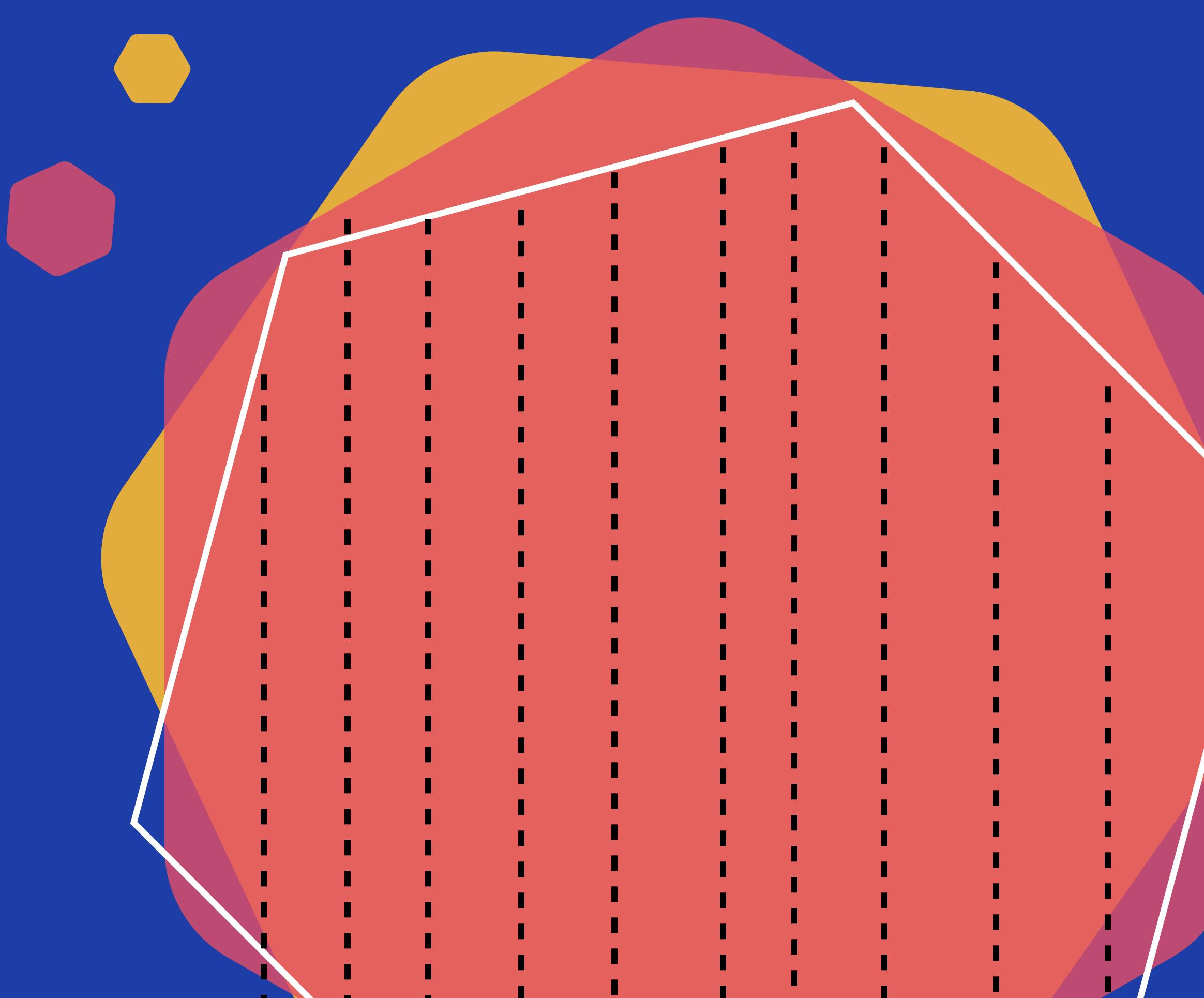


IMMIGRANT
DEFENSE
PROJECT

Guide for Criminal Defense Counsel: **REPRESENTING CLIENTS DETAINED BY ICE**

This guide is available online at:
immdefense.org/crim-defense-ice
maketheroadny.org/know-your-rights

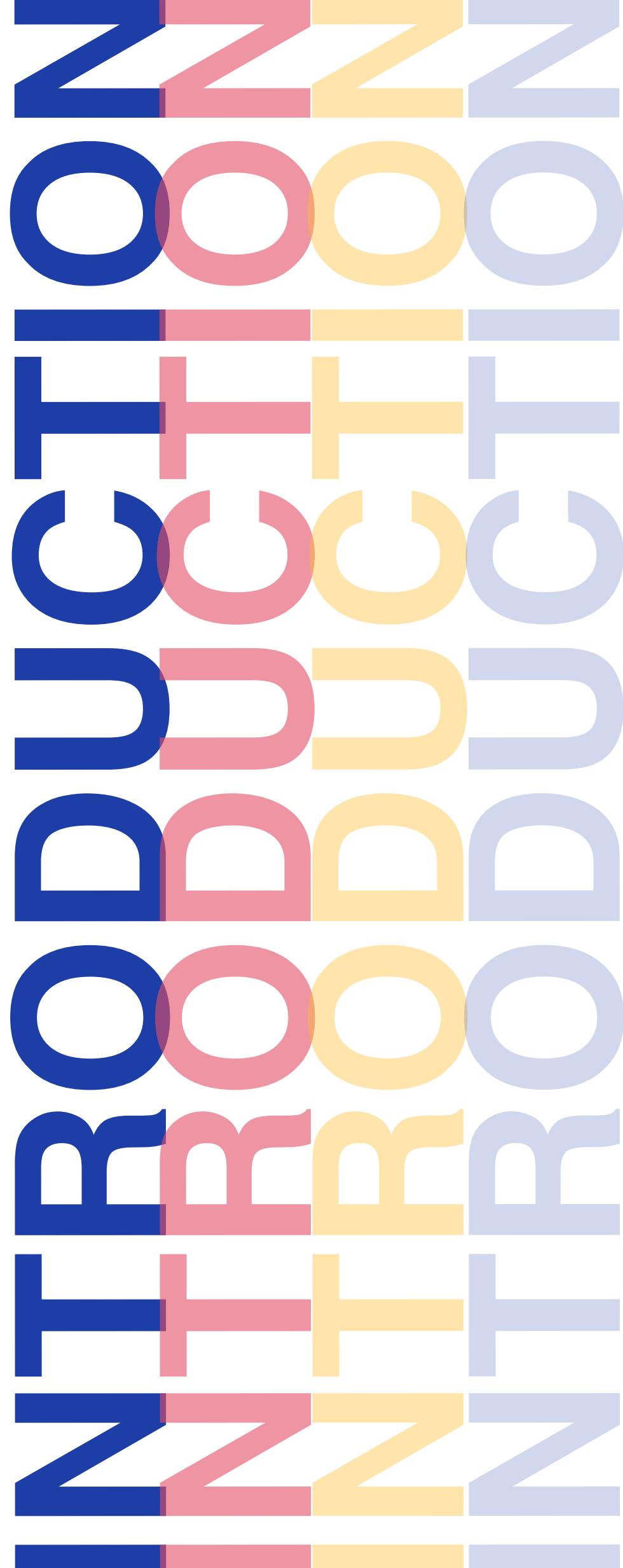


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The **Immigrant Defense Project** (IDP) fights for the human rights of immigrants in the criminal legal and immigration systems. We work to end the current era of unprecedented mass deportation via strategies that attack these two interconnected systems at multiple points. We use impact litigation and advocacy to challenge unfair laws and policies and media and communications to counter the pervasive demonization of immigrants. We provide expert legal advice, training, and resources to immigrants, legal defenders, and grassroots organizations to support those on the frontlines of the struggle for justice. IDP has played a critical role in supporting successful campaigns to limit ICE-police collaboration, and in developing and advocating for innovative criminal justice reforms that benefit both noncitizens and citizens.

Make the Road New York (MRNY) builds the power of Latinx and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. Make the Road New York operates neighborhood-based community centers in Bushwick, Brooklyn; Jackson Heights, Queens; Port Richmond, Staten Island; Brentwood, Long Island and White Plains, Westchester. With a membership of 22,000+ low-income New Yorkers, MRNY tackles the critical issues facing our community: workplace justice, tenants' rights, immigrant civil rights, language-access, TGNCIQ justice, public education, health care access, and immigration reform.

