

# RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

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*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.*

## The New ICE Enforcement Memo and What it Means for Your Client

On September 30, Secretary of Homeland Security Alejandro Mayorkas issued a policy Memorandum entitled “Guidelines for the Enforcement of Civil Immigration Law.”<sup>1</sup> The Memorandum went into effect on November 29, 2021. As the Memo succinctly begins, “this Memorandum provides guidance for the apprehension and removal of noncitizens.”

### What is in the Memo?

After a discussion about the importance of “prosecutorial discretion”, words we have not heard since before 2016, and a subject we will leave to another day, the Memo goes on to state: “We will prioritize for apprehension and removal noncitizens who are a threat to our national security, public safety, and border security.” The “public safety” category is most relevant to your clients and will be the focus of our last newsletter of 2021.

### The “Public Safety” Category for Prioritized ICE Enforcement

A noncitizen who poses a current threat to public safety, typically because of serious criminal conduct, is a priority for apprehension and removal.

There can be **aggravating factors that militate in favor of enforcement action...**

- the gravity of the offense of conviction and the sentence imposed;
- the nature and degree of harm caused by the criminal offense;
- the sophistication of the criminal offense;
- use or threatened use of a firearm or dangerous weapon;
- a serious prior criminal record.

Conversely, there can be **mitigating factors that militate in favor of declining enforcement action...**

- advanced or tender age;
- lengthy presence in the United States;

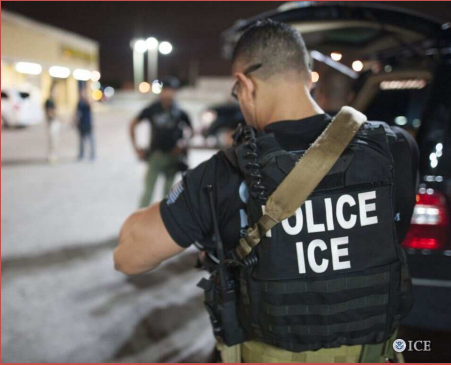
### In This Issue:

## New ICE Enforcement Memo

### UPCOMING EVENTS:

## Happy Holidays and a Happy New Year!





- a mental condition that may have contributed to the criminal conduct, or a physical or mental condition requiring care or treatment;
- status as a victim of crime or victim, witness, or party in legal proceedings;
- the impact of removal on family in the United States, such as loss of provider or caregiver;
- whether the noncitizen may be eligible for humanitarian protection or other immigration relief;
- military or other public service of the noncitizen or their immediate family;
- time since an offense and evidence of rehabilitation;
- conviction was vacated or expunged.

The Memo goes on to state: “Our personnel should not rely on the fact of conviction or the result of a database search alone. Rather, our personnel should, to the fullest extent possible, obtain and review the entire criminal and administrative record and other investigative information to learn of the totality of the facts and circumstances of the conduct at issue.”

This sounds like each ICE officer is going to spend time poring over your client’s records and history to make the correct determination, right? Let us consider what is in “the records” about your client: The charges, affidavits and supporting statements, rap sheets, presentence reports... pretty much all of the records on the prosecutorial side of the equation. What about your client? Where are the “records” about your client’s long history in the US, steady employment, trauma history, family ties and other facts that show your client in more positive light? How much time is an ICE officer going to dedicate to finding positive information about your client?

**What defense counsel needs to do:**

1. Use this checklist to determine what information applies to your client.
2. Get critical information from your client about his/her immigration status and history, family members and other mitigating information. You have heard it from us before: INTAKE IS IMPORTANT.
3. Use mitigation experts! ICE will probably not go looking for this information on their own and it could mean the difference between your client staying in the U.S. or being removed.
4. If your client has contact with ICE, contact immigration counsel to advocate with ICE on your client’s behalf.
5. If client’s conviction is on direct appeal, make sure someone knows that, including the client, so they can let ICE know the conviction is not final.
6. Make sure you know what your client’s priorities are. They may conflict with what is suggested here depending on the circumstances.
7. CONTACT THE RIAC. This has not changed, but it is as important as ever!

The Immigrant Defense Project has issued an excellent Practice Advisory with more information and strategies for defense counsel. You can access it here: <https://www.immigrantdefenseproject.org/wp-content/uploads/Criminal-Defense-Attorneys-Advisory-on-BIDEN-UPDATED-Enforcement-Priorities.pdf>

<sup>1</sup> Mayorkas, A. Memorandum, “Guidelines for the Enforcement of Civil Immigration Law,” Dept. of Homeland Security, Sept. 30, 2021.

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**Contact the RIAC2 to**

**schedule your next**

**training, lunch hour or**

**other session in your**

**office/county.**

**We will provide CLE credit!**