers' contact information & retainer agreement(s)

## DETENTION ISSUES

- Deportation officer's contact info
- G-28 (Notice of Entry of Appearance)
- Order of supervision
- Complaints filed

## POST-DEPORTATION

- Notice of reinstatement of deportation order (absconders, re-entrants)
- Warrant/Notice of deportation (listing bars, etc)
- All of the above documents from initial deportation

\* These are basic documents that every person should try to collect. Not every person will have every document. As the person's case becomes clearer, other documents may also be required.



# Identification Documents

## I-551 Permanent Resident Card

This card—various versions of which have been issued since 1978—is proof of Lawful Permanent Resident status. Until 1989 these cards – popularly known as “greencards” – had no expiration date, but cards now being issued expire 10 years after the date of issue. At the end of the 10 years, the Lawful Permanent Resident (LPR) does not lose his or her status, but must simply renew the card. Conditional permanent residents are issued cards that are coded “CR” and expire after two years. All I-551 cards (and its predecessor I-151) include codes showing how the individual obtained LPR status—whether through work skills, as the relative of a U.S. citizen or permanent resident, through the visa lottery, as a refugee or asylee, or otherwise.



If the individual does not have a greencard but is a permanent resident, she may have a temporary I-551 stamp on her foreign passport or on her I-94, or she may have an INS Form I-327 Permit to Reenter the United States.

See <http://www.accessproject.org/downloads/NJ.pdf>, pages 35-37 for list of codes on I-551.

## I-94 Arrival/Departure Record

The I-94 is issued to almost all noncitizens upon entry to the United States, and individuals who entered the country without inspection and later have contact with the INS. The card is stamped or handwritten with a notation that indicates the individual's immigration category or the section of the law under which the person is granted admission or parole. The words “Employment Authorized” may also be stamped onto the card. Noncitizens with I-94s include LPRs, persons fleeing persecution, persons with permission to remain in the United States based on a pending application, persons in deportation or removal proceedings, nonimmigrants, and undocumented persons whose period of admission or parole has expired.

For formerly detained asylum seekers, the I-94 and Order of the Immigration Judge often serve as the only form of identification, proof of employment authorization, and proof of immigration status.

Immigration category of applicant stamped here

See <http://www.accessproject.org/downloads/NJ.pdf>, pages 38-39 for list of codes on I-94.

## I-766 Employment Authorization Document (EAD)



This document is one of several that indicate an immigrant has been granted permission to work in the United States. Codes on the front of the card indicate the person's immigration status by referencing the subsection of the regulation authorizing employment—8 CFR § 274a.12. Asylees are automatically authorized to work based upon their status. They do **not** need an EAD, and must apply to receive one. Asylees often use the EAD as a form of picture identification. Employers often **illegally** demand that the asylee furnish an EAD in order to work.

See <http://www.accessproject.org/downloads/NJ.pdf>, pages 40-41 for list of codes on I-766.

**Notice to Appear**

**In removal proceedings under section 240 of the Immigration and Nationality Act**

File No. A.

In the Matter of:

Respondent: \_\_\_\_\_ currently residing at: \_\_\_\_\_  
\_\_\_\_\_  
(Number, street, city, state and zip code) (Area code and phone number)  
N/A

AKA:  NO  YES - SEE ATTACHED I-831

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

**SEE ATTACHED I-831 FOR ALLEGATIONS**

On the basis of the forgoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

**SEE ATTACHED I-831 FOR PROVISION(S) OF LAW**

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.
- Section 235(b)(1) order was vacated pursuant to:  8 CFR 208.30(f)(2)  8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: \_\_\_\_\_  
**TO BE CALENDARED AND NOTICE PROVIDED BY THE OFFICE OF THE IMMIGRATION JUDGE**

on \_\_\_\_\_ (Date) TO BE CALENDARED AND NOTICE PROVIDED BY THE OFFICE OF THE IMMIGRATION JUDGE at \_\_\_\_\_ (Time) TO BE CALENDARED AND NOTICE PROVIDED BY THE OFFICE OF THE IMMIGRATION JUDGE to show why you should not be removed from the United States based on the charge(s) set forth above.