A special thank you to all of the people who helped make this toolkit possible, including Ellen Pachnanda, Joshua Epstein, Lauren Migliaccio, and Richard Bailey.

This guide is for criminal defense attorneys who represent clients who are or may be detained by ICE. It provides information to help you:

- Identify strategies and arguments for ensuring fair access to the court for your client in ICE custody;
- Ensure continued communication with your client while they are in ICE custody;
- Identify if your client will have a hearing and/or be assigned an attorney in Immigration Court; and
- Access resources to ensure the best outcome for your client in criminal and immigration proceedings.

While much of the information contained here is aimed at attorneys practicing in New York State, many of the strategies and considerations will apply to criminal defense attorneys across the U.S.

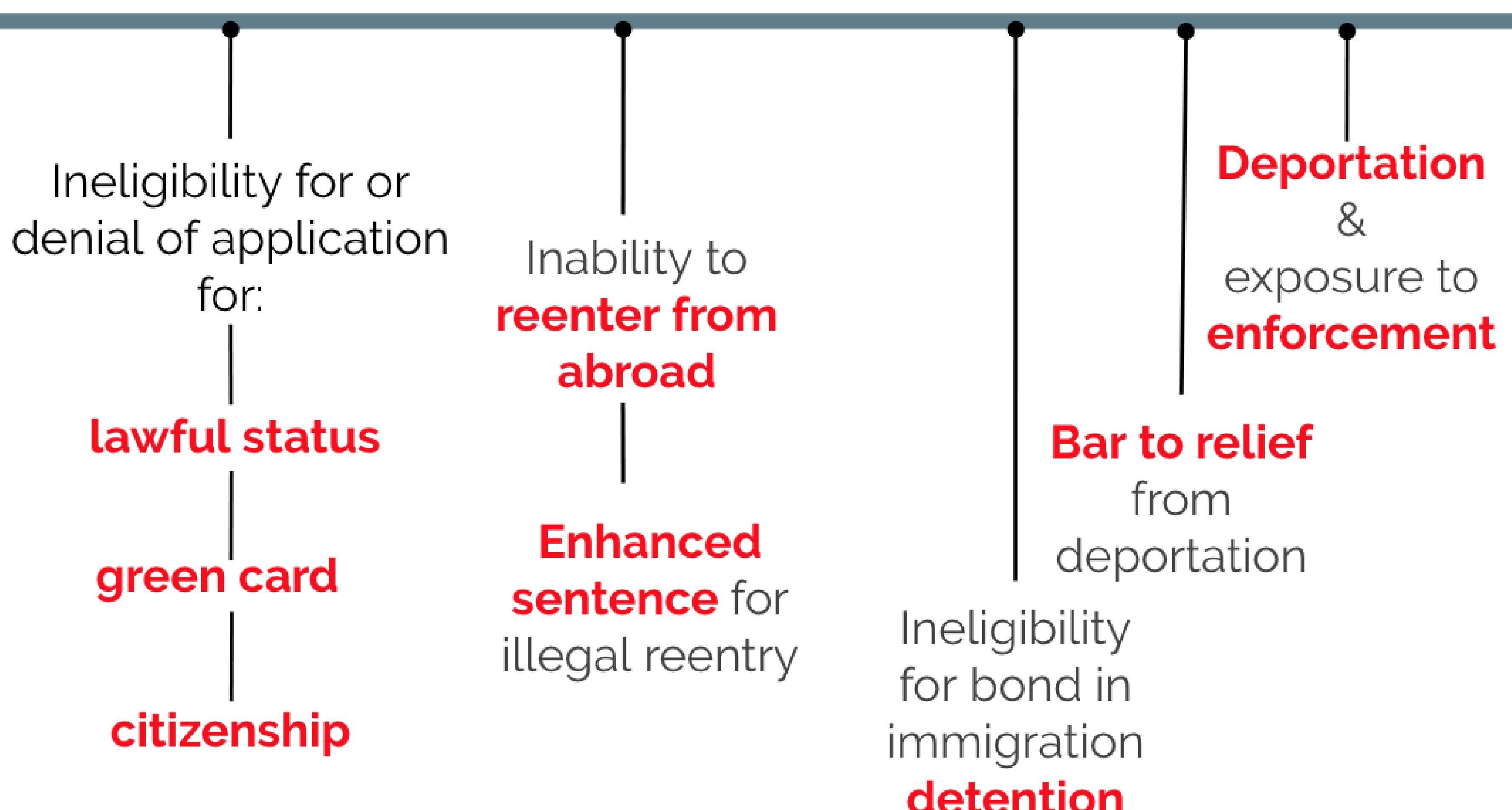
The defense attorney's crucial role

Under Padilla v. Kentucky, criminal defense attorneys have an obligation to advise clients about the immigration consequences of any plea offer or the decision to go to trial. This obligation does not end because your client is in removal proceedings or facing imminent deportation. It continues throughout the entire course of representation.

As discussed in this guide, you play a crucial role in ensuring detained immigrants are able to exercise their rights in the criminal legal system. Your work to ensure that a bench warrant is not issued, provide information to the District Attorney so an immigrant can appear in criminal court, or invoke an immigrant's right to a speedy trial can be the difference between staying in the U.S. and deportation.

In many cases, it will benefit the client to resolve the criminal case before the first immigration court appearance. However, the case outcome may also impact eligibility for bond and arguments your client can make about their defenses to removal. An immigration expert can help you ensure your plea advice incorporates the impact of your case on the client's ability to get bond and be able to remain in the United States.

Criminal convictions can trigger a range of immigration consequences, including deportation.



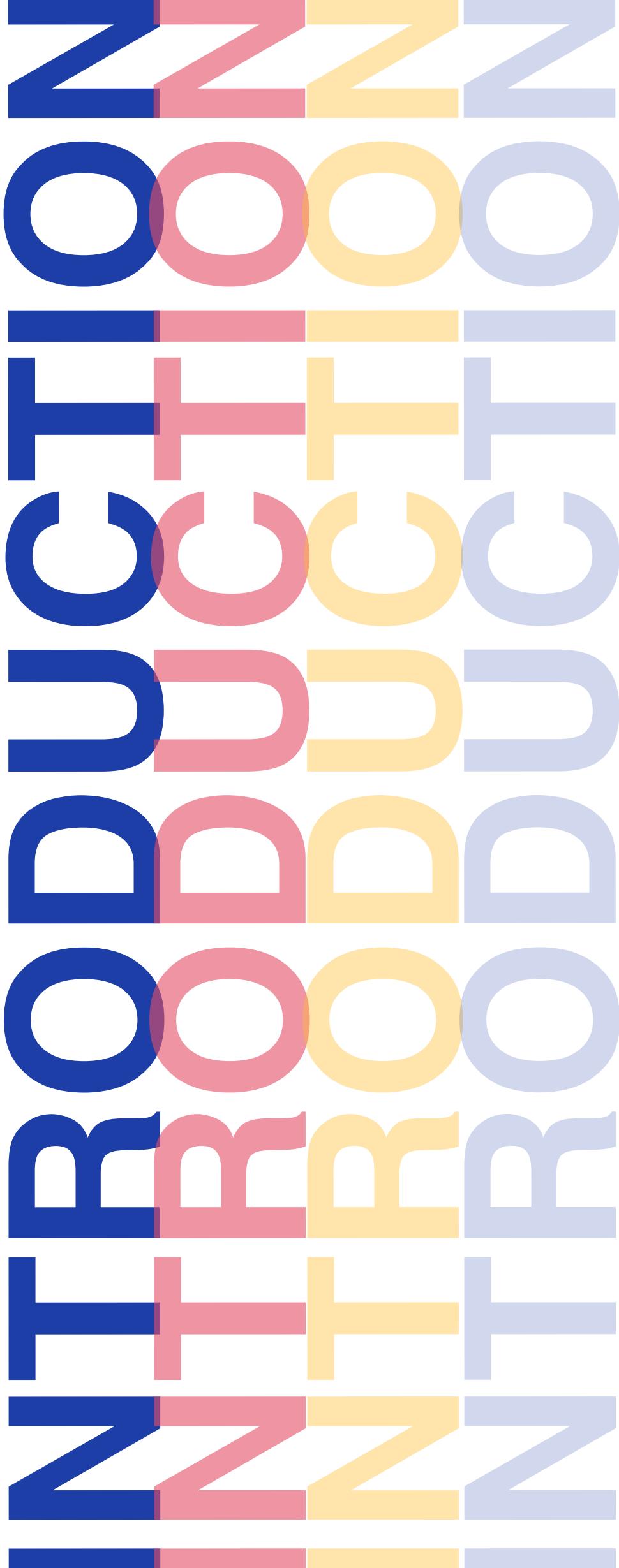
What does it mean that my client is detained by ICE?

