

# DEPORTATION 101

A Community  
Resource on  
Anti-Deportation  
Education  
and Organizing



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Revised May 2010

Produced by

Detention Watch Network  
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Washington, DC 20005

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# THE DEPORTATION 101 CURRICULUM

## A Little History

The Immigrant Defense Project (IDP) and Families for Freedom (FFF) originally developed the Deportation 101 curriculum in 2005. In 2007, the National Immigration Project of the National Lawyers Guild and Detention Watch Network began collaborating with IDP and FFF to create an expanded curriculum and to present additional trainings.

Together, the Deportation 101 team has partnered with community-based groups to train directly affected people, organizers, and service providers in various parts of the country, including New York, New Jersey, Florida, Massachusetts, Georgia, Maryland, Virginia, District of Columbia, North Carolina, Arkansas, Louisiana, Mississippi, Alabama, Florida, Kentucky, Tennessee, South Carolina, Virginia, and West Virginia.

## About the Curriculum

Deportation 101 is an intensive, one to two-day training, accompanied by comprehensive written materials, that offers basics on the detention and deportation system and provides guidance on how to organize communities directly impacted by deportation. Created by community organizers, legal experts, and advocates, this curriculum teaches immigrant families, loved ones, and communities how to understand and develop individual and community responses to this system – inside and outside the courts.

The Deportation 101 curriculum provides:

- overviews of the criminal justice and deportation systems and immigration enforcement programs,
- practical tips and advocacy strategies for people facing or at risk of deportation,
- local and national resources and referrals,
- ideas for addressing the needs of immigrant families and communities,
- discussions on current and future organizing strategies, and
- analyses of current immigration reform proposals.

### **\*Disclaimer\***

*This latest version of the Deportation 101 curriculum was published in May 2010. We've tried our best to make sure all information is up-to-date. Please keep in mind that immigration laws and policies are constantly changing, and this manual only reflects information available up until the time of publication.*

*We also want to be clear that the Deportation 101 curriculum is not a substitute for individualized legal advice. If you are dealing with a deportation case, we recommend trying to contact an expert for more information and help on your particular case.*







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## **Acknowledgments**

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Revised May 2010

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# SECTION 1: DEPORTATION BASICS

**I**n this section, we provide an overview and some background on the immigration detention and deportation system. Later sections in this manual will go into greater detail about how this system works and how to navigate it. Here, we want to provide a general framework to help ground our understanding

of some terminology, government actors, and history.

We start off with some fundamentals. First, since the immigration system can seem inaccessible due to deportation-related jargon, we share a glossary of terms. We then take a look at the government systems and departments that deal with detention and deportation. We include a diagram of the branches of federal government to help you understand the different institutions that play a role in deportation. We also include a list of government actors that immigrants going through deportation often encounter – and their responsibilities.

Lastly, we share a timeline to give some historical context for our current political landscape. This timeline gives a snapshot of policies, legislation, and case law that have shaped the current detention and deportation system since 1980.



# DEFINITIONS

## **287(g) Agreement**

A Memorandum of Agreement (MOA) 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 is not supposed to override constitutional protections. According to ICE, more than 1,075 officers have been trained through the program under 67 MOAs as of January 2010.

## **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. In 2003, ICE created Fugitive Operations Teams (FOT) to investigate and arrest absconders. A 2008 Migration Policy Institute report found that FOTs arrested approximately 97,000 people, 73% of whom were undocumented with no criminal record. According to ICE, FOTs made 26,900 more arrests in the first half of 2009.

## **Administrative Removal**

A section of the 1996 laws used to deport certain non-citizens convicted of crimes, including “aggravated felonies.” Under administrative removal, individuals can be deported without a hearing. A noncitizen can challenge the administrative findings.

## **Aggravated Felony**

A federal immigration category that includes more than 50 classes of offenses, some of which are neither “aggravated” nor a “felony” (for example, 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 virtually mandatory deportation (no possibility of applying for cancellation of removal, or any other pardons).

## **“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. This immigration law term-of-art has not been defined by Congress. It has been interpreted by courts 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 (DHS) to refer to any noncitizen apprehended by ICE through the criminal justice system, regardless of how minor or how long ago the alleged offense occurred or whether the noncitizen was ever convicted of a crime. A “criminal alien” can be someone who is undocu-



mented, someone who is applying for a green card, or a green card holder with U.S. citizen family. So-called “criminal aliens” are aggressively targeted for deportation after they have served their sentence. Deportation is not part of the criminal sentence, and oftentimes immigrant defendants do not realize that a guilty plea may result in deportation.

### **Criminal Alien Program (CAP)**

This is ICE’s primary enforcement program. Through CAP – which has existed since the 1980s – ICE agents identify and screen inmates in jails and prisons to initiate removal proceedings while people are still in criminal custody OR transfer people directly from jail or prison to ICE custody for removal proceedings. CAP agents rely on informal relationships with jails and prisons to gain access to and conduct interviews with noncitizens in criminal custody. These interviews can occur before or after a detainer has been issued to facilitate transfer to the detention and deportation system. Nearly half (48%) of all noncitizens in ICE custody are apprehended through CAP. In Irving, TX, 98% of detainees lodged through CAP were against persons charged with misdemeanor offenses.

### **Deportation/Removal**

Expulsion of a noncitizen from the United States. People who can be deported include noncitizens (including green card holders) with past criminal convictions; visa overstays; refugee/asylum seekers; and those who entered without inspection (for example, by crossing the border unlawfully). Once removed, a noncitizen faces legal bars that prevent his or her return or sometimes they are permanently barred.

### **Department of Health and Human Services (DHHS)**

The federal Cabinet department responsible for the placement of unaccompanied (i.e. without a caregiver) noncitizen children. This program is one of dozens of programs run by DHHS.

### **Department of Homeland Security (DHS)**

The federal Cabinet department charged with “protecting” the United States. Through the Department of Homeland Security Act, DHS absorbed most of the former Immigration and Naturalization Service and took on its duties in 2003. DHS split immigration-related duties between three separate agencies under its control: services (Citizenship and Immigration Services),



enforcement (Immigration and Customs Enforcement), and border patrol (Customs and Border Protection).

### **Detainer**

ICE’s most effective tool to seal the pipeline from the criminal justice system to the deportation system. A detainer serves as a request to a jail or prison to hold a suspected noncitizen for ICE to pick up or to notify ICE when the jail or prison intends to release the person (for example, after criminal bail is paid the case is disposed of, or the criminal sentence has been served). Federal regulations provide that a jail or prison can hold someone for only 48 additional hours (not including weekends or holidays) based on an ICE detainer. However, jails and prisons frequently violate this 48-hour rule.

### **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 ICE is actively trying to remove them; and (5) sometimes indefinitely, where ICE 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 US, but never admitted legally at a port of entry). Detainees are housed in over 250 county jails, private prisons, and federal facilities nationwide, and are often held with the general criminal population. Immigration detention is supposed to conform with Detention Standards but they are not binding.

Detention transfers occur often from one part of the country to another, without regard for access to family and counsel.

## **Expedited Removal**

A section of 1996 laws used 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. 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 US Immigration and Naturalization Service (INS) began implementing the expedited removal provisions of IIRIRA on April 1, 1997.

## **ICE Agreements of Cooperation with Communities to Enhance Safety and Security (ICE ACCESS)**

Umbrella program through which ICE partners with local law enforcement agencies to target immigrants for deportation. Through its 14 programs (including the Criminal Alien Program, Secure Communities, and 287g), ICE ACCESS tries to ensure immigration enforcement at every point of the criminal justice system, including at arrest, the criminal court, jail, and probation/parole.

## **Illegal Reentry**

A federal offense criminalizing anyone who enters, attempts to enter, or is found in the U.S. after having been deported or denied admission. People who illegally reenter after having been ordered removed for an aggravated felony can face a criminal sentence of up to 20 years in prison.

## **Immigration and Customs Enforcement (ICE)**

The largest investigative arm of the Department of Homeland Security. ICE’s Office of Detention and Removal (DRO) is in charge of identifying, detaining, and deporting noncitizens in the US. ICE deportation officers also prosecute illegal reentry cases, monitor immigrants who are on supervised release, and search for and deport absconders. In 2008, ICE physically deported 385,886 immigrants. In 2009, ICE detained around 380,000 people in about 350 facilities across the country at a cost of more than \$1.7 billion.

## **Institutional Removal Program (IRP)**

Established in 1988 as the Institutional Hearing Program and renamed the Institutional Removal Program in 1996. Under the IRP, immigration agents initiate and complete removal hearings while an immigrant is serving a criminal sentence, so that the person can be

deported more quickly upon completion of the sentence. Under the IRP, hearings happen before an immigration 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, IRP hearings make it even more difficult for immigrants to assert their rights and defenses.

## **Intensive Supervision Assistance Program (ISAP) and the Electronic Monitoring Program (EMP)**

Alternatives to detention that ensure close and frequent contact with someone granted supervised release. A person subjected to these programs typically has to make regular visits to an ICE officer or subcontractor and check in through telephone calls. Many people are also required to wear an ankle bracelet, and are subject to curfew and other reporting requirements. These programs are frequently utilized on people who have final orders of removal but who ICE cannot effectuate deportation against (for example, because of lack of travel documents, or a country’s refusal or inability to accept an immigrant).

## **Lawful Permanent Resident (Green Card 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 “green card” is the identification card for lawful permanent residents, but this status is not lost just because the physical card expires or gets misplaced.

## **National Crime Information Center (NCIC) Database**

Nationwide FBI-operated computerized database, which 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; the legality of this practice is being challenged.

## **Noncitizen**

An individual who was born outside of the US unless the person acquired or derived US citizenship or

naturalized. Noncitizens include green card holders, refugees, asylees, temporary visitors, and the undocumented.

Acquisition of US citizenship occurs when a person is born outside of the US but has a US parent(s) at birth and thus automatically acquires citizenship.

Derivation of US citizenship occurs when a person is born outside of the US to noncitizen parent(s) but automatically becomes a citizen when the person's parent(s) became US citizen(s) while the person is still a minor.

Naturalization occurs when a person is born outside of the US but lawfully immigrated to the US and later goes through the process of applying for citizenship, passing a civics test, and being sworn in.

### **Post-Conviction Relief**

Noncitizens convicted of crimes that affect their immigration status may seek post-conviction relief, ways to remove or alter your criminal conviction so that it does not affect your immigration status.

### **Prosecutorial Discretion**

The authority of the Departments of Justice and Homeland Security to refrain from placing a potentially deportable person in deportation proceedings; suspend or even terminate a deportation proceeding; postpone a deportation; release someone from detention; or de-prioritize the enforcement of immigration laws against someone 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 en masse. Typically, DHS claims to be looking for particular people and then arrests many more that agents happen to encounter. 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 – have complained about misinformation and sloppy and indiscriminate work by DHS agents.

### **Secure Communities**

An ICE ACCESS program that checks a person's fingerprints against both immigration and criminal databases at the time of arrest or booking. If a person is matched to a record indicating some immigration history, ICE and the jail are automatically notified. ICE then decides what enforcement action will be taken, including whether a detainer will be issued. The process from fingerprint submission to issuance of a detainer takes approximately 4 hours. ICE enters into agreements with the State Identification Bureaus, which process fingerprints and then provides Standard Operating Procedures to the police and jail. By January 2010, this program was active in 116 jurisdictions in 16 states. ICE plans to have Secure Communities implemented in every state by 2013.

### **Undocumented**

An informal term to describe noncitizens who 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 green card 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 s/he is considered "documented" for immigration purposes.

### **Vacatur**

The setting aside of a conviction in criminal court. For a vacatur to no longer be a conviction for immigration purposes, it must be for a procedural or substantive defect in the underlying criminal proceeding. ICE can still deport someone for a vacated conviction if the vacatur is for post-conviction reasons, such as rehabilitation or to avoid immigration consequences.

### **Voluntary Departure**

DHS may, in its discretion, allow a person to depart from the US at his or her own expense in lieu of being subject to proceedings. DHS will allow someone no more than 120 days to depart the US. If the person fails to depart, s/he will be subject to fines and a 10 year period of ineligibility for other forms of relief. Immigrants with aggravated felonies are ineligible for voluntary departure.



# IMMIGRATION IN THE BRANCHES OF GOVERNMENT (PARTIAL CHART)



## EXECUTIVE US President & Federal Officers

| DEPARTMENT OF HOMELAND SECURITY (DHS)<br>Secretary Janet Napolitano   |   |  | DEPARTMENT OF JUSTICE (DOJ)<br>Attorney General Eric Holder  | DEPARTMENT OF HEALTH & HUMAN SERVICES (DHHS)<br>Secretary Kathleen Sebelius                                   |
|---|---|--|--|---|
| <b>Customs &amp; Border Patrol (CBP)</b><br>Border patrol and customs at ports of entry (airport, seaport, etc.). Refers deportation cases to ICE.<br><a href="http://cbp.gov/">http://cbp.gov/</a> | <b>U.S. Citizenship &amp; Immigration Services (USCIS)</b><br>Processes applications for adjustment, naturalization, etc. Refers deportation cases to ICE.<br><a href="http://uscis.gov">http://uscis.gov</a> | <b>Immigration &amp; Customs Enforcement (ICE)</b><br>Carries out enforcement actions, issues detainer ("hold") and Notice to Appear (NTA). Decides to detain or release immigrants from detention.<br><a href="http://ice.gov">http://ice.gov</a> | <b>Executive Office of Immigration Review (EOIR)</b><br>Chief Judge Brian M. O'Leary<br><div>Call the EOIR hotline for general information about your deportation case: (800) 898-7180</div> | <b>Office of Refugee Resettlement</b><br>Responsible for placement of unaccompanied children.                 |
|   |   | <b>Detention &amp; Removal</b><br>Has deportation officers assigned to manage each case. Contracts with Bureau of Prisons, private prison companies, and county jails for detention space.   |  |   |
|   |   |  | <b>Immigration Judge (IJ)</b><br>Part of the immigration court system. IJ reviews deportation cases.   | <b>Board of Immigration Appeals (BIA)</b><br>Appeals court of the immigration court system.<br>(703) 305-0289 |



## LEGISLATIVE Congress

|   |   |
|---|---|
| <b>SENATE</b><br>Senator (2 per state)<br><a href="http://www.senate.gov">http://www.senate.gov</a>   | <b>HOUSE OF REPRESENTATIVES</b><br>Congressperson (1 per district)<br><a href="http://www.house.gov">http://www.house.gov</a> |
| <p>Call the Switchboard: 202-224-3121 or 202-225-3121</p> <p>Congress writes and passes laws. Each elected official has:</p> <p><b>Legislative Office (D.C.)</b></p> <p>Immigration Legislative Aide works on public and private bills.</p> <p><b>District Office (Local)</b></p> <p>Immigration Caseworker investigates specific cases, refers matters to DC.</p> <p>Find out who represents your district or state!</p> |   |



## JUDICIARY Federal Judges

|  |  |
|--|--|
| <b>DISTRICT COURT</b><br>Hears habeas corpus petitions challenging detention (including citizenship claims). | <b>CIRCUIT COURT OF APPEALS</b><br>Reviews appeals filed within 30 days of BIA decision, where person challenges that she or he is a noncitizen, deportable or excludable; and appeals of District Court decisions.<br>Many people with convictions are barred from review here. |
| <b>SUPREME COURT</b><br>Reviews Court of Appeals decisions that it chooses to accept.                        |  |

# GOVERNMENT ACTORS DURING DEPORTATION

This is a list of people immigrants are likely to encounter during the deportation process. This is not a complete list. It is a list of people who are often involved in detention or deportation court cases. <sup>1</sup>

## Ice Field Offices And Detention Facilities

| GOVERNMENT ACTOR  | RESPONSIBILITIES:   |
|---|---|
| ICE Deportation Officer (DO)<br>(Each person in removal proceedings or detention is assigned a DO)  | <ul style="list-style-type: none"><li>• They know whether and when an immigrant will be detained, transferred, or deported and may make or be involved in custody determinations.</li><li>• They can deal with complaints about detention conditions, including family visitation, legal access, and medical and mental health services.</li></ul>  |
| Special Agents and other Officers from Detention and Removal Office (DRO) and Investigations Office | <ul style="list-style-type: none"><li>• They arrest and detain immigrants.</li><li>• They begin the deportation process.</li><li>• They gather information and conduct surveillance in preparation for deportations and raids.</li></ul>  |
| Special Agent-in-Charge   | <ul style="list-style-type: none"><li>• They make custody decisions, and at times are in charge of making arrangements for deportation.</li><li>• During specific enforcement actions, a Special Agent-in-Charge may oversee and coordinate with other local agencies.</li></ul>  |
| Officers-in-Charge  | <ul style="list-style-type: none"><li>• They are supervisory officers who may be in charge of a specific facility.</li><li>• They make custody decisions and have the power to respond to abusive detention conditions.</li></ul>   |
| Field Office Directors (FOD)  | <ul style="list-style-type: none"><li>• They are the head honchos who control the direction of their district office and supervise the operations of their region.</li><li>• They supervise ICE employees' custody determinations.</li><li>• They have the power to exercise prosecutorial discretion, including whether to begin removal proceedings and whether to grant deferred action.</li><li>• They have the power to respond to complaints about detention conditions and mistreatment.</li><li>• They can lift ICE detainees.</li><li>• They work with DHS attorneys in deciding whether to appeal an immigration court decision.</li><li>• They plan "special projects," including enforcement actions.</li><li>• They work with Department of Justice attorneys to represent the government in federal appeals.</li><li>• They report to ICE headquarters.</li></ul> |
| Criminal Alien Program Officers   | <ul style="list-style-type: none"><li>• They interview suspected noncitizens in jail to determine if they should be referred for deportation proceedings.</li></ul>   |

<sup>1</sup> It does not include, for example, personnel at the Department of Homeland Security's Citizenship and Immigration Services (CIS) and Customs and Border Protection (CBP), who serve related functions. For example, CIS reviews naturalization, asylum, and adjustment of status application and can issue Notices to Appear (the immigration charging document). More information can be found at <http://www.ice.gov/about/dro/contact.htm>.

## ICE HEADQUARTERS

### Government Actor

Officials at ICE headquarters in Washington, D.C.



### Responsibilities:

- The current ICE Assistant Secretary is **John Morton**.
- All I-9 audits and workplace raids are run by Worksite Enforcement initiative located at ICE headquarters.
- This office is also responsible for 287(g), Secure Communities, and Criminal Alien Program agreements and detention.
- This office is the headquarters for Immigration Court Trial Attorneys.
- This office houses the Post Order Custody Review (POCR) Unit. The Unit reviews custody of immigrants who have been ordered removed or deported but whom the government cannot deport (for example, because their country of origin will not accept return). This Unit becomes most directly involved in high-profile indefinite detention cases.

## CUSTOMS AND BORDER PATROL AGENTS

### Government Actor

Customs and Border Patrol (CBP) Agents

### Responsibilities:

- Currently **Alan Bersin** is the Commissioner of U.S. Customs and Border Protection.
- CBP agents monitor all ports of entry (for example, airports, borders, shipping ports) and 100 miles from the border in the interior.
- They conduct interviews of all noncitizens (including green card holders) at ports of entry for purposes of deportation.
- They deport noncitizens in "administrative removals."

## OTHER PARTS OF US GOVERNMENT THAT CONDUCT IMMIGRATION ENFORCEMENT

Office of Refugee and Resettlement (within the Department of Health & Human Services)

- This office handles detention and custody issues of minors, including custody determinations and arrangements.

Department of Immigrant Health Services (DIHS)

- Among other activities, DIHS handles most detainee health issues and may monitor other special health issues in detention centers. For example, DIHS "monitored" pregnant women who were arrested and detained after a raid in Maryland. Sometimes, ICE uses private medical contractors.

Federal and local enforcement agencies

- Other federal and local agents often coordinate with ICE (for example from Social security, FBI, US Marshals, local police, probation, parole, and others.)



## OFFICIALS INVOLVED IN IMMIGRATION COURT CASES

|  |  |
|--|--|
| Trial Attorneys or Office of Chief Counsel (TA or OCC) Attorneys | <ul style="list-style-type: none"><li>These are Department of Homeland Security (DHS) employees who represent the government in a removal case, similar to a prosecutor.</li></ul>   |
| Immigration Judge (IJ)   | <ul style="list-style-type: none"><li>These are Department of Justice (DOJ) employees appointed by the Attorney General to the Executive Office of Immigration Review, who “run” immigration courtrooms.</li><li>Immigration Judges decide whether an immigrant is eligible for bond and if eligible, whether to grant bond. They decide whether an immigrant is removable, deportable, or eligible for relief from deportation. They take evidence, including testimony, and read court briefs. They also can order deportation or grant relief from deportation.</li></ul> |
| Members of Board of Immigration Appeals (BIA)                    | <ul style="list-style-type: none"><li>They are DOJ employees appointed by the Attorney General to the Executive Office of Immigration Review.</li><li>They review appeals of decisions made by the IJ and other matters, including motions to reopen immigration cases.</li></ul>  |

## DURING FEDERAL COURT APPEALS OF AN IMMIGRATION COURT DECISION

|  |   |
|--|---|
| DOJ’s Office of Immigration Litigation (OIL)           | <ul style="list-style-type: none"><li>These are the lawyers representing the government in federal appeals regarding detention or deportation cases.</li></ul>  |
| US Attorneys and Assistant US Attorneys (USA and AUSA) | <ul style="list-style-type: none"><li>In most Federal District Court and Court of Appeals cases, OIL represents the government; however, USAs also represent the government in some jurisdictions (for example, the Second Circuit district and appeals courts).</li></ul>              |
| Solicitor General                                      | <ul style="list-style-type: none"><li>When a case goes to the Supreme Court, the Solicitor General usually represents the government.</li></ul>   |
| District Court Magistrate or Judge                     | <ul style="list-style-type: none"><li>These judges decide cases in federal district court, including habeas corpus petitions challenging the detention of individuals.</li></ul>  |
| Courts of Appeals Judges                               | <ul style="list-style-type: none"><li>These judges decide cases in Federal Courts of Appeals, including petitions for review challenging orders of removal and deportation and appeals from federal district courts. This process happens usually in a panel of three judges.</li></ul> |
| Supreme Court Justices                                 | <ul style="list-style-type: none"><li>The nine Justices of the US Supreme Court decide on civil and criminal cases. They generally choose to accept and review a very limited number of cases.</li></ul>  |



