

Immigration Consequences of Criminal Conduct



**CPCS Immigration Impact Unit
January 2020**

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Before you meet any new client . . .

... you need to know who ICE is looking for.



ICE Enforcement Priorities include:

- ❖ Virtually **EVERYONE** who is *already removable*, including
 - Removable and convicted of any crime
 - Removable and charged with any crime
 - Removable and committed acts that constitute crime

- ❖ Executive Order did NOT create new criminal grounds of deportability.
 - Ex: LPR who is not otherwise removable does not become removable based on a conviction for trespass.

How does ICE find people?



Initial Identification

What do you do at arraignment?

In lock up ...



❖ The Concern: ICE in the courthouse at arraignment

#1 Ask about **place of birth** and **current status**

- BUT!!! explain why you are asking, make sure D knows the purpose is to protect their interest.
- Same type of conversation as confidentiality
- Try to have the conversation as far from others in lock up as possible.

In lock up ...



❖ The Concern: ICE in the courthouse

#2 Check for an ICE Detainer

- If going to post bail or be released on PR, will they make it to the street?
- Ask the court officer if there is anything else holding your client.



Immigration detainers

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: _____
Event #: _____

File No: _____
Date: _____

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

- Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):
- has a prior a felony conviction or has been charged with a felony offense;
 - has three or more prior misdemeanor convictions;
 - has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
 - has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
 - has illegally re-entered the country after a previous removal or return;
 - has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
 - otherwise poses a significant risk to national security, border security, or public safety; and/or
 - other (specify): _____
- Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date).
- Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date).
- Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

- Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours**. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- Provide a copy to the subject of this detainer.
- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- Consider this request for a detainer operative only upon the subject's conviction.
- Cancel _____ previously placed by _____ Office on _____ (date).

Immigration detainers



❖ *Lunn v. Commonwealth, 477 Mass. 517 (2017)*

- Holding an individual on an ICE detainer when they would otherwise be released from criminal custody constitutes an arrest
- There is no MA common law or statutory authority to arrest someone on an ICE detainer
- State and local law enforcement officials do not have authority to hold someone on an ICE detainer for civil immigration purposes

❖ New Detainer Forms

- I-200 and I-205 are admin warrants only

Current Impact of ICE Detainers

In the Courthouse

- Indicates likelihood of ICE being in courthouse
- BUT! State LEA can't hold on the detainer

Posting Bail at Jail

- Most jails still call ICE
- Lunn non-compliance

If Defendant was Summoned...



❖ The Concern: ICE in the courthouse

Ryan v. ICE, 382 F.Supp.3d 142 (D. Mass. 2019)

Preliminary injunction against courthouse arrests for anyone coming to court on their own power (i.e., not brought to court in criminal custody)

Trial Court Policy (2017)

Know Your Rights (KYR)



- You have the right to remain silent. Anything you say **WILL** be used against you. Don't lie.
- You do not have to sign any documents that ICE gives you.
- ICE agents should have I-200 or I-205 (administrative warrant, not a judicial warrant)
- ICE does **NOT** have permission to enter your home without a warrant signed by a judge (not with an ICE warrant)

Know Your Rights (KYR)



- Carry copies of KYR flyers to court and meetings with new clients:

- Immigrant Defense Project
<https://www.immdefense.org/ice-home-and-community-arrests/>
- Immigrant Legal Resource Center
<https://www.ilrc.org/red-cards>



What happens if Client is Arrested by ICE?



- Get family/friend contact before arrest
- Locate the Defendant
 - ICE locator – www.ice.gov/locator
 - Call Bristol, Plymouth, Greenfield (sometimes NH and RI)
 - Contact family/friends
- Habe back into state court
 - See CPCS practice advisory
<https://www.publiccounsel.net/iiu/wp-content/uploads/sites/15/Habeing-defendants-from-ICE-January-2019-FINAL-with-attachments.pdf>
- ICE will not wait for conclusion of criminal case before removing client from country

The first meeting with the client . . .

What are my Duties?