ICE has the power to detain any immigrant who is charged with being removable from the United States (colloquially, anyone accused of being deportable). Your client may be detained anywhere in the country.

Your client may be removable because they are undocumented (they walked across the border or overstayed a visa). Or your client may be removable because even though they have status (such as lawful permanent residents, refugees, and in-status visa holders), they also have certain criminal convictions.

ICE's ability to arrest and detain someone may be unconnected to the criminal case in which you represent them. But often the outcome of a criminal case is a decisive factor in their ability to remain in the United States. Just because your client has been detained by ICE does not mean they will be deported. Many immigrants in detention are able to successfully fight deportation and remain in the U.S., including some people with criminal convictions.

Clients in ICE custody will not automatically be produced for their state criminal court appearances. As the defense attorney, you play a crucial part in ensuring your client retains the ability to fight their criminal case.



CRIMINAL COURT APPEARANCES

What steps should I take when I know or suspect that my client has been detained by ICE?

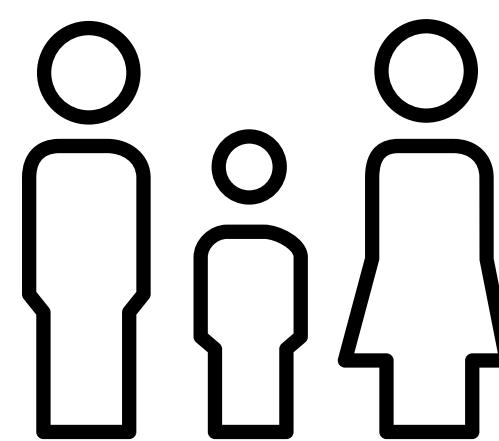
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Confirm your client's location

Obtaining proof that your client is in ICE custody

1. Find out your client's A number.

An "A number" is an 8 or 9 digit identification number found in most immigration documents. It may be listed if there are any "hits" from immigration on your client's rap sheet. This is the most accurate way to find your client.



Reach out to your client's loved ones for help confirming your client is detained by ICE and finding out their A number.

2. Confirm your client is detained using the online ICE locator.



To use the online ICE locator you need your client's:

- Country of birth and "A number" *or*
- Country of birth, first name, last name, and date of birth

If you find your client, the locator will state their name, the place where they are detained and that they are in custody. **You can print this out to show the court.**

Note: Your client may not show up on the locator if:

- They are a minor.
- They are in U.S. Marshal custody.
- You are not using their full name as ICE has recorded it. You can try using any aliases or common mis-spellings of your client's name. The A number is always most accurate.
- They declined to allow ICE to make their information searchable.
- They were recently arrested by ICE. It can take 1-2 days before a person in custody appears online.

Confirm your client's location

Redacted ICE locator result

Official ICE detainee locator website
(locator.ice.gov)

Client Name,
Country of Birth,
and "A Number"

The screenshot shows a web browser displaying the ICE Online Detainee Locator System at <https://locator.ice.gov/odls/#/results>. The page is titled 'Search Results: 1' and lists the following information for a detainee:

- A [REDACTED] B [REDACTED]
- Country of Birth: St. Vincent-Grenadines
- A-Number: [REDACTED]
- Status: In Custody
- State: NJ
- Current Detention Facility: BERGEN COUNTY JAIL

A large black arrow points from the text 'Custody information' on the left to the 'Status' and 'Current Detention Facility' fields in the search results. Another black arrow points from the text 'Client Name, Country of Birth, and "A Number"' at the top right to the redacted A-Number field in the results.

Related Information

- Helpful Info
 - Status of a Case
 - About the Detainee Locator Brochure
 - ICE ERO Field Offices
 - ICE Detention Facilities
 - Privacy Notice
- External Links
 - Bureau of Prisons Inmate Locator

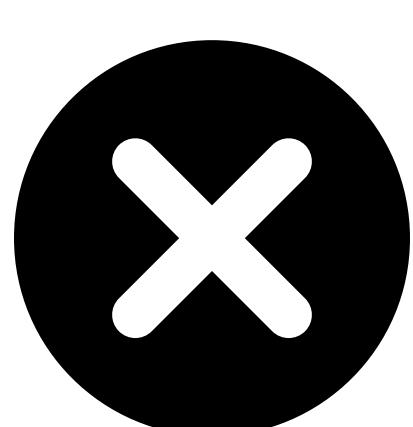
DHS.gov | USA.gov | OIG | Open Gov | FOIA | Metrics | No Fear Act | Site Map | Site Policies & Plug-Ins

Ensure a warrant is not issued

Arguing against a bench warrant

An open criminal case and warrant may negatively impact your client's immigration case. It may be harder to get released on bond, defend against their deportation, or ever return to the United States in the future. The issuance of a warrant may also make it harder for you to defend your client's right to a speedy trial. For this reason, it is important that you argue against the issuance of a warrant and continue to try to resolve the criminal case even after your client is arrested by ICE. Lastly, where a warrant is issued, the police may go to your client's home looking for them. This may cause fear and anxiety for other family members, who may be undocumented or otherwise at risk of deportation.

Dos and Don'ts: Arguments about Warrants



Don't put **confidential information**, including your client's immigration status, how they entered the country, or where they were born on the record. If necessary, ask to discuss sensitive information off the record.



Do offer the court **proof that your client is in ICE custody** and thus a warrant need not be issued. For more about how to obtain proof of your client's detention, see page 6.



Do ask the court to **stay the warrant** to give you time to provide proof of your client's whereabouts.



Do notify the court and the District Attorney that it is the District Attorney's responsibility to **ensure the production of your client in court**.

Ensure a warrant is not issued

What guidance exists about issuing warrants for clients in ICE custody?

In May 2018, Justin Barry, Chief Clerk of the NYC Criminal Court, communicated guidance that judges are not required to issue bench warrants when the Court is notified that a defendant has been taken into ICE custody. The full email is available in the additional resources section at page 19.

Excerpt of email guidance to judges and staff about warrants

From: Justin Barry [mailto:jbarry@nycourts.gov]

Sent: Monday, May 07, 2018 10:36 AM

Good Morning Tina:

Per Judge Marks' and Judge Amaker's instructions I sent an advisory to Criminal Court judges and non-judicial staff related to certain aspects of the Court's interaction with ICE. FYI, I have excerpted relevant parts of the email below.

"In the wake of a number of recent ICE actions and our conversations with defense providers, Hon. Tamiko Amaker has asked that I update our judges and non-judicial supervisors (particularly uniformed supervisors) on some items that have arisen and the Court's response:

1. ICE Judicial Warrants

Uniformed supervisors should direct uniformed staff to take the following action when ICE officials identify themselves pursuant to our written procedure and state their purpose for entering the courthouse. The court officer should inquire whether the ICE official has a warrant and, if so, whether that warrant was issued by a judge. If possible, uniformed staff should scan a copy of the warrant (either administrative or judicial) and attach it to the required notifications. Uniformed staff will also inform the judge, who will be hearing the defendant's case, if the ICE official has a judicial warrant. In the Unusual Occurrence Report, uniformed staff should indicate if a warrant was presented and, if so, the type of warrant.

Should the judge decide to inform the parties before the court appearance of ICE presence in the courtroom (see attached email), the judge should also make it clear if we have been informed that the ICE officials have a judicial warrant.

Some defense providers have said that it would be helpful if we knew that the ICE official have a judicial warrant.