# DEPORTATION TIMELINE

| TIME                              | EVENT  |
|-----------------------------------|--|
| 1981-1990                         | <p><b>People Deported:</b></p> <p>213,071<sup>1</sup> (30,630 for criminal or narcotics violations)<sup>2</sup></p>  |
| 1986                              | <p><b>Immigration Reform and Control Act (“Amnesty”)</b></p> <p>Under President Ronald Reagan, Congress passes the Immigration Reform and Control Act (IRCA), eventually giving legal permanent residency to 2.7 million undocumented immigrants who continuously resided in the US since before January 1, 1982, or who were employed in seasonal agricultural work prior to May, 1986. IRCA is a trade-off because it also creates new employer sanctions (penalties) for employers who hired immigrants without employment authorization.</p>   |
| 1986                              | <p><b>Alien Criminal Apprehension Program (ACAP)</b></p> <p>In 1986, the Immigration &amp; Naturalization Service (INS) begins a pilot of the ACAP program. Under ACAP, INS works with local jails to identify immigrants who may be deportable and institute deportation proceedings. Today, this program, known as the <b>Criminal Alien Program</b>, is responsible for identifying almost half of all people in immigration detention and is a core example of the merging of the immigration and criminal justice systems.</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></p> <p>Congress passes and President Bill Clinton signs the “1996 laws,” which replace a largely discretionary system with <i>mandatory detention</i> and <i>mandatory deportation</i>.<sup>3</sup></p> <ul style="list-style-type: none"> <li>• The grounds of deportation expand to include a broad range of minor offenses, including a vast expansion of the term “aggravated felony.” 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, including lawful permanent residents, have no right to prove rehabilitation, family and community ties, and other reasons that they deserve to stay in the US. Immigration judges have no power to grant a pardon from deportation in many cases.</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 and asylum seekers.</li> <li>• The Attorney General gains the power to place asylum seekers and certain immigrants with past convictions into <i>expedited removal</i> – expulsion without seeing a judge.</li> <li>• Deportation becomes a point of no return, with long and sometimes lifetime bars to reentry for those deported. Criminal penalties for illegal reentry are increased.</li> </ul> |
| January, 1997                     | <p><b>Flores Settlement for Minors in Detention</b></p> <p>The federal government settles the <i>Flores v. Meese</i> lawsuit. The agreement establishes minimum standards for the detention, release, and treatment of minors in immigration custody. Among other things, it guarantees basic educational, health, and social services; stipulates that minors should not be detained unless no alternatives are available; and requires that minors who are detained must be placed in the least restrictive setting possible. The <i>Flores</i> class action lawsuit was originally brought by four minors in 1985.</p>  |

| TIME                     | EVENT   |
|--------------------------|---|
| 1997, 1999               | <p><b>Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA) and Haitian Refugee Immigration Fairness Act of 1999</b></p> <p>These acts allow 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>INS v. St. Cyr</i></b></p> <p>The Supreme Court decides 5-4 that long-term green card 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). When the 1996 laws eliminated this pardon, the Justice Department retroactively applied the law in order to force the deportation of thousands of green card holders with old crimes, even if the crimes were pardonable before the 1996 laws. Today, the Justice Department maintains that people who were unlawfully deported because of their actions cannot return to the US and refuses to apply the decision to people who were convicted after trial (unless a federal court requires it).</p>  |
| June 28, 2001            | <p><b><i>Zadvydas v. Davis &amp; Reno v. Ma</i></b></p> <p>The Supreme Court decides 5-4 that a law permitting indefinite detention would raise serious constitutional issues. The decision indicates that current laws do not authorize the government to indefinitely detain immigrants who have final orders of deportation but are unlikely to be deported. Instead, such detention is limited to a “reasonable period” during which the government can attempt deportation, typically 6 months. The rulings turn on two men: Kestutis Zadvydas, a stateless man born in a German displaced person’s camp, and Kim Ho Ma, whose home country, Cambodia, has no repatriation agreement with the US at the time. In 2003, the US signs an agreement and departs Ma and other Cambodians settled in the US in the wake of the Vietnam War.</p>   |
| Sept 2001 to August 2002 | <p><b>Post 9/11 “Special Interest” Round-Ups</b></p> <p>Shortly after 9/11, the FBI and INS arrest at least 1,200 South Asians, Arabs, and North Africans.<sup>4</sup> Their arrests are marked by heavy-handed tactics of entering into people’s homes at early hours of the morning and carting them away in front of their families to several detention centers in New Jersey and Brooklyn, New York. These men are initially held indefinitely, in secret, without charges, and with their immigration hearings closed to the public. Most are ultimately charged with overstaying visas and minor immigration violations. Others are charged with marriage fraud, illegal reentry, and other relatively low level criminal offenses. The majority of this group is deported. During this time period, the <b>PATRIOT Act</b> and regulations adopted by administration soon after 9/11 gives the government far reaching authority to detain immigrants for extended periods and without charges.</p> |
| December 2001            | <p><b>Operation Tarmac</b></p> <p>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>   |

| TIME             | EVENT   |
|------------------|---|
| January 25, 2002 | <p><b>Alien Absconder Apprehension Initiative (now known as Fugitive Operations)</b></p> <p>This initiative formalizes the Justice Department's hunt immediately after 9/11 for immigrants with old deportation orders. 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> dispositions and warrants. Now, when an immigrant is pulled over by a cop for a traffic violation, s/he could be turned over to DHS and deported within hours or days if his or her name appears in the NCIC – even if this person has citizen family, decades of residency, or property in the US. Many of the estimated 500,000 people with old deportation orders do not know they have been ordered deported and fall into this category. This may be the first time in US history that so many people are fugitives without knowing it.</p>   |
| March 27, 2002   | <p><b>Hoffman Plastic Compounds, Inc. v. NLRB</b></p> <p>Supreme Court rules 5-4 that Jose Castro, a laborer fired unlawfully for union organizing, has no right to back pay – 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>   |
| October 2002     | <p><b>Special Registration (NSEERS program)</b></p> <p>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 and immigration and financial information. Eighty thousand people comply. Of these people, the government tries to deport 14,000. Others face potential criminal prosecution and deportation for special registration non-compliance. "Port of Entry" registration requires this same group of men to be fingerprinted and interviewed whenever leaving or entering the US. The government publicizes this policy only on its website and in the Federal Register. Community institutions take on the burden of educating communities. This program becomes part of the government's post-9/11 persecution, causing entire neighborhoods to leave the country. This program is still in effect.</p> |
| March 1, 2003    | <p><b>Department of Homeland Security Act</b></p> <p>Congress dismantles the Immigration and Naturalization Service (INS) and transfers many of its functions to a Department of Homeland Security (DHS), which is split into enforcement, border patrol and services. The DHS constitutes the largest reorganization of the federal government in 50 years. The immigration courts remain with the Department of Justice.</p>  |
| April 29, 2003   | <p><b>Demore v. Kim</b></p> <p>The Supreme Court upholds mandatory detention – the jailing of a noncitizen during his or her deportation case, regardless of whether s/he is a risk of flight or threat to society, solely because the noncitizen belongs in a blanket category (in this case, immigrants with a past conviction). This case centers on Hyung Joon Kim, a young man who emigrated to the US from South Korea at age 6, became a green card 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." Lower federal courts had decided that such mandatory detention was unconstitutional. This is the first time since Japanese internment during WWII that the Supreme Court upheld the government's right to blanket incarceration.</p>   |

| TIME              | EVENT  |
|-------------------|--|
| October 2003      | <p><b>Operation Predator</b></p> <p>This ICE initiative goes after noncitizens who have finished their sentence for past child sex-related offenses. It uses the same tactics as the Alien Absconder Apprehension 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”; however, its targets include people with low-level convictions for consensual teenage relationships, for which a criminal judge decided they deserve no jail time.</p>   |
| March 2004        | <p><b>Operation Endgame</b></p> <p>This strategic plan from ICE sets out a ten year goal to “remove all removable aliens” from the United States.</p>  |
| 2004              | <p><b>Parole and Probation Raids</b></p> <p>ICE begins to aggressively use probation and parole divisions to lure immigrants for deportation. One early example is a raid in New York, in which 500 officers from New York’s Division of Parole and ICE tag team to identify and detain immigrants who are successfully complying with parole. This raid targets 138 immigrants - most of whom are Black and Latino and many of whom have green cards. Some parole officers call parolees and former parolees, asking them to report for non-routine visits. When they report, ICE arrests them and detains them, often outside the state. Today, probation and parole departments across the country assist ICE in identifying and arresting noncitizens for deportation.</p> |
| November 9, 2004  | <p><b><i>Leocal v. Ashcroft</i></b></p> <p>The Supreme Court unanimously decides that the government was misinterpreting immigration law 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 offenses that require mere accidental or negligent conduct are not “crimes of violence” because this denotes more active violent conduct.</p>  |
| December 12, 2004 | <p><b>Intelligence Bill</b></p> <p>This bill is meant to legislate the recommendations of the 9/11 Commission, but becomes an embarrassing battle when Republicans try to tag on irrelevant immigration provisions. Families of 9/11 victims speak out against the bill, 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 number of border patrol agents 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><i>Clark v. Martinez &amp; Benitez v. Rozos</i></b></p> <p>The Supreme Court decides that the government cannot indefinitely detain “Mariel” Cubans and other “parolees” who have final orders of deportation but cannot be deported (for example, in cases where the country of origin will not accept their return). This extends the rationale in <i>Zadvydas</i> (above) to noncitizens who were never “admitted” into the US.</p>   |
| January 12, 2005  | <p><b><i>Jama v. INS</i></b></p> <p>The Supreme Court decides 5-4 that the government may deport a person to a 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>   |



| TIME                            | EVENT   |
|---------------------------------|---|
| May 11, 2005                    | <p><b>REAL ID Act</b></p> <p>In this act, Congress eliminates immigrants' ability to challenge deportation orders in federal district courts through habeas corpus petitions. Federal appeals must now be brought to the federal Court of Appeals within 30 days. 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' license regulations and deny licenses to undocumented and other immigrants.</p>  |
| December 2005 through June 2006 | <p><b>Immigration "Reform" Part 1 – 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 green card 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 and communities 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 HR 4437. Congressional session ends without adopting either bill. However, Congress does pass legislation authorizing a 700 mile fence along the border with Mexico.</p> |
| December 2006                   | <p><b>Immigration Raids</b></p> <p>The DHS begins a series of raids, including a highly publicized raid in Postville, IA 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, while children are left stranded at schools and day care centers, and communities scramble to respond to the crises. Many immigrants are prosecuted criminally for "identity theft" or other document-related offenses for using false papers to work. Convictions on these charges result in the inability to apply for lawful status.</p>   |
| December 5, 2006                | <p><b>Lopez v. Gonzales</b></p> <p>The 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 the unlawful hyper-enforcement by the government and opens the way for many green card holders to present their individual case 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>   |

| TIME            | EVENT   |
|-----------------|---|
| 2007            | <p><b>Immigration “Reform” Part 2</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 that expand 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 increase detention space, expands deportation for past offenses, and limits 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 the previous year’s S 2261, both bills include bars to legalization that narrow the number of eligible immigrants. All attempts to pass a large scale immigration package fail and are replaced with intermittent attempts to pass pro- and anti-immigrant provisions through piecemeal legislation.</p> |
| August 27, 2007 | <p><b>Hutto Settlement</b></p> <p>ICE settles a lawsuit brought by 26 immigrant children detained at the T. Don Hutto detention center in Taylor, Texas that detains families with children as young as one year old. The settlement, extended two years later, requires ICE to improve conditions, submit to external oversight, and limit the detention of families with recourse to fight deportation. Hutto, managed by the Corrections Corporation of America, is widely exposed as a symbol of the inhumanity of the American immigration detention system, in which guards threaten kids with separation from their parents. Families are in prison cells 12 hours per day, and prison-uniformed children receive one hour of school instruction per day. ICE eventually stops “family detention” at Hutto, but continues to detain children in other detention centers.</p>   |
| October 2008    | <p><b>Secure Communities (S-Comm)</b></p> <p>The DHS implements the Secure Communities program in pilot cities. S-Comm checks the fingerprints of every person who is arrested against DHS databases within hours of arrest or booking. Whenever fingerprints match the record of a record indicating immigration history, ICE decides whether to take enforcement action, such as issuing a detainer. ICE plans to implement S-Comm in every state by 2011 and almost every jail in the country by 2013.</p>   |
| 2009            | <p><b>ICE ACCESS</b></p> <p>President Obama continues to expand President Bush’s ICE ACCESS program, which first rolled out in 2008. DHS and the Obama Administration made clear that they intend to focus heavily on immigrants who have had an interaction with law enforcement, and to insert immigration into every aspect of the criminal justice system, from arrest to completion of criminal process and beyond. ICE ACCESS programs, which include the Criminal Alien Program, S-Comm, 287(g), Operation Community Shield, and Fugitive Operations, emerge as the Administration’s central means to fuse the criminal and immigration systems.</p>   |
| 2009-2010       | <p><b>Immigration “Reform” Part 3</b></p> <p>Once again, Congress takes up immigration legislation. Congressman Guitierrez introduces HR 4321, called CIR ASAP, which includes a legalization program complete with many of the bars in earlier legislation, the DREAM ACT, and the Child Citizen Protection Act (enabling immigration judges to suspend deportation if it would be in the best interest of a US citizen child). But, this bill is considered a marker bill that will not move forward. Senators Schumer and Graham announce their own general “blueprint” for immigration legislation, which appears to focus more on deportation enforcement than legalization. Graham disappears from the picture but a proposal by Senators Schumer, Reid, Menendez, Feinstein, and Durbin emerges – still focusing overwhelmingly on enforcement.</p>  |

| TIME           | EVENT  |
|----------------|--|
| May 3, 2010    | <p><b>Hui v. Castañeda</b></p> <p>The Supreme Court considers whether the family of Francisco Castañeda can sue federal Public Health Service officials for unconstitutional denial of medical care in immigration detention facilities. For almost one year, Mr. Castañeda begged for medical attention for painful lesions that government doctors correctly suspected was cancer, but was refused the recommended biopsy and appropriate treatment. His cancer spread and ultimately killed him. Mr. Castañeda had lived in the US since he was 10 years old, and this lawsuit is brought by his teenage daughter. In May 2010 the Supreme Court unfortunately decides that most government doctors are not personally liable for providing inadequate medical care.</p>  |
| March 31, 2010 | <p><b>Padilla v. Kentucky</b></p> <p>The Supreme Court issues its watershed decision in <i>Padilla v. Kentucky</i>, deciding that the US Constitution requires criminal defense attorneys to advise their clients of immigration consequences of their criminal charges.</p>   |
| April 23, 2010 | <p><b>Arizona Goes Off the Deep End</b></p> <p>Arizona's Governor Jan Brewer signs SB 1070, authorizing local law enforcement to demand proof of immigration status from anyone they have "reasonable suspicion" to believe is undocumented. Among other things, this law makes it a state crime to be in Arizona without lawful immigration status, to fail to carry immigration documentation, and to transport or house an undocumented person. Local and national organizations and many law enforcement officials decry the legislation as a green light for racial profiling and harassment of Latinos and other people of color; a hit on law enforcement resources and community policing efforts; and a hit on an already weak state economy. Comparisons to civil rights abuses by states in the 1960s, South African apartheid, and Nazi Germany devastate Arizona's image.</p> |
| FY1997 - 2008  | <p><b>People Deported Since 1997: 2,672,456</b></p> <p>(851,093 people are deported on criminal grounds or with criminal convictions between FY1999-2008)<sup>4</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 Nancy Morawetz. *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*. (113 Harv. L. Rev. 1936 (2000)). See also Aleinikoff, Martin and Motomura. *Immigration and Citizenship: Process and Policy* (1998). See also Section 440(a) of the INA as revised under AEDPA, and again under IIRAIRA.

<sup>4</sup> Department of Homeland Security, Office of Immigration Statistics, Tables 36 and 37 of *2008 Yearbook of Immigration Statistics*. <http://www.dhs.gov/files/statistics/publications/yearbook.shtm> (accessed April 26, 2010).

## Section 2: THE CURRENT DETENTION AND DEPORTATION SYSTEM

**T**his section provides a more complete picture of the current detention and deportation system.

Here, we share information to understand the system – and tips and strategies to better navigate it.

We begin with a summary of who can be deported and high-risk categories for deportation. Next, we discuss “trigger sites” for deportation – in other words, where Immigration might be most likely to arrest noncitizens.

After that, we present a map of the deportation system to give a bird’s-eye view of the legal process. We then take a closer look at the different components of detention and deportation. Included is a description of the current detention system and a map of detention centers around the country. Because getting out of detention can be critical in helping immigrants fight their deportation cases, we review bond, parole, and alternatives to detention. For those who are forced to remain in detention or face abuse, we include information about how to

report various problems encountered in detention centers and a sample letter of complaint.

We then move on to the legal process of fighting a case in immigration court and beyond. We describe the different types of hearings that occur in immigration court. Following that, we give tips and strategies to help navigate a deportation case, including materials helping someone facing deportation and the key documents to collect. We provide a chart of common forms of “relief” that immigrants can apply for in immigration court to allow them to stay in the US. We end with materials on what happens after an immigration court case is over. We review the financial consequences of deportation, the legal mechanisms to keep fighting a deportation case, and the limited options people might have to come back to the US after getting deported.



*Photo by Mizue Aizeki*

## WHO CAN BE DEPORTED?

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

### Immigrants With Past Conviction (Including Green Card Holders)

Immigrants with certain convictions can be deported, barred from adjusting their status to lawful permanent residency or prohibited from returning to the US after a trip abroad. This includes:

- Lawful permanent residents (LPRs, or green card holders)
- Asylees and refugees
- People who have been granted withholding of removal or temporary protected status (TPS)
- People who have applied to adjust their status
- People on tourist, student, business, and other visas

The types of convictions leading to deportation are very broad and even include offenses that the criminal judge considered minor enough to warrant no time in jail. This deportation is like a second punishment that usually happens after immigrants finish 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 Immigration and may also affect whether they can adjust their status. This includes:

- *People who “entered without inspection”* – for example, walked across the border without going through Immigration
- *People with old deportation orders* – remember that some people may have old deportation orders, even if they don’t know it – for example, if a green card application was denied and person did not get notice that the government had started a deportation case
- *People who have overstayed a visa*

### Can US Citizens be Deported?

US citizens cannot be deported. However, the government can attempt to take away the citizenship of naturalized citizens if they can show that 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:



## **Everyday Locations: Workplaces, Homes, Streets, Buses, Trains**

In late 2006, Immigration began conducting raids more aggressively. Immigration agents are now boarding Greyhound buses and Amtrak trains in some states (near and away from the border), demanding “status documents,” and arresting those who cannot produce them. They are also arresting people on the streets, in their homes, and at their workplaces. Especially during home raids, Immigration often uses deceptive tactics to get noncitizens to open the doors to their homes (what Immigration will call “consent” to allow them to enter). They also often don’t obtain the proper judicial warrants necessary to legally enter homes and workplaces.



## **Upon Being Stopped by the Police**

Immigrants are now increasingly getting stopped for minor offenses – such as broken tail lights and minor traffic offenses – in communities where the police have decided to take on federal immigration enforcement duties. The police often use these stops to question people about their immigration status and to turn immigrants over to Immigration and Customs Enforcement (ICE).

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. In addition, many jails and prisons participate in the Criminal Alien Program, through which ICE agents interview immigrants at local jails and lodge detainees preventing release from custody. Many also participate in ICE’s “Secure Communities” program, through which fingerprints of all arrest-

ees are sent through a DHS database, flagging people for detainees. Some local governments have also entered into “287(g) agreements” with ICE, which give them authority to enforce certain immigration laws.

Through these policies and programs, green card holders with a past conviction and undocumented immigrants with no convictions may be turned over to ICE even if criminal charges are dropped, or the person is found not guilty of the criminal charges.



## **After Leaving The Country and Trying to Reenter**

At an airport, seaport, or at land borders, Immigration agents may detain noncitizens if they have an old conviction (even a violation or misdemeanor), false papers, no status, or an old deportation order. Green card holders with old convictions are often detained at this trigger site – even if they have traveled outside the US many times since the conviction.

## **When Applying For Citizenship, Adjustment of Status, Asylum, or TPS**

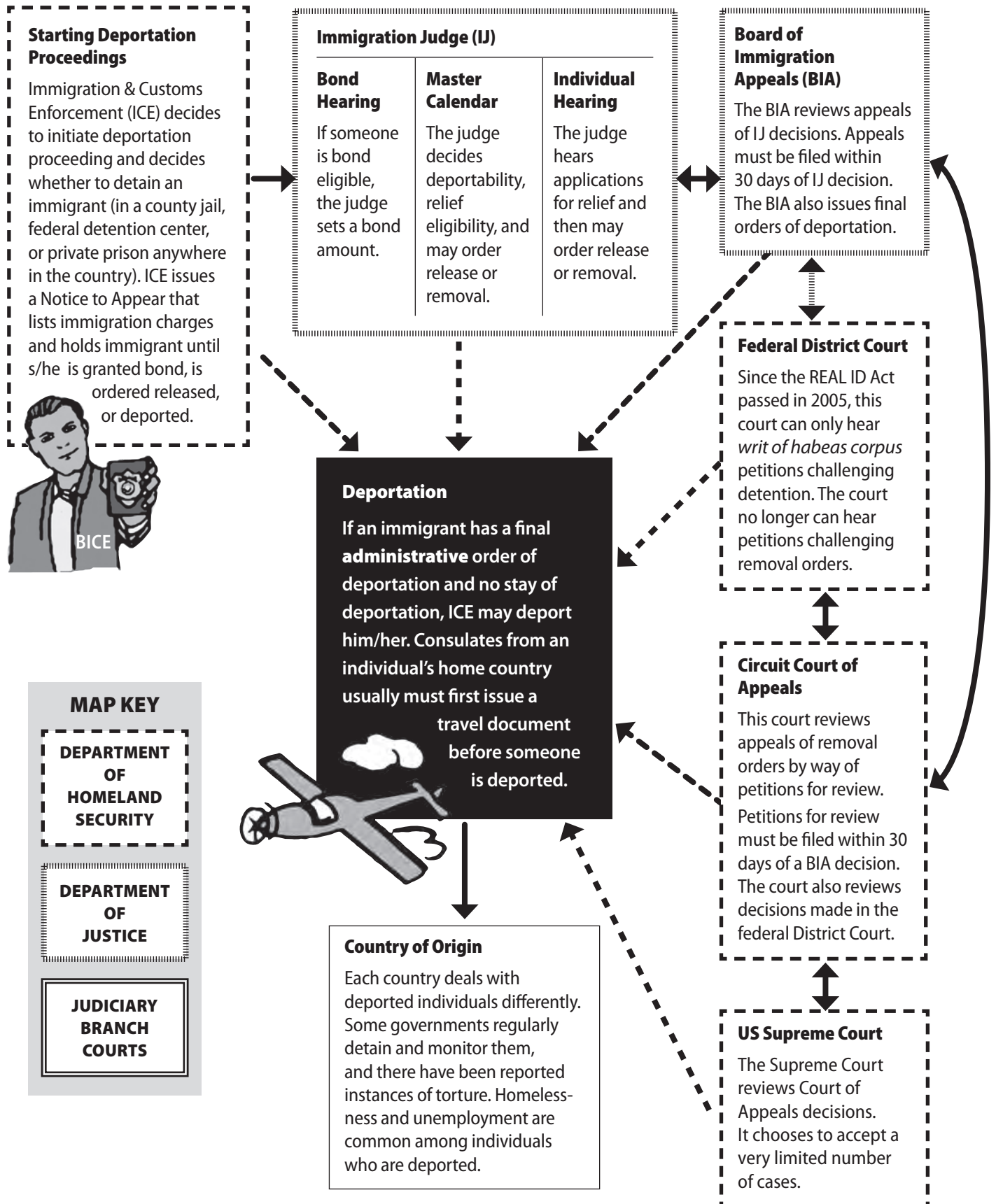
Many immigrants with old deportation orders or past convictions are detained when they apply for legal status or citizenship. Some undocumented immigrants apply for benefits for which they do not qualify (for example, because of bad legal advice, putting them on Immigration’s radar and at greater risk).

## **During or Upon Finishing a Criminal Sentence (including Parole, Probation)**



Immigrants may be sent to ICE during or after completing a jail or prison sentence, or a drug rehabilitation or other alternative program. They may also be sent to ICE while on parole or serving a sentence of probation. ICE officials are increasingly coordinating with probation and parole departments.

# DEPORTATION MAP



# ABOUT THE US DETENTION AND DEPORTATION SYSTEM

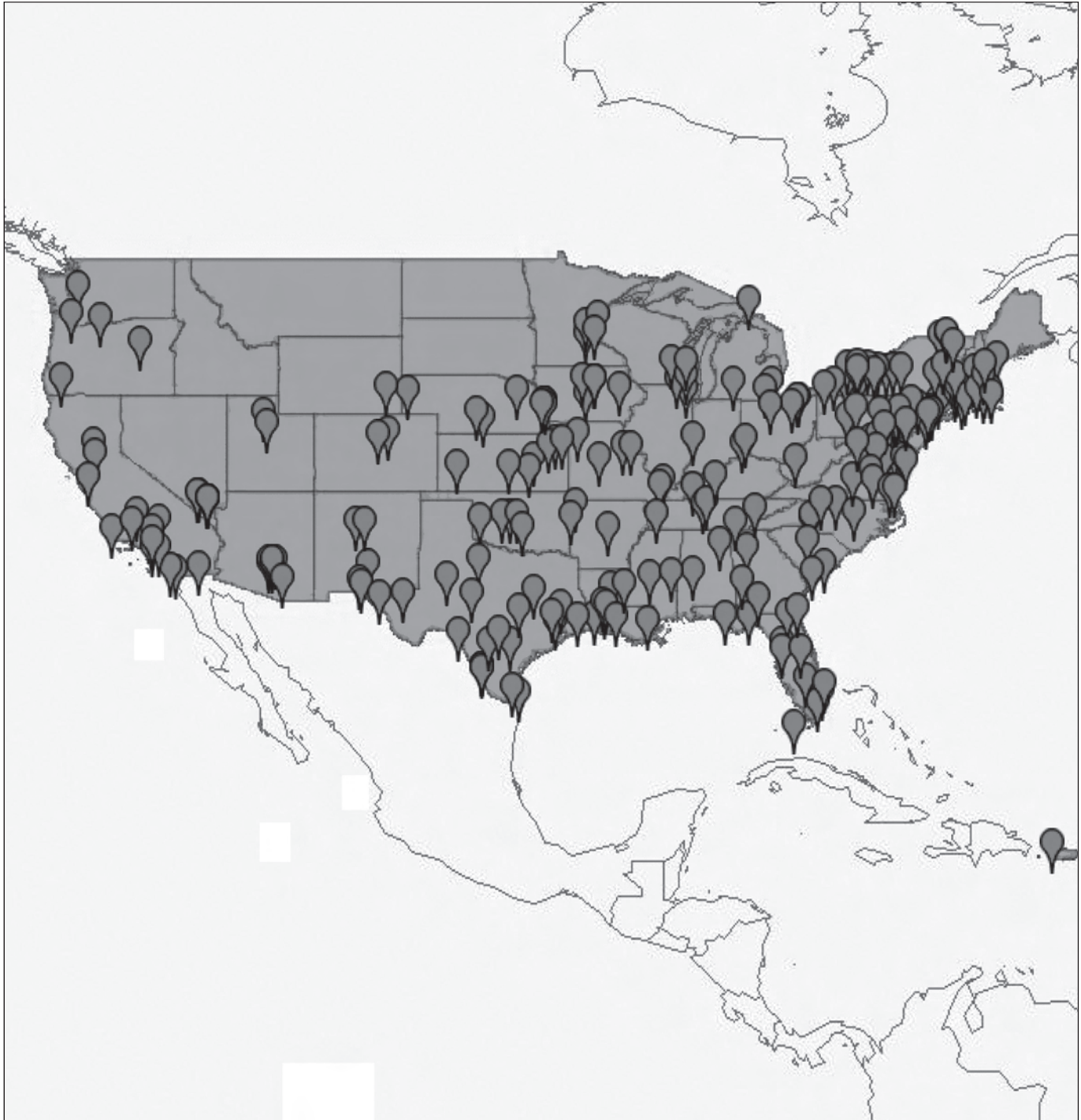


The US government detained approximately 380,000 people in immigration custody in 2009 in a hodgepodge of about 350 facilities, at an annual cost of more than \$1.7 billion.

## Did you know?

- Immigrants in detention include families, undocumented and documented immigrants, people who have been in the US for years, survivors of torture, asylum seekers, pregnant women, children, and individuals who are seriously ill without proper medication or care.
- Being in violation of immigration laws is not a crime. It is a civil violation for which immigrants generally go through a process to see whether they have a right to stay in the United States. Immigrants detained during this process are supposed to be in non-criminal custody. The Department of Homeland Security (DHS) is the agency responsible for detaining immigrants.
- The average cost of detaining an immigrant is approximately \$122 per person per day. Alternatives to detention, which generally include a combination of reporting and electronic monitoring, are effective and significantly cheaper, with some programs costing as little as \$12 per day. These alternatives to detention still yield an estimated 93% appearance rate before the immigration courts.
- Although DHS owns and operates its own detention centers, it also “buys” bed space from over 312 county and city prisons nationwide to hold the majority of those who are detained (over 67%).
- About half of all immigrants held in detention have no criminal record at all. The rest may have committed some crime in their past, but they have already paid their debt to society. They are being detained for immigration purposes only.
- Torture survivors, victims of human trafficking, and other vulnerable groups can be detained for months or even years, further aggravating their isolation, depression, and other mental health problems associated with their past trauma.
- As a result of this surge in detention and deportation, immigrants are suffering poor conditions and abuse in detention facilities across the country and families are being separated often for life while the private prison industry and county jailers are reaping huge profits.