Padilla v. Kentucky
March 2010

Commonwealth v.
Marinho
January 2013

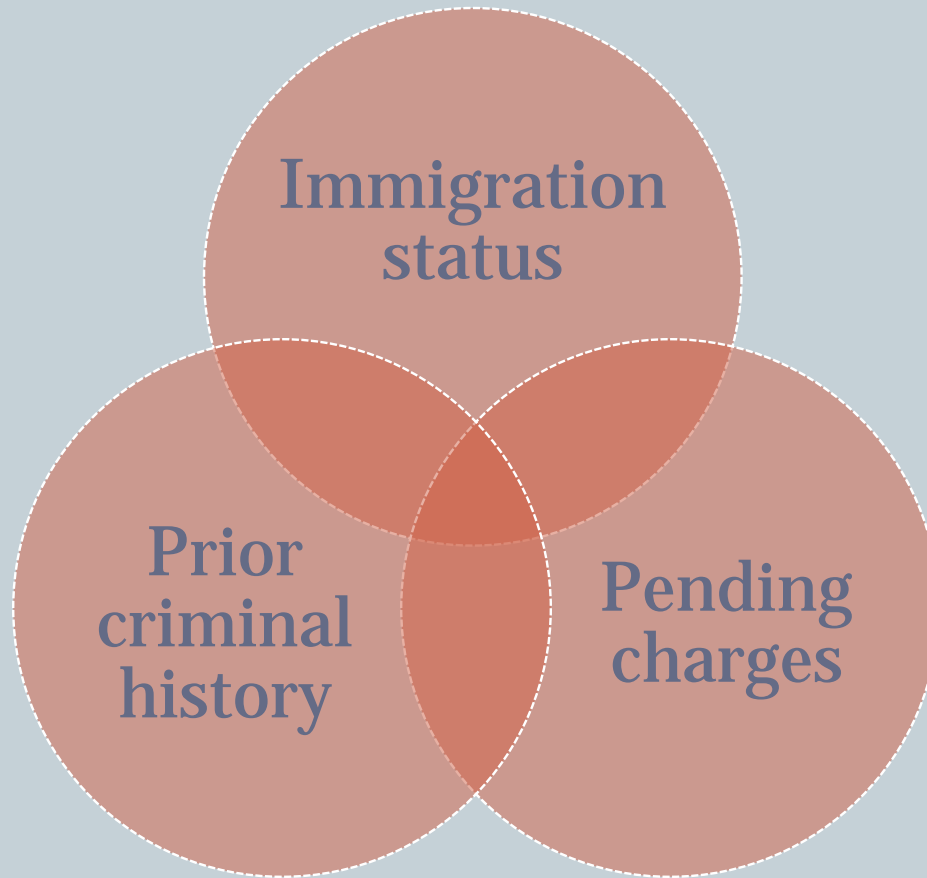
**duty to advise
of consequences
prior to
pleading**

**duty to
advise of
consequences
prior to trial**

**duty to negotiate with
prosecutor and advocate at
sentencing for **disposition**
that mitigates
consequences**

Failure to do so is ineffective assistance of counsel

To advise your client you need to know:



Types of Immigration Status



**U.S.
Citizen**

Legal Permanent Resident

Lawful Non-Immigrants

Refugees & Asylees

Temporary Protected Status

**Deferred Action for Childhood Arrivals
(DACA)**

Undocumented and Out of Status

Information Gathering



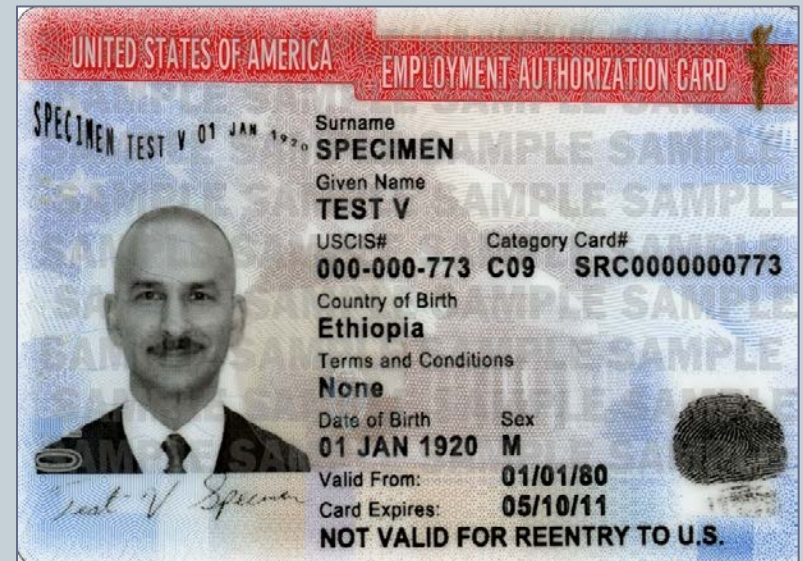
UNITED STATES OF AMERICA PERMANENT RESIDENT

Surname: SPECIMEN
Given Name: TEST V
USCIS#: 000-000-001
Category: RE8
Country of Birth: Utopia
Date of Birth: 01 JAN 1920
Sex: F
Card Expires: 08/21/07
Resident Since: 08/21/07

01 JAN 1920 F

Test V. Specimen

Background features include the Statue of Liberty and a fingerprint.



