

# **Defending Non-Citizens in Illinois, Indiana, and Wisconsin**

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**with Heartland Alliance's National Immigrant Justice Center,  
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“[T]hough deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. That deportation is a penalty -- at times a most serious one -- cannot be doubted. Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.”

*Bridges v. Wixon*, 326 U.S. 135, 154 (1945).

#### DISCLAIMER

**This manual is NOT INTENDED to serve as legal advice on individual cases, but to give a general overview of the immigration consequences for criminal convictions to public defenders and criminal defense attorneys who are working with non-citizen clients. Due to the ever-changing nature of immigration law, almost weekly administrative immigration appellate decisions, and federal court rulings, attorneys are strongly urged to contact and collaborate closely with an immigration attorney who works on criminal immigration cases in every case involving a non-citizen defendant.**

**CHAPTER**

**7**

**Enforcement and Detention**

**by Immigration and Customs Enforcement**

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**Expansion of Immigration Enforcement Programs**

Since the creation of the Department of Homeland Security in 2003, increased funding for immigration enforcement has continued, demonstrating that the prior and current administrations' dedication to increasing border security and interior enforcement of immigration laws. More than 30,000 non-citizens are in custody under DHS authority in 260 facilities across the country, with a budget to detain 33,400 on any given day; this constitutes, more than three times the number detained in 1996, prior to the enactment of IIRAIRA.<sup>1054</sup> This constitutes more than three times the number of detainees in 1996. As a result of the increased funding over the past several years, ICE and CBP have been expanding current programs to apprehend non-citizens present in the U.S. in violation of immigration law. Evidence of this focus on enforcement is present in prisons, in the workplace, and in communities across the United States.

ICE's Criminal Alien Program ("CAP") is structured to ensure that non-citizens serving time for criminal convictions in local, state, and federal facilities are not released into the community by completing removal proceedings while they are incarcerated.<sup>1055</sup> In Fiscal Year 2008, ICE issued 221,085 charging documents to non-citizens in such facilities.<sup>1056</sup> Through its Detention Enforcement and Processing Offenders Through

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<sup>1054</sup> See M. Roberts, "Immigrants face lengthy detention with few rights," *The Associated Press*, Mar. 10, 2009 (citing information received from a Freedom of Information Act request evidencing 32,000 detainees in DHS custody on January 25, 2009 and an additional 2,700 per day on electronic monitoring programs); Amnesty International, *Jailed Without Justice: Immigration Detention in the USA*, at 6, Mar. 25, 2009, available at <http://www.amnestyusa.org/immigrant-detention/page.do?id=1641031>.

<sup>1055</sup> See "Fact Sheet: Criminal Alien Program," ICE, Nov. 19, 2008, available at [www.ice.gov/doclib/pi/news/factsheets/criminal\\_alien\\_program.pdf](http://www.ice.gov/doclib/pi/news/factsheets/criminal_alien_program.pdf).

<sup>1056</sup> See *id.*

Remote Technology (“DEPORT”) Center located in Chicago, ICE interviews inmates at the 114 federal Bureau of Prisons (“BOP”) facilities.<sup>1057</sup> In Fiscal Year 2008, DEPORT officers issued 5,933 charging documents to non-citizens in the BOP facilities.<sup>1058</sup>

The increase in funding for the Criminal Alien Program has not stretched far enough to place ICE agents in all local and state jails. Therefore, ICE has sought the assistance of local law enforcement under section 287(g) of Immigration and Nationality Act.<sup>1059</sup> The U.S. General Accounting Office recently released a report critical of §287(g) agreements and programs between ICE and local law enforcement and found a lack of ICE oversight of the local law enforcement officers.<sup>1060</sup>

ICE has also begun its “Secure Communities” program with local law enforcement agencies. As part of the program, ICE distributes technology that links local law enforcement agencies with the FBI and DHS biometrics systems.<sup>1061</sup>

Local law enforcement agencies, state agencies involved with the issuance of driver’s licenses, and ICE are also in partnership by sharing information.<sup>1062</sup> Begun in 2003 with eight team, ICE’s Fugitive Operation’s Program uses information provided by local agencies to track down and arrest non-citizen fugitives, including those who do not have criminal convictions but who are subject to a final order of removal or deportation.<sup>1063</sup> In Fiscal Year 2008, the teams arrested 34,155 fugitives.<sup>1064</sup>

Although the program targets non-citizen terrorism suspects and convicted criminals, more than half of the non-citizens apprehended are those who previously applied for immigration relief, had their applications denied, and remained in the U.S. without legal authorization.<sup>1065</sup> ICE has made a special effort to remove these non-citizens as laid out in the strategic plan for detention and removal entitled Endgame. This plan strives for a 100 percent removal rate of all non-citizens who have been ordered removed by 2012.<sup>1066</sup>

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<sup>1057</sup> See *id.*

<sup>1058</sup> See *id.*

<sup>1059</sup> See “Section 287(g) of the Immigration and Nationality Act,” *Immigration and Customs Enforcement*, [www.ice.gov](http://www.ice.gov).