## DETENTION CENTERS IN THE US\*



\* NOTE: This map does not show all of the detention centers in the US. It is meant to give a picture of the places where detention centers are concentrated. This version of the map does not show locations in Hawaii or Alaska. Details for each detention center are at [www.detentionwatchnetwork.org/dwnmap](http://www.detentionwatchnetwork.org/dwnmap)



# GETTING OUT OF DETENTION

## ***How does someone get out of immigration detention?***

These are the some of the ways you can get out of detention.

- 1. Bond:** A bond is an amount of money paid to Immigration and Customs Enforcement (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 US. 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. Sometimes, you can be released on "alternatives to detention," which are programs run by private companies hired by ICE. If you do not comply with the conditions on your release, you may risk being re-detained.
- 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 ("custody redetermination") 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 help from a lawyer experienced in deportation defense.

### **Will 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 by the judge 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. If the government is using your conviction to oppose bond, ask for authenticated criminal conviction documents. Admitting charges may make it harder for you to appeal your bond case later on. 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.

## ***Do not admit to or agree with the government charges in this hearing.***

### **If I am eligible for bond, 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, when 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. An appeal may take a very long time, and some individuals have challenged their detention in cases of prolonged detention.

### **What if the judge granted bond but the government attorney files 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.

### **How do I pay bond?**



Certified or cashiers' checks from banks or US 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 people may have trouble posting bond for themselves if they cannot show where they will live upon release.

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

You will need the detained person's full name, alien registration number, home address, date of birth, and country of birth. To post bond, you must have immigration status. If you want to post bond, ICE may also ask to see your driver 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 more than six months (in most cases) is too long to hold someone in detention after they have been ordered deported.

**I have been transferred to another location. Can I file a bond motion in the place where I was originally detained?**

There are good legal arguments to do this, but the immigration judge may not take the motion. For a practice advisory ("Immigration Court Jurisdiction to Conduct Bond Hearings Regardless Whether DHS Transfers Respondent After the Hearing Request is Filed"), go to [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org).

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

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**WHAT ARE ALTERNATIVES TO DETENTION?**

ICE may select someone to participate in an alternatives to detention (ATD) program. ATD means that someone is released from a jail or prison facility on conditions of supervision, employment verifications, home check-ins, call-ins, or an electronic monitoring device. ICE recently enacted new ATD protocols, specifically Intensive Supervision Appearance Program II (ISAP II), which combined the previous ISAP program and the Extensive Supervision/Reporting (ESR) program operated by a different company.

There are two programs:

- (1) The majority of folks are placed in ISAP II. Behavioral Interventions, Inc. (BI), an ICE contractor, runs ISAP II. BI operates in many cities nationwide. Under ISAP II, pre-trial detainees are not supposed to be on electronic monitors, but if the ICE Deportation Officer (DO) believes that an individual poses a flight risk, they may request the BI case manager to use a GPS monitor pre-trial. The nationwide roll out began in September 2009, so BI is now operational in many new places.
- (2) Electronic Monitoring Program (EMP): ICE manages these programs, which are used for individuals who reside

outside of the 70 mile radius where ISAP II operates. EMP currently utilizes the following technologies for monitoring detainees:

- telephonic reporting with voice verification;
- radio frequency with electronic monitoring devices attached to one's ankle; and
- global position satellite.

EMP uses BI equipment, but BI has no involvement in operating this program.

**How are you selected to be in the alternatives to detention programs?**

ICE always decides who can enter the program. They currently do not use a screening tool, so it is in the discretion of a DO to decide for whom an ATD would be appropriate. A DO can recommend release into an ATD, but it is a supervisor's decision to release under these conditions. Guidance and a screening tool are being developed by ICE headquarters to standardize these decisions, but in the meantime, communication with the individual's DO is critical to negotiating the person's release on this program.

**I have been released on the ISAP ATD program.  
What can I expect?**

You will be referred to the local BI branch. When you are released into the ISAP program you enter the first stage. BI will conduct a basic individual needs assessment to determine how they will monitor you. Generally, you are fitted with an electronic monitoring apparatus – attached to your ankle - that has a global positioning device. Often during the first stage, you are required to report to the BI office 3 times a week, and a representative of BI will visit your residence twice a month without informing you. You will be on a 12 hour curfew and you have to give them a detailed written schedule of your week.

If ICE does not yet have travel documents for you, a BI representative will ask you to provide travel documents to your home country. You may be asked to go to your consulate and apply for a passport, or provide a letter from the consulate stating that they will not issue to travel document at this point in time. Some immigrants state that they have experienced threats and scare tactics by BI representatives.

Often upon giving BI the travel document, you will enter the second stage of the program. The electronic ankle monitor may be taken off, and you may not have a curfew. Your reporting conditions may change to twice per month. The criteria may vary by BI locations and be based on how well you have complied with their terms.

**What is BI required to report to ICE?**

Under its contract with ICE, BI must report any emergency changes in circumstances or when a person fails to check in as required within 24 hours. ICE then decides whether to take action. ICE may increase the conditions of supervision, including requiring that an individual be placed on a GPS ankle monitor.

**What if a person has been on an order  
of supervision after being ordered removed?**

The default ISAP II program model contemplates use of a GPS monitor for all new ISAP II participants. ICE makes the decision as to who will be enrolled in the ISAP II program after an order of removal. ICE has the authority to enroll any person on an order of supervision in ISAP II and can instruct BI not to use the GPS monitor.

**What if I want to challenge the conditions of release?**

Conditions of release may be challenged to an immigration judge within 7 days. A DO may recommend changes to the conditions of release. Only a supervising DO has the authority to change conditions without judicial action. BI does not have the authority to change the conditions ICE has instructed them to place.

**What if I have complaints about BI?**

All complaints can be raised to the Field Office Director of the ICE office closest to you.

**What if I have complaints about ICE?**

All complaints can be raised to the Field Office Director of the ICE office closest to you.



*Photo by Jason Cato*

# REPORTING PROBLEMS WITH DETENTION CONDITIONS AND DETAINEE ABUSE

Detained immigrants are scattered throughout a network of county jails and prisons, federal detention centers, and private prisons. Detained immigrants regularly report problems accessing legal materials or contacting their loved ones or attorneys because of limited visitation, phone, and mail service; poor food and medical care; and maltreatment by facility staff. Immigrants in detention have the right to demand better standards of care and treatment to ensure their safety and enable them to pursue their legal case. Immigration and Customs Enforcement (ICE) has established National Detention Standards that govern the treatment of immigrants in its custody. (See <http://www.ice.gov/partners/dro/PBND/index.htm>). However, the standards are not regulations – they are merely guidelines and are not enforceable by law. So, the main way to demand that ICE meets its standards is through filing complaints with ICE officials locally and with the national office.

**Detainee Grievance Form:** The American Bar Association (ABA) has instructions for people who want to file complaints regarding detention standards, conditions of confinement, and access to attorneys. You can find the instructions and complaint form at: [http://www.abanet.org/publicserv/immigration/Complaint\\_Processes\\_Immig\\_Detainees.pdf](http://www.abanet.org/publicserv/immigration/Complaint_Processes_Immig_Detainees.pdf)

In addition to poor conditions, detained immigrants may be subject to abuse at the hands of corrections officers and even other inmates. Incidents of abuse have been widely reported over the last 15 years (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 write down the following information:
  - ➡ Date and approximate time of each incident
  - ➡ Names, alien registration numbers (A#s), and inmate numbers of everyone that was assaulted
  - ➡ Names and titles of officer(s) who assaulted the detainee
  - ➡ Names and 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 letter*). 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, ICE Field Office Director, and the Department of Homeland Security Office of the Inspector General (in Washington, DC).
- ➡ 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. *\*\*In many cases it may be better to **not** copy the letter to the press just yet.*
- ➡ **Describe the incident** as documented in bulletpoint 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 detainees from segregation, contacting their attorneys, giving them medical attention, etc.
- ➡ **Request a direct response** in your conclusion (for example, “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) so that you can follow up to make

sure they received it. 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 detainees involved.

- **Encourage the detainees involved to file complaints.** To preserve the possibility of legal action, detainees that face abuse should file written complaints. Complaints should be filed to:

➡ **Officer in Charge of the Facility (OIC) and ICE Field Office Director**

- Each facility *should* have a complaint procedure as outlined in detainee handbook
- Detainees must submit an informal complaint within *five* days of event



- Formal complaint must be within *five* days of event or unsuccessful conclusion of informal grievance. (*See the appendix for local ICE contact information.*)

➡ **Office of Inspector General (OIG) in Washington, D.C.**

- The OIG has jurisdiction over all ICE employees.
- The OIG investigates allegations of abuse, misconduct, and systemic problems.
  - Department of Homeland Security  
Attn: Office of Inspector General  
245 Murray Drive, SW, Bldg 410  
Washington, D.C. 20538  
Ph: 1-800-323-8603/ Fax: (202) 254-4292  
Email: [dhsaighotline@dhs.gov](mailto:dhsaighotline@dhs.gov)

➡ **Office of Professional Responsibility**

- This office has jurisdiction over misconduct by DOJ attorneys and judges (including EOIR). This is useful if you tried to report the incident to a judge or other DOJ employee, and it was disregarded.

- Department of Homeland Security  
Attn: Office of Professional Responsibility  
500 12th St, SW  
Washington, DC 20024

- **Talk to attorneys and legal experts about filing complaints about detention conditions and civil suits for monetary damages.** Suing over detainee abuse is very difficult, and very few lawyers are available to help people sue when they are abused. Nevertheless it can be an option and some detainees have even sued without a lawyer's help (*pro se*)! The following are *some* potential claims.

➡ **Federal Tort Claims Act (FTCA):** FTCA claims can be used by immigration detainees against the *United States* if they were injured due to actions by *federal officers* before or during their detention. A detainee can file an FTCA complaint when a federal officer violates state laws. FTCA complaints may attract interest from private firms because a detainee may obtain monetary compensation.

➡ **Bivens claims** are lawsuits against *individual employees* of the federal government. A detainee may file *Bivens* complaints to obtain money damages to remedy constitutional violations (specifically of 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, or 8<sup>th</sup> amendments). However, if a court has given a decision on an FTCA claim, a detainee is barred from filing a *Bivens* complaint. You cannot bring a *Bivens* lawsuit against a Public Health Service employee for detention abuse or death.

➡ **Section 1983 claims or 1983 complaints** are lawsuits against *individual employees* of the state or local government (e.g. county jail officials) to obtain money damages to remedy constitutional rights violations. Of the three complaints, 1983 complaints are the most complicated and often require the most help from legal experts.



## Sample Letter Reporting Abuse

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**To:** Warden Leroy Holiday, Concordia Parrish Correctional Facility; Field Office Director Craig Robinson, Officers Randall Morton & Marvin McKlesky, Bureau of Immigration and Customs Enforcement; Nancy Hooks; DHS Secretary Tom Ridge

**CC:** American Civil Liberties Union (national and local offices), CLINIC and Loyola School of Law, Associated Catholic Charities, Office of Inspector General at DOJ

**Date:** March 23, 2004

**Re:** Immigration Inmate Patrick B--- (A#-----)

Families For Freedom is an immigrant rights organization that works with immigrant detainees and their family members. On March 18, 2004 we received a letter from inmate Patrick B--- indicating that he was assaulted by correctional officers at Concordia Parrish Correctional Facility II (CPCF). We have also had an opportunity to speak with Mr. B---.

Here is our understanding of the facts:

On March 10, 2004, at approximately 3:30pm, Lieutenant Lyold opened the door of Mr. Patrick B---'s cell and slapped Mr. B--- in the face. Shortly there after, five additional officers (Officers Book, Dhanes, and three others) entered his cell and repeatedly punched and kicked Mr. B--- and dragged him out of the cell. They apparently handcuffed and pepper sprayed Mr. B--- and then put him back in the cell with handcuffs on.

Mr. B--- has sustained severe injuries as a result of this beating. He has pain in his lower back and neck and an inability to see clearly. We also understand that he has up to this point been denied proper medical treatment, and as a result, the pain has moved to his legs. As of today, he continues to have trouble and pain while walking.

Mr. B--- has written to us that he had been smoking in his cell immediately before this incident. He had assumed that smoking was permitted in his cell, as it had been previously. In fact, Mr. B--- reports that officers had often provided him with cigarettes and lights, and continue to do so.

We have also been informed that Mr. B--- was in 24-hour lockdown for three months due to his unwillingness to violate his religious beliefs against cutting his hair and beard. Mr. B--- is a practicing Rastafarian.

We consider it the responsibility of BICE and CPCF officials to contact legal counsel for Mr. B---, if he has one, and his family to discuss this matter.



We understand that Officer Lloyd may have already been suspended. We request confirmation that all officers involved in the March 10<sup>th</sup> event are removed from duties at Concordia Parrish Correctional Facility until an investigation into this matter is completed. We would also like assurances that no punitive actions (threats, arbitrary transfers, etc.) will be taken against Mr. B--- or other inmates by BICE or CPCF officials.

We are extremely concerned about the treatment of immigration inmates at CPCF. We have received reports of other incidents where the rights of immigration inmates may have been violated. Complaints range widely and include assault, lack of prepaid phone cards, lack of access to legal materials, confiscation of personal paperwork, coercion of inmates to violate religious beliefs relating to hair and diet, and segregation if they refuse to do so. In addition, we have been advised of retaliatory transfers from the Federal Detention Center in Oakdale to various Parrish jails, especially CPCF. While we understand and applaud that changes are starting to be made, we would like a clear timeline of your investigation into Mr. B---'s assault and the manner in which you will address the remaining issues.

We have not yet publicized this matter and are awaiting your response. Please contact Families for Freedom at (212) 898-4121 to discuss this matter further. Thank you in advance for your immediate attention to this matter.

# IMMIGRATION COURT

There are three main types of hearings that can happen in immigration court: a bond hearing, master calendar hearings, and an individual hearing (also known as a “merits” hearing).

## **Bond hearings:**

Bond is like bail. It lets you out of immigration custody while your case is in process. Deportation officers and immigration judges can offer bond. In the immigration system, not everyone is eligible for bond. It is important to always ask your deportation officer or an immigration judge for a bond hearing, even if you think you are ineligible.

During the bond hearing you can present evidence to the judge to show that you will comply with the terms of the bond agreement using favorable factors. Examples of favorable factors are: family ties or community ties, your permanent address, and proof of stable employment. (For more information, see the section called “Getting out of Detention: Bond and Parole”).

## **Master calendar hearings:**

Master calendar hearings are generally short and you might have several of them. During master calendar hearings you can let the immigration judge know what you want to do in your immigration case. The judge may set up a schedule to file applications with the court. If you want to fight your

deportation case, you can refuse to admit the immigration charges against you that are listed on the charging document called the Notice to Appear. In addition, you can ask the judge for more time to find a lawyer.

During the master calendar hearing, you might get ordered deported if:

1. You ask to be ordered deported, or
2. You do not have any applications that you can file with the immigration court.

## **Individual hearings:**

If you have an application to file with the immigration court or any relief from deportation available to you, you will return to court for an individual or “merits” hearing. This is your immigration trial.

Immigration and Customs Enforcement (ICE) attorneys and the immigration judge might ask you questions. You can have witnesses testify on your behalf and submit evidence to support your case. The immigration judge will make a decision on whether you should be allowed to stay in the United States. These decisions can be appealed by you or by ICE. Appeals should be filed within 30 days to the Board of Immigration Appeals (BIA).



# HOW TO HELP SOMEONE FACING DEPORTATION

The first step in helping someone with a deportation matter is to ask the right questions about the case.

## Get the right information to get the right help.

**\*ALERT:** Asking these questions requires the ability to keep the responses confidential. If you – as a person, agency, or organization – feel that you cannot keep these responses confidential, you should seriously reconsider asking for the following information.

## What is the person's immigration status?

1. 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 s/he get this status and how?

2. If the person has no legal status, did s/he overstay a visa, or enter the country illegally (via the border or false papers)? When and how?
3. Does the person have an old order of deportation? When did s/he get it and how? Sometimes Immigration orders immigrants deported without them knowing. 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 someone has an old order of deportation is to call the Executive Office for Immigration Review (EOIR)/immigration court:

**STEP 1:** Find the Alien Registration Number (A#). This is on the I-94 card in passports, green cards, work permits, and all other documents from Immigration. It looks like this: A99 999 999.

**STEP 2:** Call 1-800-898-7180. This is the hotline for the immigration court (EOIR).

**STEP 3:** Press "1" for English or "2" for Spanish.

**STEP 4:** Enter the A# and listen for instructions. If the number is in the system, this means that the person had a deportation case at some point.

**STEP 5:** Press "3" to find out if an immigration judge ordered deportation (removal) against the person.

**STEP 6:** If the hotline says the person has a deportation order, s/he should consult a lawyer specializing in immigration deportation before going to any immigration office, leaving the country, or trying to adjust status. People with old orders of deportation may not see a judge and can be deported immediately.

**\*ALERT:** The EOIR hotline number may not contain information about deportation orders that are more than several years old. Some people may also have more than one Alien Registration Number.

## ***What information does the person need to fight the deportation case?***

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Collect the following information about the person facing deportation. The person facing deportation proceedings along with the primary person handling the case should keep a copy of:

- ☐ **Full name** and aliases
- ☐ **“Alien Registration Number:”** This is on most immigration papers, including the I-94 card on your passport, green card, or any other document that Immigration provides. The A# looks like this: A99 999 999. If you do can’t find the A#, try to contact the person’s consulate to see if they have a record of detention that contains the A#.
- ☐ First (or next) **immigration court date:** If you do not know when the court date is, call the Immigration court hotline at (800) 898-7180 and enter the A#.
- ☐ **Date person entered the US** and how (visa, cross border, green card through marriage, etc.)
- ☐ **Criminal record:** You must have a list of the precise criminal convictions (for example, penal law codes). 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 the **Notice to Appear (NTA)** and all other immigration paperwork: if the person has any old orders of deportation, gather the documents related to the old immigration case.
- ☐ **Favorable factors:** collect documents showing that the person facing deportation has family, community ties, and “good moral character.” (See the Favorable Factors sheet in the A.R.M. Case Campaign & Organizing Manual).
- ☐ The person’s **location** (jail, federal detention center, etc.).
- ☐ **Information about family members:** Children, spouses, parents, etc. can be critical. Information about finances can also help.

## ***How do I find someone in immigration detention?***

It often takes weeks to find someone that has just been detained by Immigration and Customs Enforcement (ICE). Because ICE is often unresponsive, families often 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 about the detained person:**

- Full name (including all aliases)
- Date of birth
- A# ("Alien Registration Number"): The A# is on work permits, green cards, and all other document that Immigration provides. It looks like this: A99 999 999.



### **After getting this information, you can take the following steps:**

1. **Contact Immigration and Customs Enforcement Detention and Removal Office (ICE-DRO).** The website provides information about different local ICE-DRO offices. Start with the facilities closest to the arrest location at <http://www.ice.gov/about/dro/contact.htm>. Ask to speak with a supervisory deportation officer or the Field Office Director (head of ICE-DRO). Give them the person'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.*)
2. **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. 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.
3. **Contact the different county detention facilities.** Detention Watch Network (DWN) has created a

map of detention centers and contact information for ICE-DRO offices and legal service providers. See their website: <http://www.detentionwatchnetwork.org/dwnmap>.

4. **Wait for the person to call.** Remove any blocks on your phone for collect calls by calling the phone company. This way s/he has a greater chance of reaching you.

**\*ALERT:** *If you are undocumented or think you might be at risk of deportation but want to visit someone in detention, contact an immigration expert first to see if this may pose a danger to you.*

### ***What should detainees do 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, even without an attorney:

They should know they have the right to **NOT** sign any statements or documents, especially those giving up the right to an immigration hearing in front of an immigration judge. If necessary, they can say they want to speak to a lawyer first.

- ✓ They can request bond or parole from an immigration officer immediately (even if they think they don't qualify). This may help keep them in the state in which they were arrested.
- ✓ If they have an old order of deportation or certain criminal convictions, they will not see a judge and can be deported *immediately*. They should ask for a **Notice of Reinstatement of Deportation Order** or **Final Administrative 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 the jail for a copy of the inmate handbook, detainee handbook, and ICE Detention Standards.
- ✓ If they are able to see an immigration judge but do not have an attorney, they should tell the judge that they 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 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, make sure the lawyer has filed an immigration form with the court and Department of Homeland Security about the lawyer's representation of the detainee. This form is called a G-28, which can be downloaded from <http://www.uscis.gov/files/form/g-28.pdf>. Fax the form to the Deportation Officer immediately. This form may convince the officer to stop the 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 information about medication) travel with them. They should always ask for a receipt for their personal property.

### ***How do I find a good 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 one's case or without knowing anything about an attorney. First, learn as many facts about your loved one, and then approach an attorney.

#### **Here are the TOP 9 tips for identifying and dealing with an attorney:**

1. Stay informed about the immigration case, and do not just rely on the attorney.
2. 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, accidents, business and immigration, s/he is most likely not a deportation specialist.
3. Make sure the lawyer looks at your loved one's Notice To Appear (NTA) before giving advice.
4. Keep the full name and contact information of EVERY lawyer that has ever represented your loved one.
5. 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 orally.

6. File a complaint with the Attorney Grievance Committee immediately if you feel your lawyer wronged you. Find out about the process to make a complaint against a lawyer in your state at the following link: <http://www.lawyers.com/~link.aspx?id=03172A52-0986-4FF3-A73F-110A31EA99DC&z=z>.
7. If your loved one has an old order of deportation and is attempting to adjust status, get written information from your lawyer explaining how s/he will manage to keep your loved one from being deported.
8. If your attorney ever refuses to provide information s/he promises you in writing, send a certified mailed letter to the lawyer outlining the promises s/he made to you and asking for written verification or clarification of those promises.
9. Make sure you and your loved one receive a copy of everything your lawyer files.

### ***What if the detainee has a criminal case?***

- A recent Supreme Court decision (*Padilla v. Kentucky*) makes it mandatory for criminal defense lawyers to advise clients about the immigration consequences of their criminal conviction. Detainees with current criminal cases should ask their lawyers to provide information about the immigration consequences of a conviction *in writing* before pleading guilty. Detainees with convictions might also have opportunities to reopen their criminal cases if they were not advised or misadvised about the immigration consequences – but this can be an extremely complicated process.
- If the detainee faces automatic deportation because of a crime, s/he can consult a criminal immigration attorney about the positives and negatives of vacating, appealing, or reopening the criminal case. This is very complicated, but may be the only way to avoid deportation.

### ***What happens to a detainee's children and property?***

People detained by ICE or at risk of detention 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 ensure that children are not placed into child protection services and that they can travel with the detainee if s/he is eventually deported. A power of attorney can also help detainees control their finances – for

example, by making payments on a mortgage. It helps to do the power of attorney ahead of time and to include it with your immigration papers. It's also helpful to collect children's birth certificates and passports ahead of time. To get a US passport for a 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 the state where the certificates were issued.

### ***What if deportation is imminent?\****

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

Immigrants may be deported immediately if they have exhausted all appeals/legal options. **Immigrants are subject to immediate deportation if:**

1. They are detained because of an old or outstanding order of deportation,
2. An immigration judge orders them deported and they do not appeal the decision,
3. The Board of Immigration Appeals orders their deportation and they do *not* have a stay of deportation in place with any federal court, or a federal court rules against them and they do not have a stay of deportation 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:** Deportation 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, but you can still try to talk to a deportation officer directly. And although deportation officers are often unresponsive and uncooperative or just believe they cannot do anything, **some** may be willing to even help a little if more time is needed (for example, because the detainee is filing court papers or preparing housing arrangements in the home country). If you feel that a person has a particularly compelling case, you can also 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 him/her, and his/her location in the detention system. They can also tell you where the person may go after being deported (for example, the local police station). Before a detainee is deported, you can call the detainee's national consulate to ask for the caseworker that handles deportation. Provide copies of pending litigation to the consulate to show that deportation would be premature because the detainee is awaiting a court ruling, ask them to ensure that the deportation complies with the country's law, and verify that the person being deported is indeed a national of that country.

**\*ALERT:** *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 ICE (Form I-246)



➡ **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 Office Director directly to raise concerns around a deportation. (See the A.R.M. Case Campaign & Organizing Manual for more information).

# KEY DOCUMENTS YOU NEED TO FIGHT YOUR DEPORTATION CASE

The deportation process is extremely complicated. In order to fight your case as effectively as possible, you must have all of the necessary documents. Below is a **partial list** of documents that you may need to help you understand and fight your case. These are basic documents that every person should try to collect, though not every person will have every document. Remember to keep copies of all your documents.

