



HAPPY HOLIDAYS!

In This Issue:

ICE in the courtroom:
What to do if they arrest
your client before your
case is concluded

UPCOMING EVENTS

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The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

ICE in the courtroom: What to do if they arrest your client before your case is concluded

We are taking another pause in the “Anatomy of an Advisal” series to advise counsel about what to do **when** ICE shows up at court and they are after your client. As we have previously explained, the first thing to determine (PRIOR to going to court!) is whether your client is “otherwise deportable,” meaning subject to ICE enforcement regardless of the (proposed) disposition in your case. Please refer to last month’s newsletter on what makes your client “otherwise deportable.”

So, let’s say that your client entered the U.S. without being inspected by an immigration officer and is undocumented. That person is deportable no matter what happens in his or her case, and if your client was fingerprinted or incarcerated at arrest or thereafter, it is more than likely that ICE knows about your client. ICE could very well show up at court to take your client into custody for removal proceedings, whether or not your case has been disposed of in court. What is your role as defense counsel? The short answer is to prepare your client and use available strategies to protect your client’s rights under the state and federal constitutions. The long answer is the subject of a training session!

Strategies for defense counsel PRIOR TO COURT DATE:

1. Meet with your client and conduct a thorough immigration intake with an interpreter if necessary.
2. If your client is subject to removal, advise your client that ICE could be present to take your client into custody outside the courtroom, even before the case is finished. It could happen on the way into court or after the court appearance.
3. If possible, get the court to waive the client’s appearance.
4. Advise your client to have a plan in place in case your client is arrested by ICE. This includes giving you contact information for family members and



UPCOMING EVENTS:

January 23, 2018:

Jefferson County Bar
Association Mtg. CLE:
Representing Non-citizens in
Criminal and Family Court:
Basic Concepts in
"Crimmigration"

Chief Defenders & Assigned Counsel Administrators:

Contact the RIAC2 to
schedule a training, lunch
hour or other session in
your office/county. We will
provide CLE credit!

friends.

5. Arrange to meet your client outside of court and go into court together.
6. At no time should you ever counsel a client not to appear in order to avoid being arrested by ICE.

Strategies to follow AT THE COURT APPEARANCE:

1. Prior to meeting your client, enter the courtroom and check to see if any ICE officers are present. They are often in plain clothes and do not have anything in their outward appearance that says "ICE."
2. If possible, depending on your relationship with the court clerk, when signing in, ask the clerk to call your case by the DR # or some case number instead of using your client's name. ICE often does not know who your client is, and ICE is in court to make the ID so they can arrest him/her outside.
3. Meet your client outside of court and walk in together.
4. Pay attention to any unusual activity in court, e.g. delay in calling your case, rushing your case, etc.
5. If ICE is there for your client and you do not have a disposition, if appropriate, and with your client's consent, ask the judge to set bail and have your client remanded. If this is not possible or the judge refuses to do so, ask the judge not to issue a bench warrant. **Do not** request any adjournments. Put on the record that ICE has taken your client and that, if the client's presence is needed, the DA must arrange to produce your client for any future court appearances.
6. Get the case called quickly or adjourn the case, if appropriate.
7. Although you cannot prevent ICE from arresting your client, you can and should ask the ICE officers questions. (What is your authority to arrest? Do you have a warrant to arrest this person? Where are you taking him/her?)
8. Be sure to make a record in court of the entire transaction (i.e. your questions, their responses, involvement of any court personnel aiding ICE, etc.), and if necessary, second call the case to place information on the record.
9. Advise your client not to answer any questions when interviewed by ICE.

Other considerations:

1. The clock for CPL 30.30 purposes still runs when client is in ICE custody as long as there is no bench warrant issued and defense counsel has not requested an adjournment or otherwise waived 30.30.
2. Share information with RIAC and other counsel as to what transpired.
3. Share information about detainer policies in your areas with the RIAC, other attorneys in your office and the Assigned Counsel Panel, depending on the setup in your county.

Although much of the media has focused on ICE in the courtroom in the NYC metro area, ICE is arresting clients at court in upstate NY as well. Do not think that your client is safe just because you are in a small justice court for a routine appearance.