<sup>1060</sup> See U.S. General Accounting Office, “Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws,” Jan. 30, 2009, available at <http://www.gao.gov/products/GAO-09-109>.

<sup>1061</sup> See ICE, “New ICE Program Enhances Identifying and Removing Criminal Aliens in Fairfax County,” Mar. 9, 2009, available at <http://www.ice.gov/pi/nr/0903/090309fairfax.htm>.

<sup>1062</sup> See “Teams track fugitive immigrants for deportation,” *National Public Radio*, [www.npr.org](http://www.npr.org), Sept. 3, 2006.

<sup>1063</sup> See Ruth Morris, “U.S. Adding Fugitive Squads That Target Immigrants Who Ignore Expulsion Orders,” *South Florida Sun-Sentinel*, Feb. 26, 2007.

<sup>1064</sup> ICE Annual Report Fiscal Year 2008, p. 3, available at [http://www.ice.gov/pi/reports/annual\\_report/2008/ar\\_2008\\_page3.htm](http://www.ice.gov/pi/reports/annual_report/2008/ar_2008_page3.htm).

<sup>1065</sup> See *id.*

<sup>1066</sup> See *Endgame: Office and Detention and Removal Strategic Plan, 2003-2012: Detention and Removal Strategy for a Secure Homeland*, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Jun. 27, 2003; *An Assessment of the United States Immigration and Customs Enforcement’s Fugitive Operations Teams*, Department of Homeland Security, Office of Inspector General, Mar. 2007, pp. 5, 17.

As an amendment to the January 2006 renewal and update of the Violence Against Women Act (VAWA), Congress authorized forensic DNA sampling for most persons arrested or detained by federal authorities, including ICE.<sup>1067</sup> Only two categories of non-citizens will be exempt: 1) legal non-citizens who are stopped briefly by authorities; and 2) lawful permanent residents who are detained on non-criminal immigration violations.<sup>1068</sup> After the FBI analyzes the DNA, it will become a computer-readable profile that is loaded into the National DNA Index System database.<sup>1069</sup>

## **Custody Determinations: Bond, Parole, or Mandatory Detention?**

As of October 9, 1998, ICE must detain many categories of non-citizens without bond, regardless of whether they are a flight risk or pose a danger to the local community. Where a non-citizen has been sentenced to serve time for a state offense, the state authorities are not obligated to release him from prison to the DHS for execution of a removal order prior to the completion of his sentence.<sup>1070</sup>

<b>Who is Subject to Mandatory Detention?</b>	
1.	Any non-citizen who has been arrested and convicted for: <sup>1071</sup> <ul style="list-style-type: none"><li>▪ A crime involving moral turpitude for which he has been sentenced to a term of imprisonment of one year or more;</li><li>▪ Two or more crimes involving moral turpitude, regardless of the length of the sentence, if any.</li><li>▪ An aggravated felony;</li><li>▪ A firearms offense;</li><li>▪ Possession of a controlled substance other than simple possession of thirty grams or less of marijuana</li><li>▪ Possession of drug paraphernalia; or</li><li>▪ Sale of a controlled substance</li></ul>
	AND
2.	Released from local, state, or federal custody on or after October 9, 1998, regardless of the reason for the release.

<sup>1067</sup> See Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006).

<sup>1068</sup> See Julia Preston, "U.S. Set to Begin a Vast Expansion of DNA Sampling," *New York Times*, [www.nytimes.com](http://www.nytimes.com), Feb. 5, 2007.

<sup>1069</sup> See *id.*

<sup>1070</sup> See *Elias-Nieves v. Wallace*, 2006 U.S. Dist. LEXIS 42670 (E.D.WI Jun. 23, 2006) (citing *Duamutef v. INS*, 386 F.3d 172, 182 (2<sup>nd</sup> Cir. Sept. 23, 2004)). If a bond is posted for release from state custody and the non-citizen is transferred to DHS custody instead, it may be difficult to obtain a refund of the bond money posted. See K. Rivas, "Program Hard on Hispanics Wallets," *The Times News*, [www.thetimesnews.com](http://www.thetimesnews.com), May 6, 2007.

