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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.*

Immigration at Arraignment: Do You Really Want Your Client ROR'd?

We are taking a pause in the “Anatomy of an Advisal” series to advise counsel about immigration issues that arise at the arraignment stage. Now that many counties have established and implemented “Centralized Arraignment Part” (CAP) court and Counsel at First Appearance (CAFA) procedures, with the remaining counties to follow in the future, it is important to discuss immigration issues with your non-citizen client, especially if your client is “otherwise deportable” and is subject to going into ICE custody prior to the disposition of your case. If you are not sure whether your client is a USC, proceed as if he or she is NOT a USC. The first thing to determine is whether your client is “otherwise deportable”, meaning subject to ICE enforcement regardless of the current arrest. (See the attachment.)

How will you know if your client is “otherwise deportable”?

1. Although not true in every case, if there is an ICE hold on your client, that is an indication your client may be deportable. Find out if there is an ICE hold.
2. Ask your client these important immigration questions, which are listed in our RIAC brochure:
 - Date of birth and Country of birth
 - Prior criminal history
 - Date of entry to US
 - Status at entry (refugee, immigrant visa, temporary visa, entered without inspection)
 - Immigration history (previous Immigration Court proceedings/orders of removal; applications pending/approved/denied)
 - Any/all immediate family members in US and their status

UPCOMING EVENTS:

January 23, 2018:

Jefferson County Bar
Association Mtg. CLE:
Counsel's Obligation Under
Padilla v. Kentucky

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!

3. Generally, your client is deportable for the following:
 - Immigration violations (Entered without Inspection- EWI; Entered with a visa but overstayed).
 - Previous criminal convictions (AF, CIMTs, Firearms, Viol. of OP, CODV, CAC).
 - Has a prior order of removal (ordered removed & never left; ordered removed in absentia & never left; received voluntary departure & never left; previously deported & came back illegally).

The goal is to keep the client out of ICE custody prior to any disposition

in your case. If ICE takes your client, you aren't going to see your client again for a long time, if ever. If the client is in custody and has been fingerprinted, information is automatically shared with ICE, so if your client is deportable for any of the reasons above, there is a good chance that ICE will take your client into custody at some point. At no time should an attorney ever counsel a client to evade ICE in a way that suggests the attorney is "hiding" the client from ICE or is counseling the client to flee the jurisdiction to evade ICE detection.

Always keep in mind that once a client goes into ICE custody, an order to produce will be necessary to bring the client back to state criminal court. Federal authorities are under no obligation to transport a client to state criminal court absent a court order, and they will not do so. If a client is deportable, in ICE custody, and ordered removed, ICE can move forward regardless of any pending case in a state court.

So how does one get all of this done in the few minutes allotted prior to and during an arraignment? The safest way is to proceed with caution and explain to the client what the options are for release. There is no black and white answer as to whether or not to get your client released. Get and use an interpreter if available. Use the "cheat sheet" we have developed to help at arraignments.

Your attention to immigration issues at arraignment can be a life changing matter to your client. If time is needed to address these issues, adjourn the bail application (i.e. keep the client in custody) with your client's consent.