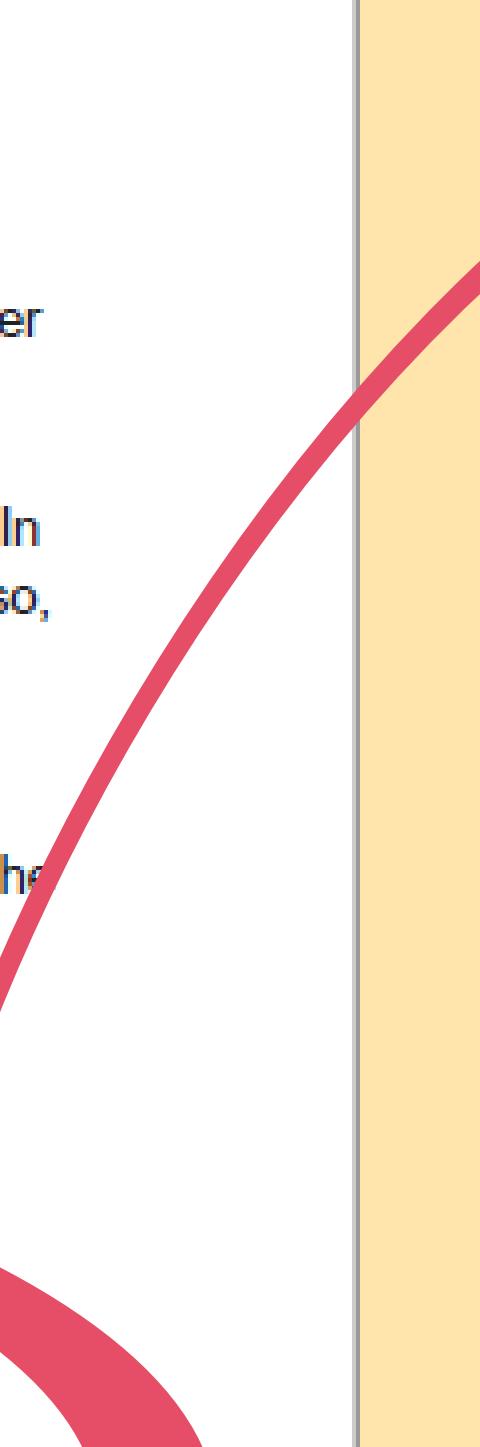
1. Bench Warrants

When the Court is made aware that ICE has taken a defendant with an active, open case into custody, judges need not issue a bench warrant. In lieu of a warrant, we have been able to effectuate the defendant's appearance where the judge has directed the prosecutor to issue a writ to produce the defendant on his/her next court appearance."

As always, let me know if you have any questions.

Justin

"When the Court is made aware that ICE has taken a defendant with an active, open case into custody, judges **need not issue a bench warrant**. In lieu of a warrant, we have been able to effectuate the defendant's appearance where the judge has directed the prosecutor to issue a writ to produce the defendant on his/her next court appearance."



In April 2019, OCA issued additional policies preventing ICE from making an arrest inside a New York State Courthouse without a judicial warrant. Information about that policy is included in the additional resources section on page 20.

Notify the District Attorney

Notify the District Attorney as soon as possible that your client is in ICE custody. Consider whether you need to follow up any oral communications in writing and/or make a record for the court. You may be able to argue that the time that elapses due to the District Attorney's failure to produce the client for prosecution is charged to the prosecution in a speedy trial motion.

When notifying the District Attorney that your client is in ICE custody, the best practice is to provide the name of the jail and the state in which your client is being held. This will help ensure that the District Attorney cannot argue your client was absent from court due to "unknown" incarceration.

Sample letter to District Attorney

RE: People v. John Doe - Docket Number 2019XX00000

Dear ADA:

I represent Mr. Doe in the above-docketed case, which is currently in warrant status*. I write to inform you that Mr. Doe was in the custody of the Department of Homeland Security, Immigration and Customs Enforcement (ICE) on April 15, 2019 when the warrant was issued.

As of this writing, Mr. Doe remains in ICE custody. He is currently at the Hudson County Jail at 30-35 Hackensack Avenue, Kearny, New Jersey 07032. Enclosed, please find a copy of the ICE Online Detainee Locator System search results (visited April 29, 2019), which provides details as to Mr. Doe's custody status in immigration detention. Note Mr. Doe's A number is 012-345-678.

I request that you issue a *writ of habeas corpus ad prosequendum* to secure Mr. Doe in court as soon as possible.

Please contact me upon receipt of this letter. I can be reached by phone at (212) 555-5555 or email at lawyer@gmail.com.

*Note you will need to change this letter if a warrant has not been issued for your client.

Secure your client's appearance

It is the responsibility of the District Attorney to issue a writ to secure the production of your client in court.

A *writ of habeas corpus ad prosequendum* (N.Y. Crim. Proc. § 580.30) secures the attendance of people who are detained or incarcerated in federal custody to appear in state criminal court. The District Attorney of the county must issue a certificate, known as a *writ of habeas corpus ad prosequendum*, addressed to the Attorney General of the United States explaining that the attendance of the defendant is necessary in the interest of justice and requesting they be produced on a specified date and time.



ICE guidance about procedures for transfer from ICE custody to aid state prosecution efforts

"If an ICE detainee is needed as a defendant or witness in an upcoming criminal proceeding, you may obtain a writ from an appropriate state or local judge ordering the alien's appearance in court on a specific date. While federal agencies are not bound by state court orders, ICE will generally honor the writ of a state or local judge directing the appearance of a detainee in court. Once the writ is obtained and ICE has approved it, you should contact the FOD [Field Office Director] responsible for your area in writing and request that he/she facilitate the alien's transfer to state or local custody. However, the requesting LEA [Law Enforcement Agency] must arrange for the alien's transportation."

ICE Tool Kit for Prosecutors, April 2011, available at:
<https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>

Secure your client's right to a speedy trial

You may be able to argue that the District Attorney's failure to make efforts to produce the client for prosecution is charged to the prosecution in a speedy trial motion. Under Section 30.30 of New York's Criminal Procedure Law, the fact that a defendant is missing from court does not eviscerate their right to a speedy trial.

In order to keep the 30.30 time running, make sure to explain how failure to produce is not a reasonable delay because the District Attorney was notified and should have filed a writ, and that the adjournment was not requested by your client. Otherwise, it may be found to be an excludable consent adjournment under 30.30(4).

Consider arguing:

- The prosecution has a duty to exercise due diligence in ascertaining the whereabouts of your client in ICE custody.
- Clients arrested by ICE are not absent or unavailable when the prosecution has notice of your client's location in ICE custody.
- After the prosecution has notice that your client is in ICE custody, they must make diligent efforts to produce the defendant.
- The prosecution cannot be ready when your client is in ICE custody and not produced for court.

COMMUNICATING WITH CLIENTS IN ICE CUSTODY



As required by the ABA Rules of Professional Conduct, defense attorneys have a duty to communicate and keep clients informed and advised of significant developments in their cases as well as to inform them of plea offers and other options. This duty continues regardless of whether your client is at liberty, in local criminal custody, or in ICE custody.

Rule 1.4 of the **ABA** (American Bar Association) Model **Rules of Professional Conduct** states that a lawyer shall **promptly inform** clients of any decision or circumstances where their informed consent is required, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information.

Under current law, ICE does not have an obligation to detain immigrants near the place of arrest, and immigrants may be transferred to ICE detention facilities anywhere in the country. But ICE policy is to detain immigrants within the "field office" jurisdiction of the place of arrest when possible.

You may visit your client in person or, where facilities allow, arrange a video chat with your client. As with other clients in jail, these methods of communicating ensure the confidentiality of your communications. If you are unable to communicate with your client in one of these ways, you can provide your client with your direct number so they can call you. You'll need to make sure you can accept calls from jails and keep in mind that your call may be recorded.

If you are having difficulty locating or meeting with your client, you can speak with their deportation officer by calling the appropriate field office with the client's A number.

New York: (212) 264-4128 or [NewYork.Outreach@ice.dhs.gov](mailto>NewYork.Outreach@ice.dhs.gov)

Upstate: (716) 464-5800 or Buffalo.Outreach@ice.dhs.gov

New Jersey: (973) 645-3666 or [Newark.Outreach@ice.dhs.gov](mailto>Newark.Outreach@ice.dhs.gov)

For a full list of field offices go to: www.ice.gov/contact/ero

COMMUNICATING WITH CLIENTS IN ICE CUSTODY



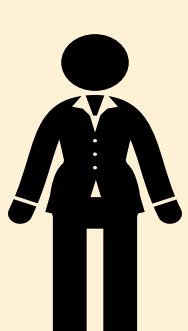
My client was arrested in the New York Field Office (New York City, Long Island, or Hudson Valley area):

Where is my client? How can I speak to them?