***Make sure anyone helping you fight deportation has a copy of all relevant documents, too!***

## CRIMINAL PROCEEDINGS

- ☐ Indictment
- ☐ Court minutes (especially plea allocution)
- ☐ Complete record of criminal conviction
- ☐ Defense attorney's contact information and retainer agreement(s)
- ☐ Informant agreement
- ☐ Immigration interview paperwork copy
- ☐ Requests to and replies from attorney regarding consequences of criminal convictions
- ☐ Arrest documents and wage/hour investigation papers (if you are a victim of a crime or labor violation)

## DEPORTATION PROCEEDINGS

- ☐ Notice To Appear (NTA) or Order to Show Cause (OSC)
- ☐ Immigration judge decision
- ☐ I-155 Permanent Resident Card (green card)
- ☐ Board of Immigration Appeals (BIA) decision
- ☐ Federal court decision(s)
- ☐ I-94 Arrival/Departure Card
- ☐ All briefs submitted to immigration and federal courts
- ☐ Immigration lawyer's contact information and retainer agreement(s)
- ☐ Previous applications for relief from deportation

- ☐ Relevant correspondence to and from your consulate
- ☐ Evidence of equities (i.e. tax records, rehab certificates, diplomas, letters)
- ☐ Employment Authorization Document (EAD)
- ☐ Immigration arrest warrant(s)
- ☐ Voluntary removal papers

## **DETAINEES/DETENTION ISSUES**

- ☐ Deportation Officer's contact information
- ☐ I-352: Bond paperwork (with ICE or with bonding company)
- ☐ G-28 (Notice of Entry of Appearance)
- ☐ Order of supervision
- ☐ Complaints filed with DHS or the jails you have been in
- ☐ Notice of reinstatement of deportation order (for absconders, re-entrants)
- ☐ Information on Alternatives to Detention (for example, Intensive Supervision Appearance Program—ISAP, G4)

## **POST-DEPORTATION ISSUES**

- ☐ Warrant/Notice of Deportation (listing bars, etc)
- ☐ Power of Attorney
- ☐ Freedom of Information Act (FOIA) paperwork
- ☐ All of the above documents (as relevant to your case)

## **ATTENTION: FOR THOSE WHO THINK THEY MIGHT BE US CITIZENS**

- ☐ Certificate of Naturalization
- ☐ Parents' or Grandparents' Certificate of Naturalization or passport
- ☐ U.S. government issued birth certificate (if you were born in the U.S. or its territories)
- ☐ U.S. issued passport
- ☐ Hospital records showing birth in the U.S.

# FORMS OF RELIEF TO PREVENT REMOVAL

Please note: This chart is not an exhaustive list of all forms of relief and does not provide all of the requirements and bars to the forms of relief discussed. We recommend getting further advice when pursuing any forms of relief. This chart is based on a similar document produced by Bryan Lonagan when he was with the Immigration Law Unit of the Legal Aid Society of New York. Revisions of the chart have been provided by the National Immigration Project, the Immigrant Defense Project, and Detention Watch Network.

| Form of Relief  | Requirements and Bars  |
|---|--|
| <b>Adjustment of Immigration Status</b>                       | <p>In general, an immigrant who has been admitted or paroled and who has an approved petition can adjust status if s/he:</p> <ul style="list-style-type: none"> <li>• Makes an application to adjust,</li> <li>• Is eligible for an immigrant visa and is admissible, and</li> <li>• Has an immigrant visa immediately available.</li> </ul> <p><b>**NOTE:</b> If the immigrant entered without inspection, a petition must have been filed on or before April 30, 2001.</p>   |
| <b>Cancellation of Removal for Lawful Permanent Residents</b> | <p>A green card holder can apply for this waiver in immigration court if s/he:</p> <ul style="list-style-type: none"> <li>• Has continuously resided in the US for 7 years before: (1) commission of a criminal offense that results in him/her being removable, or (2) being served a Notice to Appear,</li> <li>• Has had a green card for at least 5 years,</li> <li>• Has positive factors that outweigh negative factors, and</li> <li>• Has not been convicted of an aggravated felony.</li> </ul>   |
| <b>212(c) Waiver for Lawful Permanent Residents</b>           | <p>A green card holder can apply for this waiver if s/he:</p> <ul style="list-style-type: none"> <li>• Has resided in the US for 7 years,</li> <li>• Pled guilty before April 2, 1996 to an inadmissible offense or a deportable offense referred to in the inadmissibility grounds,</li> <li>• Has not served a term of imprisonment of 5 years or more, and</li> <li>• Has positive factors that outweigh negative factors.</li> </ul>   |
| <b>212(h) Waiver</b>  | <p>A person can waive certain inadmissible offenses if the offense is not a drug offense (unless it is a one-time simple possession of 30 grams or less of marijuana) and:</p> <ul style="list-style-type: none"> <li>• Denial of the person's admission would cause "extreme hardship" to a US citizen or lawful permanent resident spouse, child, or parent</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Inadmissible activities occurred more than 15 years ago and the person is rehabilitated</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• The person is only inadmissible for prostitution-related grounds and the person is rehabilitated</li> </ul> <p><b>**NOTE:</b> If the person is a lawful permanent resident, s/he must not have been convicted of an aggravated felony and must have resided in the US for at least 7 years</p> |



| Form of Relief  | Requirements and Bars  |
|---|--|
| <b>Cancellation of Removal for Non-Lawful Permanent Residents</b> | <p>A person who is not a lawful permanent resident can apply for this waiver in immigration court and secure a green card if s/he:</p> <ul style="list-style-type: none"> <li>• Has been continuously present in the US for 10 years before: (1) commission of an offense that results in him/her being removable on criminal grounds, or (2) being served a Notice to Appear,</li> <li>• Has demonstrated “good moral character” for at least 10 years, and</li> <li>• Can show that his/her deportation would cause “extreme hardship” to a US Citizen or lawful permanent resident spouse, child, or parent.</li> </ul>   |
| <b>VAWA Cancellation of Removal</b>                               | <p>If a person’s spouse or parent is abusive, s/he can apply for this waiver to secure a green card if s/he:</p> <ul style="list-style-type: none"> <li>• Has been continuously present in the US for 3 years,</li> <li>• Demonstrates “good moral character,” and</li> <li>• Is admissible and does not have any aggravated felonies.</li> </ul>  |
| <b>Persecution-Based Relief</b>                                   | <p>These forms of relief are for people who are afraid of going back to their country of origin</p> <p>Asylum – To qualify s/he:</p> <ul style="list-style-type: none"> <li>• Must be unable or unwilling to return based on a well-founded fear of persecution on account of race, religion, nationality, membership in a social group, or political opinion,</li> <li>• Generally must apply within 1 year of arrival to US, and</li> <li>• Must not be convicted of an aggravated felony or a “particularly serious crime”</li> </ul> <p>Withholding of Removal – This form of relief prohibits a person’s removal.</p> <p>To qualify s/he:</p> <ul style="list-style-type: none"> <li>• Must show that his/her life or freedom would be threatened because of race, religion, nationality, membership in a social group, or political opinion, and</li> <li>• Must not be convicted of a “particularly serious crime” or aggravated felonies with an aggregate sentence of 5 years or more</li> </ul> <p>Convention Against Torture – This form of relief prohibits a person’s removal.</p> <p>To qualify s/he:</p> <ul style="list-style-type: none"> <li>• Must show that s/he would suffer severe pain and suffering in the country of origin,</li> <li>• Must show that the pain or suffering would be intentionally inflicted for an illicit purpose by or at the instigation or with the acquiescence of a public official, and</li> <li>• Must show that the pain or suffering would not arise from a lawful sanction.</li> </ul> |
| <b>Special Immigrant Juvenile Status (SIJS)</b>                   | <p>A juvenile can be eligible for SIJS if s/he:</p> <ul style="list-style-type: none"> <li>• Has been deemed to require long-term foster care by a juvenile court OR has been committed to the custody of a state agency due to abuse, neglect, or abandonment, and</li> <li>• Is less than 21 years of age and unmarried at the time the application for SIJS is approved.</li> </ul>   |

| Form of Relief                          | Requirements and Bars  |
|---|--|
| <b>Special Visas (S, T, and U)</b>      | <p>These visas require cooperation by law enforcement.</p> <p>S Visa:</p> <ul style="list-style-type: none"> <li>• For people who provide important information about a criminal or terrorist organization.</li> </ul> <p>T Visa:</p> <ul style="list-style-type: none"> <li>• For victims of trafficking.</li> </ul> <p>U Visa:</p> <ul style="list-style-type: none"> <li>• For people who have suffered substantial harm as a result of being the victim of a crime.</li> </ul>   |
| <b>Temporary Protected Status (TPS)</b> | <p>A person can secure temporary permission to stay in the US and work lawfully if s/he:</p> <ul style="list-style-type: none"> <li>• Is from a designated country (such as Haiti, El Salvador, Nicaragua, and Honduras),</li> <li>• Is admissible, and</li> <li>• Does not have any felonies or 2 or more misdemeanors.</li> </ul>  |
| <b>Voluntary Departure</b>              | <p>A person can get 120 days to leave on his/her own and not get an order of removal if s/he:</p> <ul style="list-style-type: none"> <li>• Does not have any aggravated felonies,</li> <li>• Has not previously been ordered removed, and</li> <li>• Is not an “arriving alien”</li> </ul> <p>If a person requests voluntary departure at the end of removal proceedings, s/he can get 60 days to leave on his/her own if s/he:</p> <ul style="list-style-type: none"> <li>• Has been physically present in the US for 1 year or more, and</li> <li>• Demonstrates “good moral character” for five or more years.</li> </ul> |

## WHAT'S NEXT AFTER IMMIGRATION COURT

After the immigration judge (IJ) makes a decision on your case, you or the Immigration and Customs Enforcement (ICE) attorneys have the opportunity to file an appeal on the decision. Often, once you have your last hearing in immigration court, the rest of the deportation proceeding is a paper process – that is, you will submit motions and file briefs to various places, but more than likely will not return to see a judge, unless your case is remanded from a higher court back to the IJ.

If you are ordered deported in immigration court, you can appeal the IJ's decision to the Board of Immigration Appeals (BIA). The BIA reviews appeals of IJ decisions, reviews motions to reopen or reconsider, and can issue final orders of deportation. Appeals of IJ decisions **must** be filed within 30 days of the decision date.

If the BIA denies your appeal you have 30 days to file a Petition for Review to the federal circuit court of appeals that has jurisdiction over your case. The circuit court that has jurisdiction over your case is based on the location of the immigration court where you were ordered removed. For example, if you are a resident of New York, but the immigration judge ordered deportation on your case while you were being detained in Texas, you must file the Petition for

Review in the 5<sup>th</sup> Circuit Court of Appeals, which has jurisdiction over cases from Texas. But keep in mind that there is only limited review available in federal court.

**PLEASE NOTE:** *Since the REAL ID Act passed in 2005, the federal district courts no longer can hear petitions challenging removal orders. The district court can only hear writ of habeas corpus petitions challenging your custody in detention. Appeals on a writ of habeas corpus decision by the district court can be filed to the federal circuit court that has jurisdiction over your case.*

If the federal circuit court denies your Petition for Review, you have 45 days to file a writ of certiorari to the US Supreme Court. The Supreme Court reviews circuit court of appeals decisions. It only chooses to accept a very limited number of cases.

**Keep in mind:** You may be deported even if you have appeals or petitions pending! You should consider filing a Motion for a Stay of Removal along with any motion to reopen or reconsider or any Petition for Review.



# COMBATING FINANCIAL CONSEQUENCES OF DETENTION AND DEPORTATION

Since 1996, over 2.2 million immigrants have been deported. Hundreds of thousands of families are torn apart each year by the cruel immigration laws of this country. The personal costs of these laws are tremendous. The financial costs can be, too. Here, we'll discuss some of the most common financial challenges related to detention and deportation and how to combat them.

This is not an exhaustive list. Please see Families for Freedom's *Financial Handbook for Families Facing Deportation* for more detailed information on how to fight the negative consequences of detention and deportation at: <http://www.familiesforfreedom.org/>

## 1. Managing Your Bank Account

Managing your bank account needs special attention when you are in detention or deportation proceedings. You may also need to provide proof that is difficult to get a hold of in detention or from abroad. Some banks may try to require you to appear in person to make changes to your account – and that's obviously not possible if you are detained or deported.

Since each bank is different, you will need to call your bank to discuss what steps need to be taken to manage your account the way you want. Here are some things to keep in mind:

- Before you call, plan out what information you need from the bank and the questions you need to ask.
- During the call, do not be afraid to take a minute to think through their answers to your questions, to think through your problem aloud, or to ask follow-up questions. Banks are used to answering routine questions and the help you need may require more elaboration than they are used to.
- Be wary of answers that seem to easy. Sometimes customer service people focus on one part of your question and ignore other important issues you are concerned about. Make

sure all parts of your question get answered in a satisfactory way.

### To manage your accounts, some options include:

- 1) opening a bank account
- 2) turning an existing account into a joint account
- 3) closing your account
- 4) transferring all funds to another account
- 5) keeping your U.S. account and/or
- 6) online banking.

## 2. Maintaining and Protecting Your Credit

Detention and deportation can affect your credit in a number of ways. It may be difficult to pay your bills when you are in detention, fighting deportation, or have been deported. This is true because you might not be working due to detention, your immigration case may interrupt your work, you may be looking for a job in your home country, or you may make significantly less money in your home country. It is

also physically difficult to pay your bills because of the way in which mail works, both in detention and abroad.

Still, you likely want to continue paying your debts. Bills such as mortgages, credit card bills, car payments, or legal payments like child support or restitution unfortunately don't just go away.

### To help maintain your credit, you can:

- Monitor your mail for bills
- Arrange for someone you trust to take power of attorney
- Manage your bank account
- Negotiate with creditors/bill collectors about payment plans

In addition to arranging for your bills to be paid, another common

credit problem that people experience due to detention and/or deportation is identity theft. Some people have been released from detention facilities and won their cases, only

### WHAT IS CREDIT?



Credit allows you to borrow money. Your credit rating grades how responsible of a borrower you are. The credit bureaus are companies that keep track of whether or not you have paid your bills. Based on this information, they rate your credit and share your credit rating with employers, lenders, and banks.

### Three major credit bureaus:

- Equifax (800) 525-6285
- Experian (888) 397-3742
- TransUnion (800) 680-7289

to find that they have had their identity stolen and credit history ruined. While there are many possible explanations for why this happens – officials get access to lots of private information while you are in detention or are being deported, you may have given private information to untrustworthy attorneys or notarios, or relationships with family members might have taken a bad turn – a big contributing factor is the fact that you will not be able to monitor your credit and expenses like you did before. While it is possible to recover from identity theft, it is much easier to monitor and protect yourself before your credit is compromised.

Federal laws explicitly provide consumers with rights as victims of identity theft or fraud. Most importantly, once you report the identity theft, you cannot be held liable for subsequent unauthorized charges. Also, your liability as a victim of identity theft or fraud cannot exceed \$50.

### ***Some ways you can work to protect your credit:***

- Monitor your bank account for fraud and monitor your mail
- Monitor your credit by requesting a free credit report from places like [www.annualcreditreport.com](http://www.annualcreditreport.com) (877-322-8228)
- Put a 90-day or extended fraud alert on your credit file by calling the credit bureaus
- Freeze your credit by contacting each of the credit bureaus
- Dispute charges or accounts
- Cancel a tampered account
- File a complaint with the Federal Trade Commission and/or police



### ***3. Forwarding Your Mail***

If you are in detention or have already been deported, a loved one should monitor your mail for you. If your immigration case is still ongoing, you will usually have a very short amount of time to respond to any notices you receive. You should contact the immigration court and ask them to change your address. But with

the amount of time it takes to receive mail in detention or internationally, deadlines for responding may pass before you even get your mail. That is why monitoring your mail

is your best policy when your case is ongoing. (Also, rather than relying on mail alone, following up directly by phone with the Executive Office for Immigration Review on matters concerning your case is a good idea. The number for Case Information is 1-800-898-7180, or, for persons with hearing impairments, dial 1-800-828-1120.)

When your immigration case is over, you will want to make sure your mail is forwarded to your most current address. Forwarding your mail is important for a number of reasons. First, it is hard to keep up on your finances and other valuable communications when you do not get your mail. Also, as outlined previously, many people in detention and deportation experience identity theft. Identity theft can frequently happen when mail continues to get sent to an old address where other people can eas-

ily steal your identity – and money – using the information from your mail. Go to the U.S. Postal Service website <http://www.usps.com/> to find out about forwarding your mail.

### ***4. Getting Bond Money Back***

Most people have to post a bond in order to get released from detention (“delivery bond”). People also have to post a bond if they receive voluntary departure (“voluntary departure bond”).

The person who posted your bond should get that money back when you are deported or the proceedings against you have ended. You will not get the bond money back; the person who paid it will. If a bail bondsman paid your bond, that money goes back to him, not you.

### ***WATCH OUT FOR BAIL BONDSMEN!***

- Bail bondsmen charge a nonrefundable fee to post bail for your loved ones.
- Bail bondsmen may ask for collateral and may report failure to pay to credit reporting agencies.
- An immigration bond is a contract between the person posting bond and ICE. If you choose to use a bail bondsman, that contract exists between the bail bondsmen and ICE.
- As part of the contract, ICE may contact the bail bondsmen to have the bonded noncitizen appear for a hearing, interview, or removal. You should have an understanding with the bail bondsmen about how s/he will communicate with you if s/he receives such a form! This should be a written agreement!!!!!!



Your bond money will never be returned, however, if you “breach” your bond. Do not breach your bond if you want the person who posted it to get that money back! **Breach includes:**

- Not showing up for an immigration hearing (even one)
- Not showing up at other events where your presence is demanded
- Not departing the US on or before the date specified in the order granting voluntary departure.

On the other hand, the person who paid should get your bond money back when any of the following events occur (provided you have not already breached your bond):

- You win your immigration case (which means you are granted permanent residence or deportation proceedings are terminated)

**NOTE:** *Administrative closure or stay of proceedings do not count*

- ICE takes you back into its custody
- You are deported
- You are issued a new delivery or voluntary departure bond
- You are detained for 30 or more days pursuant, or prior, to a local, state, or federal conviction and ICE is given notice
- You pass away
- You present valid proof of your voluntary departure

### **To get bond back more easily:**

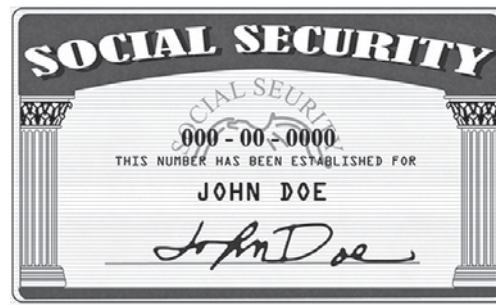
Keep a copy of all of the paperwork you receive that’s related to your bond, including:

- A copy of the completed I-325 Immigration Bond Form
- The completed original I-305 or I-300 Bond Receipt Form

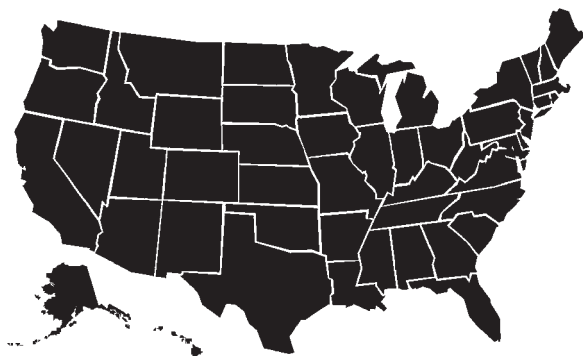
These documents are your proof that the government has made a contract with you and you are owed money.

### **(5) Social Security Benefits**

The Social Security Administration (SSA) runs several government benefits programs, including Social Security retirement benefits, disability benefits, and supplement security income (SSI). Each of these programs has its own set of complicated rules that become even more complicated in the context of detention and deportation. For example, nobody, regardless of citizenship, can receive SSI during periods where they are outside of the US for more than a calendar month. **You should contact the SSA directly to learn specific information about your individual situation: (800)772-1213.**



# CAN I RETURN TO THE US AFTER BEING DEPORTED?



Under the Obama administration, the United States deported over 298,000 people in 2009. This was a 13 percent increase from 2008. Every year, these deportations tear apart thousands of families, communities, and businesses.

Naturally, many people want to return to the communities they were forced to leave behind. Unfortunately, it is very difficult to return to the US after being deported. Many people will never be able to return. In addition, if people who were previously deported return to the US without authorization, they can face strict criminal prosecution and imprisonment.

Still, people who were deported can try to apply to the Department of Homeland Security (DHS) for readmission. Furthermore, families in the United States can begin to collectively pressure the US government by leveraging the power of Congress members and the media, to reunite with their loved ones.

In order to return to the United States after being deported, you must overcome two barriers: First, you must have a basis to apply for permission to come to the US. Second, you 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, you will have to take the following steps:

## ***1. Apply for permission to enter the US***

This step requires that you have a basis for coming back to the US. For example, you might get a family member or employer in the US to sponsor you for a green card. Please note that many people who are deported may never be able to return with a green card, for example people deported due to an aggravated felony conviction.

If you aren’t eligible to apply for a green card, you might still be able to return with a non-immigrant visa. To get a non-immigrant visa, you must prove that you are seeking a temporary visit to the US which relates to a specific non-immigrant visa category. For most non-immigrant visas, you will also have to prove that you do not have “immigrant intent,” which is the intention to permanently live in the US. Because many deportees have strong family, employment, and social ties to the US, you might have to prove that you have equally strong ties to your country of nationality to show that you don’t have “immigrant intent.” Evidence should include a statement of purpose for the visit, round trip tickets, and documents establishing ties to your country of origin. You must meet all of the requirements for the requested non-immigrant visa and prove that you do not have immigrant intent before a consular officer will review any waivers.

## ***2. Determine bars to reentry***

Every person who is deported is barred from returning to the US for a certain number of years. People with criminal convictions have additional bars that prevent admission to the US. You will have to determine which grounds of inadmissibility and bars to entry/reentry apply to you. Some of these bars are summarized in the attached chart.

## ***3. File waivers for bars, if available***

For **each** bar to entry, you will have to file a waiver asking the US government to pardon the ground of inadmissibility or bar to reentry in order to allow you to return earlier than allowed. To return with a green card, you may need to file: **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.

For a non-immigrant visa, you can waive most bars under INA Section 212(d)(3) (including the bar for being ordered removed after a conviction for an aggravated felony). The consulate will consider the following three factors when adjudicating the waiver: 1) the risk of harm to society if you are admitted; 2) the seriousness of your prior immi-

gration law or criminal law violations; and 3) the nature of your reasons for seeking entry into the US. If the consulate recommends the waiver, it will then forward the request to the DHS Admissibility Review Office which will review the waiver using the three factors mentioned above. DHS approves most consular waiver recommendations within 1 - 4 months. There is no specific form or fee necessary to file for the INA Section 212(d)(3) waiver. Nevertheless, you should write a letter addressing the reason for the temporary visit, the three factors listed above, and any evidence bolstering your "good moral character."

***4. In some situations, it may be useful to take additional steps to support your application – for example, through media coverage and political advocacy.***

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You can refer to the A.R.M. Case Campaign & Organizing Manual in this packet for more information on how to tell your story, to highlight your favorable factors, and to work with media and politicians.

For more information, you can check out materials available through Boston College's Post-Deportation Human Rights Project at <http://www.bc.edu/centers/humanrights/projects/deportation.html>.



## ANALYZE ELIGIBILITY FOR READMISSION: COLLECTING DOCUMENTATION

- ☐ Submit **Freedom of Information Act** (FOIA) requests to get copies of your 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. Sometimes all of your files will be mailed to you on a compact disc (CD).
- ☐ Collect all **immigration and criminal records**. Many should be in the immigration file you are requesting through the 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 or Certificate of 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 life. This is a list of all of the positive aspects of your 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 US 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.
- ☐ If applying for a non-immigrant visa, collect all evidence relating to your ties to your home country. This can include birth certificates, marriage certificates, licensing certificates, property deeds, employment contracts, affidavits describing participation in community and religious organizations, school records and diplomas, bank account documents, proof of other assets, etc.

People who have been deported face a number of obstacles in returning to the US. The following charts list bars to reentry 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 US.

### SUMMARY OF BARS TO REENTRY for PEOPLE WHO HAVE BEEN DEPORTED

|  | Bar to Reentry* | Waiver for Immigrant Visa | Waiver for Non-Immigrant Visa   |
|--|-----------------|---------------------------|---|
| Unlawful presence in US for less than 6 months                 | No Bar          |                           |   |
| Unlawful presence in US for over 6 months and less than 1 year | 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. |
| Unlawful presence in US for one year or longer                 | 10 years        |                           |   |
| Ordered removed on inadmissibility grounds                     | 5 years         | Yes. Form I-212.          |   |
| Ordered removed on deportability grounds                       | 10 years        |                           |   |
| Ordered excluded/deported under pre-1996 laws                  | 10 years        |                           |   |
| Ordered removed two times                                      | 20 years        |                           |   |
| Failed to attend removal hearing                               | 5 years         | Probably yes.             |   |
| Ordered removed after a conviction for an aggravated felony    | Permanent       | Maybe.                    |   |

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

### SUMMARY OF SOME COMMON CRIMINAL GROUNDS OF INADMISSIBILITY

A wide range of offenses makes a person inadmissible, or ineligible to be admitted to the US. This is a summary of some of the grounds of inadmissibility, and whether they can be waived.

|   | Waiver for Immigrant Visa  | Waiver for Non-Immigrant Visa  |
|---|--|--|
| <b>Crime Involving Moral Turpitude (CIMT)</b><br>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 were more than 5 years before application for admission. | <b>212(h) waiver available.</b> 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 (for example, espionage). |
| <b>2 or more offenses of any kind, for which you received total sentences of 5 years or longer</b>  |  |  |
| Prostitution, commercialized vice   |  |  |
| Drug offense  | 212(h) waiver available only for single conviction for simple possession of 30 grams or less of marihuana. Form I-601.   |  |



## Section 3: ICE IN THE CRIMINAL JUSTICE SYSTEM

**I**n this section,  
we talk about the  
process through

which immigrants who get arrested end up in the detention and deportation system. We call this the criminal-immigration pipeline.

We start off by talking about how this pipeline works – specifically, how Immigration and Customs Enforcement (ICE) works with local police to ensure that immigrants in the criminal justice system get funneled straight into deportation. Most typically, we explain, this happens through Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) programs that ICE enters into with local enforcement agencies. We provide an overview of ICE ACCESS. Then we go more in-depth to look at the main ICE ACCESS programs focusing on the criminal justice system: Criminal Alien Program, Secure Communities, and 287(g). We also discuss why these programs are so problematic.