*Dianne M. Weisheit*

Deputy Assistant District Director for Investigations, NY NY  
(Signature and Title of Issuing Officer)

New York, New York  
(City and State)

Date: 11/20/97

**See reverse for important information**



U.S. Department of Justice  
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name	File Number A.	Date November 20, 1997
--------------	-------------------	---------------------------

**ALLEGATIONS:**

- 4.) You are not a citizen or national of the United States;
- 5.) You are a native of the Dominican Republic and a citizen of the Dominican Republic;
- 6.) You were admitted to the United States at Champlain, New York on July 15, 1983 as a legal permanent resident;
- 7.) You were, on October 29, 1990, convicted in the Supreme Court, of the State of New York, County of New York, for the offense of Criminal Sale of a Controlled Substance, in the 2nd degree, to wit, cocaine, in violation of section 220.41 of the New York State Penal Law.

**CHARGE:**

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the Act.

Section 237(a)(2)(B)(1) of the Immigration and Nationality Act (Act), as amended, in that, at anytime after admission, you have been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act [21 U.S.C. 802]), other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

**A.K.A:**

Signature <i>Dianne M. Weisheit</i>	Title Deputy Assistant District Director for Investigations NY NY
--	--

Example of one type of an Immigration Judge's decision

IMMIGRATION COURT  
625 EVANS STREET, ROOM 148A  
ELIZABETH, NJ 07201

In the Matter of

[REDACTED]  
Respondent

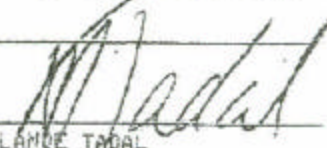
Case No.: A [REDACTED]  
IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on [REDACTED], 2001.  
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- The respondent was ordered removed from the United States to \_\_\_\_\_ or in the alternative to \_\_\_\_\_
- Respondent's application for voluntary departure was denied and respondent was ordered removed to \_\_\_\_\_ alternative to \_\_\_\_\_
- Respondent's application for voluntary departure was granted until \_\_\_\_\_ upon posting a bond in the amount of \$ \_\_\_\_\_ with an alternate order of removal to \_\_\_\_\_
- Respondent's application for asylum was  granted  denied  withdrawn
- ~~Respondent's application for withholding of removal was  granted  denied  withdrawn.~~
- Respondent's application for cancellation of removal under section 240A(a) was  granted  denied  withdrawn.
- Respondent's application for cancellation of removal was  granted under section 240A(b)(1)  granted under section 240A(b)(2)  denied  withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- Respondent's application for a waiver under section \_\_\_\_\_ of the INA was  granted  denied  withdrawn or  other.
- Respondent's application for adjustment of status under section \_\_\_\_\_ of the INA was  granted  denied  withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
- Respondent's status was rescinded under section 246.
- Respondent is admitted to the United States as a \_\_\_\_\_ until \_\_\_\_\_
- As a condition of admission, respondent is to post a \$ \_\_\_\_\_ bond.
- Respondent knowingly filed a frivolous asylum application after proper notice.
- Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- Proceedings were terminated.
- Other: \_\_\_\_\_

Date: [REDACTED] 2001  
Appeal: Waived/Reserved Appeal Due By: \_\_\_\_\_

  
MIRLANE TADAL  
Immigration Judge

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

CERTIFICATE OF  
DISPOSITION

21 8

FEE 10.00

THE PEOPLE OF THE STATE OF  
NEW YORK  
against  
[REDACTED]  
Defendant

Indictment No. [REDACTED]  
Docket No. [REDACTED]  
NYSID No. [REDACTED]  
Filed 5-2 20197

I DO CERTIFY that the records on file in this office indicate that the defendant  
was charged with the crime(s) of 3<sup>rd</sup> [REDACTED] 2<sup>o</sup> 3<sup>rd</sup> [REDACTED]  
5<sup>th</sup> [REDACTED] AND A [REDACTED]

and that on 6-13 201997 the defendant, represented by counsel,  
was convicted by Plea of Guilty  
by verdict of the crime(s) of [REDACTED]  
5<sup>th</sup> [REDACTED] PL [REDACTED]

and that on 8-1 201997 it was the judgement of the Honorable  
M. [REDACTED] that the defendant be sentenced to  
5 YRS PROBATION AND A CONDITIONAL DISCHARGE  
ON EACH [REDACTED]  
CVAF 1 MSC 155

ENTERED  
SEP 8 2003  
[REDACTED]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal  
this 8 day of SEPT 2003

FEE 10.00

[REDACTED]  
County Clerk  
County Clerk and Clerk of the Supreme Court,  
Kings County

