

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

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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.

“CRIMMIGRATION” UNDER THE NEW ADMINISTRATION

President Trump has begun his presidency by swiftly changing the landscape of “crimmigration” with the issuance of Executive Order #13768, “Enhancing Public Safety in the Interior of the United States.” This order, along with his other two pronouncements, “Protecting the Nation from Foreign Terrorist Entry Into the United States” and “Border Security and Immigration Enforcement Improvements” widely expands the enforcement of immigration laws against noncitizens in the U.S.

Of the three new orders, the “interior public safety” order mentioned above is most relevant to those attorneys who represent non-citizens in criminal and family court matters. This order involves the expansion of ICE’s (Immigration and Customs Enforcement) reach and capabilities to deport someone from the U.S.

Under the Obama Administration, priorities were established for deporting those who are removable from the U.S. for any reason (visa overstays, criminal convictions, illegal entry, etc.). In recognition that it would be impossible to deport every person who is removable, the Priority Enforcement Program (“PEP”) gave priority for deportation to those convicted of “aggravated felonies,” and other types of felonies. A lesser priority was given to those with 3 or more misdemeanors, or a “significant” misdemeanor (domestic violence, alcohol-related convictions including DWAI). Note that under federal law, a “misdemeanor” is any offense with a possible sentence of more than 5 days, meaning certain violations, such as DWAI, can be considered a “significant misdemeanor.” Lowest on the list were those who entered the country after 2014 or who had a final order of removal.

The new executive order has terminated the PEP program and replaced it with the former “Secure Communities” program, allowing state and local law enforcement to enter into cooperation agreements with ICE that give local law enforcement officials designated authority to perform certain functions related to ICE enforcement.



UPCOMING EVENTS:

March 31, 2017:

12 pm – 3 pm

“Immigration Consequences in Criminal Court”

Broome County Public Library,
Binghamton, NY

April 6, 2017:

Time & location TBA

“Immigration Consequences in Criminal Court”

Tompkins County, Ithaca, NY

ALL TRAININGS ARE **FREE OF CHARGE!!**

Contact RIAC2 for a free training!

RIAC2@ocgov.net or call
315-356-5794.

The previous priorities have been replaced in Section 5 of the EO with the following: any noncitizen who is *already removable* (illegal entry to the U.S., visa overstay, prior deportable criminal conviction, etc.) will be arrested and detained if they:

1. Are convicted of ANY criminal offense;
2. Are arrested for ANY offense and charge(s) still pending;
3. Committed acts (NOT arrested) that constitute a crime;
4. Engaged in fraud/misrepresentation in any official matter or government agency application;
5. Abused any program relating to public benefits;
6. Have a final order of removal;
7. Pose a risk to public safety or national security *in the judgment of an immigration officer.*

What does this mean for defense lawyers? The new order severely raises the stakes for non-citizen defendants in criminal and family court matters. Those with minor offenses, even violations, will be at risk. Information will be shared with ICE from multiple sources, and clients will be subject to removal proceedings in cases that were formerly not a priority for removal. (Do not share immigration information, which is confidential, about your client with police, ICE, prosecutors or the Court!)

It is therefore critical to communicate with the RIAC from the outset of the case. For example, at arraignment, bail may be a consideration, but not every defendant should be bailed out of custody as the client could go directly into ICE custody depending on the circumstances. (Call us!) Post arraignment, as soon as an attorney receives a case, if the client was not born in the U.S., contact should be made immediately with the RIAC.

In Family Court matters, all noncitizen cases should be referred to the RIAC to determine how to fashion a disposition that will avoid contact with ICE if the client is at risk for removal, protect children, and keep families united.

These are uncertain times for all who represent non-citizens of the U.S. Now more than ever, it is imperative for attorneys to investigate and advise their noncitizen clients about the immigration consequences involved in their cases.

The Immigrant Defense Project (IDP) has issued a practice advisory for criminal defense attorneys representing non-citizens in criminal cases:

<http://www.immdefense.org/wp-content/uploads/2017/01/IDP-Post-Trump-EOs-FAQs-for-defenders-1.27.17.pdf>

Contact the RIAC to ask about an in-person meeting, a free training with CLE credit, suggestions for CLE topics and feedback on our process. We are here to help!