Next we walk through steps of the criminal justice system, from arrest to conviction and beyond. Along the way, we examine the ways in which ICE ACCESS operates within this system. And we look more carefully at detain-

ers, the primary tool ICE uses to snag people into detention and deportation.

Finally, we take a look at why this all matters so much. We examine the different immigration consequences that having a criminal conviction abring and what types of convictions should be avoided (basically, most of them!). We end with a reference chart of the types of criminal convictions that result in deportation and ineligibility for citizenship, and some suggested approaches – from a criminal defense lawyer’s view – to help immigrants stay in the US.



*Photo by Mizue Aizeki*

# THE PIPELINE FROM THE CRIMINAL JUSTICE SYSTEM TO THE DEPORTATION SYSTEM: AN OVERVIEW



The criminal justice system is now the primary pipeline into the deportation system. This is as a result of local and state police now collaborating with Immigration and Customs Enforcement (ICE) on a regular basis. Through Agreements

of Cooperation in Communities to Enhance Safety and Security (ACCESS) programs, police pass on information to ICE about suspected noncitizens in their custody and refer them to ICE for deportation. (See the section on ICE ACCESS programs in this manual.) In the first quarter of 2010, 43 percent of noncitizens in immigration detention had had some kind of contact with the criminal justice system.<sup>1</sup>

Even though immigration laws have long penalized non-citizens with convictions, laws passed in 1996 made deportation a mandatory minimum for both documented and undocumented immigrants who have had almost any kind of conviction. These new enforcement programs have been created to shuttle people from the criminal justice system into the deportation system, creating an airtight pipeline.

The result is that for many immigrants who have ever had contact with the criminal justice system, detention and deportation is now an unfair second punishment. In 2008, 37 percent of deportees were deported because of a criminal charge or conviction.<sup>2</sup>

Find out what kinds of agreements your local or county police department has with ICE so you know when and how ICE targets immigrants in your community through the criminal justice system. It's not always easy to figure out which programs are operating and how – or if there is no program operating but the police still have informal arrangements set up with ICE. Learning as much as you can about how these relationships work is key to being able to challenge them effectively.

1 TRAC Immigration, "Detention of Criminal Aliens: What Has Congress Bought?" <http://trac.syr.edu/immigration/reports/224/>

2 Department of Homeland Security, Office of Immigration Statistics, Tables 36 and 37 of 2008 Yearbook of Immigration Statistics. <http://www.dhs.gov/files/statistics/publications/yearbook.shtm>

## THE FACTS ABOUT ICE ACCESS

### ***What is ICE ACCESS?***

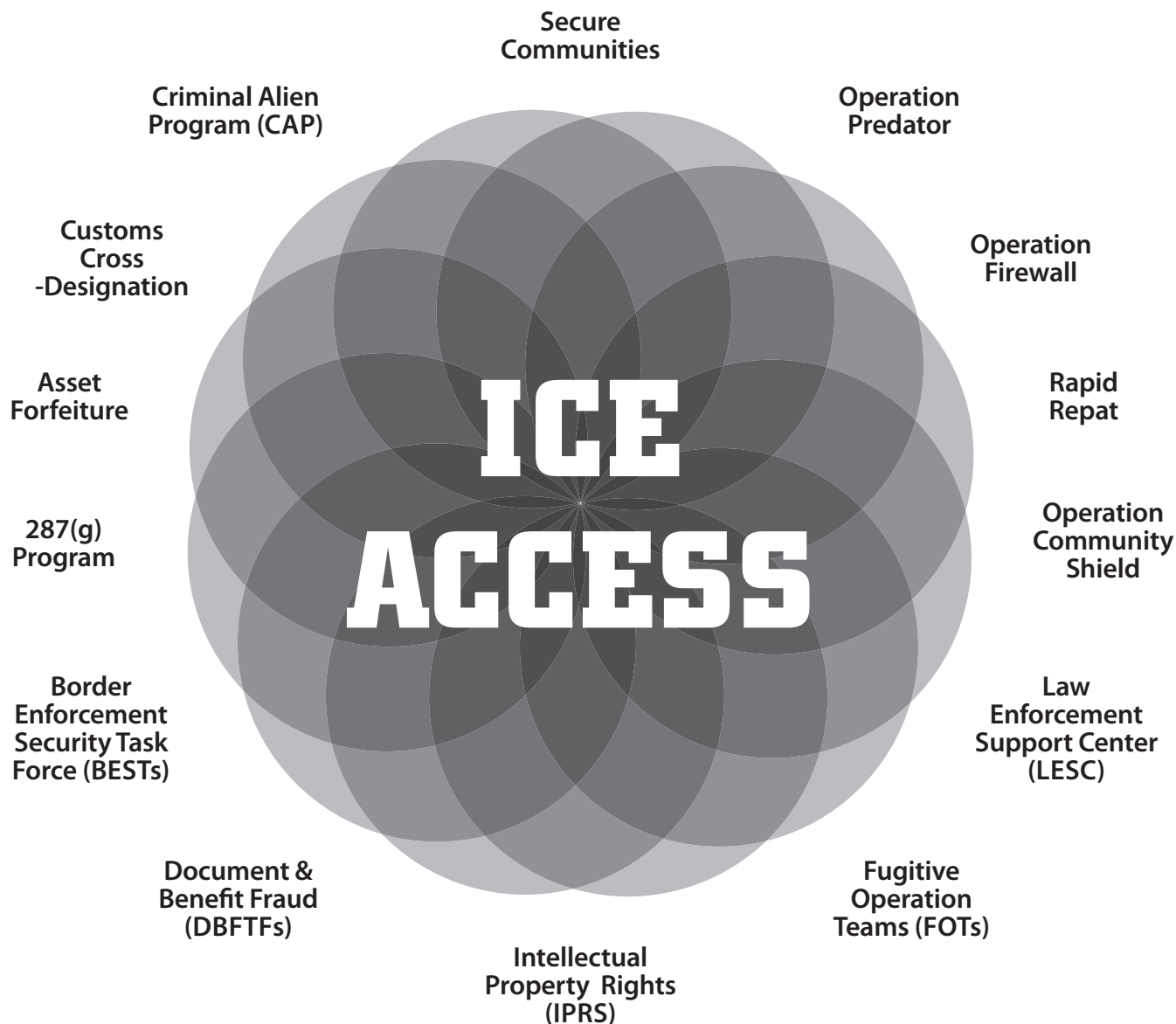
**ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS):**

A series of different programs and services designed to enhance the cooperation of local law enforcement agencies with ICE in enforcing immigration laws.

### ***Incentive for participation in ICE ACCESS?***

- ➡ Equitable sharing in asset forfeiture
- ➡ Increased jurisdiction & legal enforcement authority
- ➡ Increased resources (Advanced Enforcement Technology/ Infosharing)





#### **\*\*287(g) PROGRAM: DELEGATION OF IMMIGRATION AUTHORITY**

Deputizes state and local officers to enforce immigration laws as authorized by section 287(g) of the Immigration and Nationality Act. State, county, and municipal enforcement agencies are cross-designated immigration officers pursuant to memorandums of agreement entered into with ICE and some immigration training.

#### **ASSET FORFEITURE**

Allows ICE agents to seize and forfeit illicit proceeds from criminal organizations. The proceeds of these forfeitures are deposited into the Treasury Forfeiture Fund and help pay for a variety of enforcement operations.

#### **BORDER ENFORCEMENT SECURITY TASK FORCES (BESTs)**

Agencies working cooperatively to identify and dismantle criminal organizations posing threats to border security. BEST teams now appear in Arizona, California, Texas, and Washington with plans to expand to Buffalo, New York.

#### **\*\*CRIMINAL ALIEN PROGRAM (CAP)**

Focuses on identifying noncitizens who are incarcerated in federal, state and local facilities. Secures a person's final order of removal prior to completion of a criminal sentence to avoid his/her release into the community.

## **CUSTOMS CROSS-DESIGNATION**

Section 1401(l) of Title 19 of the United States Code allows for deputizing federal, state, and local officers as customs officers to enforce U.S. customs laws. This cross-designation is available to those who participate in ICE task force operations.

## **DOCUMENT AND BENEFIT FRAUD TASK FORCES (DBFTFs)**

Investigates document and benefit fraud with local, state and other federal agency cooperation. Illicit proceeds are often seized and subject to equitable sharing of asset forfeiture. DBFTFs are located in Atlanta, Baltimore, Boston, Chicago, Dallas, Denver, Detroit, Los Angeles, Miami, New York, Newark, Philadelphia, Phoenix, St. Paul, San Francisco, Tampa, and Washington, DC.

## **FUGITIVE OPERATION TEAMS (FOTs)**

Teams of ICE and state and local enforcement agencies identify, locate, apprehend, process, and remove fugitives. The goal of FOTs is to ensure that the number of noncitizens deported equals the number of final orders of removal issued by immigration courts in any given past, present, or future year.

## **INTELLECTUAL PROPERTY RIGHTS (IPRs)**

ICE's National Intellectual Property Rights Coordination Center enforces laws prohibiting the flow of counterfeit goods into U.S. commerce. The goal is to pursue illegal proceeds derived from the manufacture and sale of counterfeit merchandise.

## **LAW ENFORCEMENT SUPPORT CENTER (LESC)**

Collaboration in which local, state, and federal law enforcement agencies gain 24-hours-a-day, 7-days-a-week access to immigration status and identity information on immigrants suspected, arrested, or convicted of criminal activity. LESC also provides assistance and information to corrections and court systems. ICE makes LESC records available electronically through the Immigration Alien Query screen on the International Justice and Public Safety Network.

## **OPERATION COMMUNITY SHIELD**

Initiated in February 2005 to focus enforcement on violent gangs. ICE uses its broad authority, both criminal and administrative, to conduct investigations and enforce violations committed by alleged gangs and alleged individual gang members.

## **OPERATION FIREWALL**

ICE Financial, Narcotics and Public Safety Division and the U.S. Customs and Border Protection Office of Field Operations, Tactical Operations Division developed a joint Bulk Cash Smuggling (smuggling of bulk currency out of the US) initiative that commenced operations in August 2005.

## **OPERATION PREDATOR**

Program designed to identify, investigate, and deport sex offenders. ICE coordinates with foreign law enforcement in these efforts.

## **RAPID REPAT**

A joint partnership with state and parole agencies to allow for the early release of noncitizens who have non-violent convictions and final orders of removal from state custody to ICE custody in order to effectuate their removal.

## **\*\*SECURE COMMUNITIES**

Program through which ICE assists works with local law enforcement to identify and remove noncitizens held in prisons and jails through information sharing and technology. The cornerstone of this initiative is to share biometric data with federal, state and local enforcement agencies to screen all foreign-born persons in criminal custody.

\*\* For more information about these programs, check out materials like NILC's "Overview of the Key ICE ACCESS Programs: 287(g), the Criminal Alien Program, and Secure Communities." <http://www.nilc.org/immlawpolicy/LocalLaw/ice-access-2009-11-05.pdf>



# Dangerous merger:

Corrupting the criminal justice system for immigration enforcement

*Why pouring billions of dollars into CAP, 287(g), and Secure Communities subverts the criminal justice system, erodes due process, and makes us less safe*

## Questions and Answers:

**What is the connection between immigration enforcement and the criminal justice system?**

Immigration and Customs Enforcement (ICE), the agency within the Department of Homeland Security charged with detaining and deporting immigrants, uses local law enforcement and jails in its enforcement operations. The ICE ACCESS initiative combines 13 programs with the goal of using local criminal justice systems—the courts, jails, and police—to hunt down people deemed to be “criminal aliens.”<sup>1</sup> The Criminal Alien Program (CAP), 287(g) Agreements, and Secure Communities initiative are the three most well-known ACCESS programs used to accomplish this goal.<sup>2</sup> ICE spent over \$1 billion on these programs in FY 2009.<sup>3</sup> FY 2010 funding is projected to be nearly \$1.5 billion.

**The alleged target: “criminal aliens” who commit serious offenses**

- The term “criminal alien” is used to describe any noncitizen who has been arrested or convicted for any criminal offense, regardless of the severity of the person’s crime or whether s/he is undocumented or has lawful immigration status. Under current laws and practices, ICE is classifying increasingly alarming numbers of noncitizens as “criminal aliens.” This “criminal alien” dragnet is being used to indiscriminately target, apprehend, and deport ever larger numbers of noncitizens, including long-time green card holders with U.S. citizen spouses and children. Since Fall 2006, ICE has identified and charged over 450,000 noncitizens through CAP, with increasingly more immigrants charged each year.<sup>4</sup>
- While ICE claims to target serious criminals, the Government Accountability Office in the March 2009 review of the 287(g) program found that ICE failed to meet this goal, and was aggressively focusing on “easier” targets—those who are charged with minor offenses, like shoplifting and even traffic violations.<sup>5</sup>

**How do these programs refer immigrants in the criminal justice system to ICE?**

Local police and jails collect immigration information on all people arrested (e.g. booking or at arrest), share this information with ICE, and allow ICE to interrogate defendants in jail. ICE also encourages local law enforcement officials to use integrated criminal-immigration databases and ICE fingerprint checks. A “detainer,” or an immigration “hold,” is placed on those in custody, preventing their release from jail

ICE

### 287 (g):

Contracts with state and local police and jail officials to enforce immigration laws



### Secure Communities:

Uses technology and databases to identify, detain, and deport “criminal aliens” in federal, state, and local facilities



### Criminal Alien Program:

Relies on jail officials, police, and the courts to identify “criminal aliens” incarcerated within federal, state, and local facilities



## Detainer damage: a misused and mishandled tool

- The immigration “detainer” is the key tool used by ICE to apprehend noncitizens in the criminal justice system. When booked into jail, noncitizens often unknowingly respond to questions about where they were born. The jail provides this information to ICE, who then files a detainer on the person. The detainer permits the jail to detain immigrants beyond their criminal case so that ICE can pick them up for deportation. In Irving, TX, 60% of people who had detainers placed on them were arrested for low-level offenses, such as speeding, public intoxication, misdemeanor assault, and theft.<sup>6</sup>
- Under the law, a detainer only permits a jail to hold the person for a 48-hour period. However, noncitizens frequently remain in jail beyond the 48 hour limit. ICE does not provide proper guidance to jail officials on detainer authority, including the 48-hour limitation or ways to lift the detainer when it is erroneously lodged against someone. ICE detainers mean that noncitizen defendants are being held in jail for much longer periods than citizens. For example, in Travis County, Texas, “the 2007 average length of stay for all non-ICE misdemeanants was 8.2 days. For those ICE detainers with misdemeanor violations, the average length of stay in 2007 was 28 days—this is nearly four times the length of stay for non-ICE inmates.”<sup>7</sup>

and ensuring that they will be released only to ICE. Any suspicion of noncitizen status means the person gets referred to ICE for deportation.

### How effective are these programs?

There are no government regulations or any other procedural mechanisms in place to ensure effective oversight, accountability, or redress.



...continued from previous page

## **Dangerous merger:** Corrupting the criminal justice system for immigration enforcement

*While rounding up “criminal aliens” sounds good, these programs actually subvert the criminal justice system, erode due process, and make us less safe*

### ***There is no immigrant crime wave***

Despite rhetoric that the “criminal alien” population is on the rise, studies show that immigrants commit fewer crimes than native-born citizens, and that a high proportion of immigrants in a neighborhood is associated with lower rates of crime.<sup>8</sup> A California study, a state with more immigrants than any other, concluded the foreign-born are incarcerated at a rate half as high as their presence in the population.<sup>9</sup> According to the latest Justice Department statistics available, noncitizen prisoners accounted for only 5.9% of the combined **federal and state** prisoner population.<sup>10</sup>

### ***Jeopardizes Community Safety***

Increasingly, police departments are targeting immigrants for arrests—often on minor violations—that result in deportation. This diverts resources away from law enforcement’s primary role of promoting community safety. Scholars and police chiefs alike worry that using local law enforcement to pursue immigrants sabotages “sound and well established policing practices.”<sup>11</sup> For example, in Maricopa County, Arizona, where Sheriff Arpaio has shifted resources to controlling illegal immigration, FBI statistics show that violent crime is up by 69%, murder is up 166%, robbery is up 74%, property crime is up 26%, and burglary is up 25%.

### ***Fosters bias against immigrants in our criminal justice system***

Misguided policies against suspected immigrants, legal or undocumented, by judges and our criminal court systems are on the rise. Treating immigrants differently than U.S. citizens in our criminal justice system subverts the core purpose of our legal system to enforce equal treatment of the law. In Harris County, TX, the district attorney who has vowed to fight illegal immigration proposed to bar plea deals for people who refuse to provide citizenship information. This is in violation of state law. State legislatures and judges are abandoning time-tested bail provisions to create blanket no-bail policies for noncitizens with detainees—regardless of the severity of the crime—even though there is “no conclusive research to show that illegal immigrants are more likely than their U.S.-born counterparts to abscond on state charges while out on bail.”<sup>12</sup>

### ***Violates the basic promises of fairness and due process at the core of our legal system***

Long ago the U.S. Supreme Court held that our Constitution requires that people accused of a crime be given the right to remain silent and the right to have a court-appointed attorney to defend these and other due process rights. Under immigration law, immigrants have far fewer due process rights, including no right to an attorney until after they have incriminated themselves, and no right to an appointed attorney ever. Arresting immigrants, locking them up in jail, interrogating them without lawyers, and then using this illegally obtained information to prosecute and deport them is un-American.

### ***The North Carolina case: How 287(g) Increased Racial Profiling***

- With eight active 287(g) agreements, North Carolina has become a national testing ground for programs between ICE and local enforcement. Local police set up roadblocks for the purpose of checking licenses outside of Latino markets on the weekends and on Sundays. They also station themselves at roads that provide access to Latino churches.<sup>13</sup> Johnson County Sheriff Steve Bizzell has stated that “they [immigrants] are breeding like rabbits,” and that they “rape, rob and murder American citizens.”<sup>14</sup> Despite this attempt to link immigrants to violent crime, in one North Carolina county, 83% of immigrants arrested in one month by ICE-authorized police officers were charged with traffic violations.<sup>15</sup> Still, criminal alien programs do not require data collection on race or ethnicity to verify that racial profiling does not exist.



The Immigrant Justice Network is a collaborative formed in 2006 with the Immigrant Legal Resource Center, the National Immigration Project of the National Lawyers’ Guild, the Washington Defender Association’s Immigration Project, and the Immigrant Defense Project to advocate on behalf of noncitizens facing unjust immigration penalties as a result of being entangled with the criminal justice system.

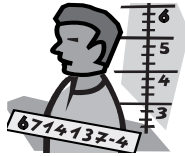


Footnote citations can be found on:  
[http://www.ilrc.org/immigrantjusticenetwork/  
cites\\_dangerous\\_merger.html](http://www.ilrc.org/immigrantjusticenetwork/cites_dangerous_merger.html)

# OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM



**START: POLICE STOP/ARREST**



**BOOKING INTO JAIL AFTER ARREST**



**ARRESTEE IN JAIL (Pre/Post Bail Hearing)**



**BAIL/CUSTODY HEARING**



**CRIMINAL CHARGES & DISPOSITION (plea/trial/dismissal/sentence)**



**POST-CONVICTION (appeal, completion of sentence, release from criminal custody, probation)**

# HOW ICE ACCESS PROGRAMS INTERACT WITH THE CRIMINAL JUSTICE SYSTEM



## START: POLICE STOP/ARREST

- **287(g)** task force officers target noncitizens for civil immigration enforcement
- Police check National Crime Information Center (NCIC) database for immigration law violators
- Police informally question detained people re immigration status, report to ICE



## BOOKING INTO JAIL AFTER ARREST

- Checks in FBI & **Secure Communities** databases to identify noncitizens in system
- **287(g)** Jail Enforcement Teams target arrestees for interviews re: immigration status
- Under **CAP**, ICE gets place of birth and other booking biographic info, which they use to ID noncitizens to interview



## ARRESTEE IN JAIL (Pre/Post Bail Hearing)

- Using info from **Secure Communities** database check or jail interview through **CAP**, ICE or **287(g)** officer issues detainer



## BAIL/CUSTODY HEARING

- Detainer triggers judge to deny bail, OR
- Judge grants bail (usually higher due to detainer). If bail is posted, detainer is triggered and noncitizen goes into immigration custody/ detention and removal proceedings are initiated.



## CRIMINAL CHARGES AND DISPOSITION (plea trial/dismissal/sentence)

- While in custody, ICE or **287(g)** officer conducts initial/ additional interview of noncitizen
- During or shortly subsequent to interview, ICE or **287(g)** officer initiates paperwork for removal process (for example, stipulated removal, NTA, expedited removal, referral for illegal reentry prosecution).

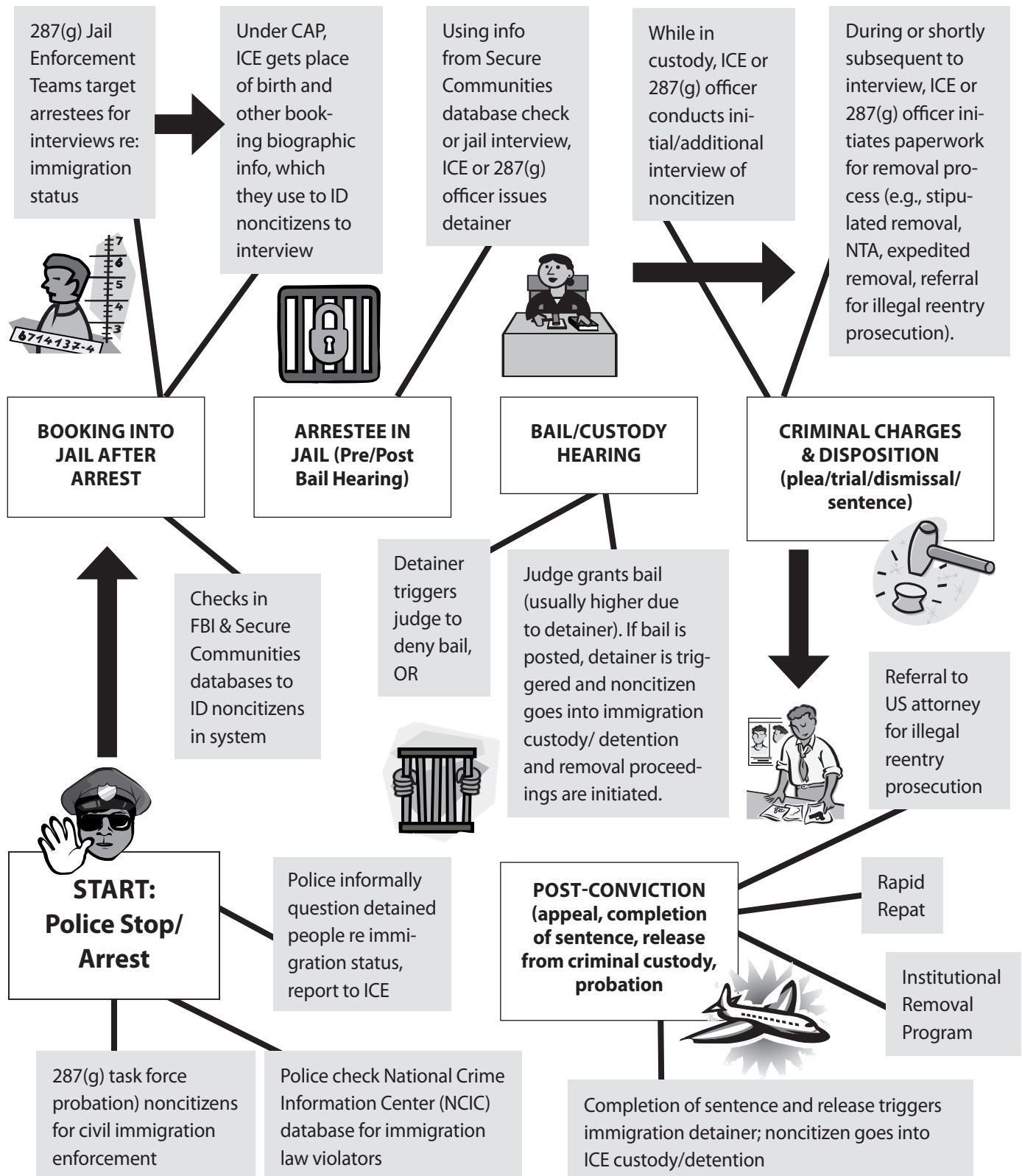


## POST CONVICTION (appeal, completion of sentence, release from criminal custody, probation)

- Completion of sentence and release triggers immigration detainer; noncitizen goes into ICE custody/detention, OR
- Referral to US attorney for illegal reentry prosecution

# HOW ICE ACCESS PROGRAMS INTERACT WITH THE CRIMINAL JUSTICE SYSTEM

(adapted from Washington State Defender Association Immigration Project, National Immigration Project, National Immigration Project of the NLG, and Immigrant Legal Resource Center, Dec. 2009)



## BOOKING AT THE POLICE STATION: KNOW YOUR RIGHTS!

If you are arrested for a crime, you will likely be booked at the police station. During booking, police typically search you, remove your personal property, take your fingerprints, check their computers for outstanding warrants, and ask you questions. Sometimes, officers will swab your mouth for their DNA databases.



Although the purpose of booking is to ensure that the police have the right person in their custody, it is also used to collect immense amounts of information about you that could be transferred to Immigration and Customs Enforcement (ICE). Unfortunately, you are not legally entitled to counsel during this time.

Police, ICE, and Customs and Border Protection (CBP) work closely together behind the scenes, especially during booking. Immigration officers may try to interview you by phone, video or in-person during booking.