### SAMPLE DCJS RAP SHEET

14

<<<<<<< CRIMINAL HISTORY >>>>>>

ARREST INFORMATION	ARREST CHARGES	DISPOSITION AND CORRECTIONS DATA
1- ARR DT/PL 05-28-69 (NEW YORK COUNTY)	PCB/FORCEFUL THEFT W/DEPLY WEAP 14C.15 PL CLASS B FEL NCIC 1299	1C-3C-69 SUP CRT BY CO INB # 3322-69 CONVICTED UPON PLEA OF GUILTY THE FOLLOWING CHARGE(S): POWER-DR 14C-C1 PL CLASS B FEL SENT: 6 YRS PAB
2- ARR DT/PL 05-28-69 (REL TYPE COLATS)	BANK INST/INT USE ILL 2ND CFF 143.C PL CLASS B FEL CTA C2	12-12-69 12-12-69
3- ARR/ASY NYCPC PCT 028		11-11-69
		<p style="text-align: center;">-- CORRECTIONS DATA --</p> <p>1C-3C-69 ADMISSION TEMP: 6 YRS PAB NY DEPT CORR INMATE ID NC 144817 02-15-71 PAROLED OR REPAROLED C2-15-71 RELEASED TO PAROLE 02 YRS OF POS ID UNKNOWN ASSIGNED ALBANY 06-07-71 DISCHG-REVOKED</p> <p>CERTIFICATE OF RELIEF ORIGINAL TYPE B CST HEL TORG ISS 01-20-72 PERP C1-20-74</p>
ARR DT/PL 03-23-76 ALBANY	ADLT W/INT CAUSES HWY INJURY 12C.10 PL CLASS A MIS CTA 04	03-24-76 CC CRT ALBANY ISS 0 70-340
ARR DT/PL 03-23-76 ALBANY	POSSESSION OF BURGLAR TOOLS 14C.25 PL CLASS A MIS CTA 04	DISMISSED
ARR/ASY 0130C163 ALBANY PR CST C040 0231RAC6P		
4- ARR DT/PL 10-25-66 SUFFERN	BURGLARY-3RD 14C.20 PL CLASS B FEL NCIC 1299	10-26-66 NJ SUFFERN DET # 8C/2345 ARR COURT# OF DIS-CPL 190.55 THE FOLLOWING CHARGE(S): BURGLARY-3RD 14C.20 PL CLASS B FEL
ARR DT/PL 10-25-66 SUFFERN		11-11-66
ARR/ASY 33C-8C SUFFERN VG 99 FAX NO 3RCC843		11-11-66
5- ARR DT/PL 10-25-66 SUFFERN		11-11-66
		<p style="text-align: center;">-- DISPOSITION --</p> <p>14-26-67 NJ SUFFERN DET # 8C/2345 DISMISSED BURGLARY-3RD 14C.20 PL CLASS B FEL</p> <p>04-26-67 NJ SUFFERN DET # 1C/2345 SEALED 14C.5C</p>
ARR DT/PL 12-21-63 YONKERS	PETIT LARCENY 155.25 PL CLASS A MIS CTA 1C	NO DISPOSITION REPORTED
ARR DT/PL 12-21-63 YONKERS	OPER VEH INFL DRUGS-1ST CFF 11922 VTL CLASS V MIS	
ARR/ASY JACAC-44 WESTCHESTER PUB SA		

From "How to Get & Clean Up Your New York State Rap Sheet."  
by the Legal Action Center. New York. 1996

16

### KEY TO SAMPLE DCJS RAP SHEET

This sample rap sheet contains information on 4 arrests, separated from each other by horizontal lines.

- 1) Arrest date and place
- 2) Crime date and place \*
- 3) Arresting agency
- 4) A star indicates that no fingerprint card is on file for this arrest either because the arrest record has been sealed or for some other reason
- 5) Arrest charges, including a description of each charge, its criminal code number and the level of the charged offense, such as Class A Felony or Class B Misdemeanor
- 6) The "sealed" notation indicates that DCJS has sealed the entry
- 7) Index or docket number
- 8) The court in which the case was heard \*
- 9) Whether a Certificate of Relief has been issued, and details if so
- 10) Corrections date, including parole and probation information
- 11) Sentence \*
- 12) Offense convicted of \*
- 13) How the case was disposed \*
- 14) Date of disposition

## New York State Department of Correctional Services Inmate Population Information Search

[Back to NYS DOCS Home Page](#)

Please specify one or more of the following: [More Detailed Instructions](#)  
 Use Name alone or in combination with birth year. [More on Name Search](#)  
 DIN or NYSID are meant to be used alone - not in combination with name or birth year.  
[Who's Listed Here?](#)   [About Youthful Offenders](#)  
**If you have bookmarked this page, please note a change in URL to:**  
<http://nysdocslookup.docs.state.ny.us/kinqw00>

Error/Information Message:

**Last Name:**      
 **First Name:**      
 **Middle Init:**   
**Birth Year:**  (Optional, see above)     
 **Name Suffix:**  (SR, JR, etc.)

