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ICE: COMING TO A JAIL NEAR YOU

WHAT WE CAN DO TO HELP CLIENTS WITH IMMIGRATION ISSUES



What is your client's
status?

U.S. Citizenship

- Birth: in U.S. or U.S. Territory
- Acquired: born abroad to U.S. Parent
- Naturalization
- Derived:
 - Parent naturalizes
 - Client was unmarried and under 18
- *Simple rule: possible citizen if parent or grandparent was a U.S. Citizen or lived in the U.S.*

Immigration Status

- Lawful Permanent Resident (LPR)
- Undocumented
- Refugee or Asylee
- Non-immigrant



Should your client talk to
ICE?

Custodial Statements

- Suppression if:
 - Police coercion & involuntary
 - 5th Amendment due process violation
- No *Miranda*, but 8 C.F.R. § 287.3(c):
 - Statements may be used against noncitizen
 - Right to counsel
 - Free legal services list



Is there a suppression
issue?

Suppression-Criminal

- 4th Amendment protects against unlawful searches and seizures:
- Applies to:
 - Investigative stop (RS)
 - Arrest (PC)
- Violation = suppression
- Fruit of the poisonous tree

Suppression-Immigration

- 5th Amendment protects against violations of due process:
- Applies to:
 - Investigative stop (RS)
 - Arrest (PC)
 - Custodial statements
 - Searches

Suppression-Immigration

- *Lopez-Mendoza v. INS*, 468 U.S. 1032 (1984).
- Violation \neq suppression
- Except:
 - “Egregious” 4th Amendment violation
 - 5th Amendment due process violation

Terry Stops


- Wisconsin Attorney General Memo, January 2008
- *Muehler v. Mena*, 544 U.S. 93 (2005):
 - If there is reasonable suspicion under *Terry*
 - No reasonable suspicion of immigration violation
 - Not a 4th Amendment violation to ask about immigration status



Can my client get out of
custody?

Custody Issues

- ICE Hold:
 - 8 C.F.R. § 287.7
 - If alien is “not otherwise detained”
 - ICE can place detainer for 48 hours (excludes weekends and holidays)
- Mandatory Detention
 - 8 U.S.C. § 1226a
 - Most crimes triggering removal will result in mandatory detention



When should I advise my
client to get immigration
counsel?



Immediately

Basic Terms

- Inadmissible - seeking admission/visa
- Deportation - you are here, government wants you out
- Removal - proceedings in which you are deported or found inadmissible

Inadmissible Offenses

- Crime involving moral turpitude
 - Unless misdemeanor and imprisonment is no more than 6 months
 - Unless committed when under 18 YOA and offense/release from custody not within 5 years of application for visa/admission
- Controlled substance offense
- Two or more convictions with aggregate sentence of five years or more
- Drug trafficker – “reason to believe”
- Prostitution
- Money laundering

Deportable Offenses

- Crime involving moral turpitude
 - Felony within 5 years of admission
 - Two or more not in same scheme
- Aggravated felony
- Controlled substance offense
- Firearms offense
- Domestic violence or violation of a protection order

Special Immigrant Juvenile Status

- Child - under 21 years of age
- Unmarried
- Court order:
 - Declaring dependency
 - Eligible for long term foster care due to:
 - Abuse
 - Neglect
 - Abandonment
 - Not in best interest to return to country of nationality
 - Proof of age