Bergen County Jail

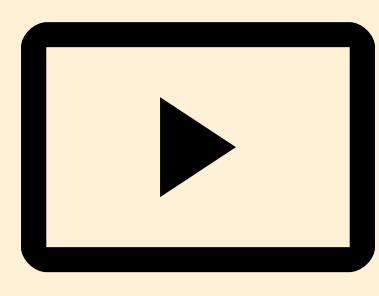
160 South River Street
Hackensack, NJ 07601

(201) 336-3500



Visit your client in detention by going to the jail facility with your attorney ID and your client's name. Call ahead to confirm attorney visit hours.

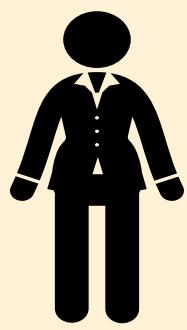
Hudson County Jail



Set up a video conference in advance:
Step 1: Register online: <https://hudsoncountynj.gtv.visitme.com/>. You will need a license number, passport number, or state ID.

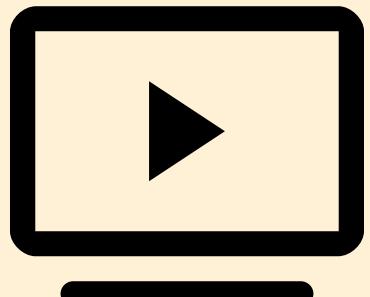
Step 2: Contact Hudson to be upgraded to a "Professional Visitor": let them know that you are an attorney and provide your bar number. This can be done by e-mailing Lieutenant Murrell at smurrell@hcnj.us or by calling (201) 395-5600 ext. 5001. You can also dial ext. 8 for the Administration Office to ask for the best contact.

Step 3: To set up a video visit with your client, go to the website and add them to your visitation list by searching by name. You should be able to schedule a visit one calendar day in advance. If you have issues during the scheduled visit (for example, if the client does not appear), call: (201) 395-5600 ext. 5039 or dial ext. 8 for the Administration Office for assistance.



Visit your client in detention by going to the jail facility with your attorney ID and your client's name. Call ahead to confirm attorney visit hours.

Orange County Jail

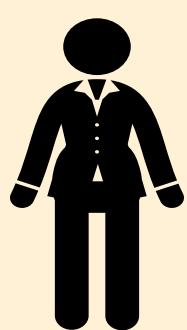


Set up a video conference in advance:

Step 1: Register online at <https://ocjailvisit.orangecountygov.com/app>. You will need a license number, passport number, or state ID.

Step 2: Register as a Professional Visitor in person (can come in at any time; need to bring in bar ID or other ID). Contact at Orange: (845) 291-7682 or Officers Hernandez or David Colon, (845) 291-7966.

Step 3: To set up a video visit with your client, add them to your visitation list by searching for that person by name. Then, you should be able to schedule a visit one calendar day in advance of the visit.



Visit your client in detention by going to the jail facility with your attorney ID and your client's name. Call ahead to confirm attorney visit hours.

COMMUNICATING WITH CLIENTS IN ICE CUSTODY



My client was arrested in the upstate New York field office (north of the Hudson Valley area):

Where is my client? How can I speak to them?

Buffalo Federal Detention Facility



Visit your client in detention by going to the jail facility with your attorney ID and your client's name. Call ahead to confirm attorney visit hours.

4350 Federal Drive
Batavia, NY 14020

(585) 344-6500

My client was arrested in the New Jersey field office:

Where is my client? How can I speak to them?

Essex County Correctional Facility



Visit your client in detention by going to the jail facility with your attorney ID and your client's name. Call ahead to confirm attorney visit hours. To speak with the administration, you can also call (973) 274-7521.

354 Doremus Avenue
Newark, NY 07105

(973) 274-7500

Elizabeth Contract Detention Facility



Visit your client in detention by going to the jail facility with your attorney ID and your client's name. Call ahead to confirm attorney visit hours.

625 Evans Street
Elizabeth, NJ 07201

(908) 282-5700

Delaney Hall Detention Facility



Visit your client in detention by going to the jail facility with your attorney ID and your client's name. Call ahead to confirm attorney visit hours.

451 Doremus Avenue
Newark, NY 07105

(973) 491-6042

THE IMMIGRATION CASE

Will my client have a hearing before an immigration judge?

Not necessarily. Some clients are at risk of imminent removal, without even seeing an immigration judge. Here are some red flags which should indicate that your client will not get a court date:

- They entered the U.S on the “visa waiver program” or “ESTA”.
- They remember “signing their deportation” at the border and may have been issued an expedited removal order.
- They were previously ordered deported by an Immigration Judge. You can check on this if you have their A# by calling the immigration court hotline at (800) 898-7180.

If your client is not entitled to see a judge, they may have very little time before being physically removed from the country. They will need a trusted immigration consultation as soon as possible to determine if they have options to remain in the United States. The immigration expert working with you can help find referrals for immigration counsel.

If my client can't afford counsel, will someone be assigned?

The New York Immigrant Family Unity Project (NYIFUP) is a program funded to provide high-quality, experienced lawyers for some immigrant New Yorkers detained by ICE. Representation requirements change from time to time, but generally your client will qualify for NYIFUP if:

- They are detained.
- It is their first hearing in immigration court for this case.
- Their household income before being detained was below 200% of the federal poverty guidelines.

Note: NYIFUP's ability to meet the capacity on the detained docket is dependent on adequate funding. For current information on NYIFUP intake, it is best to reach out to the NYIFUP organizations. Additionally, if your client hired a private attorney, they will not qualify for NYIFUP representation. If they later wish to access NYIFUP, you can reach out to NYIFUP to inquire about whether that will be possible.

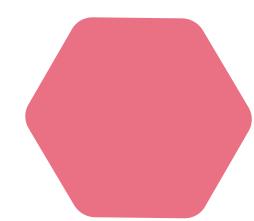
The **Legal Aid Society**, the **Bronx Defenders**, and **Brooklyn Defender Services** are NYIFUP providers for the New York Field Office and New York City residents in the New Jersey Field Office. The **Volunteer Lawyers Project** of the Erie County Bar Association is the NYIFUP provider for the Buffalo Federal Detention Facility in Batavia, NY. **Prisoners Legal Services** is the NYIFUP provider for Clinton, Albany, or Wayne County Jails and individuals in New York State DOCCS custody who have Immigration Court hearings.

Working with immigration counsel

— “In essence, we’re doing death penalty cases in a traffic court setting.”
Immigration Court Judge Dana Leigh Marks, April 1, 2018