<sup>1071</sup> See I.N.A. § 236(c), 8 U.S.C. § 1226(c); *In re Saysana*, 24 I&N Dec. 602 (BIA Aug. 27, 2008); *In re Kotliar*, 24 I&N Dec. 124 (BIA Mar. 21, 2007).

Where a non-citizen has been convicted of one of the above qualifying crimes, his date of release from criminal custody controls whether he will be subject to mandatory detention by the ICE. Mandatory detention means that he will not be eligible for release from DHS custody under bond or on his own recognizance until the removal proceedings have been finally completed, either resulting in a grant of relief from removal or a final removal order.<sup>1072</sup>

**NOTE:** It is critical to investigate a non-citizen client's past history, including any cases involving supervision, a stay of adjudication of guilt or deferred adjudication. A non-citizen who has been convicted for one misdemeanor crime involving moral turpitude and pleads guilty to a second misdemeanor crime involving moral turpitude may find himself subject to mandatory detention by ICE.

For non-citizens detained in Indiana, Illinois, and Wisconsin, the Immigration Court in Chicago conducts custody redetermination hearings (known as bond hearings) to consider whether non-citizens who were released from federal, state, county, or local police custody prior to October 9, 1998 should be released on bond pending the outcome of their removal proceedings. The Chicago Immigration Court also conducts "Joseph" bond hearings to determine whether non-citizens are subject to mandatory detention under I.N.A. § 236(c), 8 U.S.C. § 1226(c).<sup>1073</sup> In a Joseph hearing, an individual may demonstrate that he is a U.S. citizen or U.S. national, that he was not convicted of the predicate crime, or that the DHS is substantially unlikely to establish that he is subject to I.N.A. § 236(c), 8 U.S.C. § 1226(c).<sup>1074</sup> If the Immigration Judge finds that a non-citizen is subject to mandatory detention and enters an order of "no bond" or "no jurisdiction over the bond request", then the non-citizen may file an appeal with the Board of Immigration Appeals.<sup>1075</sup> A non-citizen may also file a petition for a writ of habeas corpus to challenge his ongoing detention by the DHS in the federal district court with jurisdiction over the warden of the facility where he is being held<sup>1076</sup> while removal proceedings take place before

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<sup>1072</sup> See *In re Rojas*, 23 I&N Dec. 117 (BIA May 18, 2001) (holding that an Immigration Judge does not have jurisdiction to redetermine custody status of a non-citizen subject to the mandatory detention provisions where they were released from state custody after October 8, 1998, even if he is not taken into custody immediately by the INS (or current DHS) upon his release from incarceration); *In re Adeniji*, 22 I&N Dec. 1102 (BIA Nov. 3, 1999); *In re West*, 22 I&N Dec. 1405 (BIA Oct. 26, 2000); see also, *Kahn v. Perryman*, 2000 U.S. Dist. LEXIS 11091 (N.D. Ill. July 31, 2000); cf. *Olatunji v. Ashcroft*, 387 F.3d 383 (4<sup>th</sup> Cir. Oct. 19, 2004) (holding that where a non-citizen pled guilty to an offense rendering him subject to mandatory custody under I.N.A. § 236(c)(1), 8 U.S.C. § 1226(c)(1) prior to the enactment of IIRAIRA, he is eligible to be released under bond even where he is charged as an arriving alien by the DHS).

<sup>1073</sup> See *In re Joseph*, 22 I&N Dec. 660 & 799 (BIA May 28, 1999) (holding that a lawful permanent resident will not be considered "properly included" in a mandatory detention category where an Immigration Judge finds, on the basis of the bond record as a whole, that it is substantially unlikely that the INS will prevail on a charge of removability specified in I.N.A. § 236(c)(1), 8 U.S.C. § 1226(c)(1)).

<sup>1074</sup> See *id.*

<sup>1075</sup> See 8 C.F.R. §§ 1003.19(f), 1003.38.