**DIN:**  -  -  (Department ID Number, format 99-A-9999, example 95-A-9876)

**NYSID:**  -  (For Criminal Justice Use Only; New York State ID Number)

Error/Information Message:

For comments or questions about the inmate lookup capability, please visit the [Contact Us](#) page.

[Privacy Policy](#)

New York State Department of Correctional Services  
**Inmate Information - Location/Status/Legal Dates/etc.**

[Back to NYS DOCS Home Page](#)

[Go Back](#)

Information/Error Message:

([Help](#)) Date of Information: 11/18/02  
 ([Help](#)) DIN (Dept. Identif. Number)  
 Inmate Name:  
 Sex: MALE  
 Date of Birth: 02/13/1974  
 ([Help](#)) Race/Ethnicity: WHITE/HISPANIC  
 ([Help](#)) Custody Status: RELEASED  
 ([Help](#)) Housing/Releasing Facility: GOWANDA  
 ([Help](#)) Date Received (Original): 08/04/1997  
 ([Help](#)) Date Received (Current): 08/04/1997  
 ([Help](#)) Admission Type:  
 ([Help](#)) County of Commitment: QUEENS  
 ([Help](#)) Latest Release Date/Type: 10/02/98 PAROLE U.S. IMMIGRATION  
 (Released Inmates Only)  
 ([Help](#)) Crime 1, Description: ATT ROBBERY 2ND  
 Crime 1, Crime Class: D  
 Crime 2, Description:  
 Crime 2, Crime Class:  
 Crime 3, Description:  
 Crime 3, Crime Class:  
 Crime 4, Description:  
 Crime 4, Crime Class:

If all 4 crime fields contain data, there may be additional crimes not shown here. In this case, the crimes shown here are those with the longest sentences.

([Help](#)) Aggregate Minimum Sentence: 001 Years, 06 Months, 00 Days

([Help](#)) Aggregate Maximum Sentence: 003 Years, 00 Months, 00 Days

([Help](#)) Earliest Release Date:

Under certain circumstances, an inmate may be released prior to serving his or her minimum term and before the earliest release date shown for the inmate. See "Help" for further information.

([Help](#)) Earliest Release Type:

([Help](#)) Parole Hearing Date: 04/1999

([Help](#)) Parole Hearing Type: CONDITIONAL PAROLE FOR DEPORTATION ONLY

([Help](#)) Parole Eligibility Date: 06/14/1998

**Freedom of Information/Privacy Act Request**

The completion of this form is optional.

Any written format for Freedom of Information or Privacy Act requests is acceptable.

**START HERE – Please type or print and read instructions on the reverse before completing this form.**

1. Type of Request: *(Check appropriate box)*

- Freedom of Information Act (FOIA) *(Complete all items except 7)*
- Privacy Act (PA) *(Item 7 must be completed in addition to all other applicable items)*
- Amendment *(PA only, Item 7 must be completed in addition to all other applicable items)*

2. Requester Information:

Name of Requester:		Daytime Telephone:	
Address <i>(Street Number and Name)</i> :		Apt. No	
City:	State:	Zip Code:	

**By my signature, I consent to the following:**

Pay all costs incurred for search, duplication, and review of materials up to \$25.00, when applicable. *(See Instructions)*

**Signature of requester:** \_\_\_\_\_

- Deceased Subject - **Proof of death must be attached.** *(Obituary, Death Certificate or other proof of death required)*

3. Consent to Release Information. *(Complete if name is different from Requester)(Item 7 must be completed)*

Print Name of Person Giving Consent:	Signature of Person Giving Consent:
--------------------------------------	-------------------------------------

**By my signature, I consent to the following:** *(check applicable boxes)*

- Allow the Requester named in item 2 to see  all of my records or  a portion of my record. If a portion, specify what part *(i.e. copy of application)*

*(Consent is required for records for United States Citizens (USC) and Lawful Permanent Residents (LPR))*

4. Action Requested *(Check One)*:  Copy  In-Person Review

5. Information needed to search for records:

Specific information, document(s), or record(s) desired: *(Identify by name, date, subject matter, and location of information)*