UNITED STATES OF AMERICA EMPLOYMENT AUTHORIZATION CARD

Surname: SPECIMEN
Given Name: TEST V
USCIS#: 000-000-773
Category Card#: C09 SRC0000000773
Country of Birth: Ethiopia
Terms and Conditions: None
Date of Birth: 01 JAN 1920
Sex: M
Valid From: 01/01/80
Card Expires: 05/10/11
NOT VALID FOR REENTRY TO U.S.

01 JAN 1920 M

Test V. Specimen

Background features include the Statue of Liberty and a fingerprint.

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt		NOTICE DATE April 16, 2014									
CASE TYPE I-130, Petition for Alien Relative		USCIS ALIEN NUMBER									
RECEIPT NUMBER MSC [REDACTED]	RECEIVED DATE April 14, 2014	PAGE 1 of 1									
PRIORITY DATE April 14, 2014	PREFERENCE CLASSIFICATION 201 B INA SPOUSE OF USC	DATE OF BIRTH [REDACTED]									
<p>[REDACTED] C/O JACK C. SUNG LAW OFFICE OF JACK C. SUNG 2975 WILSHIRE BLVD STE 352 LOS ANGELES, CA 90010</p> <p>3 358</p> 		<p>PAYMENT INFORMATION:</p> <p>Application/Petition Fee: \$420.00 Biometrics Fee: \$0.00 Total Amount Received: \$420.00 Total Balance Due: \$0.00</p>									
APPLICANT/PETITIONER NAME AND MAILING ADDRESS											
<p>The I-130, Petition for Alien Relative has been received by our office for the following beneficiaries and is in process:</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Date of Birth</th> <th>Country of Birth</th> <th>Class (If Applicable)</th> </tr> </thead> <tbody> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td></td> </tr> </tbody> </table> <p>Please verify your personal information listed above and immediately notify the USCIS National Customer Service Center at the phone number listed below if there are any changes.</p> <p>Please note that if a priority date is printed on this notice, the priority does not reflect earlier retained priority dates.</p> <p>If you have questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833. Please also refer to the USCIS website: www.uscis.gov.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our customer service number.</p> <p>You will be notified separately about any other case you may have filed.</p>				Name	Date of Birth	Country of Birth	Class (If Applicable)	[REDACTED]	[REDACTED]	[REDACTED]	
Name	Date of Birth	Country of Birth	Class (If Applicable)								
[REDACTED]	[REDACTED]	[REDACTED]									
<p>USCIS Office Address: USCIS National Benefits Center P.O. Box 648003 Lee's Summit, MO 64002</p>		<p>USCIS Customer Service Number: (800)375-5283 ATTORNEY COPY</p> 									



So what are the possible immigration
consequences???

Inadmissibility v. Deportability



- **Inadmissible (8 USC 1182)**

- Client never lawfully admitted to the U.S. (i.e. crossed the border illegally) can be removed.
- Client lawfully admitted (i.e. tourist) can be denied green a card.
- Client lawfully admitted (i.e. green card) leaves U.S. and tries to return, can be stopped at the border and denied re-entry.

- **Deportable (8 USC 1227)**

- Any client lawfully admitted to the U.S. can be removed based on grounds of deportability.

“Conviction”



Finding of guilt *or* admission of
sufficient facts

AND

punishment, penalty, or restraint
on liberty

8 U.S.C. 1101(a)(48)

Juvenile Dispositions



- A finding of delinquency is *not* a conviction for immigration purposes.



Some grounds of inadmiss/deport don't require a conviction, so juvenile dispositions can still have immigration consequences

Term of imprisonment/sentence



Under immigration law, a “sentence”
or “term of imprisonment”
includes any term of incarceration
whether committed or suspended.

