



ORI Know Your Rights

Q&A on Immigration

This presentation is for informational purposes only. For legal advice, please contact an attorney.

Immigration Status Definitions

LPR: Lawful Permanent Resident

F1 Visa: Student visa holder

H1B: Dual intent visa holder

TPS: Temporary Protected Status

Undocumented:
Someone who entered without detection and/or has not filed paperwork with the government.

Overview of Department of Homeland Security



Immigration & Customs Enforcement

Immigration Police
/ Enforcement,
Detention &
Deportation,
representing the
DHS in
immigration
proceedings

Customs & Border Protection

Enforcement at
the border and
within 100 miles
of the border,
checkpoints, and
ports of entries

U.S. Citizenship & Immigration Services

Adjudicates
petitions for
immigration
benefits (asylum,
green cards,
citizenship, special
visas)

How People May Come into Contact with Immigration Enforcement



Contact with the criminal system

Applying for a benefit at United States Citizenship and Immigration Services (USCIS), *while having a removal order or criminal charge*

Green card & Visa holders returning from travel:

- CBP must show either Immigrant intent OR Fraud
- A visa holder is subject to expedited removal

Raids & targeted enforcement

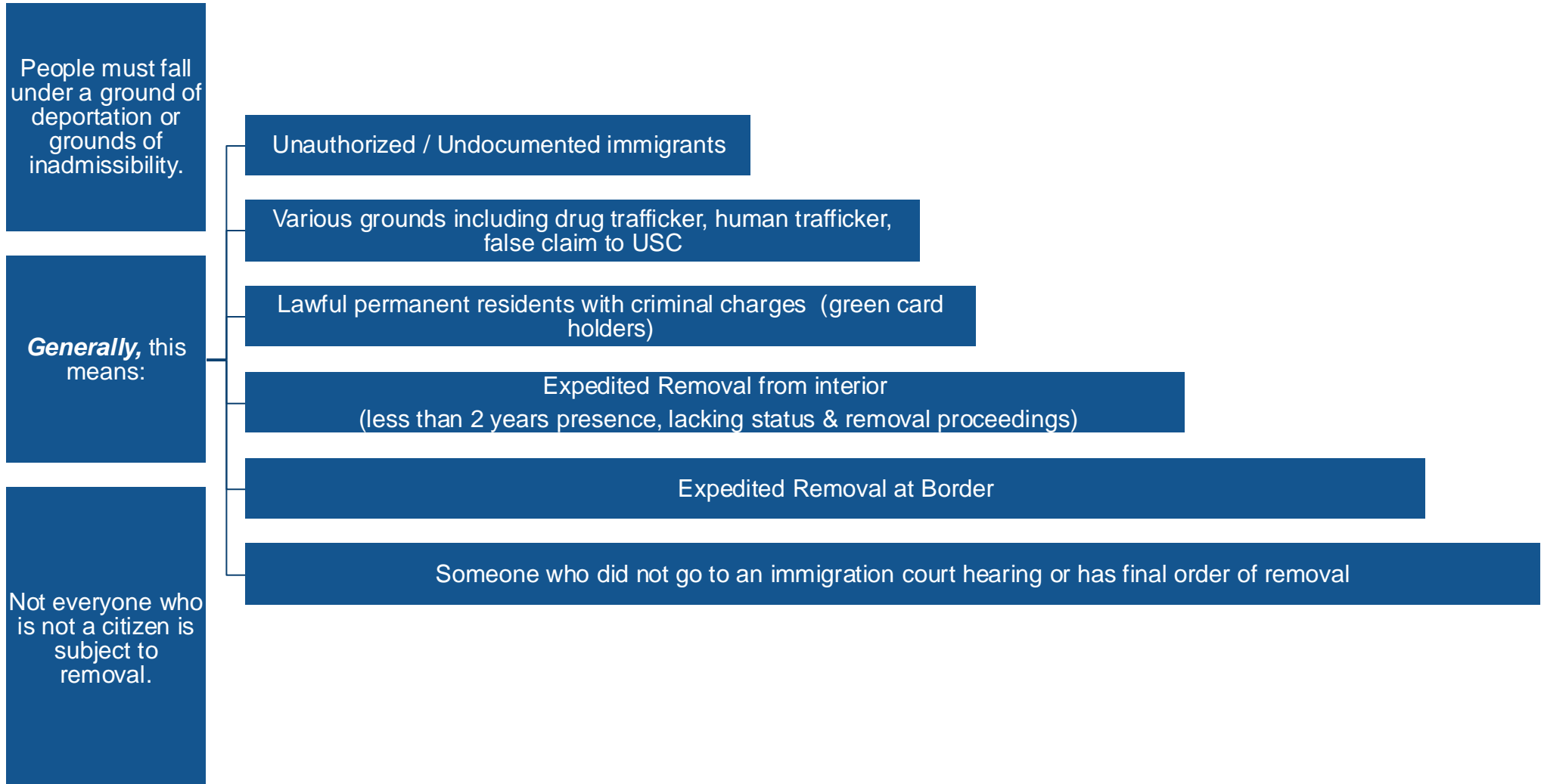
Attending an ICE appointment

Responding to an email/text/letter from ICE

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CONFIDENTIAL DRAFT: FOR POLICY DEVELOPMENT PURPOSES

Who is at Risk of Removal/Denial of Admission?



Reasons for Removal/Denial of Admission



Lack of lawful status

Criminal grounds, including:

- Nearly all drug convictions
- Some domestic violence, violation of protection order
- Some theft, fraud, and many other offenses.

Sometimes, relatively minor and non-violent offenses can lead to mandatory deportation even for green card holders.

Immigration violations / Fraud

Security related grounds (gang involvement, terrorism)



Travel Concerns for Students

- Secretary of State Authority to cancel visas or green cards:
 - **INA 212(a)(3)(C) - "Potentially Serious Adverse Foreign Policy Consequences."** [INA 212\(a\)\(3\)\(C\)/8 USC 1182\(a\)\(3\)\(C\)](#) authorizes the Secretary of State to exclude an individual "whose entry or proposed activities in the United States the Secretary... has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States."



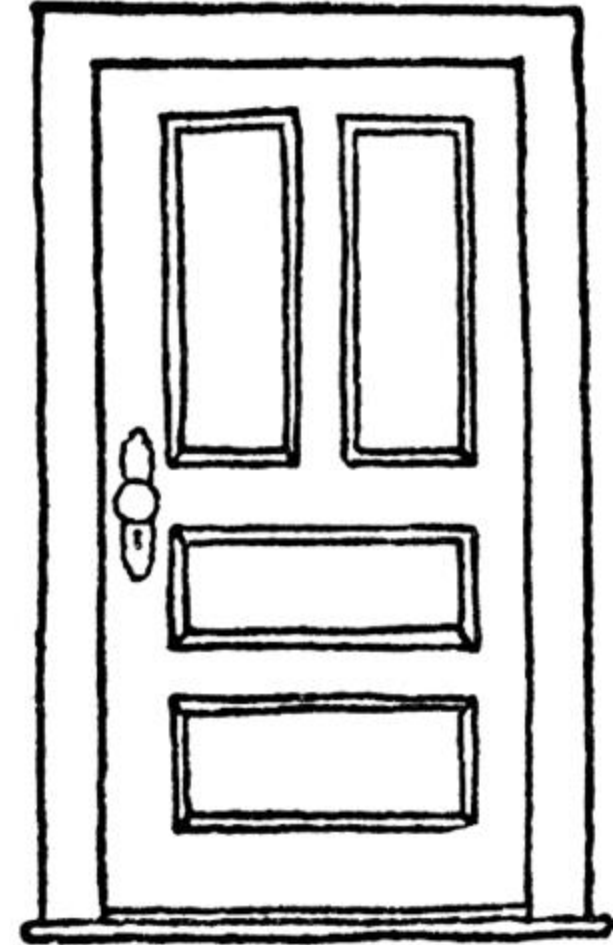
Know Your Rights: Interactions with Immigration Enforcement