Purpose: *(Optional: you are not required to state the purpose for your request; however, doing so may assist the INS in locating the records needed to respond to your request.)*

6. Data NEEDED on SUBJECT of Record: *(If data marked with asterisk (\*) is not provided records may not be located)*

* Family Name	Given Name:		Middle Initial:
*Other names used, if any:	* Name at time of entry into the U.S.:		I-94 Admissions #:
* Alien Registration #:	* Petition or Claim Receipt #:	* Country of Birth:	*Date of Birth or Appx. Year
Names of other family members that may appear on requested record(s) <i>(i.e., Spouse, Daughter, Son)</i> :			
Country of Origin <i>(Place of Departure)</i> :	Port-of-Entry into the U.S.		Date of Entry:
Manner of Entry: <i>(Air, Sea, Land)</i>	Mode of Travel: <i>(Name of Carrier)</i>		SSN:
Name of Naturalization Certifications:		Certificate #:	Naturalization Date:
Address at the time of Naturalization:		Court and Location:	



7. Verification of Subject's Identity: *(See Instructions for Explanation)(Check One Box)*

In-Person with ID       Notarized Affidavit of Identity       Other *(Specify)* \_\_\_\_\_

Signature of Subject of Record: \_\_\_\_\_ Date: \_\_\_\_\_

Telephone No.: (        ) - \_\_\_\_\_

NOTARY *(Normally needed from individuals who are the subject of the records sought) (See below)*

or a sworn declaration under penalty of perjury.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ in the Year \_\_\_\_\_

Signature of Notary \_\_\_\_\_ My Commission Expires \_\_\_\_\_

**OR**

*If a declaration is provided in lieu of a notarized signature, it must state, at a minimum, the following: (Include Notary Seal or Stamp in this Space)*

If executed outside the United States: "I declare (certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

If executed within the United States, its territories, possessions, or commonwealths: "I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

# Freedom of Information/Privacy Act Request

## INSTRUCTIONS

Please read **ALL** Instructions carefully before completing this form.

Applicants making false statements are subject to criminal penalties (Pub.L. 93-579.99 Stat. (5 U.S.C. 552a(i)(3)).

### Are There Cases When You do not Use This Form?

Do not use this form:

- (1) To determine status of pending applications, write to the office where the application was filed or call the nearest INS office;
- (2) For Consular notification of visa petition approval, use Form I-824 (Application for Action on an Approved Application or Petition);
- (3) For the return of original documents, use Form G-884 (Request for Return of Original Documents);
- (4) For records of naturalization prior to September 27, 1906, write to the clerk of court where naturalization occurred; or
- (5) For information on INS manifest arrivals prior to December 1982, write to the National Archives.

### How Can You Obtain Copies of Records from INS?

Persons requesting a search for access to INS records under the Freedom of Information or Privacy Acts may submit the completed application to the INS office nearest the applicant's place of residence. Requests may be submitted in person or by mail. If an application is mailed, the envelope should be clearly marked "Freedom of Information" or "Privacy Act Request." The INS Internet address is:  
<http://www.ins.usdoj.gov>.

### What Information is Needed to Search for Records?

*Please Note:* Failure to provide complete and specific information as requested in Item 5 of the form, may result in a delay in processing or inability to locate the record(s) or information requested. You may access "<http://www.access.gpo.gov/su-docs>" for a description of DOJ/INS systems of records.

### Verification of Identity in Person.

Requesters appearing in person for access to their records may identify themselves by showing a document bearing a photograph (such as an Alien Registration Card, Form I-551, Citizen Identification Card, Naturalization Certificate, or passport) or two items which bear their name and address (such as a driver's license and voter's registration).

### Verification of Identity by Mail.

Requesters wanting access to their records shall identify themselves by name, current address, date and place of birth, and alien or employee identification number. A notarized example of their signatures or sworn declaration under penalty of perjury must also be provided (this Form G-639 or a DOJ Form 361, Certification of Identity, may be used for this purposes).

### Verification of Identity of Guardians.

Parents or legal guardians must establish their own identity as parents or legal guardians and the identity of the child or other person being represented.

### Authorization or Consent.

Other parties requesting nonpublic information about an individual usually must have the consent of that individual on Form G-639 or by an authorizing letter, together with appropriate verification of identity of the record subject. Notarized or sworn declaration is required from a record subject who is a lawful permanent resident or U.S. citizen, and for access to certain Legalization files.