<sup>1076</sup> See *Kholiyavskiy v. Achim*, 443 F.3d 946 (7<sup>th</sup> Cir. Apr. 17, 2006) (holding that the proper respondent is the warden of the facility where the non-citizen is being held, not the DHS Director of Detention and Removal).

the Immigration Court and the Board of Immigration Appeals.<sup>1077</sup>

Where a non-citizen has been convicted of a specified offense and released from criminal custody *on or after October 9, 1998*, he will be subject to mandatory detention by ICE pending the completion of removal proceedings before the Immigration Court and any appeals before the Board of Immigration Appeals.<sup>1078</sup> Even where a noncitizen was arrested by law enforcement on or after October 9, 1998 and the arrest did not result in a criminal conviction, but the noncitizen is deportable or inadmissible for a conviction which occurred prior to October 9, 1998, mandatory detention under INA §236(c), 8 U.S.C. §1226(c).<sup>1079</sup> Challenges to mandatory detention may be brought in federal district court through a petition for a writ of habeas corpus

A non-citizen need not be charged in a Notice to Appear by the DHS with or found deportable for the ground of deportability that is the basis for mandatory detention under 8 U.S.C. § 1226(c)(1) to be considered as a non-citizen who “is deportable” on that ground.<sup>1080</sup> Admissions during a bond hearing by a non-citizen that he committed and was convicted of crimes that fall within 8 U.S.C. § 1226(c) is sufficient evidence to find that the DHS would be likely to establish removability under a ground not formally charged to sustain an order that the non-citizen is subject to mandatory detention.<sup>1081</sup> Furthermore, a non-citizen’s most recent release from custody on or after October 9, 1998 need not have been related to the ground of deportability that is the basis for mandatory detention.<sup>1082</sup> Thus, a non-citizen who was convicted of misdemeanor shoplifting in 1995 and then arrested and convicted of a second misdemeanor shoplifting offense in May 2000 will be considered to have been convicted of two crimes involving moral turpitude. She can be held in mandatory detention by ICE without bond.

Where a non-citizen was last released from the custody of an authority other than ICE *before* October 9, 1998, he will be eligible for consideration for bond and not subject to mandatory detention under I.N.A. § 236(c), 8 U.S.C. § 1226(c),<sup>1083</sup> even if he is convicted of a

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<sup>1077</sup> See *Al-Saddiqi v. Achim*, 531 F.3d 490 (7<sup>th</sup> Cir. Jun. 27, 2008); *Aceves-Santos v. Sedlock*, 2008 U.S. Dist. LEXIS 101717 (Dec. 2, 2008).

<sup>1078</sup> See *Demore v. Kim*, 538 U.S. 510, 528-29 (Apr. 29, 2003) (holding that detention of a lawful permanent resident pending completion of removal proceedings is constitutionally permissible).

<sup>1079</sup> See *In re Saysana*, 24 I&N Dec. 602 (BIA 2008).

<sup>1080</sup> See *In re Kotliar*, 24 I&N Dec. 124, 126 (BIA Mar. 21, 2007).

<sup>1081</sup> See *id.* at 126-27 (BIA Mar. 21, 2007).

<sup>1082</sup> See *id.* at 124; *In re Saysana*, 24 I&N Dec. 602 (BIA 2008); see also, *In re Rojas*, 23 I&N Dec. 117 (BIA May 18, 2001) (holding that a non-citizen who is released from criminal custody after October 8, 1998 is subject to mandatory detention under 8 U.S.C. § 1226(c), even if he is not taken into DHS custody immediately upon release from incarceration).

<sup>1083</sup> See *In re Adeniji*, 22 I&N Dec. 1102 (BIA Nov. 3, 1999) (holding that I.N.A. § 236(c), 8 U.S.C. § 1226(c) does not apply to persons whose most recent release from custody by an authority other than the INS occurred prior to the expiration of the Transitional Period Custody Rules); see also, *In re Joseph*, 22 I&N Dec. 660 & 799 (BIA May 28, 1999); *Saucedo-Tellez v. Perryman*, 55 F. Supp. 2d 882 (N.D. Ill. July 2, 1999) (holding that I.N.A. § 236(c), 8 U.S.C. § 1226(c), only applied prospectively to aliens released from custody after October 1998 and did not apply to the petitioner who was released from custody in 1996). Prior to the implementation of IIRAIRA, mandatory detention of lawful permanent residents in exclusion proceedings was held to be unconstitutional. See *Ekekhov v. Aljets*, 979 F.Supp. 640 (N.D.IL Sept. 17, 1997) (holding that former I.N.A. § 236(e), 8 U.S.C. §



qualifying crime after October 8, 1998.<sup>1084</sup> To be granted a bond, he will need to establish that he is not a flight risk and does not present a danger to property or to persons.<sup>1085</sup>

Where a non-citizen is not subject to I.N.A. § 236(c), 8 U.S.C. § 1226(c), then an Immigration Judge may order him released on bond where he establishes “to the satisfaction of the Immigration Judge that he or she does not present a danger to others, a threat to the national security, or a flight risk.”<sup>1086</sup> A non-citizen who presents a danger to persons or property should not be released during the pendency of removal proceedings.<sup>1087</sup> The burden is on the non-citizen to demonstrate to the satisfaction of the Immigration Judge that she merits release on bond.<sup>1088</sup>