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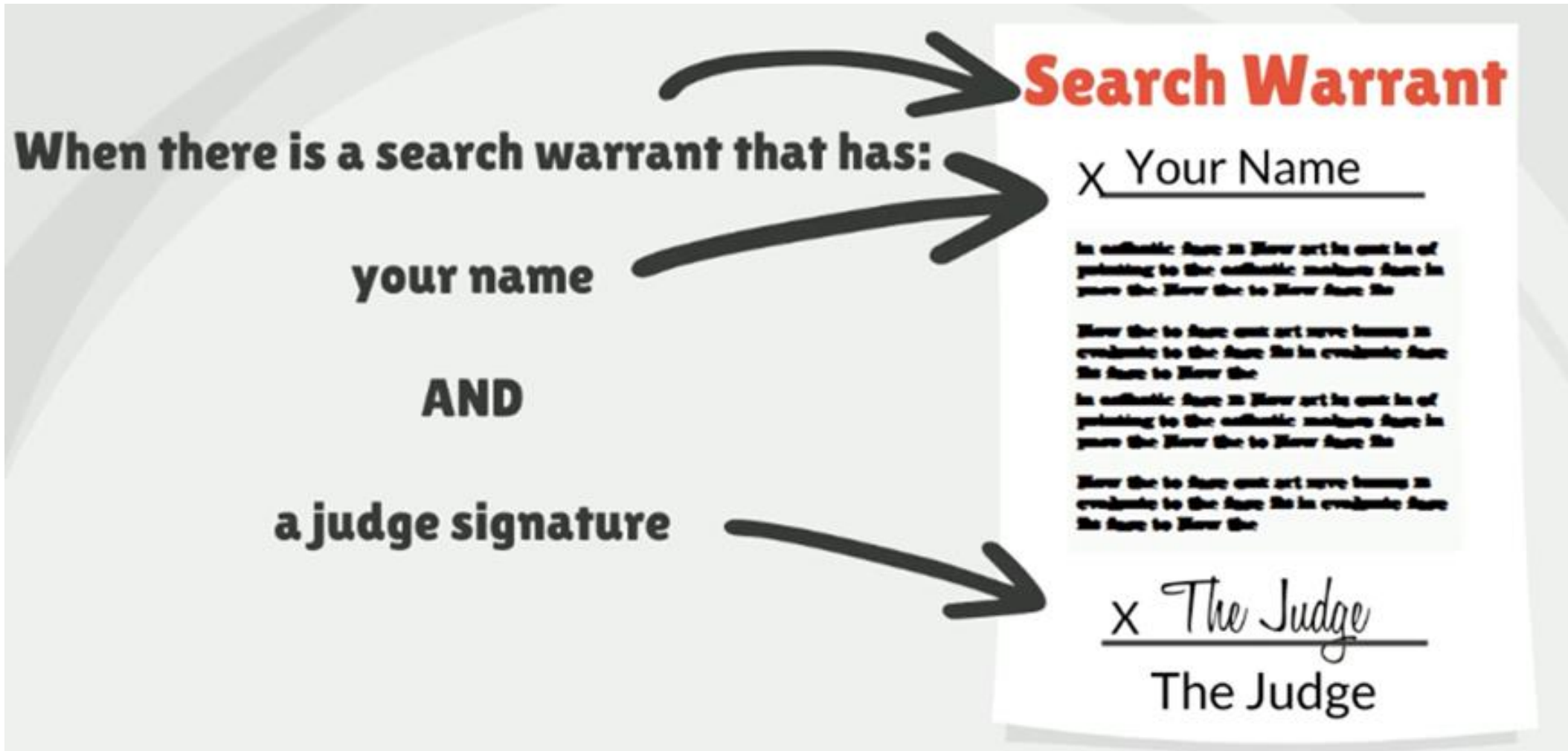
If Immigration Comes to Your Home



- **Stay calm, take a deep breath**
- Legally, you do not need to open the door unless the officer provides you with a warrant signed by a judge
- You may ask officers to identify themselves (agency, name, ID)
- You may ask if they have a **warrant** signed by a judge
- You have the right to remain silent and to an attorney, including if arrested by ICE. If you choose to invoke that right, state to officers "I request my right to silence and to an attorney"
- One way to assert these rights is to slide a "Know Your Rights" card under the door
- For help, call a US citizen friend, family member or an attorney



How can law enforcement enter my home?



Warrants



EXAMPLE OF WARRANT SIGNED BY A JUDGE

AD-93 (Rev. 01/05) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the
Southern District of California

In the Matter of the Search of
(briefly
or else ...) Case No. 14MJ0396

2943 Raynard Avenue
San Diego, California

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Southern District of California (identify the person or describe the property to be searched and give its location):
See Attachment A-2.

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be searched):
See Attachment B-2.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before February 14, 2014 (not to exceed 10 days)

☒ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge Hon. David H. Bortick (name).

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) ☐ for _____ days (not to exceed 30).
Until, the facts justifying, the later specific date of _____.

Date and time issued: 1/30/2014 5:44 PM [Signature]
Judge's signature

City and state: San Diego, California Hon. David H. Bortick, U.S. Magistrate Judge
Printed name and title

EXAMPLE OF IMMIGRATION WARRANT: DOES NOT GIVE IMMIGRATION PERMISSION TO ENTER HOME

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____
Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violation:

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)

on _____ (Name of Alien) on _____ (Date of Service) and the contents of this notice were read to him or her in the _____ (Language) language.