### Can My Request be Expedited?

To have your request processed ahead of ones received earlier you must show a compelling need for the information.

### How Do You Show a Compelling Need?

A requester who seeks expedited processing must explain in detail the basis of the need and should submit a statement certified to be true and correct to the best of your knowledge and belief. You must also establish one or more of the following exists:

- (1) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or result in the loss of substantial due process rights;
- (2) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; or
- (3) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence.

### Fees.

Except for commercial requesters, the first 100 pages of reproduction and two hours of search time will be furnished without charge. Thereafter, for requests processed under the Privacy Act, there may be a fee of \$.10 per page for photocopy duplication. For requests processed under the Freedom of Information Act, there may be a fee for quarter hours of time spent for searches and for review of records. Search fees are at the following rates per quarter hour: \$4.00 clerical; \$7.00 professional/computer operator; and \$ 10.00 managerial. Other costs for searches and duplication will be charged at the actual direct cost. Fees will only be charged if the aggregate amount of fees for searches, copy and/or review is more than \$14.00. If the total anticipated fees amount to more than \$250.00, or the same requester has failed to pay fees in the past, an advance deposit may be requested. Fee waivers or reductions may be requested for a request that clearly will benefit the public and is not primarily in the personal or commercial interest of the requester. Such requests should include a justification.

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## INSTRUCTIONS *Continued*

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### **When Must I Submit Fees?**

**Do not send money with this request.** When requested to do so, submit fees in the exact amount. Payment may be in the form of a check or a United States Postal money order (or, if form is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States) made payable, in United States currency, to the "Immigration and Naturalization Service". A requester residing in the U.S. Virgin Islands shall make his/her remittance payable to "Commissioner of Finance of the Virgin Islands," and, if residing in Guam, to "Treasurer, Guam". **DO NOT SEND CASH AT ANYTIME.**

A charge of \$30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. Every remittance will be accepted subject to collection.

### **Routine Uses.**

Information will be used to comply with requests for information under 5 U.S.C. 552 and 552a; information provided to other agencies may be for referrals, consultations, and/or to answer subsequent inquiries concerning specific requests.

### **Effect of Not Providing Requested Information.**

Furnishing the information requested on this form is voluntary. However, failure to furnish the information may result in the inability of INS to comply with a request when compliance will violate other policies or laws.

### **General Information.**

The Freedom of Information Act (5 U.S.C. 552) allows requesters to have access to Federal agency records, except those which have been exempted by the Act.

### **Privacy Act Statement.**

Authority to collect this information is contained in Title 5 U.S.C. 552 and 552a. The purpose of the collection is to enable INS to locate applicable records and to respond to requests made under the Freedom of Information and Privacy Acts.

### **The Privacy Act of 1974. (5 U.S.C. 552a).**

With certain exceptions, the Privacy Act of 1974 permits individuals (U.S. citizens or permanent resident aliens) to gain access to information pertaining to themselves in Federal agency records, to have a copy made of all or any part thereof, to correct or amend such records, and to permit individuals to make requests concerning what records pertaining to themselves, are collected, maintained, used or disseminated. The Act also prohibits disclosure of individuals' records without their written consent, except under certain circumstances as prescribed by the Privacy Act.

### **Public Reporting Burden.**

Under the Paperwork Reduction Act (5 U.S.C. 1320), 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 15 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler you may write to the Immigration and Naturalization Service, HQPDI, 425 I Street, N.W., Room 4307r, Washington, DC 20536; OMB No. 1115-0087.

U.S. Department of Justice  
Immigration and Naturalization Service

### Warrant of Removal/Deportation

File No: \_\_\_\_\_

Date: \_\_\_\_\_

**To any officer of the United States Immigration and Naturalization Service:**

\_\_\_\_\_ (Full name of alien)

who entered the United States at \_\_\_\_\_ (Place of entry) On \_\_\_\_\_ (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a district director or a district director's designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:  
Section 241(a)(5) of the Immigration and Nationality Act(Act), as amended.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of the appropriation. "Salaries and Expenses Immigration and Naturalization Service 2002," including the expense of an attendant if necessary.