### ***Risky encounters during booking:***



- **Fingerprints:** Under many ICE enforcement programs, including Secure Communities, fingerprints taken at booking will now be sent to ICE. If you had contact with ICE before, your information will likely be in the system. As a result, a detainer could be placed on you very quickly.
- **Interviews:** During booking, ICE or CBP officers may try to interview you or may be present in the booking area. Make sure you ask for the identification of whoever is interviewing you. You do not have to answer questions from ICE officers at this time.

- **Booking forms:** Police will ask questions of you to fill out the “rap sheet” or booking forms. The forms typically request place of birth or country of citizenship. Often, jails create lists of people with “foreign places of birth” and send them to ICE.

### ***Your rights during booking:***

- You have the right to **remain silent**. Do not volunteer information about your immigration status.
- You have the right to **not sign documents**. Especially if you don’t understand the documents you are given – even if that includes your booking form – don’t sign them.
- You have the right to **not speak with ICE** at all. Ask for identification from everyone who interviews you to ensure it is the police and, not ICE, that is interviewing you.
- You have the right to **request an interpreter**. If you don’t speak English or don’t speak it well, it is very risky to answer questions that you don’t understand. Remember that interpreters are not your advocates. Advise them to interpret EXACTLY what you say. If you are uncomfortable with your interpreter, wait for your attorney.

**\*ALERT!** *You should know that if you do not answer questions during booking related to your place of birth, the police may not let you get released from jail on bail or on your own recognizance. You may have to wait in jail for a judge to make a decision on your criminal custody.*



# IMMIGRATION IN CRIMINAL COURT

## ***Should I Plead Guilty Or Go To Trial?***

After you are charged with a crime, you're confronted with a difficult 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 your defense attorney, the prosecutor, the judge, and even your family. But it's important to think carefully about your decision because the immigration consequences of your criminal case can be dire. It's also important to find out as much information as you can about your options because judges, prosecutors, and even your criminal defense lawyer might not know much about or care about these consequences.

**\*ALERT!** *The Supreme Court recently issued a landmark decision in **Padilla v. Kentucky**, ruling that criminal defense lawyers are required to provide information about immigration consequences to noncitizen clients. Make sure your criminal defense lawyer gives you information in writing about the immigration consequences of your criminal case before you plead guilty!*

## ***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.) Some public defender offices have immigration experts. Make sure your attorney speaks to them.
- 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 Immigrant Defense Project (IDP) hotline (212-725-6422) or the National Immigration Project of the NLG (NIPNLG) (617-227-9727). IDP and NIPNLG do not represent people in court, but they do their best to return your call quickly and to discuss with you the possible effects of a conviction on your immigration status.
- **Structure your plea** to minimize immigration consequences. Many times, informed and creative pleading can help turn mandatory deportation into a possibility of relief from deportation. It can also help preserve a

green card holder's chance of applying for citizenship. 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.

- Explore whether your state has **dispositions for young people**. Some such dispositions are not considered "convictions" for immigration purposes (although some may become a problem for discretionary forms of relief or where "admitting to a crime" is enough). 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.
- **Consider going to trial** instead of pleading guilty. This is not the best option for everyone, but you may want to consider it if, for example, the evidence against you is weak and/or the prosecutor will not agree to any pleas that will prevent immigration consequences that you do not want to accept.

## ***Informant Agreements***

While in criminal proceedings, you may find yourself in a situation where prosecutors are seeking your cooperation. Sometimes, a prosecutor will offer an immigration benefit in exchange for this cooperation. For instance, a district attorney prosecuting a noncitizen for drug possession may offer to help get a green card or "not to deport" the defendant in exchange for testimony against another defendant. If this happens to you, should you 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 agency (Department of Homeland Security (DHS)) can be held to promises made by a different agency. Some federal courts have held such agreements binding, while others have refused to do so.

### **What can you do to increase the effectiveness of an 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 should 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 lawful permanent resident (LPR, or green card) 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.

## **Post-Conviction Relief**

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### **Direct Appeal**

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

### **Why do a Direct Appeal?**

- In most 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 can enable you to be released from custody or have your removal proceedings terminated. If you lose your appeal and have a final conviction reinstated, the removal proceedings may then be reinitiated, too.

### **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 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 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. 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 (for example, cancellation of removal or deferred action).

# IMMIGRATION IN JAIL

Immigration and Customs Enforcement (ICE) increasingly has a presence at local jails. Many times they will try to interview you before they lodge a detainer (or immigration “hold”) against you.



## Tips during Immigration Interviews

While you are at a local jail, you may be visited by a federal immigration agent, typically from ICE. The agent may ask you questions in order to determine whether you might be deportable. These questions may include your name, country of birth, citizenship, immigration status, age, parents' citizenship, and prior convictions. ***This information will be used to help 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 agent 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 for lying (for example, about your birthplace).

### 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 agent. If you do not have an attorney, say that you want to find one first. If the agent keeps 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, ICE may place a detainer or “immigration hold” on you. The detainer is the primary **tool** used by ICE to facilitate transfers of immigrants from criminal to ICE custody and deportation. A detainer is an ICE request – NOT an order – to the criminal justice agency (such as a jail or prison) to notify ICE before releasing someone.

The detainer, which is issued on a Form I-247, means that when the criminal system no longer has a right to jail you – for example, because you are granted bail, are acquitted, or finish your sentence – the local jail or prison may decide to keep you in custody to give ICE an opportunity to pick you up. This hold can prevent you from participating in some programs and getting some privileges (like work release). It can also result in high bail or no bail getting set.

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

The government may place a detainer on a **noncitizen** in government custody who is inadmissible or deportable. This includes:

- **Absconders** – people with old orders of deportation/removal.
- **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.
- **Lawful permanent residents (green card 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!

NOTE: if you are an absconder, a green card holder with a past deportable offense, or are out-of-status, 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 are the limits of the detainer?

- A detainer is alive for **only 48 hours** after it is triggered (excluding weekends and holidays). So if you are in criminal custody after a lawful arrest, the detainer is triggered when the state has no other reason to hold you. This means the detainer can be triggered when you post bail or are ordered released on recognizance; when the charges are dismissed; when you win your case and get ordered released; or when you complete your sentence.
- ICE detainers cannot be placed on noncitizens or legal permanent residents who are not deportable.
- A detainer does NOT mean that local police or local jails can hold someone for an undetermined period of time.

### What kind of proof does ICE rely on to lodge a detainer?

- Not much. ICE usually uses place of birth information given by jails or in booking sheets as the basis for lodging a detainer. As a result, ICE does make mistakes. They mistakenly place detainers on US citizens or legal permanent residents who are not deportable. Usually, ICE gets information about alienage from interviewing the noncitizen.

### What can I do if there's a detainer against me?

- To help prevent a detainer from getting lodged, don't provide your place of birth information.
- If the government's only basis to hold you is the conviction, then you may want to appeal your conviction.
- After 48 hours, the detainer expires. At that point:
  - You have the right to be released. If you have tried but not been allowed to pay criminal bail, you can try again to pay bail. But be aware that if you pay bail and are later deported, you might forfeit the bail money.
  - You can contact your criminal defense lawyer to let him/her know that you should be released. Have your criminal lawyer check to see if you are deportable. If you are not, your criminal defense lawyer can help you make sure that ICE lifts the detainer.

- You can file a letter with the jail advising them that they must comply with the 48 hour rule. (A sample of such a letter is in the appendix).
- Because you are being held illegally after the 48 hours expire (8 C.F.R. 287.7), you can file for monetary damages for your illegal imprisonment against the jail.
- You can file a state or federal writ of habeas corpus against the facility holding you to get released.
  - Be aware that sometimes, this may just result in ICE finally coming to take you into custody.

**\* ALERT!** *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 challenging a hold longer than 48 hours.*

If you believe your jail routinely violates the 48 hour rule, contact the National Immigration Project of the National Lawyers Guild or the local American Civil Liberties Union in your area.





# IMMIGRATION IN PRISON



Immigration and Customs Enforcement (ICE) focuses their effort on trying to deport people who end up in prison. Generally, people serving more than one year for a crime are in prison. Currently, ICE screens people in every state and federal prison through the Criminal Alien Program to identify immigrants who might be deportable. ICE agents frequently conduct interviews with immigrants in prison, often through video teleconferencing. They then initiate deportation proceedings against these noncitizens while they are still serving their criminal sentence.

## What is the Institutional Removal Program?

The **Institutional Removal Program** (IRP) is a nationwide Department of Homeland Security initiative forcing incarcerated noncitizens into deportation proceedings from within the very prisons to which they are confined. People are forced to defend themselves with little access to legal information or legal assistance.

IRP proceedings in many prisons take the form of “video hearings.” Instead of being in a courtroom, you see a video camera and television monitor from a room within prison. As a result, you are isolated from all other parties, including the judge, ICE prosecutor, the interpreter, witnesses, and sometimes even your own lawyer.

## Objecting to Video Hearings

You can object to a 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 American Immigration Council (formerly AILF) Practice Advisory, “Objecting to Video Merits Hearings” at: [www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org).*





# IMMIGRATION IMPACT OF CRIMINAL CONVICTIONS

## How Might a Conviction Affect Immigration?

### Potential Effects of Conviction

- Triggers deportation and possibly permanent exile from the US
- Can serve as a bar to US citizenship – either for several years or permanently
- Triggers ineligibility to reenter the US after returning from a trip abroad
- Triggers ineligibility to obtain a green card
- Triggers ineligibility for asylum or withholding of removal
- Triggers detention – sometimes mandatorily

## 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 your **current immigration status**. The same offense may have different immigration consequences for undocumented and lawful permanent residents (LPRs, also known as green card holders). There are two main categories of removal - deportability and inadmissibility. Some crimes fit in both categories, while others make you “inadmissible” but not “deportable” and vice-versa.

### Deportability

- This applies to noncitizens who have been “admitted” to the US.
- LPRs who are in the US should focus primarily on avoiding deportability.

### Inadmissibility

- This applies to people who are “seeking admission” into the US.
- People who plan to “adjust status” – in other words, apply for a green card – 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. 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** – Immigration and Customs Enforcement’s Operation Predator aggressively targets 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!***

# Immigrant Defense Project

## Immigration Consequences of Convictions Summary Checklist\*

| <p><b>GROUND OF DEPORTABILITY</b> (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR)—greencard holder)</p>   | <p><b>GROUND OF INADMISSIBILITY</b> (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)</p>  | <p><b>INELIGIBILITY FOR US CITIZENSHIP</b></p>   |  |  |
|--|---|--|--|--|
| <p><b>Aggravated Felony Conviction</b></p> <p>➤ <i>Consequences</i> (in addition to deportability):</p> <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> <p>➤ <i>Crimes covered</i> (possibly even if not a felony):</p> <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> | <p>Conviction or <i>admitted commission</i> of a <b>Controlled Substance Offense</b>, or DHS has reason to believe individual is a drug trafficker</p> <p>➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)</p>   | <p>Conviction or admission of the following crimes bars a finding of good moral character for up to 5 years:</p> <p>➤ <b>Controlled Substance Offense</b> (unless single offense of simple possession of 30g or less of marijuana)</p> <p>➤ <b>Crime Involving Moral Turpitude</b> (unless single CMT 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)</p> <p>➤ <b>2 or more offenses</b> of any type + <b>aggregate prison sentence of 5 years</b></p> <p>➤ <b>2 gambling offenses</b></p> <p>➤ <b>Confinement</b> to a jail for an aggregate period of 180 days</p> |  |  |
|  | <p>Conviction or <i>admitted commission</i> of a <b>Crime Involving Moral Turpitude (CMT)</b></p> <p>➤ Crimes in this category cover a broad range of crimes, including:</p> <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> <p>➤ <i>Petty Offense Exception</i>—for one CMT if the client has no other CMT + the offense is not punishable &gt; 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence &gt; 6 months</p> |  | <p><b>Prostitution and Commercialized Vice</b></p> <p>Conviction of <b>2 or more offenses</b> of any type + <b>aggregate prison sentence of 5 years</b></p>  | <p><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</p> |
|  | <p><b>Controlled Substance Conviction</b></p> <p>➤ EXCEPT a single offense of simple possession of 30g or less of marijuana</p>   |  | <p><b>CONVICTION DEFINED</b></p> <p>A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where:</p> <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> <p><b>THUS:</b></p> <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> |  |
| <p><b>Crime Involving Moral Turpitude (CMT) Conviction</b></p> <p>➤ For crimes included, see Grounds of Inadmissibility</p> <p>➤ One CMT 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)</p> <p>➤ Two CMTs committed at any time “not arising out of a single scheme”</p>  |   |  |  |  |
| <p><b>Firearm or Destructive Device Conviction</b></p>   |   |  |  |  |
| <p><b>Domestic Violence Conviction</b> or other domestic offenses, including:</p> <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>  |   |  |  |  |
| <p><b>INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL</b></p> <p>➤ Aggravated felony conviction</p> <p>➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the United States</p>   |   |  |  |  |
| <p><b>INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL</b></p> <p><b>“Particularly serious crimes”</b> make noncitizens ineligible for asylum and withholding. They include:</p> <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.]

## 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.



## Section 4: ORGANIZING TO FIGHT BACK!

**W**e all know that the legal system doesn't always provide us with the remedies

we need. And, as people who are directly affected by the deportation system, we have firsthand knowledge and experience about how the system tears apart our families. We can use our experience to find the best solutions to transform this broken system. By leveraging



our collective power to develop strategic campaigns to change the current laws and hold our elected officials accountable for any newly proposed legislation, we can ensure that our families stay together and our communities stay strong!

In this section, we talk about what we can all do individually and collectively to fight back against current detention and deportation policies. We begin with Families for Freedom's A.R.M. Case Campaign and Organizing Manual, which lays out specific tools to build the power of individuals and communities to stop deportations and to change the laws. The manual describes key targets and different strategies to fight individual cases.

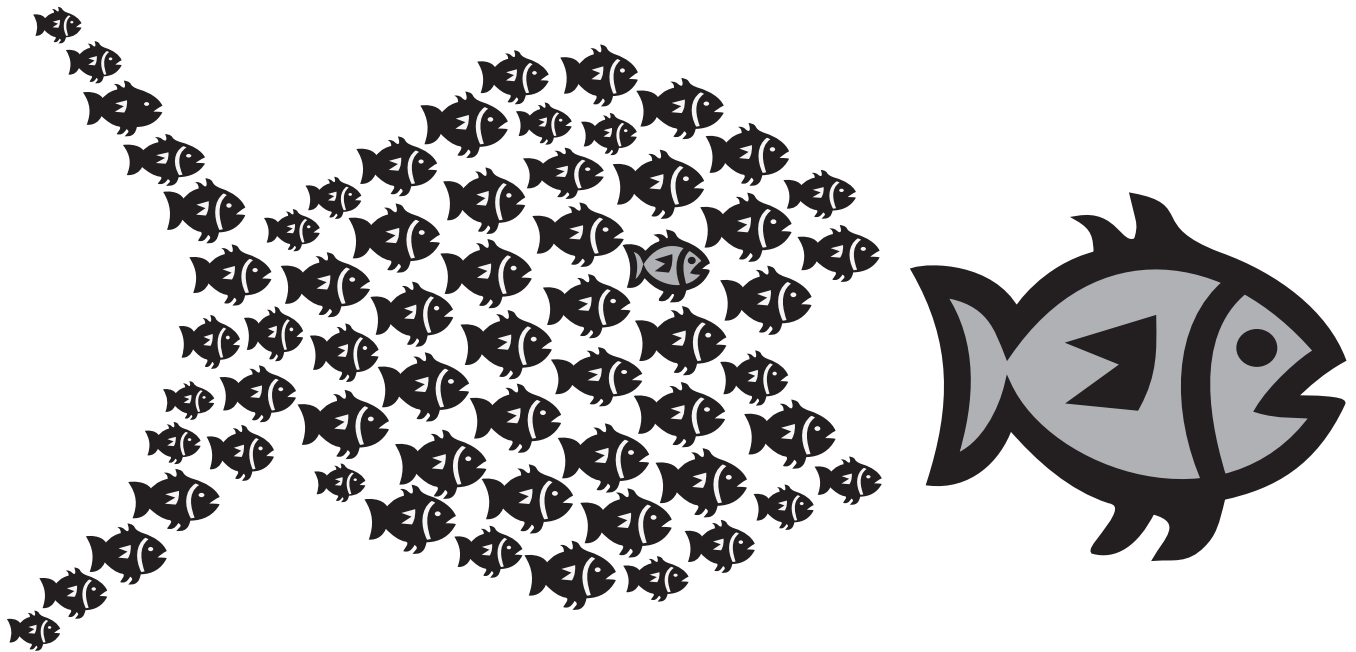
We then provide information about campaigns across the country to respond to ICE detention and enforcement programs. For example, communities in Texas, Georgia and Arizona are partnering with other members of the Detention Watch Network on the "Dignity Not Detention" campaign to stop the expansion of detention nationally. Meanwhile, groups from New Mexico, New York, Washington, D.C., and Florida share the strategies they've employed and their effectiveness in fighting back against ICE collaboration with local law enforcement in their communities.

Finally we share materials from groups that are working to change the laws through new legislation. Families for Freedom and other community-based advocates have developed a national organizing campaign around the Child Citizen Protection Act, a legislative bill that would give discretionary power back to immigration judges in the event that a parent of US citizen children is facing deportation. The New Agenda for Broad Immigration Reform (NABIR) coalition has developed materials in response to recent Congressional debate around immigration reform. In addition, Detention Watch Network, National Immigration Project of the National Lawyers Guild and Rights Working Group have laid out their respective groups' demands for any future immigration reforms, including scaling back deportations and the use of detention and limiting ICE enforcement tactics, in order to ensure due process and human rights for all people.



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# A.R.M. CASE CAMPAIGN & ORGANIZING MANUAL



Assist Ourselves  
Raise awareness  
Make 'em Bleed!

Prepared by Families for Freedom, Inc.

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

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# A.R.M. CASE CAMPAIGN & ORGANIZING MANUAL

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Get help from family, friends, community leaders, and elected officials.

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Give Witness, Gain Religious Support.

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The FFF model: Use your case to involve more families and win local and national policy changes!

## 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. Under the current laws your options are limited. The prosecutors have the final word. And powerful people act as though they are powerless.

**But here's a secret: YOU can build the power needed to win support for your case!**

**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 you and your loved ones with justice. Countless families and leaders have used this how-to guide to build local and national support on their campaign.

**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 manual 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;
- How to build community support on your individual case; and
- How to begin organizing more families directly impacted by deportation.

Today, thousands of people 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!

The ultimate goal of your case campaign is to keep your family safe and together. There are several steps to take along the way to help move you toward this goal. Start with **Step 1** below.

At each point in your campaign, the key is to identify what you want (**your DEMAND**) 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 *demands* and *targets* are discussed in the following section about Prosecutorial Discretion.

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



## **STEP 1: BEFORE YOU BEGIN YOUR CASE CAMPAIGN**

---

- Get all of your documents in order
  - *Find, read and understand all your immigration and criminal paperwork. You can file a Freedom of Information Act request to help you gather your documents.*
- Create a list of specific demands
  - *It is not enough to say you want to keep your family together. For example, 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 and loved ones about the pros and cons of being involved in a case campaign (in other words, openly discussing your case with leaders & the media)**
  - *Know why you are going public and what you want this to accomplish. Not every case campaign requires media attention. 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 and advocacy work compliment each other**
  - *The aims of your legal case should be incorporated into your advocacy work. For example, if you need to get a stay of deportation, use your advocacy strategy to build community support to win this goal.*


## STEP 2: BUILDING YOUR CAMPAIGN

These are examples of primary and secondary targets, tactics and demands to help you reach your campaign goal! Keep in mind, these charts are meant to serve as a guide to help you brainstorm – they are not exhaustive lists.

| Primary Targets   | Possible Tactics   | Demands for your individual case  | Demands that can help you AND other families  |
|---|--|---|---|
|  <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 attention to your case</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> | <ul style="list-style-type: none"> <li>• Ask them to release you from detention</li> <li>• Ask for bond or a reduction in bond amount</li> <li>• Ask for a stay of removal while your case is pending in the courts</li> <li>• Ask for discretionary relief from deportation (<i>See the section on Prosecutorial Discretion for more information</i>)</li> </ul> | <ul style="list-style-type: none"> <li>• Ask them to follow their own regulations. Cite the regulations they have violated</li> <li>• Ask them to exercise their full prosecutorial discretion</li> <li>• Ask them to NOT racially profile</li> <li>• Ask them to take into consideration family concerns before arrests</li> </ul>  <ul style="list-style-type: none"> <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 room with supporters</li> <li>• Letter writing campaign to the court</li> <li>• Demonstrations outside court house</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>• Ask for increased discretion</li> <li>• Ask them to take a stand and support legislative fixes that increase their discretionary power (e.g., CCPA, HR 182)</li> </ul>   |

\* Detainees who organize hunger strikes, petitions, or other forms of protest inside detention are often subject to solitary confinement, transfers to other facilities, and other forms of punishment. Many detainees do these things despite the risk. People on the outside can work in solidarity and assist in ensuring the safety of detainees initiating and engaging in such actions.



| Secondary Targets  | Possible Tactics  | Demands for your individual case   | Demands that can help you and other families   |
|--|---|--|--|
| <ul style="list-style-type: none"> <li>• Congress members and state senators</li> </ul>  <ul style="list-style-type: none"> <li>• City Council members or local government officials</li> <li>• State legislators, state officials, and state agencies (for example, child welfare and domestic violence agencies)</li> </ul> | <ul style="list-style-type: none"> <li>• Congressional visits</li> <li>• Call-ins</li> <li>• Attend congressional press conferences</li> <li>• Co-sponsor a press conference</li> <li>• Ask for public comment or statement</li> <li>• Letter requesting support</li> <li>• Congressional memos to other members of Congress</li> </ul> | <ul style="list-style-type: none"> <li>• Write a letter of support (especially for Prosecutorial Discretion package)</li> <li>• Sponsor a Private Bill (Congress)</li> <li>• Conduct an investigation on a facility or jail</li> <li>• Attend a press conference</li> <li>• Support a pardon (state legislature)</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 or state resolution or ordinance (especially against local enforcement)</li> <li>• Issue a statement denouncing ICE actions</li> <li>• Sponsor legislation</li> <li>• Sponsor local hearings and townhalls</li> <li>• Draft new legislation</li> </ul> |
| <ul style="list-style-type: none"> <li>• Consulates</li> </ul>   | <ul style="list-style-type: none"> <li>• Vigils</li> <li>• Individual meetings with consular officials</li> <li>• Community meetings</li> <li>• Get media attention in ethnic press and local media outlets</li> </ul>  | <ul style="list-style-type: none"> <li>• Help locate detainee</li> <li>• Investigate abuse in the detention facility</li> <li>• Ensure that all international laws are upheld by the U.S.</li> <li>• Ensure people who want to leave are allowed a speedy deportation</li> <li>• Prevent illegal and premature deportations</li> </ul> | <ul style="list-style-type: none"> <li>• Ensure that all international laws and norms are followed</li> <li>• Investigate detention abuse</li> <li>• Help them create protocols to prevent illegal deportations</li> <li>• Ask them to notify nationals of rights once arrested or at risk</li> <li>• Ask them to visit detention centers</li> <li>• Join in class action litigation</li> </ul>  |

| Other Important Targets   | Possible Tactics   | Demands for your individual case   | Demands that can help you AND other families   |
|---|--|--|--|
| <ul style="list-style-type: none"> <li>• Criminal justice players</li> <li>• Judge assigned to your criminal case(s)</li> <li>• Prosecutor</li> <li>• Law enforcement officials (sheriffs, police, departments of corrections)</li> </ul> | <ul style="list-style-type: none"> <li>• Postcard campaigns</li> <li>• Letter to the judge/prosecutor</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 “juvenile delinquents”</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 (child welfare agencies, school principals, etc.), religious institutions, unions, PTAs, etc.</li> </ul>  | <ul style="list-style-type: none"> <li>• Group visits and meetings with agency officials</li> <li>• Letter-writing campaign</li> </ul>                                       | <ul style="list-style-type: none"> <li>• Letter of support</li> <li>• Assist in creating support in the community</li> <li>• Letters documenting hardship to family</li> </ul>   | <ul style="list-style-type: none"> <li>• Join your local New Sanctuary Movement chapter (<i>see Section on NSM</i>)</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> |



Photo by Mizue Aizeki

## ASKING FOR DISCRETIONARY RELIEF

Although the laws are very rigid, the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE) has the ability to exercise its discretion at various stages in your campaign and can stop your deportation. The authority that ICE has to act favorably in a person's immigration case is called Prosecutorial Discretion (PD). It is a legal way of asking ICE 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 in the United States. 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...**

NOT given by courts and judges

NOT a way to obtain legal status (instead, you might get lifelong parole)

NOT a solution for everyone


NOT always more effective with media attention on your case

NOT something you can appeal

Doris Meissner, the former Commission of the INS under President Clinton, wrote a memo on Prosecutorial Discretion outlining when the agency should use it favorably. Although dated and deeply underused, DHS maintains it is still valid. Factors taken into consideration include:

- Your immigration status
- Length of residence in US
- Criminal history
- Humanitarian concerns
- Immigration history
- Likelihood of ultimately deporting the immigrant
- Likelihood of achieving enforcement goal by other means
- If the person is (likely to become) eligible for relief
- Effect of action on future admissibility
- Current or past cooperation with law enforcement
- Honorable US military service
- Community **attention**
- Resources available to DHS
- If interest served by prosecution would not be substantial

**When seeking PD, you have to know exactly what and who to ask. Some examples are:**


| When   | Targets  | Demands   |
|--|--|---|
| <b>Before Removal Proceedings</b><br><br> | Special Agent-in-Charge<br>ICE Field Office Director   | ICE should not conduct arrests or raids or should conduct them in line with X principles and regulations  |
|  | ICE Field Office Director (head of local ICE office)   | ICE should not transfer detainees across the country  |
|  | ICE Field Office Director<br>Other DHS officer authorized to issue a Notice To Appear (NTA)                | ICE should not issue the NTA  |
|  |  | DHS should cancel NTA before it is filed at the Immigration Court   |
|  | District Counsel or Trial Attorney   | Move to dismiss the NTA   |
| <b>In Removal Proceedings</b>  | Field Office Director<br>District Counsel  | Ask DHS for release on bond or parole (when someone is technically not bond eligible)   |
|  |  | Ask to support you in the other type of relief you're seeking before the immigration judge – for example, a Joint Motion to Terminate Proceedings |
| <b>After Removal Proceedings (But Before Removal)</b>  | Field Office Director<br>Detention and Removal Operations-DC (if in detention 180 days after deport order) | Ask for an agency <b>stay of deportation</b> .  |
|  |  | 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 help of City University of New York Immigrant Rights Clinic. Updated: 3/17/10*

# KEY TACTICS

## 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 Congressional offices consider when they see your case. Collect whatever you have. Keep all your documents in one folder.

| FAVORABLE FACTOR   | Supporting Evidence   |
|--|---|
| <input type="checkbox"/> Family ties in the United States<br> | <ul style="list-style-type: none"><li>• copies of family members' naturalization certificates and/or green cards</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 US 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>   |



| FAVORABLE FACTOR                                   | Supporting Evidence  |
|--|--|
| <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 (for example, 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 corrections/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 and phone calls from elected officials (council members, mayors, members of Congress)</li> </ul>   |

## LETTERS OF SUPPORT

Fill the blanks below with the name of the person being deported. Put your name in the last line, and add 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.