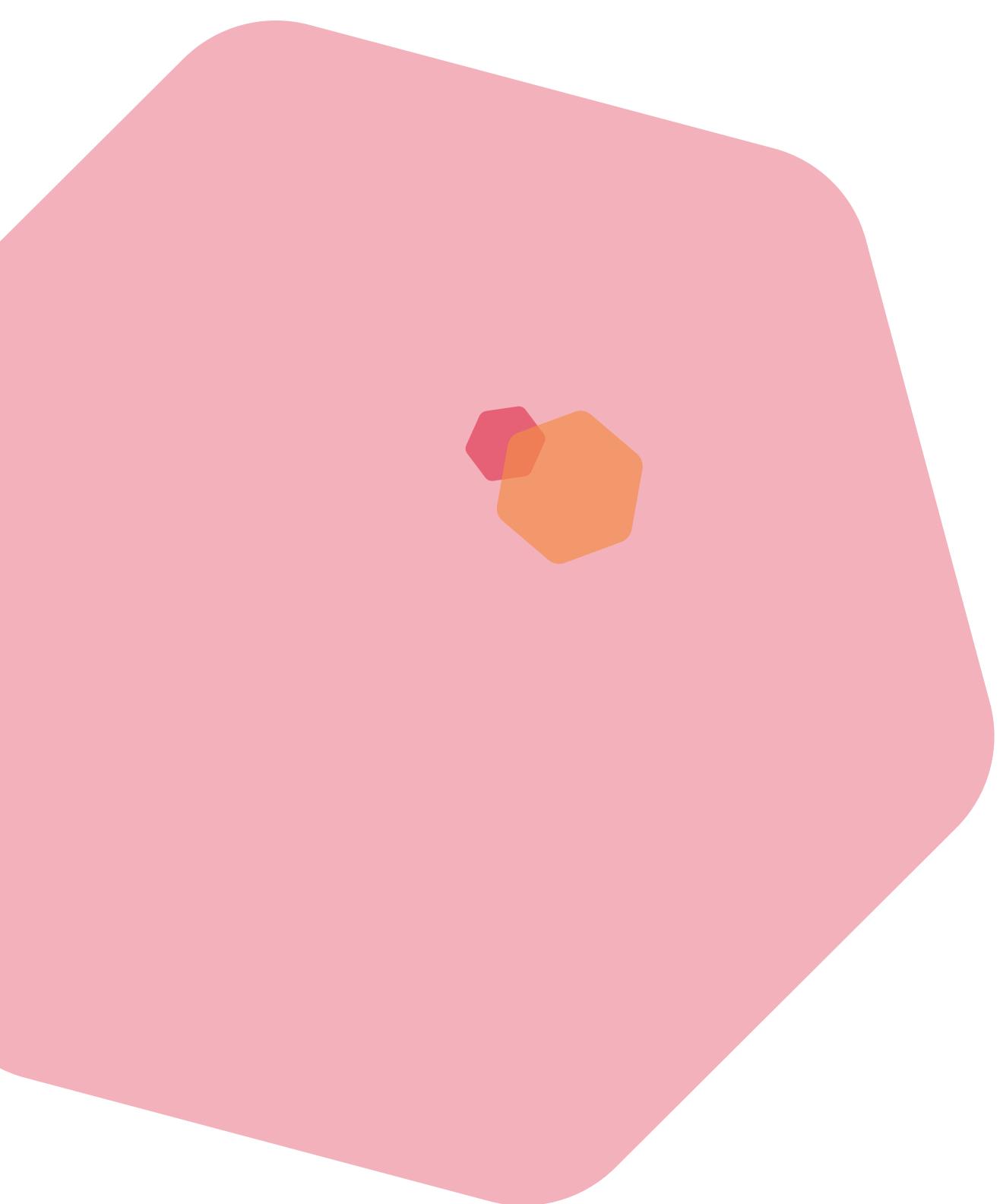
Keep in mind:

- There is no right to free counsel in Immigration Court. If your client does not qualify for counsel through NYIFUP they will need to find another attorney or represent themselves *pro se*.
- A client may be detained by ICE for months before the first hearing in Immigration Court.
- In some places clients are not produced to Immigration Court and hearings are conducted by video teleconferencing.
- Even clients who qualify for counsel through the NYIFUP program may not be able to speak to a NYIFUP attorney in advance of their first court date.



You can help by:

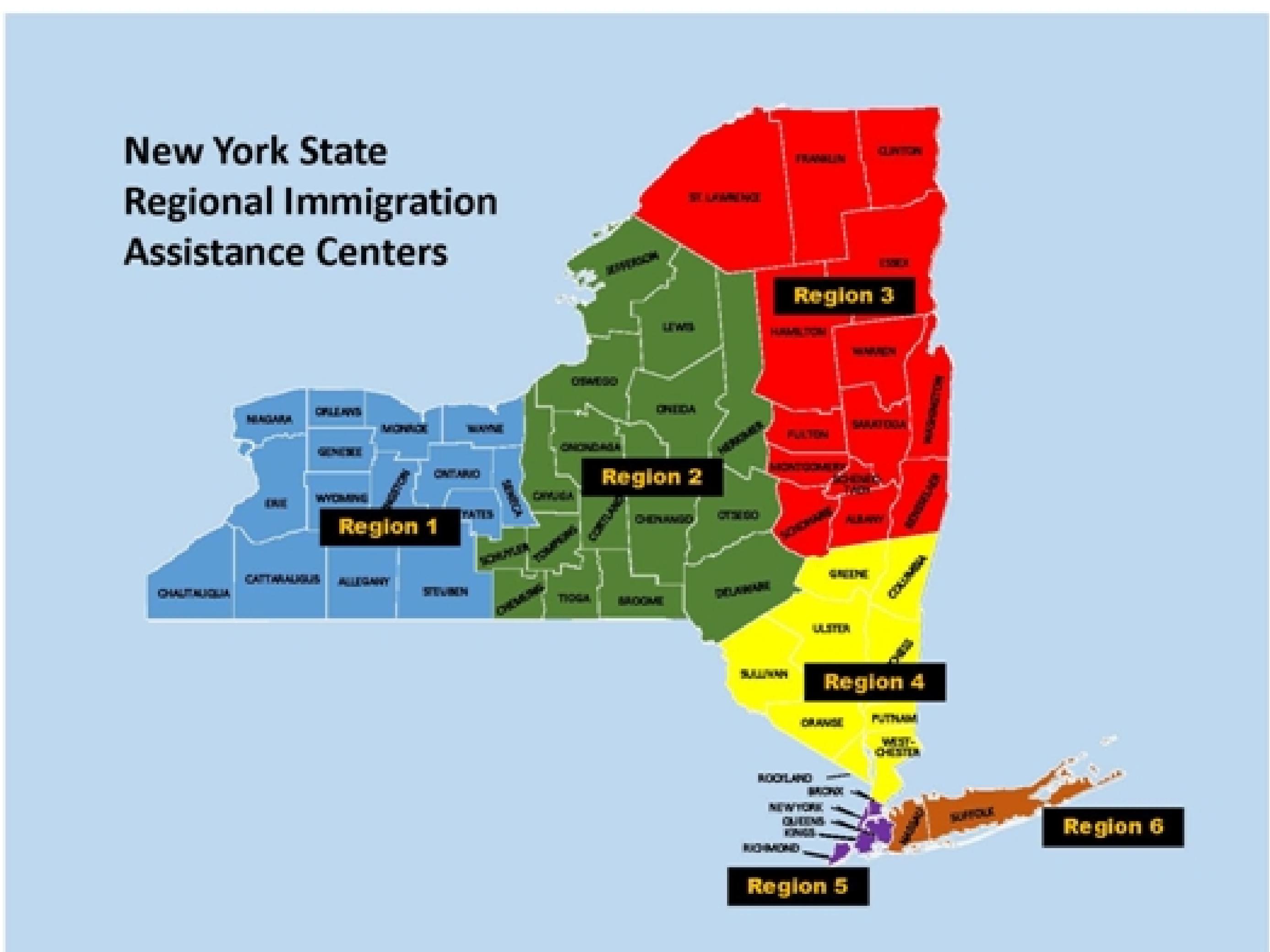
- **Working with expert immigration counsel to ensure the criminal case strategy takes into account immigration concerns**, including detention-related issues.
- **Telling your client about the NYIFUP program.** If the initial court date is set for a day that NYIFUP is not available for intake and your client is unrepresented, your client may request a new court date when NYIFUP is available.
- **Providing criminal court documents to your client's immigration counsel.** Your client's immigration counsel will need all documents related to any criminal arrest - including police reports, charging documents, rap sheets, and certificates of disposition. If your client's immigration counsel (whether NYIFUP or someone else) reaches out to you, respond as soon as possible to help equip them with information they need. Immigration counsel may need criminal court documents to go forward with bond applications.
- **Talking to your client about whether they want copies of documents.** You can send copies of these documents to your client by mail at the facility but remember your client may have limited privacy in the detention facility. Depending on the contents of the documents, your client may not want to receive copies for fear that others in the detention center will see them.



RESOURCES

Getting Padilla Advice

"The importance of accurate legal advice for noncitizens accused of crimes has never been more important."
Padilla v. Kentucky, 559 U.S. 356 (2010)



The New York State Office
of Indigent Legal Services
has created **Regional**
Immigration Assistance
Centers across the state to
ensure that every attorney
assigned as counsel in an
criminal case has access to
expert immigration advice.

For contact information for the center for your county, go to:

[www.ils.ny.gov/content/region
al-immigration-assistance-
centers](http://www.ils.ny.gov/content/region-al-immigration-assistance-centers)

The Immigrant Defense Project publishes resources for defense attorneys, including a manual on representing immigrants in criminal cases in New York, a Quick Reference Chart on the immigration consequences of New York criminal offenses, and practice alerts based on new developments.

For more information, go to:
www.immdefense.org



RESOURCES

Bench Warrant Guidance

From: Justin Barry [<mailto:jbarry@nycourts.gov>]

Sent: Monday, May 07, 2018 10:36 AM

Good Morning Tina:

Per Judge Marks' and Judge Amaker's instructions I sent an advisory to Criminal Court judges and non-judicial staff related to certain aspects of the Court's interaction with ICE. FYI, I have excerpted relevant parts of the email below.