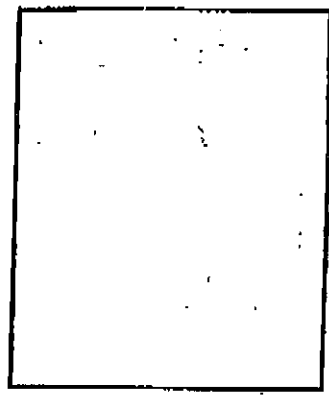
\_\_\_\_\_  
(Signature of INS official)

\_\_\_\_\_  
(Title of INS official)

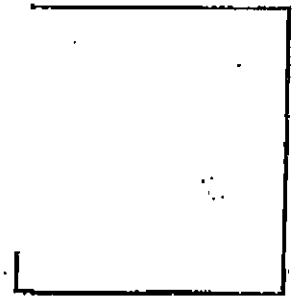
\_\_\_\_\_  
(Date and office location)

To be completed by Service officer executing the warrant:  
Name of alien being removed: \_\_\_\_\_

Port, date, and manner of removal: \_\_\_\_\_



Photograph of alien removed



Right index fingerprint of alien removed

\_\_\_\_\_  
(Signature of alien being fingerprinted)

\_\_\_\_\_  
(Signature and title of INS official taking print)

Departure witnessed by: \_\_\_\_\_  
(Signature and title of INS official)

If actual departure is not witnessed, fully identify source or means of verification of departure:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

Departure Verified by: \_\_\_\_\_  
(Signature and title of INS official)

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

The Premises Known As,

Swift & Company, located at 1700  
Highway 60 NE, Worthington,  
Minnesota, and all its  
appurtenances, parking areas,  
and outdoor working areas

Defendant.

CIVIL NO. 06mj457 JSM

ORDER  
FOR WARRANT FOR  
ENTRY ON PREMISES TO  
SEARCH FOR ALIENS  
WHO ARE IN THE UNITED  
STATES WITHOUT LEGAL  
AUTHORITY

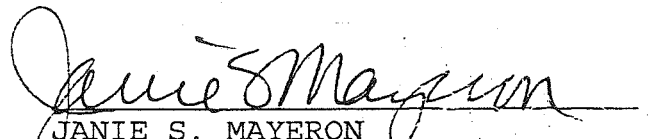
The United States of America, having filed an application to authorize officers of United States Immigration and Customs Enforcement to enter the building on the premises described above in order to search for persons who are aliens in the United States without legal authority, together with an Affidavit and memorandum of Points and Authorities in support of the application, and the Court finding on the basis of the affidavit that there is probable cause to believe that located within the business premises described above are persons who are aliens in the United States without legal authority and subject to removal proceedings pursuant to Section 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a (1996).

IT IS THEREFORE ORDERED that the officers of U.S. Immigration and Customs Enforcement are authorized to enter the building and

areas on the premises described herein and to make such search as is necessary to locate aliens present in the United States illegally and counterfeit, altered, or imposter documents possessed and/or used by the aliens who are not lawfully entitled to reside within the United States and who are employed at present within Swift, Inc. (See Attachment B). In making this search, the agents of ICE are authorized to enter any locked room on the premises in order to locate persons who may be such aliens in the United States without legal authority and, if any such persons are found on the premises, to exercise their authority pursuant to section 287 of the Immigration and Nationality Act, 8 U.S.C. § 1357, to question them to determine whether they are such aliens and, if there is probable cause to believe they are such aliens, to arrest them.

IT IS FURTHER ORDERED that U.S. Immigration and Customs Enforcement shall conduct the entry and search during daylight hours with ten (10) days of the issuance of this warrant, and make its return to this Court with ten (10) days of the date the entry and search have been completed.

Dated: December 8, 2006

  
JANIE S. MAYERON  
United States Magistrate Judge

**ATTACHMENT A**  
**LOCATION OF PROPERTY TO BE SEARCHED**

The entire premises and vehicles within the cartilage located at Swift & Company, located at 1700 Highway 60 NE, Worthington, Minnesota, further described as:

Parcel Number 31-3787-000 and Parcel Number 31-3790-000 in the county of Nobles, in the state of Minnesota. A commercial industrial meat processing plant with one main building and several out buildings on the property.

Directly to the north of the facility is Interstate 90 and to the west of the facility is Highway 60. The facility has one main vehicle gate. A chain link fence surrounds the facility on three sides with barbed wire on top. Security personnel housed in an access control booth man the main gate.



ATTACHMENT B  
DESCRIPTION OF ITEMS TO BE SEARCHED FOR

1. Aliens who are not lawfully entitled to reside within the United States who are employed at present within Swift & Company; and
  
2. Counterfeit, altered or imposter documents possesses and/or used by the aliens who are not lawfully entitled to reside within the United States and who are employed at present within Swift & Company.