Bond proceedings are separate and apart from the removal hearing.<sup>1089</sup> The factors that an Immigration Judge may consider in a bond hearing may include any or all of the following: 1) whether the non-citizen has a fixed address in the U.S.; 2) the non-citizen’s length of residence in the U.S.; 3) the non-citizen’s family ties in the U.S.; 4) the non-citizen’s employment history; 5) the non-citizen’s record of appearance in court; 6) the non-citizen’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; 7) the non-citizen’s history of immigration violations; 8) any attempts by the non-citizen to flee prosecution or otherwise escape from authorities; and 9) the non-citizen’s manner of entry to the U.S.<sup>1090</sup> An Immigration Judge is not limited to considering only criminal convictions in assessing whether a non-citizen is a danger to the community.<sup>1091</sup> Any evidence in the record that is probative and specific can be considered.

There are two exceptions to mandatory detention under I.N.A. § 236(c), 8 U.S.C. § 1236(c). First, where a non-citizen who has been admitted into the Witness Protection Program and whom the DHS has determined is not a danger to the community and is likely to appear for future removal proceedings, she may be released from custody.<sup>1092</sup> Second, a non-citizen who is charged as an arriving alien may be paroled into the U.S. in the

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1226(e) is unconstitutional as applied to lawful permanent residents in exclusion proceedings and that Immigration Judges have authority to make parole determinations).

<sup>1084</sup> See *In re West*, 22 I&N Dec. 1405 (BIA Oct. 26, 2000) (holding that I.N.A. § 236(c), 8 U.S.C. § 1226(c) does not apply to an alien last released from the physical custody of state authorities prior to October 8, 1998 but convicted after October 8, 1998 where he was not physically confined or restrained as a result of that conviction).

<sup>1085</sup> See *id.*

<sup>1086</sup> See I.N.A. § 236(a), 8 U.S.C. § 1226(a); *In re D-J-*, 23 I&N Dec. 572 (A.G. Apr. 17, 2003) (holding that neither the I.N.A. nor applicable regulations confer on a non-citizen the right to be released on bond); *In re Guerra*, 24 I&N Dec. 37 (BIA Sept. 28, 2006).

<sup>1087</sup> See *In re Drysdale*, 20 I&N Dec. 815 (BIA May 25, 1994).

<sup>1088</sup> See *In re Guerra*, 24 I&N Dec. 37 (BIA Sept. 28, 2006).

<sup>1089</sup> See 8 C.F.R. § 1003.19(d); see also, *In re Chirinos*, 16 I&N Dec. 276 (BIA Jul. 14, 1977).

<sup>1090</sup> See *In re Saelee*, 22 I&N Dec. 1258 (BIA Feb. 25, 2000); *In re Drysdale*, 20 I&N Dec. 815 (BIA May 25, 1994).

<sup>1091</sup> See *In re Guerra*, 24 I&N Dec. 37, 40-41 (BIA Sept. 28, 2006).

<sup>1092</sup> See I.N.A. § 236(c), 8 U.S.C. § 1226(c); *Velez-Lotero v. Achim*, 414 F.3d 776, 782 (7<sup>th</sup> Cir. Jul. 11, 2005).

discretion of ICE to attend deferred inspection interviews with the CBP and to appear for removal proceedings.<sup>1093</sup>

**A non-citizen who has pled guilty and been placed on “first offender probation” may be subject to mandatory detention by the DHS if he was arrested and convicted on or after October 9, 1998.<sup>1094</sup>**

Where the DHS initially decided to hold a non-citizen without the possibility of release under bond or set the bond at \$10,000 or more, the DHS has the ability to override an Immigration Judge’s decision to grant release under bond. If the Immigration Judge finds that the non-citizen is not subject to I.N.A. § 236(c), 8 U.S.C. § 1236(c) and issues an order granting him release under bond, then the DHS may file Form EOIR-43, Notice of DHS to Appeal Custody Redetermination, known as an automatic stay, within one business day.<sup>1095</sup> The DHS then must file Form EOIR-26, Notice of Appeal, with the Board of Immigration Appeals within ten business days or else the automatic stay is dissolved.<sup>1096</sup> The filing of an automatic stay and a notice of appeal by the DHS means the non-citizen will remain in DHS custody, pending the resolution of the bond appeal, unless he is success in obtaining relief from removal and/or a writ of habeas corpus in federal district court. Where the DHS initially set a bond in an amount under \$10,000, the automatic stay provision is not applicable.