### 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 identify your demands and points where members of Congress can help, 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** (DC office).

|   | Senate                          |                                 | House of Representatives        |
|---|---------------------------------|---------------------------------|---------------------------------|
|   | Senator 1                       | Senator 2                       | Congressperson                  |
| <b>Name</b>                                     |                                 |                                 |                                 |
| <b>Immigration Caseworker (District Office)</b> | NAME:<br><br>PHONE:<br><br>FAX: | NAME:<br><br>PHONE:<br><br>FAX: | NAME:<br><br>PHONE:<br><br>FAX: |
| <b>Immigration Legislative Aide (DC Office)</b> | NAME:<br><br>PHONE:<br><br>FAX: | NAME:<br><br>PHONE:<br><br>FAX: | NAME:<br><br>PHONE:<br><br>FAX: |

### 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 a lot for your case. 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 your demands.

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. Bring the legal papers and favorable factors you have gathered to document your case.

### Always ask for responses in writing.

Remember, much of our goal in gathering support is to get decision-makers to 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.

-----

We, the undersigned, stand in solidarity with Mr. XXXX, who is facing removal proceedings by the Department of Homeland Security. Mr. XXXX, a United States resident since 1977, is the father, grandfather, son and brother of several U.S. citizens, an active member of his church, and an important voice for immigrants in his community. The attempt to deport him has already brought hardship to Mr. XXXX and his family, and his removal from the country would be an alarming violation of the principles of family unity. In signing this petition, we voice our support for him and his family and ask that he is granted discretionary relief so that he may remain in the United States with those that love him.

Yours truly,

PRINTED NAME:

ADDRESS:

SIGNATURE:

|       |       |       |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

## 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 points to consider.

### WHY AM I GOING TO THE PRESS?

- To pressure my Congressperson to help me.
- To educate the general public about deportation.
- To educate others at risk about deportation.
- To expose specific people/agencies abusing my loved one.

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

### 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 your story 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 (for example, 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 and 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 (for example, immigration or 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 reporter Lou Im-Aracist only talks about immigrants as "diseased aliens," you **don't** want to call him!

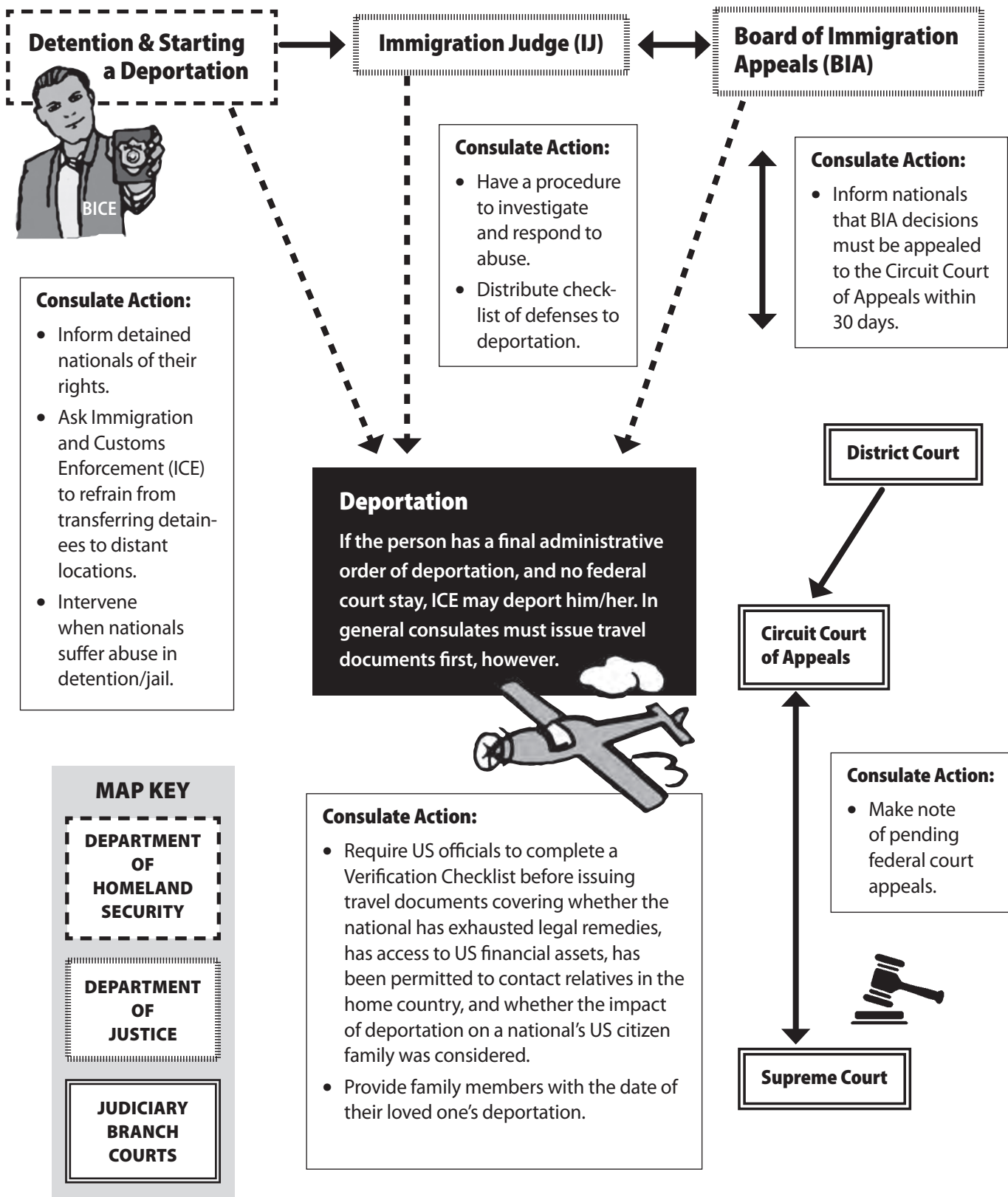
### CALL!



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 to hear from a real person. Keep an organized record of who you spoke with and each conversation. Follow up with them when you say you will.



## CONSULATE INTERVENTIONS MAP



## 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**

#### **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.

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

#### **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.

### **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.

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

## **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 has not been subject to abuses or other rights violations in detention.

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

### **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 the 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 US officials with a *Verification Checklist* and require US 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 US citizen family has been taken into consideration;
  - Whether the national has access to his/her financial assets in the US, 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.

## **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 US 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.

*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."*

## SUPPORT FROM RELIGIOUS INSTITUTIONS

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Connect your family's struggle to your community. If you are affiliated with a religious group, sharing your story with your religious community can help you. Ask a religious leader to make a statement, write letters, and lead others in supporting you and your family. Religious leaders are also helpful in a meeting with members of Congress, Immigration & Customs Enforcement (ICE) officials, and other key targets. You may be surprised to see how many other members of your community are affected by detention and deportation along with you.

### **\*\*Join your local New Sanctuary Movement (NSM)\*\***

#### ***Background***

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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 US. 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 US.

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 enables 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.

#### ***YOU Can Get Involved***

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Families for Freedom began collaborating with the New Sanctuary Coalition of NYC 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 and support anti-deportation campaigns.

Sanctuary is not a community. It is an invaluable, mutual support network grounded in faith and justice. To get involved, visit <http://newsanctuarynyc.org> or call 646-395-2925 for information.



# SAMPLE LETTERS

December 12, 20XX

## Elected Official

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

Dear Senator XXXX:

I am writing from \_\_\_\_\_ to request your support for our member and your constituent, XXXXX. 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 XXXXX 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.

XXXXX 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 January X, 199X. The Board of Immigration Appeals dismissed her case on April X, 1998. XXXXX 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 green card 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 XXXXX) 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 XXXXX to remain here, despite her deportation order. The Bureau of Immigration and Customs Enforcement, within DHS, has the power to grant XXXXX 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 XXXXXXX. Congressional support would greatly strengthen our request.

XXXXX 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. XXXXX is successfully putting her life back together. She does not deserve to see it torn apart now. We ask for your support so that XXXXX may remain in this country.

Sincerely,

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## Sample Letter—Letterhead

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December 20, 20XX

Attn: Immigration Caseworker  
Office of Rep. XXXX XXXX  
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, XXXXXXX. We are writing you now with an urgent plea for help. This week, XXXXXXX 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, a 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, XXXXXXX 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 effective when there is significant community attention, including from elected officials.

To remind you of the details of the case, XXX and the XXXXXXX were married in Trinidad at a very young age. While XXXXXXX was pregnant, her husband abandoned his family and left for the United States. Heartbroken, XXXXXXX 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 illegal activity and also had a child with her. She was arrested in 1988 and convicted of attempted criminal sale of a controlled substance in the third degree. She was sentenced to probation. She was rearrested in 1989, made bail, and fled her abusive relationship and the authorities.

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

XXXXXXX has not had an arrest in the past 16 years. XXXXXXX 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 XXXXXXX. 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,

XXXXXXXXX

The Congregation of Spanish United Pentecostal Church

## Sample Letter

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May 25, 20XX

**To: Craig Robinson**

Field Office Director, New Orleans ICE  
701 Loyola Avenue, Rm. T-8011  
New Orleans, LA 70113

**To: Nancy Hooks**

Field Officer-in-Charge, ICE  
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, XXXXX 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 devastate 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 XXXXX 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. XXX's grades are dropping and her teachers see a notable difference in her ability to concentrate and get along with her peers. XXX 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.

XXXXXX and XXXX 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 chance. 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,

XXXXXXXXX XXXXXXXXX

Congress member

# BEGIN ORGANIZING WITH FAMILIES FACING DEPORTATION (the FFF model)

Use your case to involve more families and win local and national policy changes!

As detainees, deportees, and families facing deportation, we are NOT just victims. Many of us have been forced to navigate one of the most complex processes by ourselves. We have often circulated petitions, coordinated detention center visits, and even organized hunger strikes and sanctuary. But our involvement in advocacy should not end with families either becoming clients or just being mouthpieces at press conferences. Families should be supported when we organize to confront the problems we face.

Families for Freedom has developed a specific model for organizing families facing deportation in an effort to be an organization *by and for families facing deportation*. Although there are different ways to help families organizing to fight deportation, here are some basic tips to get started.

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

One of the worst parts of the deportation process is the isolation. Many people feel alone and feel like no one else can understand what they are going through. Set up a meeting *only* for families facing deportation (including former detainees) to meet each other. With a possible exception of a facilitator or translator, there shouldn't be any advocates, social workers, or community activists in the room that aren't facing deportation. This should be a space where people facing deportation can openly talk 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 can 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 can respond to questions like "How are you feeling?" and "What are your main struggles right now?" Be prepared, because this part is always hard emotionally. The important thing is that folks are specific about what they are going through. 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 your struggles? (Ask for one or two word answers.) Save these responses for later.
- **Education:** A lot of us 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 for 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. In order to make the experience more empowering, 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? By the end, families will have come up with a list of tips that can help other people facing a similar situation. 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 OF US can do TOGETHER in the next 3-6 months to (a) support one another, (b) educate the



Photo by Paromita Shah

community, (c) act to change the policies/laws/practices affecting us and (d) be seen as people with expertise and knowledge of the system? Try to get the room to agree on one thing per category. Set a plan of action, and then designate roles. Make sure that you all think about a 3-6 month timeline for each activity.

- **Set a next meeting:** At each meeting evaluate the plan of action you've developed and make any necessary revisions. Continue to incorporate different support, education, and action components into each meeting. Have family members collaborate to prepare the agenda and co/facilitate different meetings.
- **Identify new people to come:** Ask people to identify new people to invite, whether they are people they were detained with, people they met in the detention visitation line or people at their church/mosque, etc.

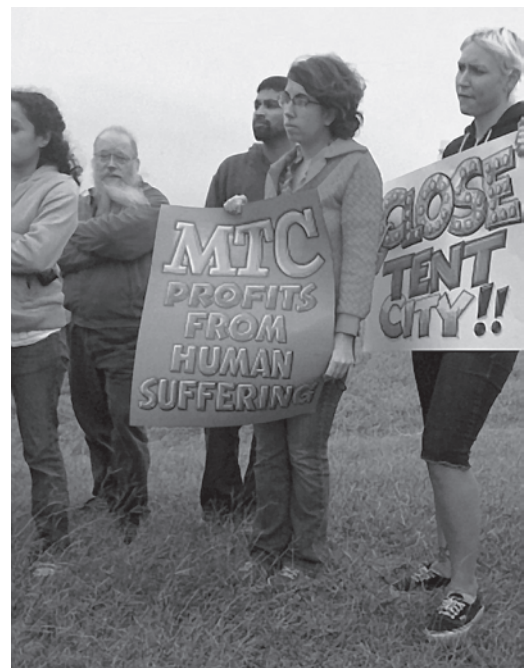
## **STEP 2: Developing Know-Your-Rights curriculum**

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 can be 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 already know (churches/temples, schools, community centers, PTA meetings). 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 may 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 and begin thinking about a campaign. Strategize about how you plan to move that target within the year, and what you need to know to move that target. In the meantime, continue to keep growing the meetings and building membership based upon people's primary contacts.



*Photo by Texans United for Families*



# DIGNITY, NOT DETENTION: PRESERVING HUMAN RIGHTS AND RESTORING JUSTICE



The US immigration detention system is in deep crisis. In recent years it has expanded dramatically and at great cost to principles of universal human rights and the rule of law. Since 1994 the number of detention beds has grown from 5,000 to over 33,000 with more than 1.7 million individuals passing through the system since 2003. This dramatic growth in detention is indicative of the unjust immigration enforcement system in this country.

Immigrants are detained in a secretive network of over 350 federal, private, state prisons, and local jails, at an annual cost of \$1.7 billion to taxpayers. This crisis is not limited to the undocumented—long-term green-card holders with minor offenses, survivors of trafficking and domestic violence, and those fleeing persecution also are detained and deported by the thousands. Over eighty percent of detained immigrants go through the immigration system with no lawyer. Many are denied their fair day in court owing to mandatory and arbitrary detention laws and policies that severely limit judicial discretion in immigration cases. While detained, immigrants face horrific human rights abuses, including mistreatment by guards, solitary confinement, the denial of medical attention and limited or no access to their families, lawyers and the outside world. In many cases, these conditions have proven fatal: since 2003, a reported 111 people have died in immigration custody.

Last year ICE announced plans to reform the immigration detention system, yet to date, there is little evidence of change. DHS Secretary Napolitano has publicly reaffirmed the agency's intention to expand a punitive enforcement system which already lacks oversight and accountability. DWN members are committed to opposing any expansion of the enforcement regime and shifting the national debate in support of a system based in civil administrative process which ensures the due process and human rights of all people.

This year, Detention Watch Network launched the “**Dignity Not Detention**” campaign to stop the expansion of detention nationally. DWN members are supporting organizing efforts in Arizona, Georgia and Texas to stop local detention expansion, underscore the impact of national detention pol-

icy on local communities, and highlight the human rights crisis resulting from detention growth. DWN members are also engaging in a complementary national advocacy strategy towards four goals:

1. Reduce detention spending by the Obama Administration
2. Demand the use of secure release options as a meaningful alternative to detention,
3. Restore due process to immigration laws, and
4. End expansion of enforcement programs (i.e. ICE ACCESS) that are contributing to the growth of the detention system.

As Americans, we have a **responsibility** to uphold our core values: **dignity, human rights, and due process** of law -- principles that are fundamental to a democracy. All people, regardless of race or country of origin, deserve **fair and equal treatment by the government**. Yet, the government has instead created a climate of fear which has led to the systematic violation of basic human rights and the denial of due process.

## HOW YOU CAN GET INVOLVED:

- Sign-on to the campaign – Go to [www.dignitynotdetention.org](http://www.dignitynotdetention.org) and spread the word by informing your networks and constituents about the campaign.
- Campaign for reform – Visit your local congressional representatives and ICE offices, send in complaints to ICE/DHS, and participate in national action alerts and mobilizations.
- Join a local campaign – If you live in Arizona, Georgia or Texas please contact us and we will connect you to the local campaign in your region.
- Start a campaign in your community – If your community is facing detention expansion we would love to support your work, please contact us.

**Dignity Not Detention** is a campaign of the Detention Watch Network. For more information please go to [www.dignitynotdetention.org](http://www.dignitynotdetention.org) or email: [campaign@detention-watchnetwork.org](mailto:campaign@detention-watchnetwork.org)



# HOW COMMUNITIES ARE FIGHTING BACK AGAINST LOCAL IMMIGRATION ENFORCEMENT

(Derived from the ICE ACCESS Webinar presented on 3/14/10 by Detention Watch Network, Immigrant Defense Project, Immigrant Legal Resource Center, National Immigration Project of the National Lawyers Guild, and Rights Working Group)

## **SOMOS UN PUEBLO UNIDO, SANTA FE, NEW MEXICO; CRIMINAL ALIEN PROGRAM**

### **Overview:**

Somos Un Pueblo Unido has worked to combat immigration enforcement in Santa Fe, New Mexico, since 1995. This immigrant-led organization has amassed a membership base of over 1,600 people throughout the past 15 years. These members began sharing stories of loved ones detained for weeks and months in local prisons, long after their criminal custody finished. A pattern of violations emerged, where suspected noncitizens were staying in jails for extended periods of time, either because the jails weren't notifying ICE to pick up these immigrants or because ICE was neglecting to pick them up. These community stories of illegal imprisonment sparked an outcry against local law enforcement's collaboration with immigration authorities. Somos then created a movement to uncover the government policies, publicize these violations, and hold the local agencies accountable.

### **Successes:**

- Local jails no longer provide any detainee information to ICE.
- ICE cannot conduct interviews in the local jails.
- ICE is not given information on booking records.
- 48-hour rule is honored for detainees who have detainers.
- Local jails will not notify ICE at the expiration of the 48 hours.
- There's greater local awareness within government and communities about the dangers of ICE enforcement programs.
- Santa Fe set up a commission to focus on the civil rights of immigrants which reports directly to the mayor.

### **Most Effective Strategies:**

- Tracking compelling stories from the community.
- Holding local officials accountable for their violations.

- "Following the money" and establishing that ICE enforcement programs are expensive for the local government.
- Partnering with legal organizations to unearth invaluable information through FOIA requests.
- Educating local officials and the community about ICE and local jail violations.

### **Tips to Pass on:**

- Create an organizational model in the beginning. Without a clear path, one unsympathetic story can destabilize the entire fight and wipe out all the successes.
- Construct working relationships with local governments but be aware that it may be difficult to sue the respective agencies later.
- Educate other community based organizations and create a climate of non-cooperation with ICE.
- Follow all funding streams to reveal how ICE's enforcement programs impact local resources.

### **Contact Information:**

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Santa Fe, New Mexico 87505  
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Email: [somos@somosunpueblounido.org](mailto:somos@somosunpueblounido.org)

## **DC JOBS WITH JUSTICE, WASHINGTON, DC; SECURE COMMUNITIES**

### **Overview:**

DC Jobs with Justice primarily focuses on labor rights issues. However, in the fall of 2009, ICE began to try to institute Secure Communities in Washington, DC. DC Jobs with Justice became alarmed that this program would sweep up its members and terrorize the city. To combat Secure Communities, this organization brought many stakeholders to the table, including civil rights organizations, grassroots organizations, and the city government to provide education about the destructive impact of this enforcement program.

The organizing model was threefold. First, legal organizations filed FOIA requests and sent memoranda to force the police to comply with language access laws. Second, DC

Jobs with Justice went to the legislature to force oversight of Secure Communities and to lobby to prevent ICE collaboration with the police. Finally, all of the participating groups provided education to the community and city agencies to debunk the myths put forth by ICE.

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**Successes:**

- Lobbied for a bill to prevent the police from sending detainee information to ICE.
- Collaborated with labor, direct legal service, domestic violence, and community based organizations to have one voice fighting against ICE enforcement.
- Ensured that the DC police would continue to exempt certain crimes from a fingerprint requirement to avoid detection by immigration databases.
- Organized a five-hour public hearing with the police department.
- Prevented implementation until the City provided a 30-day notice period.
- Established a community forum before implementation.

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**Most Effective Strategies:**

- Educating communities via know-your-right presentations and government agencies via public hearings with facts from FOIA requests and legal research.
- Messaging to the police department that Secure Communities will hinder public safety and utilize resources.
- Using political pressure to fight for accountability for violations and oversight of Secure Communities.

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**Tips to Pass on:**

- Start early and before ICE implements an enforcement program, if possible.
- Don't assume that only immigrant organizations are willing to help. All civil rights organizations will want to combat ICE enforcement if they understand its practical effects.
- Be armed with talking points and facts to counter ICE's strategies. ICE deceives many agencies and everyone should be ready to challenge this messaging.

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**Contact Information:**

MacKenzie Baris  
DC Jobs with Justice  
888 16th St. NW Ste. 520  
Washington, DC 20006  
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Email: Mbaris@dclabor.org

## **FLORIDA IMMIGRATION COALITION, MIAMI, FLORIDA; 287(G) AGREEMENTS AND SECURE COMMUNITIES**

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**Overview:**

The Florida Immigration Coalition (FLIC) has been working to counter ICE's 287(g) agreements and Secure Communities throughout the state. This organization commenced its work by focusing on counties which already had 287(g) agreements. Initially, this was a complicated endeavor since 287(g) agreements were prevalent in many counties. Consequently, FLIC targeted localities where community-based and civil rights organizations already existed in order to leverage support. These partnerships, along with FOIA requests and know-your-rights trainings, strengthened FLIC's power and extended its reach in combating 287(g) agreements.

Miami-Dade County had no 287(g) agreement but a lot of Secure Communities activities. Due to its success in fighting 287(g) agreements in other counties, FLIC employed similar strategies to fight back against Secure Communities in Miami-Dade County.

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**Successes:**

- Prevented the signing of new 287(g) agreements in at least two counties.
- Created a culture of unfavorable publicity in counties that have 287(g) agreements.
- Broadened the scope of organizations that are engaging against ICE enforcement programs throughout the state.

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**Most Effective Strategies:**

- Assessing the capacity of local organizations and focusing on counties where a network of organizations already existed.
- Assigning tasks to each organization to specialize on – for example, FOIA requests and legal research to legal organizations and community outreach to grassroots organizations.
- Disseminating know-your-rights presentations to local organizations to “train the trainers” and to communities directly impacted by ICE's enforcement programs.

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**Tips to Pass on:**

- Don't target only one program, like 287(g), because ICE will continue to terrorize communities with other programs, even if one program is defeated.

- Messaging should target ICE's destructive interactions with local law enforcement in general, regardless of the program.
- Focus on an organizing plan for counties that have a network of multi-disciplinary groups, and empower each organization with a role and objectives.
- Educate communities in locations and at times when they feel most comfortable. Many communities are understandably skeptical so reaching out is not always easy.

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### **Contact Information:**

Subhash Kateel  
 Florida Immigration Coalition  
 8325 Northeast 2nd Avenue  
 Miami, FL 33138-3815  
 Telephone: (305) 571-7254  
 Email: subhash@floridaimmigrant.org

## **ICE OUT OF RIKERS COALITION, NEW YORK, NEW YORK; CRIMINAL ALIEN PROGRAM**

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### **Overview:**

After learning of countless violations against immigrants incarcerated at the Rikers Island prison complex, New York University sued the Department of Correction (DOC) in an illegal incarceration case. This lawsuit prompted the New Sanctuary Movement and other partners to work together and to try to meet and negotiate with DOC. The goal of the ICE Out of Rikers Coalition that formed was to combat persistent problems with ICE's strong presence at Rikers. These problems included gross violations of the 48-hour rule, reports of ICE officials failing to properly identify themselves, and claims that ICE officials were engaging in coercive tactics. The Coalition utilized information from FOIA requests and created alliances with defender services, law school clinics, clergy, and community-based organizations. Armed with partnerships, information, legal research, and stories of people directly impacted, the Coalition has recorded great success in combating ICE's presence at Rikers.

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### **Successes:**

- Convinced city agencies and public officials that collaboration with ICE costs the city valuable financial resources and doesn't accomplish what ICE claims it does.

- Instituted a DOC policy where immigrant detainees must receive a form before ICE interviews them. This form allows for the person to opt out of an interview.
- Convinced DOC to require ICE to wear uniforms at Rikers.
- Gained access to present know-your-rights workshops to immigrants in DOC facilities
- Publicized abuses and created a broad coalition of groups to combat ICE's presence at Rikers.