"In the wake of a number of recent ICE actions and our conversations with defense providers, Hon. Tamiko Amaker has asked that I update our judges and non-judicial supervisors (particularly uniformed supervisors) on some items that have arisen and the Court's response:

1. ICE Judicial Warrants

Uniformed supervisors should direct uniformed staff to take the following action when ICE officials identify themselves pursuant to our written procedure and state their purpose for entering the courthouse. The court officer should inquire whether the ICE official has a warrant and, if so, whether that warrant was issued by a judge. If possible, uniformed staff should scan a copy of the warrant (either administrative or judicial) and attach it to the required notifications. Uniformed staff will also inform the judge, who will be hearing the defendant's case, if the ICE official has a judicial warrant. In the Unusual Occurrence Report, uniformed staff should indicate if a warrant was presented and, if so, the type of warrant.

Should the judge decide to inform the parties before the court appearance of ICE presence in the courtroom (see attached email), the judge should also make it clear if we have been informed that the ICE officials have a judicial warrant.

Some defense providers have said that it would be helpful if they knew that the ICE official have a judicial warrant.

1. Bench Warrants

When the Court is made aware that ICE has taken a defendant with an active, open case into custody, judges need not issue a bench warrant. In lieu of a warrant, we have been able to effectuate the defendant's appearance where the judge has directed the prosecutor to issue a writ to produce the defendant on his/her next court appearance."

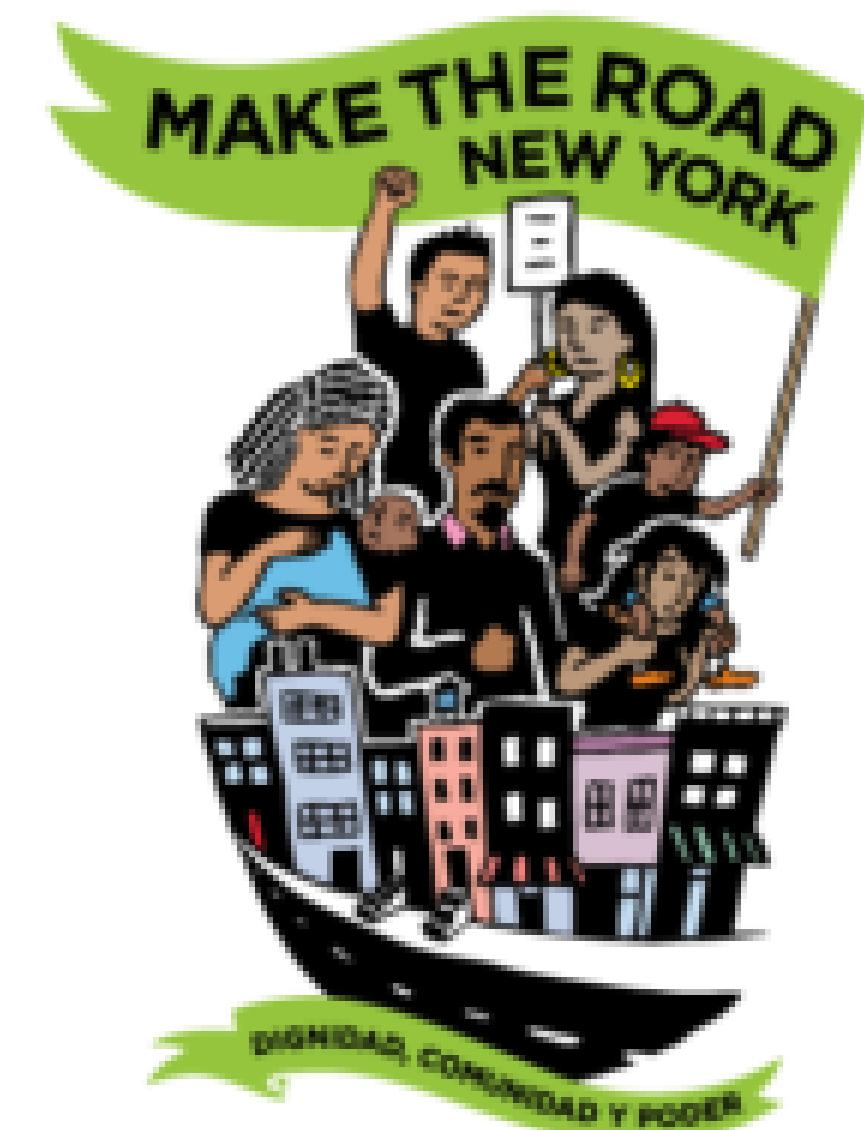
As always, let me know if you have any questions.

Justin

RESOURCES

ICE Arrests in Court: OCA Rules

THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION ANNOUNCED NEW RULES PROHIBITING ICE FROM ARRESTING INDIVIDUALS IN STATE COURTHOUSES WITHOUT A JUDICIAL WARRANT



Effective April 17, 2019, the Office of Court Administration announced new rules applicable to law enforcement agencies that enter a New York State courthouse, including ICE.

What is the new rule that was announced by the Office of Court Administration on ICE's presence in New York State courthouses?

- ICE must make themselves known to court personnel and state the reason why they are inside the courthouse. If ICE plans to detain an individual within the courthouse, ICE must have a judicial warrant or judicial order before detaining the person.
- A judicial warrant or judicial order is an order signed by a federal judge or federal magistrate judge. Court personnel, such as a judge or court attorney, will review the warrant to confirm that it is valid.
- The rule does not prevent ICE from monitoring or surveilling people inside the courthouse or from detaining people outside the courthouse.

Why are these new rules important?

- New York State courthouses have seen an unprecedented rise in immigration raids occurring while a person is attending, present at, or returning home from a courthouse. Often, an ICE raid takes place without a judicial warrant or judicial order, which results in people being placed in an ICE detention facility and separated from their family and loved ones. New York State courthouses should be protected and free from ICE raids in order for all New Yorkers to have access to legal protections and justice under the law.

Is there anything else that could prevent ICE from carrying out raids within or near a courthouse?

- Yes. The Protect Our Courts Act is a proposed bill currently in the New York State Legislature that would protect a person from a civil arrest, including an ICE raid, while going to, within, or returning from a New York State courthouse by requiring ICE to have a judicial warrant or judicial order before detaining a person. The Protect Our Courts Act would go further to protect all New Yorkers and make these protections law, unlike the new court rules that could be changed at any time.

What is the latest news on the Protect Our Courts Act?

- The Protect Our Courts Act is currently pending before the New York Assembly and Senate. Make the Road New York fully supports the Protect Our Courts Act in order to allow all New Yorkers equal access to courthouses without fear or intimidation from ICE.

RESOURCES

Advising Clients on ICE in Court



DEFENSE ATTORNEYS: HOW TO ADVISE IMMIGRANT CLIENTS ON ICE IN THE COURTS

Immigration & Customs Enforcement (ICE) and Homeland Security Investigations (HSI) are federal agencies that send officers to detain and deport “removable” people in the community, including at courthouses. This practice of arresting immigrants in courthouses undermines equal access to justice and can interfere with clients’ ability to resolve criminal matters.

WHERE DO ICE AGENTS MAKE ARRESTS IN THE COURTS?

ICE officers have made arrests in courtrooms, vestibules, hallways, private areas, and just outside of courthouses. ICE has come more frequently to criminal courts but has also been in family courts.

ARE ICE AGENTS EASILY IDENTIFIABLE WHEN THEY COME TO COURT?

ICE agents are often in plainclothes and come in groups of 2-4 (sometimes more).

DOES ICE USUALLY TARGET SPECIFIC INDIVIDUALS TO ARREST?

ICE usually identifies a specific individual appearing for a court date and has an “administrative warrant” signed by a supervisor, not a judge. This allows the agents to detain the person upon confirmation that s/he is the individual named in the document.

WHO IS AT RISK OF BEING TARGETED AND ARRESTED BY ICE?

People who are undocumented and people with lawful status with certain criminal convictions may be at risk of being detained and deported. For more details see IDP’s advisory on the January 2017 Executive Order priorities: <http://bit.ly/2ohuSjn>.

