

Second National Parents' Attorneys Conference

The Overlap of Child Welfare, Family Court and Immigration: Problems, Practices and Suggestions for Reform

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Immigration Detention and Removal Proceedings: **A Checklist for Parent's Attorneys**

- **TRIGGER SITES FOR DEPORTATION**
 - Raids
 - At home or at work
 - Greyhound buses and Amtrak trains near border
 - Police
 - 287(g) under which police are deputized to enforce immigration laws
 - Old order of deportation
 - Secure Communities
 - Jail, Probation, etc.
 - Secure Communities
 - Criminal Alien Programs
 - After travelling internationally
 - DSH agents check priors, so those with status travelling with convictions or open criminal cases will be stopped, even if you have travelled since then
 - Immigration Applications: Applying for citizenship, adjustment of status, or any other immigration benefit may trigger deportation
 - LPRs with prior convictions applying for citizenship or to renew their green cards
 - Undocumented people who don't qualify for the benefit they are requesting
 - For these reasons, It's essential that anyone who is planning on interacting with immigration consult with a qualified, trusted immigration attorney before sending in an application.

- **IMMIGRATION DETENTION**

- **FINDING SOMEONE IN IMMIGRATION DETENTION**

- Will be easiest if you have the A#. WHERE to find the A#?
 - If they have a Green Card, Work Authorization Card, any documents from immigration- the A# will be printed on it
 - If they are detained through a local jail, the jail or ICE agent issuing the detainer may have the A# and give it to you
- Check the ICE Online Detainee Locator System: <https://locator.ice.gov/odls/homePage.do>. You will need the A number and country of birth. If you do not have the A number, you cant use the first and last name, but it must be an EXACT match
- Contact Immigration and Customs Enforcement and Removal Office (ERO, formerly DRO). Start with the facilities closest to where the person was detained by ICE: <http://www.ice.gov/contact/ero/>. Give full name and A#
- You can also try:
 - Contact the person's consulate
 - Contact the different detention facilities:
 - www.detentionwatchnetwork.org/dwnmap for more details, including phone numbers and addresses
 - www.ice.gov/detention-facilities/

- **ONCE IN DEPORTATION PROCEEDINGS, WHAT HAPPENS?**

- Why is my client in deportation proceedings?
 - Undocumented- either entered the country without permission or overstayed their visa
 - Lawful Permanent Resident (or some other status) with criminal convictions, even very minor or old convictions
- May be detained by ICE pending removal proceedings anywhere in the country
 - May or may not be eligible for release on bond or ATI
- NO right to free legal counsel- an immigration attorney will not be appointment

- May or may not be detained in a facility with a Legal Orientation Program- if your client is detained in a facility in which a non-profit conducts LOPs, that organization may be an important source of information about your client.
 - LOP providers by state: <http://www.vera.org/project/legal-orientation-program/facilities>

- **PROCEDURE:**
 - Notice to Appear served- that has immigration allegations listed
 - Master Calendar Hearing(s) before Immigration Judge- administrative
 - May be adjourned to find a lawyer
 - Pleadings taken: alienage and removability established
 - Eligibility to apply for relief from detention established
 - Client may or may not be eligible for relief from removal
 - If no relief application, may be ordered deported
 - Individual Hearing: A hearing at which the Immigration Judge considers documentary evidence submitted, along with testimony from client, family members, and experts, regarding whether or not client qualifies for requested relief.

- How do I know when my client's next court date is?
 - Using A#, you can get the next appearance date and location; or, after a final decision has been made, information about what decision was made by calling immigration's automated system:
 - 1-800-898-7180

- Appeal Procedure
 - Appeal to Board of Immigration Appeals (BIA)
 - Appeal BIA decisions to federal circuit court with Petition for Review

Case Scenarios: Child Welfare Consequences of Immigration

Arizona: Mother is arrested and then detained and loses ability to advocate for her parental rights.

R went to a party one night in Phoenix. She left three of her five kids with her sister. The other two were with their father. At the party she says she had a couple of drinks and then left early to pick her children up before 8pm. On the drive home, she was pulled over and she says her children jumped out of their car seats. One of them came to the front to help translate for because R speaks only Spanish and the police spoke none. The police administered a breath test, which R failed. She was arrested, charged with drunk driving and convicted of a month in jail. Upon arrest, the police called child welfare and three children were placed in state custody.

R was moved to a detention center in Florence, Arizona where she remains today. It has now been seven months since she's seen her children and she does not know where several of them are. All she knows is that all five are placed in several different foster homes and that none remain with their father because he is mentally ill and deemed unfit to care for the children.

R was not informed of several of her dependency hearing dates and has difficulty communicating with the CPS lawyer and case worker because they speak no Spanish. Nor has she been sent any sort of case plan so that she knows what she is required to do to maintain contact and custody of her children if she is released. Her caseworker did tell her that if she is deported, there is no way that she will be allowed to take her children with her.

New York: A Victory for Holistic Defense

In 2008, G was arrested after the police were called to his house during a disagreement with his daughter. Bail was set and an immigration detainer dropped based on a drug sale conviction from 1989. In the meantime, his emotionally disturbed fifteen year old daughter who had struggled with mental illness was placed in foster care. Assigned to represent G in Criminal Court, the criminal defense attorney realized that G would have both family court and immigration issues in his case. After successfully getting his criminal case dismissed, the immigration attorney worked to have G returned from immigration detention out of state and eventually moved back to New Jersey detention.

Focusing their efforts on getting him bond, the immigration attorneys argued successfully for a federal judge to grant a writ of habeas corpus ordering that the Immigration Judge set bail. Ultimately, the decision changed case law around the country by redefining who is eligible for immigration bond and who isn't.

Once he was released from detention, G worked with his family court attorney to reunite with his daughter who remained in foster care. Prior to the case, G had sole custody of his daughter. Even when he was detained in Texas, G and his family court attorney made sure that he was participating to the extent possible in family court proceedings and maintaining contact with his daughter. After a six-month adjournment for continuing evidence of rehabilitation, the Immigration Judge finally granted Mr. Garcia's waiver and reinstated his residency- two months short of three years after he was arrested.