Grounds of Inadmissibility and Deportability

Inadmissibility 8 USC 1182	Deportability 8 USC 1227
Crimes involving moral turpitude	Crimes involving moral turpitude
Controlled Substance Offense	Controlled Substance Offense
Prostitution related offenses	
Conviction of multiple offenses (5 years or more)	
	Firearms offenses
	Domestic Violence offenses
	Aggravated Felonies

Crime Involving Moral Turpitude



Matter of Silva-Trevino, 26 I&N Dec. 826 (BIA 2016) (“*Silva-Trevino III*”)



Crime Involving Moral Turpitude

Theft offenses
(larceny, robbery,
RSP, B&E)

Fraud offenses
(credit card fraud)

**Aggravated
violent crimes**
(ABDW)

MISC (malicious
destruction of
property, vandalism,
open & gross)

Inadmissible

**Convicted of one
CIMT**

unless:

One crime committed
when under 18 years
old and at least 5 years
before admission

or

One CIMT with
maximum possible
penalty of one year or
less and sentence is 6
months or less

Deportable

Convicted of **one
CIMT within 5 years
of admissions**, where
a sentence of at least
one year *may* be
imposed

OR

**Two CIMTs at any
time**, not arising out of
a single scheme of
criminal misconduct



Controlled Substances Offenses

Inadmissible	Deportable
<p>A violation of any law relating to a controlled substance</p> <p>Any noncitizen the AG has reason to believe is a drug trafficker (no conviction necessary)</p>	<p>Conviction for any controlled substance offense <i>Except 1 offense of 30 grams or less of marijuana</i></p> <p>Includes conspiracy or attempt</p>



Prostitution

Inadmissible	Deportable
<ul style="list-style-type: none">• Engaging in prostitution• Procuring a prostitute• Receiving the profits from prostitution (pimps)	<p>N/A</p> <p>But note: Prostitution-related offenses are also CIMTs.</p>



Multiple Offenses

Inadmissible	Deportable
Two or more convictions for which aggregate sentence is more than 5 years	N/A But note: multiple offenses may trigger other grounds of deportability



Firearms Offenses

Possession of a firearm

Buying/selling

Conspiracy/attempt

Inadmissible

N/A

Deportable

Convicted for any crime of buying, selling, using, owning, possessing or carrying any firearm or destructive device.

Includes conspiracy and attempt



Domestic Violence

Inadmissible	Deportable
N/A	<p><i>Conviction</i> for</p> <ul style="list-style-type: none">• Crime of domestic violence• Stalking• Child abuse• Child neglect• Child abandonment <p>Or</p> <p><i>Violation</i> of criminal or civil protective orders</p>

Deportable Offense: Domestic Violence



Crime of
violence
(18 USC 16)
Consider
ELEMENTS



Person
protected
under state
DV laws
Consider
FACTS



Crime
of DV

Aggravated Felony



Consequences

- Nearly automatic deportation
- Permanent exile from the U.S.
- Bar to almost every form of relief from deportation
- Mandatory detention

Aggravated Felony



- Federal statutory definition at 8 U.S.C.1101(a)(43)
- Minor offense can be aggravated felony
- Misdemeanor can be aggravated felony

Aggravated Felony



Conviction-based AFs

Conviction of specified offense

Sentence-based AFs

Conviction of specified offense
+ sentence of imprisonment of one year or more

Aggravated Felony



Common Conviction-based

- Murder
- Rape
- Sexual abuse of a minor
- Drug trafficking (any offense other than simple possession)

Common Sentence-based

- Crimes of violence
- Theft offenses
- Burglary; B&E in a building
- Witness Intimidation

Defense to deportation or path to lawful status



LPR Cancellation of Removal

- Barred by aggravated felony conviction
- 7 years residence stopped by inadmissible offenses

Non-LPR Cancellation of Removal

- Barred by convictions for any inadmissible or deportable offenses

Asylum

- Barred by aggravated felonies and “particularly serious crimes”

Green card through family

- Must be admissible or eligible for and granted waiver

OTHER: DACA, SIJ, u-visa, etc

- Each has specific individual bars

Key Take-Aways



- **Determine your client's immigration status ASAP**
- Determine your client's goals
- Consult with crim-imm specialist
- Advise clients not to travel, talk to an immigration official or apply for any immigration benefit without help from immigration attorney

For more information . . .



- CPCS Immigration Impact Unit
<https://www.publiccounsel.net/iiu>
- National Immigration Project
<https://nationalimmigrationproject.org>
- Immigrant Legal Resource Center
<https://www.ilrc.org>
- Immigrant Defense Project
<https://www.immigrantdefenseproject.org>

CPCS Immigration Impact Unit



Committee for Public Counsel Services
Immigration Impact Unit

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