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### **Most Effective Strategies:**

- Diversifying the groups involved with the coalition to thwart ICE's tactics:
  1. Clergy set the tone on a moral level in conversations with city personnel.
  2. Defenders provided access to immigrants at Rikers. These people were more willing to discuss their experiences because they had legal representation.
  3. Law school clinics contributed legal research to inform DOC that compliance with ICE's procedures was not legally necessary.
- Providing DOC with a clear outline of why collaboration doesn't fulfill its policy goals and wastes precious resources.

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### **Tips to Pass on:**

- Construct an organizational model that is broad and includes all of the actors who are affected by ICE's enforcement programs.
- Frame the problems in the context of a greater civil rights catastrophe. More groups will participate if they interpret that ICE is offending their key values.
- Assemble as many facts as possible from FOIA requests and community stories to inform local government agencies of the legal violations.

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# CHILD CITIZEN PROTECTION ACT (CCPA) STATEMENT OF PRINCIPLES AND PLEDGE

## Families for Freedom Statement of Principles & Pledge

Deportation is the cruelest civil proceeding in the United States of America. The cruelty of this broken system threatens the health of our communities, and the very soul of our nation.

### Principle 1. Massive Deportations Constitute a Human Rights Crisis.

Nearly 1 in 10 American families are of mixed immigration status: at least one parent is a noncitizen, and one child a citizen. Millions of American children already have lost parents to cruel and unusual deportations. US law dictates that the American-born children of immigrants cannot be considered before a mom or dad is exiled for life.

### Principle 2. CCPA is Sensible Immigration Legislation We Can All Agree On.

In Spring 2006, amidst historic marches and political battles, a small movement of families who were being torn apart by these unjust immigration laws moved a member of Congress to introduce the Child Citizen Protection Act (CCPA). This simple bill does not remove anyone from the deportation rolls. It only creates a safety valve, allowing the judge to consider the best interests of an American-born child before deporting a parent.

### Principle 3. CCPA is Grounded Fundamentally in the Rights of Children and Family Unity.

The most basic right of children is the right to an intact family. International laws recognize this right, as do American citizens. To date, the CCPA is the only legislative proposal to address the crisis facing American children and immigrant families caught in the raids sweeping our country.

### Principle 4. CCPA Seeks to Challenge the ‘Good’ vs. ‘Bad’ Immigrants Myth.

While the CCPA is not a comprehensive solution, we believe it is a first step in a long march to justice. In principle, the CCPA is a human rights law. It does not distinguish between Good and Bad immigrants. Rather it restores vision against such blinding labels as “illegal” and “criminal.” It echoes the same principle articulated centuries ago, in our Constitution: all persons have a right to due process. That is, a day in court and a hearing before a judge. The bill applies to all subjects of the deportation law – undocumented and lawful permanent residents, those with and without past criminal records. The central focus is the American-born children who suffer from the present law’s neglect.

### We, the families, organizations and individuals who support this just law, covenant to:

- Preserve these principles, without compromise, in the process of advocating for the Child Citizen Protection Act.
- Bear public witness to the value of family unity in the face of the devastation caused by deportations;
- Defend all children who are the focus of the Child Citizen Protection Act, irrespective of the labels that haunt their parents; and
- Promote legislation and build a movement grounded in human rights to heal the hatred and ignorance that has poisoned not only the immigration debate, but our society in general.

Original Signatories

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

Subsequent Signers

Dates

## Child Citizen Protection Act Talking Points

### Massive Deportations Constitute a Human Rights Crisis

- US citizen children are losing their parents to cruel and unusual deportations – 100,000 parents have been deported in the last ten years.
- US law dictates that the American-born children of immigrants facing mandatory deportation cannot be considered before a mom or dad is exiled for life.
- After 1996, laws made mandatory deportation applicable to any immigrant deemed to have committed an “aggravated felony.” The term “aggravated felony” has been expanded to include offenses that are neither aggravated nor felonies in criminal court – such as jumping a turnstile, shoplifting, and other misdemeanors. This has made many more parents of American children susceptible to deportation.

### We Must Protect the Rights of Children and Promote Family Unity

- The most basic right of children is the right to an intact family.
- Under the current system, immigration judges have to break up families because they have no discretion.
- When a parent is deported, US citizen children have to choose between their family and their country.
- The Child Citizen Protection Act would untie the hands of immigration judges. Immigration judges would have the power to look at a family’s whole situation, not just the label of an immigration offense. Currently judges lack the authority to consider the best interest of an American-born child before deporting an immigrant parent.

### The Costs of Cruel and Unusual Deportations are Paid by All

- Many families have lost their breadwinners and thus face enormous economic challenges.
- Some of them have no choice but to turn to assistance offered by community groups, religious institutions and the government to survive.
- Extended family members and others who take in the children of deported families also experience increased economic hardship.

- Separation from parents causes emotional trauma to children. Psychologists have found the onset of depression, post-traumatic stress disorder, separation anxiety and other mental health challenges in children whose parents have been deported.



### The Child Citizen Protection Act Seeks to Challenge the “Good” v. “Bad” Immigrant Myth

- The central focus of the Child Citizen Protection Act is the American-born children.
- Applying the Constitutional principle that all persons should have their day in court, the bill applies to all persons subject to deportation except those labeled as security threats or engaged in human trafficking.

### Would People be Using the CCPA to Gain Lawful Status (or some other version of “Anchor Baby” question)?

- Does not create status for the parent facing deportation or prevent the government from starting an immigration case against a parent.
- The 1996 laws created mandatory deportation for large groups of immigrants.
- The judges’ hands are tied even if they think a parent deserves to stay in the US to help raise their families.
- The CCPA merely creates a safety valve for consideration of the US citizen children who will be impacted by deportation decisions. It will allow judges to be judges and make determinations by taking all the relevant circumstances into account.

### Doesn’t the CCPA Provide more Discretion than Existed before the 1996 Reforms?

- The changes since 1996 have made this bill necessary. The 1996 laws not only took away judges’ discretion in many cases, it also expanded the reasons to put immigrants in deportation proceedings in the first place.
- At the same time, immigration raids and enforcement practices have become more and more aggressive.



- The result is that we have a system where over 100,000 parents have been separated from their US citizen children due to deportation over the last ten years.
- The CCPA makes sure there's a safety valve for judge to consider the best interests of US citizen children.

### **Why Don't You Just Wait for Comprehensive Immigration Reform?**

- Our families are in crisis and our children cannot wait any longer.

- The Department of Homeland Security recently announced that over 100,000 parents have been separated from their US citizen children due to deportation in the last ten years.
- The CCPA is not in competition with Comprehensive Immigration Reform. Any immigration reform bill will have to address family unity and judicial discretion.
- We are pushing forward because these issues are important to us as a community.



*Photo by Paromita Shah*

# FAMILIES FOR FREEDOM

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FOR IMMEDIATE RELEASE

Contact: Manisha Vaze, 646-290-5551

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*New Yorkers encouraged that Rep. Luis Gutierrez's (D-IL) immigration reform bill recognizes rights of American kids from immigrant families*

New York, NY (December 16, 2009)- Representative Gutierrez's highly anticipated immigration reform bill, Comprehensive Immigration Reform for America's Security and Prosperity (CIR ASAP) Act, made its debut yesterday, marking the first concrete step to shift Congress' focus in 2010 toward immigration reform. Since the beginning of this year, Gutierrez has toured the country, listening to community groups say that family unity must be the guiding principle behind new reform legislation. With the introduction of CIR ASAP, it seems that communities around the country made their voices heard.

It is clear that Gutierrez also looked to other members of Congress in drafting this bill, mainly those whose commitment to keeping immigrant families with children together is evident in the bills they themselves introduced or cosponsored in this session of Congress. In particular for New Yorkers, CIR ASAP includes language similar to Representative José Serrano's (D-NY) bill the Child Citizen Protection Act (HR 182). HR 182 and the provision in CIR ASAP give immigration judges the authority and discretion to prevent the removal of a parent of a US citizen child if it is not in the child's best interest.

"Today's immigration system tears US citizen children from their parents, destroying the family. Many times families are subsequently forced to endure harsh economic and psychological hardship. America's children deserve better for their future, and the government cannot continue to deny them the right to family unity," stated Janis Rosheuvel of Families for Freedom, a New York City-wide immigrant advocacy organization of families affected by deportation. "By including a provision similar to HR 182 in his bill, Representative Gutierrez set the tone for the upcoming debate on immigration reform and sent the message to Congress that our communities are united and strong, and our dream for an end to the injustice within the system will prevail," Rosheuvel continued.

"I am gratified that my Child Citizen Protection Act was included in the comprehensive immigration reform package," said Representative Serrano. "We have a duty to protect our children and families, and this provision will allow immigration judges to do just that. The hard work of groups like Families for Freedom was crucial to bringing this family unity issue to light, and then raising awareness around the nation and thereby getting the provision in the bill. I look forward to celebrating with them when we pass this comprehensive package."

New York Representatives Clarke and Rangel, who co-sponsored HR 182, also demonstrated their support for CIR ASAP yesterday, signing on as original co-sponsors of the bill. Rosheuvel concluded, "Families for Freedom applauds Representative Gutierrez for making preservation of families with children a priority in his bill. Immigrant communities in New York are hopeful Senator Schumer will also see that more opportunities for discretionary action and due process are necessary to keep families together and to ensure humane and just solutions to America's broken immigration laws."

###

# NEW AGENDA FOR BROAD IMMIGRATION REFORM (NABIR) TALKING POINTS



The **New Agenda for Broad Immigration Reform (NABIR)** is a diverse coalition of grassroots, advocacy, and faith-based organizations uniting behind the principle that all – not just some – immigrants must have the opportunity to live lawfully in the United States, free from fears and threats of deportation. For more information, visit us at: <http://nabir.wordpress.com>

Tagline: “Give us a bill we can fight for, not against.”

“We want reform that keeps families together and maintains the human dignity of all immigrant families.”

**MESSAGE: Due process must be central to any immigration reform. It’s implicated in all areas:**

## LEGALIZATION

- In general, overly harsh criminal bars will prevent many people from ever legalizing and keep them subject to deportation under unjust laws.

## FAMILY UNITY

- Current laws and proposed legislation threaten to rip families apart, often using very minor offenses to permanently deport husbands, wives, children, and siblings without fair hearings.
- Deportation comes as an unfair and excessive punishment for entire families, leaving them emotionally and financially devastated.

## WORKERS’ RIGHTS

- Severe criminal bars to legalization will force many immigrants to continue to reside in the US without status and thus subject to exploitation by employers.

## INTEGRATION

- It’s nearly impossible to try to “integrate” into American society if immigrants are forced to live in a climate of fear due to racial profiling, hyper-enforcement, and threats of deportation.

**ASK: Eliminate mandatory detention.**

**Talking Point:** Mandatory detention undermines due process by locking people up without an opportunity to show an immigration judge that they are neither a danger nor flight risk.

**Talking Point:** Detention destroys families and communities

- Detention transfers continue to tear apart family and community ties

- Families incur significant costs, especially when a breadwinner is detained.

**Talking Point:** Detention is ineffective and expensive.

- Governments lose out on tax revenue from not letting immigrants work and spending too much on private contractors to lock them up instead.
- Immigration court proceedings are less efficient and more expensive because many detainees are unrepresented and held far away from advocacy agencies.
- Better, smarter, and cheaper alternatives to detention are available and even promoted by Department of Homeland Security itself.

**ASK: Modify the aggravated felony definition.**

**Talking Point:** Under the current definition, they have to be neither aggravated nor felonies.

- Someone who has an “aggravated felony” faces mandatory detention and virtually mandatory deportation, which are disproportional double punishments.
- Despite these harsh consequences, the government has continued to broaden this category to include many low-level offenses, including shoplifting with a one-year sentence and some misdemeanor drug possessions.
- The current definition runs against common sense and undermines the criminal justice system’s decisions about appropriate punishments.

**ASK: Modify the definition of “conviction.”**

**Talking Point:** Immigrants are deported for dispositions that the criminal justice system never contemplated would be convictions and that run against common-sense ideas of what a “conviction” should be.

- This undermines criminal justice goals, especially for problem-solving courts.

### ***ASK: Expand relief for green card holders / Bring back 212(c).***

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**Talking Point:** Now, even minor criminal histories prevent lawful permanent residents from seeking discretionary relief.

**Talking Point:** Immigration judges have been largely stripped of their power to look at individual factors, including family, community and military service.

**Talking Point:** Restoring 212(c) would promote fairness by giving back to green card holders the opportunity to stay here in the US with their families and communities.

### ***ASK: Provide every immigrant with a fair hearing and judicial review.***

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**Talking Point:** Immigrants in immigration court currently don't have the right to an attorney provided by the government if they can't afford one.

**Talking Point:** Federal courts often cannot review immigration decisions.

**Talking Point:** Immigration judges frequently make mistakes and government abuses impact innocent people. Judicial review must be available to remedy these injustices.

### ***ASK: Pass the Child Citizen Protection Act (CCPA).***

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**Talking Point:** US citizen children are among those who get abandoned under these laws.

**Talking Point:** Deportation increases the number of people who are forced to raise their children as single parents.

**Talking Point:** Judges must have the power to keep US families intact and make sure citizen children grow up in the US with their parents.

### ***ASK: Provide a legalization program that actually places 12 – 18 million immigrants on a path to citizenship.***

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**Talking Point:** High fees, waiting periods, and bars to legalization will prevent many immigrants from legalizing – including immigrants with a broad range of minor offenses.

**Talking Point:** The inability to legalize will lead to continued or higher rates of deportation, continuing to destroy immigrant families and communities .

### ***Background:***

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- 1996 laws (Anti-Terrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)) dramatically increased detention and deportation for all types of immigrants. These laws included provisions that:
  - Instituted mandatory detention for certain criminal convictions
  - Took away immigration judges' discretion and reduced forms of relief in immigration court
  - Expanded criminal grounds of deportation and broadened "aggravated felonies"
  - Changed the definitions of "conviction" and "sentence" so that these terms go beyond what the criminal justice system intended
  - Made it harder to come back to the US after deportation
  - Limited how the courts can review immigration judge decisions
- In line with the 1996 laws, immigration enforcement has focused on merging the criminal justice and deportation systems through ICE's Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS). Major ICE ACCESS programs include:
  - Criminal Alien Program (CAP): identifies and initiates deportation against noncitizens in criminal custody or transfers people to ICE directly from criminal custody for removal
  - Secure Communities: identifies noncitizens for deportation through biometrics and records check (in some ways, a higher-tech version of CAP)
  - 287(g): through task force and jail models, deputizes local police to carry out immigration enforcement duties
  - Problems with these programs:
    - Causes criminal justice system to lose its core promise of providing a fair process
    - Fosters bias against immigrants, creating second-class citizens
    - Gives a lot of power to local and federal agents with no oversight mechanism
    - Encourages racial and ethnic profiling
    - Shifts resources away from community policing
    - Undermines public safety

## WILL IMMIGRATION REFORM REALLY HELP YOU?

We all want immigration reform that keeps our families united and respects our rights. No one wants the status quo. But while the new Senate proposal promises to legalize some immigrants, it overwhelmingly focuses on expanding the detention and deportation system that's already terrorizing our communities and destroying our families.

***YOU can transform this proposal into a humane and just law that supports ALL immigrants.***

### THE REID-SCHUMER-MENENDEZ PROPOSAL:

- Forces all immigrants to register and get screened before legalizing
- Increases and prolongs detention
- Deports even more people who have ever gotten arrested
- Further destabilizes our communities by getting police to help deport immigrants
- Takes away opportunities to have an immigration judge hear your case
- Continues militarizing our borders
- Compromises our human dignity and sacrifices our due process rights

### REAL IMMIGRATION REFORM SHOULD:

- Stop local police from deporting immigrants
- Abolish the immigration detention system and set up alternatives to detention
- Provide attorneys for people in deportation proceedings if they can't afford one
- Let immigration judges hear your entire history when considering deportation
- Allow for more judicial review of deportation cases
- Incorporate the Child Citizen Protection Act
- Provide for fair hearings and restore due process rights

## WHAT YOU CAN DO TO HELP:

1. Call Senator Schumer: 202-224-6542; Senator Reid: 202-224-4744; Senator Menendez: 202-224-3542 - Let them know their proposal isn't good enough!
2. Call President Obama: 202-456-1111 - Tell him that you want REAL reform!
3. Join the fight and spread the word for humane and just immigration reform!



The **New Agenda for Broad Immigration Reform (NABIR)** is a diverse coalition of grassroots, advocacy, and faith-based organizations uniting behind the principle that all – not just some – immigrants must have the opportunity to live lawfully in the United States, free from fears and threats of deportation.

For more information, visit us at: <http://nabir.wordpress.com>



# FAMILIES FOR FREEDOM PRESS RELEASE DENOUNCING SB 1070

Contact Janis Rosheuvel, 646-290-5551

## **FAMILIES FOR FREEDOM STRONGLY DENOUNCES SB 1070, CALLS FOR IMMIGRANT JUSTICE NOW!**

**New York, NY (April 26, 2010)** - The members, staff and board of Families for Freedom--a New York-based immigrant defense network by and for people facing and fighting back against deportation--join the national chorus of immigrants and their allies repudiating Arizona's SB 1070 law. As people directly impacted by already unjust, biased and broken immigration laws we strongly condemn Arizona's racist criminalization of immigrants and their families.

This law, signed by Governor Jan Brewer on Friday, April 23, among other things, makes it a state crime to be undocumented and requires immigrants to have proof of their immigration status. It also requires police officers to "make a reasonable attempt" to determine the immigration status of a person if there is a "reasonable suspicion" that he or she is undocumented. This unconscionable law harkens back to the darkest days of Nazi Germany, apartheid-era South Africa and the period of the US Fugitive Slave Act of 1850 when "pass laws" terrorized whole communities. Like its historical predecessors, SB 1070 is a clear violation of the most basic civil and human rights and must be immediately rolled back.

As people who must daily wrestle with the devastating realities of having our families and communities divided, we ardently resist the local and national move toward legalized bigotry inherent in SB 1070. We call on all immigrants and their allies, especially those in the White House and Congress, to work to repeal this law and to stop other such proposals. Further, we insist on an end to the aggressive and brutal enforcement of immigration laws that set the stage for SB 1070 to be passed.

While we recognize the urgent need for immigration reform, the current framework for "comprehensive immigration reform" will likely only reinforce and exacerbate the trend of increased enforcement and deportation. We need truly just immigration reform that is grounded in the basic rights of all people and that ensures family unity, equal employment, and due process. We call for just, inclusive and humane policies and demand:

- That President Obama immediately stop the implementation of--and affirmatively strike down--Arizona's immoral and unconstitutional SB 1070;
- That local law enforcement focus on protecting our communities, not destroying them;
- That President Obama and Immigration and Customs Enforcement (ICE) immediately halt the Criminal Alien Program, Secure Communities, 287(g), and all other partnerships between ICE and local law enforcement; and
- That President Obama issue a moratorium on detention and deportation until Congress can pass truly meaningful and just immigration reform that puts an end to mandatory deportations.

We are organizing and resisting by calling on all people of conscience to raise their voices by:

- 1. Contacting Arizona Governor Jan Brewer** with the following message: "I am deeply disappointed that you have signed SB 1070. This law promotes discrimination and profiling by legitimizing suspicion based upon appearance. I ask that this law be rescinded immediately." **(602) 542-4331** or [azgov@az.gov](mailto:azgov@az.gov).
- 2. Joining a May 1<sup>st</sup> Rally in your community** to show our strength in numbers and to send the message that we will not be silent. Find out more: <http://www.immigrantsolidarity.org/MayDay2010/>
- 3. Calling President Obama** and asking him to speak out against the climate of hate and SB-1070. SB-1070 is misguided and depends on federal immigration policing programs. Ask President Obama to roll-back federal immigration enforcement programs that allow local police to collaborate on immigration control. The 287(g) and Secure Communities programs are encouraging the kind of hateful activity we are witnessing in Arizona. **202-456-1111**
- 4. Knowing-Your-Rights** when interacting with local and federal law enforcement. See Families for Freedom's website for more details: <http://familiesforfreedom.org/files/ImmBeware-english-May2008.pdf> and <http://familiesforfreedom.org/files/ImmBeware-spanish-May2008doc.pdf>

# RESTORING ACCOUNTABILITY TO U.S. IMMIGRATION ENFORCEMENT



*The time has come to restore American values of fairness and justice to US immigration enforcement policies*

**The federal government must safeguard against racial profiling and human rights violations which occur under the guise of immigration enforcement.**

## Recommendations

- The authority to enforce civil immigration law should **return to the purview of trained and experienced immigration officers.**
- Halt Department of Homeland Security, Immigration and Customs Enforcement (ICE) programs that rely on state and local law enforcement or immigration laws given ICE's failure to **ensure compliance with clear and consistent objectives** for its programs and its inability to implement meaningful oversight mechanisms and **adequate supervision of local law enforcement agencies** to safeguard against civil rights violations and the misuse of government resources.

## Facts

- Through agreements between ICE and local law enforcement agencies, DHS has sanctioned immigration enforcement by local and state authorities that **lacks necessary**



Photo by Paromita Shah

**oversight, supervision, training, and performance measures**, according to government reports.<sup>1</sup> These programs have eroded public trust in law enforcement and have resulted in racial and ethnic profiling as well as the unlawful detention of US citizens and permanent residents.<sup>2</sup>

- Many local police jurisdictions have rejected these programs because they believe that they work counter to community policing goals by undermining the trust and cooperation of immigrant communities, place an undue burden on the cities' already reduced resources, and leave cities vulnerable to civil liability claims.<sup>3</sup>

**The federal government must avoid wasteful spending by ensuring that detention is used only when necessary.**

## Recommendations

- DHS should use its detention resources in the most cost effective manner. Detention should be used only as a measure of last resort and for the shortest amount of time necessary.
- Improve and expand Alternatives to Detention (ATD) programs in order to reduce the cost of detention imposed on taxpayers and to ensure humane and safe treatment for all individuals. Secure, community-based, cost-saving programs should be used over custodial programs for individuals who do not pose a danger to the community.
- Ensure that mandatory detention categories are not expanded and the authority of immigration judges is restored to make individualized determinations regarding a person's liberty.

## Facts

- Taxpayers are paying the price of DHS' skyrocketing use of immigration detention. More than 30,000 people are held in immigration detention on any given day and by the end of 2009, over 380,000 individuals were detained by ICE.

- In FY 2010, Congress appropriated \$2.55 billion for ICE's detention and removal operations.
- The current mandatory detention policy overburdens an already crippled immigration system and causes unnecessary suffering to families and communities.
- This policy has stripped DHS of its discretion to make common sense decisions on how best to use its resources. It has also led immigration officers and judges to err towards detention.
- Although the DHS Office of the Inspector General has recommended that DHS expand ATD programs and Congress has appropriated funds for such programs, ICE has not implemented any cost-saving community-based ATD programs.<sup>4</sup>

**We must be true to American values by requiring that all individuals in DHS custody are treated safely and humanely.**

### Recommendations

- Require DHS to improve and codify **enforceable detention standards** and **create independent oversight** of detention facilities to ensure DHS accountability.
- Ensure that ICE fully **reviews all facilities for compliance** with these detention standards and includes a review of detainee-filed grievances in its evaluations.
- DHS should **limit the transfer of detained individuals to facilities located far from their homes and families** without good cause and halt transfers of individuals who have an existing attorney relationship.

### Facts

- Even with the reported deaths of more than 111 detained immigrants since 2003, detention conditions continue to decline. Detainees are frequently denied appropriate medical care, visitation, legal materials, functioning telephones, and access to counsel.<sup>5</sup>
- The US Government Accountability Office (GAO) found that ICE lacks a uniform policy for providing medical care to detainees and a number of facilities have no health care staff on-site.<sup>6</sup>

**We must ensure that all individuals receive their fair day in court.**

### Recommendation

- Expand the availability of judicial discretion, including humanitarian waivers, so that each person's immigration case can be evaluated on its own merits.

### Facts

- America's long standing tradition of promoting justice and fairness has been undermined by mandatory detention and removal of individuals absent the individualized determination by a judge regarding a person's right to remain in the United States.

- 1 Department of Homeland Security Office of Inspector General: *The Performance of 287(g) Agreements*, OIG-10-63, (Mar.2010) available at: [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_10-63\\_Mar10.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_10-63_Mar10.pdf); *Immigration Enforcement Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, GAO report 09-10, (Jan. 2009) available at: <http://www.gao.gov/new.items/d09109.pdf>
- 2 *See* Justice Strategies, *Local Democracy on Ice: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement* (Feb. 2009). Available at <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf>; *see also*, ACLU of North Carolina & UNC School of Law, *The Policies and Politics of Local Immigration Enforcement Laws, 287(g) Program in North Carolina* (Feb. 2009); <http://acluofnc.org/?q=new-study-finds-dramatic-problems-287g-immigration-program>
- 3 STATEMENT BY THE CHATHAM COUNTY BOARD OF COMMISSIONERS, available at: <http://www.chathamjournal.com/weekly/news/government/lucier-backs-out-of-public-citizen-forum-90226.shtml>
- 4 DHS Office of Inspector General Detention and Removal of Illegal Aliens Audit Report, OIG-06-33, (Apr. 2006). Available at: [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_06-33\\_Apr06.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_06-33_Apr06.pdf)
- 5 *See, e.g.*, DHS OIG Treatment of Immigration Detainees Housed at ICE Facilities, OIG-07-01, (Dec. 2006). Available at: [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_07-01\\_Dec06.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-01_Dec06.pdf); *see also*, DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, GAO report 09-308R (Feb. 23, 2009) available at <http://www.gao.gov/new.items/d09308r.pdf>
- 6 DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, GAO report 09-308R (Feb. 23, 2009) available at <http://www.gao.gov/new.items/d09308r.pdf>