### ***Practice Tips***

ICE will not normally transport a non-citizen to criminal court for hearings regarding criminal charges. Counsel may need to request that the state court issue a writ in order to have a non-citizen transferred back to county custody to resolve criminal charges. Counsel may also need to inform the state court and prosecutor that the non-citizen is in ICE custody to avoid the issuance of a warrant for arrest due to failure to appear, the forfeiture of a criminal bond, and/or a charge for a violation of probation, supervision, or conditional discharge.

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<sup>1093</sup> See I.N.A. § 212(d); 8 U.S.C. § 1182(d).

<sup>1094</sup> See *Gonzalez v. O’Connell*, 355 F.3d 1010, 1020 (7<sup>th</sup> Cir. Jan. 21, 2004) (finding that mandatory detention under I.N.A. § 236(c), 8 U.S.C. § 1226(c) applies to a non-citizen who pled guilty and was sentenced to first offender probation under 720 ILCS 570/410).

<sup>1095</sup> See 8 C.F.R. § 1003.19(i)(2); *Galarza-Solis v. Ashcroft*, 2004 U.S. Dist. LEXIS 5289 (N.D.IL Mar. 30, 2004).

<sup>1096</sup> See 8 C.F.R. § 1003.19(i)(2); see also, “Interim Operating Policies and Procedures Memorandum 06-03: Procedures for Automatic Stay Cases,” David L. Neal, Acting Chief Immigration Judge, Oct. 31, 2006, reprinted in 83 Interpreter Releases 2487 (Nov. 13, 2006).

## ***Parole***

While removal proceedings are pending, the DHS may “parole” non-citizens for urgent humanitarian reasons or significant public benefit.<sup>1097</sup> Once a non-citizen has been paroled, she may be released from DHS custody; however, she is not deemed to have made a legal entry to the country. Neither an Immigration Judge nor a federal district court has jurisdiction to review the DHS’s decision to deny a request for parole.<sup>1098</sup>

A non-citizen who is paroled from DHS custody is issued a Form I-94 which evidences that he has been paroled into the U.S. to appear for a deferred inspection appointment with CBP or ICE. He may be required to appear periodically at the Chicago ICE Office to request extensions of his parole status and I-94 card, similar to probation. If he violates the terms and conditions of his parole status, ICE may revoke his parole and detain him pending the completion of his removal proceedings. If relief from removal is ultimately denied, ICE may detain him until his removal from the U.S.

Mariel Cubans are Cuban nationals who entered the U.S. during the 1980 Mariel boatlifts and never adjusted their status to become lawful permanent residents. Mariel Cubans are subject to the ICE Cuban Review Panel process.<sup>1099</sup> Cubans who came to the United States during the 1980 Mariel boatlifts and adjusted their status to become lawful permanent residents are subject to the review process for orders of supervision. All other non-citizens whom ICE cannot deport are subject to ICE’s review process for orders of supervision.

## ***Orders of Supervision***

Under I.N.A. § 241, 8 U.S.C. § 1231, the DHS has 90 days to remove a non-citizen from the U.S. after his order of removal has become final.<sup>1100</sup> During this initial 90 day period, the detention of a non-citizen is mandatory.<sup>1101</sup> Following the initial 90 day period,

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<sup>1097</sup> See I.N.A. § 212(d)(5), 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212.5.

<sup>1098</sup> See 8 C.F.R. § 1003.19(h)(1)(i)(B); I.N.A. § 242(a)(2)(B), 8 U.S.C. § 1252(a)(2)(B) However, a circuit court of appeals may review a decision denying parole if the decision raises a constitutional or legal issue. See I.N.A. § 242(a)(2)(D), 8 U.S.C. § 1252(a)(2)(D); *Bolante v. Achim*, 457 F. Supp. 2d 898 (E.D.WI Oct. 18, 2006) (holding that the federal district court has no jurisdiction to review the DHS’s denial of a request for parole for the detained petitioner and dismissing the petition for a writ of habeas corpus for lack of subject matter jurisdiction).

<sup>1099</sup> See 8 C.F.R. § 212.12.