Here are some things **you** can do in your practice to protect immigrant clients in the courthouse:

1. **Identify clients who are not U.S. citizens (USCs) and seek a *Padilla* consult as soon as possible after assignment.** Assigned counsel in NYC: contact IDP at immdefense.org/psc for a free immigration consult. Other NYS appointed counsel: contact your Regional Immigration Assistance Center at on.ny.gov/2o162kA. Others: contact a local criminal-immigration expert.
2. **For clients at risk of deportation,** advise them of their constitutional rights to be present to resolve criminal charges and to have the assistance of counsel. Discuss strategies for ensuring that you will be able to conduct the full course of representation and they will be able to resolve their cases without impermissible interruption. This may include lessening the number of court appearances, resolving cases off-calendar, and avoiding the need for personal information like name and docket number to be shared loudly in hallways or courtrooms.
3. **Prepare your clients for interactions with ICE.** Advise your clients that they have the right to remain silent when they encounter ICE agents and should say that they want to speak to a lawyer. Warn them about the dangers of answering questions about their immigration status, where they were born, or how they entered the U.S. Know Your Rights information is available in multiple languages at: immdefense.org/raids.
4. **Stay current on local detainer laws and law enforcement cooperation with ICE.** If you are in a jurisdiction that has limits on honoring detainees, setting bail might be the best way to protect your client’s ability to resolve a case. This requires individualized assessment. To learn about the current policies in NYC, visit: <http://bit.ly/2nMGD0O>.

RESOURCES

Advising Clients on ICE in Court

DEFENSE ATTORNEYS: HOW TO ADVISE IMMIGRANT CLIENTS ON ICE IN THE COURTS



IF YOU WITNESS ICE AGENTS ARRESTING YOUR CLIENT:

- **Invoke your client's rights.** Identify yourself as the person's lawyer. Tell ICE not to question your client. Tell your client not to sign anything and to exercise his/her right to remain silent. Answering questions will only help ICE deport him/her. **Request to call or recall the criminal case while your client is present to avoid the issuance of a warrant.**
- **Get info from ICE.** Ask for agents' names and contact info. Ask for the basis of the arrest and to see a warrant. Note if the document ICE presents is signed by a judge vs. ICE supervisor. Ask where they are taking your client.
- **Get on the record.** Explaining the situation may prevent a bench warrant and possibly help in immigration court. If possible, talk to your client about the impact that going into *criminal* custody via bail or a plea instead of ICE custody would have on his/her interests.

WHAT TO SAY ON THE RECORD *BEFORE* ICE DETAINS YOUR CLIENT:

- Describe the ICE agents and how you know they are going to arrest your client.
- State if they are present in the courtroom as you speak.
- Explain how you have invoked your client's rights to the agents and stated s/he is not to be questioned.
- State if you think court staff or a DA has helped ICE (e.g. waiting to call the case until ICE arrives).

If you are asking for criminal bail, invoke your client's 6th Am. right to appear in the case against them. Explain the purpose of bail is to ensure appearance. (*see below for considerations*)

WHAT TO SAY ON THE RECORD IF ICE HAS ALREADY DETAINED YOUR CLIENT:

- Ask for a bench warrant stay. Put the DA on notice of the need to produce your client from ICE custody. For more on how DAs can request production from ICE, see <http://bit.ly/2nkIXZQ>.
- Describe the ICE agents and how they arrested your client. State when/where they did this in the court. Explain how you invoked your client's rights to the agents and stated s/he is not to be questioned.
- State if ICE agents denied your request to call or recall the criminal case. Explain that ICE's practice interferes with individual cases and access to justice in the courts.
- State if you think court staff or a DA assisted with arrest (e.g. blocking exit, calling case late).
- State if you witnessed ICE violate your client's constitutional rights (e.g. searching your client's pockets without consent).

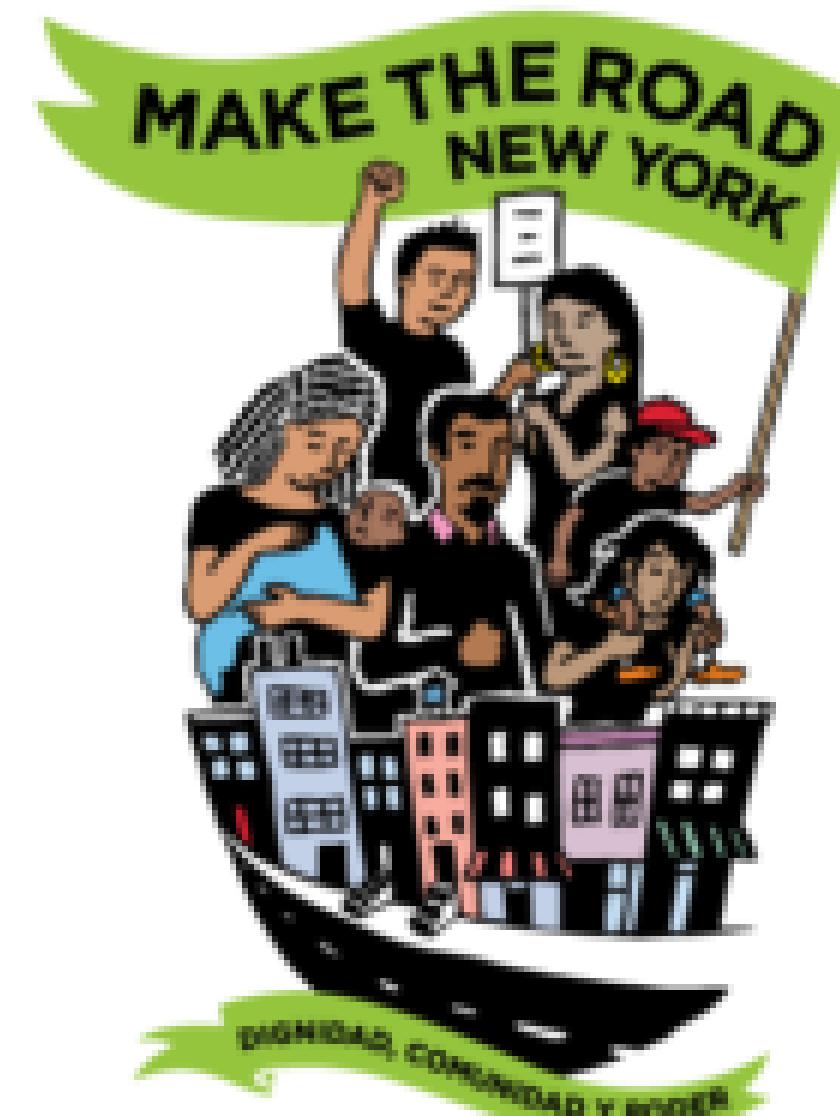
WHAT TO DO AFTER A CLIENT IS ARRESTED BY ICE:

- **Document what happened**, including: where arrest took place (e.g. in court part vestibule, courthouse hallway, courthouse private area, outside the courthouse); # of ICE agents, how they were dressed & identified themselves; how they responded when you asked questions, incl. for a warrant; and whether any court staff were involved in the arrest or aware of ICE presence.
- **Report it** to advocates pushing back against this practice. In NYC, contact IDP at 212-725-6422 if you see ICE in or around a courthouse.
- Search ICE Online Detainee Locator to **locate your client** and then **figure out how to resolve the criminal matter** with client in ICE custody. Contact an immigration lawyer for more information.

TEAR HERE



IMMIGRANT
DEFENSE
PROJECT



Quick Reference: Clients in ICE Custody

Contact

information for
immigration
consequences
expert:

(Tape card here)

TEAR HERE

TEAR HERE

My client is in ICE custody. **Defender to do list:**

1. Get client's "A number"
2. Confirm location: locator.ice.gov
3. Notify District Attorney
4. Secure speedy trial rights

ICE Field Offices:

New York City - (212) 264-4128
Upstate New York - (716) 464-5800
New Jersey - (973) 645-3666
Full List: www.ice.gov/contact/ero

New York area ICE Detention Centers:

Bergen County Jail - (201) 336-3500
Buffalo Federal Detention Center - (585) 344-6500
Delaney Hall Detention Facility - (973) 491-6042
Elizabeth Contract Detention Facility - (908) 282-5700
Essex County Correctional Facility - (973) 274-7500
Hudson County Jail - (201) 395-5600
Orange County Jail - (845) 291-4033

TEAR HERE