

RIAC2



January 2021

CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

Volume 5, Number 1

The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

It's here! We made it through 2020 and can finally step into 2021, with all of the hopes and wishes we have collected throughout this past bizarre year.

FAMILY COURT AND IMMIGRATION: PART 1

In this issue, we are focusing on Family Court issues and what to do if your client is detained by ICE. This is a very BRIEF overview based on what we have taught in our trainings. In subsequent issues, we will go into more detail about the intersection of Immigration and Family Law.

Brief Review of Immigration Concepts in the Family Court Context

Immigration law finds its way into Family Court practice both directly and indirectly. For example, an Article 8 Family Offense proceeding can directly result in the removal* of a client if a court finds that your client violated an Order of Protection. Family Court proceedings do not involve convictions for criminal charges and therefore, other than findings regarding violation of protection orders, do not *directly* result in your client's removal from the U.S. on criminal grounds. However, Family Court findings can *indirectly* result in your client's removal from the U.S. as we will see below and in subsequent newsletters.

How do Family Court findings affect your client's immigration status or ability to remain in the U.S.?

Family Court proceedings frequently involve admissions, findings or stipulations on the record. These records can be used against your client in an application for a green card, citizenship, waiver of deportation or inadmissibility; or in any discretionary determination such as bond eligibility. For example, your client may be denied a green card because of a finding or admission in Family Court that he or she neglected or abused a child. Why is this important? Denial of a green card or other immigration benefit often results in a loss of lawful immigration status for that client, leading to potential immigration court proceedings for the client's removal from the U.S.



HAPPY NEW YEAR!

In This Issue:

FAMILY COURT AND IMMIGRATION: PART 1

UPCOMING EVENTS:

Stay tuned! COVID is still with us so we will continue to provide online trainings in 2021 via Webex!



How does DHS find out about a client's family court proceedings?

Most often, DHS finds out about Family Court matters from the client, either in an application for an immigration benefit (e.g., green card, naturalization), as the result of a subpoena in Immigration Court where ICE seeks information relating to bond or other discretionary relief sought by the client, or, upon re-entry to the U.S. after a trip abroad when being questioned by CBP (Customs and Border Protection) officials.

What happens when a client with a pending Family Court proceeding is detained by ICE?

Typically, when ICE detains upstate New York residents, they are usually detained in the Buffalo Federal Detention Facility located in Batavia, New York. However, ICE may detain the person anywhere else in the country if bed space is not available, if the person has a prior removal order, or if ICE has another motive to detain the individual elsewhere. A detained individual's location may be determined using ICE's Online Detainee Locator System by entering their Alien Registration Number ("A-Number") and country of birth, or other biographical information.

How can my client have access to his/her child(ren) if my client is in ICE custody?

According to the current ICE directive, "Detention and Removal of Alien Parents and Legal Guardians", when dealing with a detainee who has a pending Family Court proceeding, ICE is responsible for:

- Facilitating participation in family court or child welfare proceedings;
- Facilitating regular parent-child visitation and communication; and
- Coordinating care or travel of minor child(ren) pending removal of a parent or legal guardian

The bottom line is, if your client is detained by ICE, do not assume there is nothing you can do! Reach out to the RIAC and we can help communicate with ICE officers to get your client access to his or her children and your client's participation in the pending Family Court proceeding. This is easier said than done, so having a resource to help communicate with ICE can go a long way to protecting your client's rights and mitigating the trauma to both parents and children that comes from family separation.

CONTACT YOUR RIAC AS SOON AS POSSIBLE WHEN WORKING WITH A NONCITIZEN CLIENT IN FAMILY OR CRIMINAL COURT!!

*We use the term "removal" to refer to a client's "deportation" from the United States. It is a term of art in Immigration Law that encompasses both the laws of deportability and inadmissibility.



CONTACT US!

Tel. (315)356-5794

Fax (315)356-5795

Riac2@ocgov.net

Sharon Ames, Esq.

sames@ocgov.net

CELL: (315)272-0505

Tina Hartwell, Esq.

thartwel@ocgov.net

CELL: (315)264-9217

**Chief Defenders &
Assigned Counsel
Administrators:**

Contact the RIAC2 to
schedule your next
training, lunch hour or
other session in your
office/county.

We will provide CLE credit!