<sup>1100</sup> For purposes of the 90 day removal period, an order of removal is final on: 1) the date the DHS issues a FARO under I.N.A. § 238(b), 8 U.S.C. § 1228(b); 2) the date that the Immigration Judge issues an order of removal and both the DHS and the non-citizen waive their right to appeal that decision; 3) the date the Board of Immigration Appeals issues its final decision; 4) the date of the Court of Appeal’s final order where the Board affirmed a removal order and the Court of Appeals has ordered a stay of removal pending resolution of the petition for review; 5) the date the non-citizen is released from detention or confinement by local, state, or federal department of corrections or a federal authority, other than an immigration authority, where a final order of removal has already been issued. See I.N.A. § 241(a)(1)(B), 8 U.S.C. § 1231(a)(1)(B); 8 C.F.R. § 1241.1; *Hussain v. Mukasey*, 510 F.3d 739 (7<sup>th</sup> Cir. Dec. 18, 2007); *Al-Bareh v. Chertoff*, 552 F.Supp.2d 794 (N.D.IL May 7, 2008).

<sup>1101</sup> See I.N.A. §§ 241(a)(3), (6), 8 U.S.C. §§ 1231(a)(3), (6).

a non-citizen may be held in continued detention or may be released under an order of supervision.<sup>1102</sup> At the end of the 180 day period, the burden of proving the reasonable foreseeability of a non-citizen's removal from the U.S. shifts to the DHS which must provide evidence to rebut the showing that there is no significant likelihood of removal in the reasonably foreseeable future.<sup>1103</sup>

Prior to the expiration of the initial 90 day removal period, the ICE field office director of the Detention and Removal Office which has jurisdiction over the facility where the non-citizen is being detained shall conduct a custody review.<sup>1104</sup> The ICE director may either order the non-citizen released under an order of supervision or continue his detention.<sup>1105</sup> If ICE decides to continue detention, then ICE may retain responsibility to review the non-citizen's custody again up until the 180<sup>th</sup> day or may refer the non-citizen's case to the ICE headquarters (known as HQPDU) for further review.<sup>1106</sup>

Where a non-citizen has been released under an order of supervision, he must report and comply with all of the conditions contained in the order of supervision.<sup>1107</sup> Basically, being under an order of supervision means that a non-citizen is indefinitely under DHS supervision. Terms and conditions of supervision can include monthly in-person reporting to the Chicago ICE Office which may later be modified to include periodic reporting and/or telephonic reporting. A non-citizen under an order of supervision is eligible for an employment authorization document (work permit) which must be renewed annually.<sup>1108</sup> If a non-citizen does not comply with the conditions of his supervision or commits any other offenses, ICE may revoke his order of supervision and take him back into custody pending further attempts to deport him and further review of his custody situation.<sup>1109</sup>

### *Alternatives to Detention*

ICE may also release a non-citizen under one of its "Alternatives to Detention" programs that remotely monitor non-citizens.<sup>1110</sup> In Fiscal Year 2008, more than 15,000 non-citizens were released under an alternative to detention program.<sup>1111</sup>

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<sup>1102</sup> See *id.*; For a detailed outline of the steps and timeline for post-order custody reviews, see *Kazarov v. Achim*, 2007 U.S. Dist. LEXIS 14001 (N.D.IL Feb. 27, 2007).

<sup>1103</sup> See *Zadvydas v. Davis*, 533 U.S. 678, 701 (Jun. 28, 2001) (holding that a non-citizen who has been ordered removed based on the grounds of deportability may be detained for six months as a period reasonably necessary to bring about his removal from the U.S.; also holding that the indefinite detention of a non-citizen beyond six months is unconstitutional unless it is likely that his removal will be carried out within a reasonably foreseeable period); see also *Clark v. Martinez*, 543 U.S. 371 (Jan. 12, 2005) (holding that *Zadvydas v. Davis*, 533 U.S. 678 (Jun. 28, 2001) also applies to non-citizens who have been found to be inadmissible to the U.S. and who have final orders of removal).

<sup>1104</sup> See 8 C.F.R. § 241.4(k)(1)(i).

<sup>1105</sup> See *id.*

<sup>1106</sup> See 8 C.F.R. § 241.4(k)(1)(ii).

<sup>1107</sup> See 8 C.F.R. § 241.5.

<sup>1108</sup> See 8 C.F.R. § 241.5(c).

<sup>1109</sup> See 8 C.F.R. § 241.4(l).

<sup>1110</sup> See Eleanor Stables, "ICE Official Wants to Expand 'Alternatives to Detention' Programs," *CQ Homeland Security*, [www.cq.com](http://www.cq.com), Mar. 16, 2007.