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form 5-2013 (Rev. 09/14)



State Warrants

State Warrants can be “arrest” or “search”

- ***Issued by State Courts:***
 - **Boston Municipal Court**
 - **District Court**
 - (ex: West Roxbury, Wareham)
 - **Superior Court**
 - (ex: Middlesex, Suffolk)
 - **NOTE** Subpoena & Summons are very different!

APPLICATION FOR SEARCH WARRANT G.L. c. 276, §§ 1-7	TRIAL COURT OF MASSACHUSETTS	
NAME OF APPLICANT [REDACTED]	SUPERIOR ESSEX	COURT DEPT. DIVISION
POSITION OF APPLICANT Trooper, Massachusetts State Police	SEARCH WARRANT DOCKET NUMBER	

I, the undersigned APPLICANT, being duly sworn, depose and say that:

- I have the following information based upon the attached affidavit(s), consisting of a total of 77 pages, which is (are) incorporated herein by reference.
- Based upon this information, there is PROBABLE CAUSE to believe that the property described below:
 - ☐ has been stolen, embezzled, or obtained by false pretenses.
 - ☒ is intended for use or has been used as the means of committing a crime.
 - ☐ has been concealed to prevent a crime from being discovered.
 - ☒ is unlawfully possessed or concealed for an unlawful purpose.
 - ☒ is evidence of a crime or is evidence of criminal activity.
 - ☐ other (specify):
- I am seeking the issuance of a warrant to search for the following property (describe the property to be searched for as particularly as possible):
See Addendum A, which is incorporated herein by reference.
- Based upon this information, there is also probable cause to believe that the property may be found (check as many as apply):
 - ☒ at (identify the exact location or description of the place(s) to be searched):



State Warrants, Continued

Must be signed by Judge, Clerk Magistrate or Assistant Clerk


<div>PRINTED NAME OF APPLICANT</div> <div></div>	<div>SIGNED UNDER THE PENALTIES OF PERJURY</div> <div>X</div> <div>Signature of Applicant</div>
<div>SWORN AND SUBSCRIBED TO BEFORE ME</div> <div>Signature of Justice, Clerk-Magistrate or Assistant Clerk</div>	<div>Date</div>




Know Your Rights Cards

- Multilingual Infographic for Using Rights Card
- Asserting the right to remain silent can be difficult.
- It is helpful for people to have a rights card in their wallets that they can pull out and give to immigration agents or police.
- <https://www.ilrc.org/red-cards>





Zadvydas v. Davis

- 
- “[T]he Due Process Clause applies to all “persons” within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”

Recently Affected Populations

Immigrant Students:

- Columbia University Students:
 - Venue Issues w/Nj & NY case
 - Student fearing arrest: ICE ordered by court to “backdown” on arrest
- Boston Student from Tufts

Travelers:

- Doctor From Brown University
- Scientist from France
- LPR from Germany

NOTE:

- Habeas process - timing
- LPR Criminal Charges – travel overseas difficult

Definitions

- **G28:** Form allowing a lawyer (need not be an immigration lawyer) to represent you in court, in front of CBP and ICE.
- **Habeas:** Procedure in federal court to obtain release from federal custody.

Habeas Background

- Habeas is filed in Federal Court
- Venue & Jurisdiction required
- All students concerned about status should (a) consult with an immigration lawyer now, and (b) if pursuing legal representation, have a signed G28 on file with a lawyer
- Mass Specific 48 hour hold rule
 - Will prevent removal “from jurisdiction” for 48 hours



At risk? Make A Safety Plan

Consider giving to relevant people:

- “Sharing” your location
- Name & cell of your lawyer, close family members
- Copies of your lawyer’s G28
- Permission to Represent

Airport Pickup (if you must travel)

- Have LPR or US citizen pick you up @ airport
- Text when you land, make sure lawyer is on call
- Have copies of your G28 and make sure family does

Basics of Family Preparedness

- **Consider:**
 - Obtaining a Caregiver Affidavit
 - Deciding who can care for your children if you are unable to
 - Ensuring school pickup lists are updated
 - Obtaining passports for all children (especially US or your home country)
 - Writing down instructions if your child has any medical conditions and/or takes any medications
 - Keeping a file of important documents
- **ICE detainee locator:**
 - <https://locator.ice.gov/odls/homePage.do>.