RETURN

Date Warrant Received

8  
12-18-06

Date and Time Executed

12-12-06  
0733

Copy of Warrant and Receipt for Items Left with

G.M. WACHER  
V.P. GENERAL MANAGER  
SWIFT & COMPANY

Inventory Made in the Presence of

GERALD COYLE

Inventory of Person or Property Taken Pursuant to the Warrant

SEE ATTACHED LIST OF PERSONS DISCOVERED AND ARRESTED.

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

Subscribed, sworn to, and returned before me this 15<sup>th</sup> day of December, 2006.

Affiant

United States Magistrate Judge



**SAMPLE LETTER TO CRIMINAL DEFENSE ATTORNEY  
FROM ORGANIZATION REGARDING IMMIGRATION CONSEQUENCES**

Date: March 23, 2006  
To: Defense Counsel  
From: \_\_\_\_\_ (Caseworker)  
Re: Inmate Name & Number

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I am writing from \_\_\_\_\_, [describe organization]. Your client, via his family, asked me to contact you.

Your client is not a citizen of the United States. At Riker's Island, he was interviewed by immigration agents from the Bureau of Immigration and Customs Enforcement (Department of Homeland Security). I understand that your client is currently facing criminal charges that may be deportable offenses. I am writing to request that you:

1. Analyze the immigration consequences of any plea agreements being offered. A great resource for attorneys is the Immigration Hotline of the NYSDA Immigration Defense Project. [www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org)
2. Attempt to reduce the immigration consequences of this case by obtaining a non-removable disposition. Letters of support from family, community leaders or correctional facility staff attesting to your client's good character may favorably impact how a judge exercises discretion. My organization may also provide a letter outlining the harsh impacts of deportation, if you believe that would be helpful.

Your client is a long-term resident of New York with many family members here. The immigration proceedings that will follow his criminal case will be devastating to him and his loved ones. Many criminal dispositions (even misdemeanors) carry grave immigration consequences – including mandatory detention, mandatory deportation, and lifetime bars to re-entry. You can minimize the damage. If the evidence against your client is weak, please consider the importance of vigilantly opposing a plea because of the immigration consequences. If your client must plead guilty to a crime, please weigh the immigration consequences of different pleas and seek offers with minimal consequences. The specific disposition that your client receives may determine if s/he can: obtain bond while facing deportation; obtain voluntary deportation; obtain discretionary relief from removal; or re-enter lawfully in the future.

If you have any questions, you may reach me at \_\_\_\_\_.

**SAMPLE LETTER TO CRIMINAL DEFENSE ATTORNEY,  
ASKING FOR INFO REGARDING IMMIGRATION CONSEQUENCES**

- Keep a copy of this letter.
- Keep proof that you sent and received this letter.
- Save the lawyer's written response. Write down any oral advice lawyer (or her staff) has given you, including name of person and date/place of conversation.

Date \_\_\_\_\_

Sent by:

- First Class Mail, Certified Mail-Return Receipt Requested  
 Federal Express  
 Other

Name of Lawyer  
Address  
City, State, Zip Code

**Re: Your Name, Case Docket Number \_\_\_\_\_  
Immigration Consequences of a Guilty Plea**

Dear \_\_\_\_\_,

Today, we spoke about the potential immigration consequences of my criminal charges and any potential guilty plea. You told me that

\_\_\_\_\_ (fill in with the immigration information that the lawyer gave you. Focus first on promises made to you that you *would not* be deported - for example, if he said you will not be deported because you have a green card/citizen children or if he said that you can apply for immigration waivers to prevent deportation).

I am seeking additional clarity on this matter. Specifically I would like to know if any of my pending charges or any of the plea offers or options could be considered aggravated felonies, crimes involving moral turpitude, or controlled substance offenses under immigration law, and whether any conviction might affect my ability to remain in the United States. I am also wondering if any of these offenses would make me deportable, affect my ability to adjust my status, naturalize, return to the US after a trip abroad, or prevent me from obtaining any pardons or waivers from deportation that may be required to maintain legal status in the U.S.

I would appreciate a written response to this request, so that I may think about the possible immigration consequences and discuss it with my family **before** I plead guilty to any offense or decide to go to trial. If I am misunderstanding any advice that you gave me about the potential immigration consequences, please notify and correct me in writing as soon as possible. If you do not know the answer to my questions, then please do the research necessary to correctly and completely answer them. Understanding immigration consequences is critical to my deciding whether to plead guilty to any charge.

Thank you for your time and I look forward to your written response.

Sincerely,

\_\_\_\_\_