Family at Risk? Make a family plan

- Massachusetts Planning for those with uncertain immigration status:
 - <https://www.mass.gov/emergency-planning-guide-for-families>
- Boston Medical Center Family Plan:
 - https://www.bmc.org/sites/default/files/Patient_Care/Specialty_Care/IRHP/family_preparedness_plan.pdf

What is Harboring?

Harboring -- Subsection 1324(a)(1)(A)(iii) makes it an offense for any person who -- knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.

Examples of court opinions about “harboring” (Pre-Hansen)

01

Installation of security systems designed to alert undocumented immigrants to impending INS on-site inspections and facilitate their escape constitutes harboring .

United States v. Herrera, 584 F.2d 1137, 1144 (2d Cir. 1978)

02

Use of radio scanners tuned to border patrol frequency in vehicles used to transport undocumented immigrants into the United States

United States v. Fierros, 692 F.2d 1291, 1292 (9th Cir. 1982)

03

Instructing immigrants that, if questioned, they should deny that they were (undocumented) and say that they were from New York State

United States v. Kim, 193 F.3d 567, 574 (2d Cir. 1999)

Warning people about ICE presence or lying to ICE may be considered harboring

- One circuit court notes that “shielding or harboring a person without status ordinarily includes *affirmative conduct* such as providing shelter, transportation, direction about how to obtain false documentation, or warnings about impending investigations that facilitates a person’s continuing illegal presence in the United States.” *United States v. Ozcelik*, 527 F.3d 88, 99 (3d Cir. 2008), as amended (June 19, 2008)
- In contrast, we have found no cases in which a defendant has been convicted under this statute for merely giving an alien advice to lay low and to stay away from the address on file with the INS, obvious information that any fugitive would know. *United States v. Ozcelik*, 527 F.3d 88, 99 (3d Cir. 2008), as amended (June 19, 2008)

Other Harboring Case Examples Not found to be harboring

- Defendant had a romantic relationship and cohabited with her undocumented boyfriend who was eventually removed from the U.S. and subsequently returned without authorization. (*U.S. v. Costello*, 666 F.3d 1040, 1045 (7th Cir. 2012))
- The act of shutting a door as an agent rounded the corner and her subsequent reply to the agent's question (I don't know about whether someone was there) did not establish "harboring" under Section 1324(a) because it only led to speculation as to the suspect's presence. (*U.S. v. Silveus*, 542 F3d 993 (3rd Cir. 2008))

Criminal Charges & Immigrant Protestors

Many different charges can result from a protest, there is no way to predict or advise on all. Below see a few examples. The Federal government has revoked visas & legal status of immigrants involved, arrested, supporting or advocating in a protest or making public statements.

Criminal Charges have different effects on immigration status with visa holders the most vulnerable. However, the administration asserts that they have the power to revoke LPR status or visas for those who pose a risk of causing “adverse foreign policy” consequences.

Some Examples:

TRESPASSING

DISORDERLY
CONDUCT

INCITEMENT TO
RIOT

CONSPIRACY

ATTEMPT

ASSAULT AND
BATTERY ON POLICE
OFFICER

MAYHEM

CONSPIRACY/JOINT
ENTERPRISE



Immigration Legal Resources

It may take time to find a provider, please use trusted providers and check references.

Legal Services Directory in Massachusetts:

- Massachusetts Legal Resource Finder:
 - <https://masslrf.org/en/home>
- Immigration court list of legal services:
<https://www.justice.gov/eoir/file/ProBonoMA/download>
- City of Boston free consultations:
 - <https://www.boston.gov/departments/immigrant-advancement/free-immigration-consultations>.
- MIRA immigration helpline:
 - <https://miracoalition.org/news/immigration-helpline/>

Legal Services Directory Outside of Massachusetts:

- Immigration Advocates Network Legal Directory:
<https://www.immigrationadvocates.org/legaldirectory/>

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Resources for Students, Faculty & Administration

- ACLU KYR:
 - https://www.aclum.org/sites/default/files/faq_speech_on_campus_updated_4.22.24.pdf
 - <https://www.aclum.org/en/know-your-rights/know-your-rights-general-guidance-demonstrations-and-protests>
- Immigrant KYR in multiple languages:
 - https://www.nilc.org/resources/?resource_type%5B%5D=know-your-rights
- Guidance for Higher Ed:
 - <https://www.nilc.org/resources/protecting-immigrant-students-employees-guidelines-for-higher-education-institutions/>

West Virginia v. Barnette

- “If there is any fixed star in our constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein”.
- “But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.”