The first program is known as the Electronic Monitoring Program which requires non-citizens to call into a reporting system from a designated phone and wear ankle bracelets that can be monitored.<sup>1112</sup> This program is available nationwide to non-citizens awaiting immigration court hearings or removal from the U.S. For non-citizens subject to wearing an ankle bracelet, they are deemed to not be “in custody” for purposes of a bond redetermination hearing request before the Immigration Court.<sup>1113</sup>

The second program is a pilot program known as Intense Supervision Appearance Program (ISAP).<sup>1114</sup> This form of supervision is marked by three phases with varying levels of ankle monitoring, office and home visits, and check-in reporting.<sup>1115</sup> It is only available to non-citizens awaiting immigration court hearings or removal who are not subject to mandatory detention and who reside in one of designated pilot program cities.<sup>1116</sup>

### **Workplace Enforcement Actions and Resulting Criminal Prosecutions of Employers and Employees**

The DHS is also stepping up efforts to enforce immigration laws within the workplace through the Worksite Enforcement Initiative. Raids of companies where undocumented non-citizens are employed have resulted in charges against undocumented employees for immigration violations and criminal violations, such as identity theft. The DHS has also prosecuted owners, managers, supervisors, and independent contractors for criminal law violations, such as harboring, recruiting and hiring, or smuggling undocumented non-citizens.

The tightening of workplace enforcement has been felt throughout the country and is expected to continue under the Obama administration as announced by DHS Secretary Napolitano in April 2009.<sup>1117</sup> Investigations and enforcement actions may involve different federal agencies, including the U.S. Department of Labor, the FBI, the IRS, the Social Security Administration, and the U.S. Attorney’s Office in the Department of Justice. They may also involve state and local law enforcement.

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<sup>1111</sup> See ICE Annual Report Fiscal Year 2008, available at [http://www.ice.gov/pi/reports/annual\\_report/2008/ar\\_2008\\_page9.htm](http://www.ice.gov/pi/reports/annual_report/2008/ar_2008_page9.htm).

<sup>1112</sup> See ICE, “Alternatives to Detention,” available at <http://www.ice.gov/partners/dro/details.htm>.

<sup>1113</sup> See *In re Aguilar-Aquino*, 24 I&N Dec. 747 (BIA Mar. 12, 2009).

<sup>1114</sup> See ICE, “Alternatives to Detention,” available at <http://www.ice.gov/partners/dro/details.htm>.

<sup>1115</sup> See *id.*

<sup>1116</sup> See ICE Annual Report Fiscal Year 2008, available at [http://www.ice.gov/pi/reports/annual\\_report/2008/ar\\_2008\\_page9.htm](http://www.ice.gov/pi/reports/annual_report/2008/ar_2008_page9.htm).

<sup>1117</sup> See ICE, “Worksite Enforcement Overview,” Apr. 30, 2009, available at <http://www.ice.gov/pi/news/factsheets/worksite.htm>.

### ICE Workplace Enforcement as a Top Priority<sup>1118</sup>

- In Fiscal Year 2008, ICE arrested more than 5,100 non-citizens for immigration violations at worksites.
- In that same time period, ICE made more than 1,100 criminal arrests, including 135 owners, managers, supervisors or human resources employees who were charged with knowingly hiring or harboring illegal aliens and the rest being workers charged with aggravated identity theft and Social Security Fraud.

In one of the most controversial worksite enforcement actions in U.S. history, ICE arrested 389 workers at the Agriprocessors Inc. meatpacking plant in Postville, Iowa on May 12, 2008.<sup>1119</sup> Workers were held at the National Cattle Congress grounds where their criminal cases went forward before a federal judge in proceedings that were later the subject of Congressional hearings.<sup>1120</sup>

Subsequent to the Postville and other raids with ensuing criminal charges against non-citizen workers, the U.S. Supreme Court issued a major decision about the prosecutions under the federal aggravated identity theft statute.<sup>1121</sup> In its *Flores-Figueroa* opinion, the Supreme Court held that the government must prove that the criminal defendant *knew* that the means of identification at issue belonged to another person.<sup>1122</sup>

Despite the fact that Chicago remains one of the top gateway cities for non-citizens, since 1990 non-citizens have been settling in many rural areas to work at meatpacking

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<sup>1118</sup> See ICE, "Worksite Enforcement Overview," Apr. 30, 2009, available at <http://www.ice.gov/pi/news/factsheets/worksite.htm>.

<sup>1119</sup> See ICE, "297 Convicted and Sentenced Following ICE Worksite Operation in Iowa," May 15, 2008, available at <http://www.ice.gov/pi/news/newsreleases/articles/080515waterloo.htm>; A. Olivo, "Immigration Raid Leaves Damaging Mark on Postville, Iowa," *Los Angeles Times*, May 12, 2009, available at <http://articles.latimes.com/2009/may/12/nation/na-postville-iowa12>; E. Camayd-Freixas, Ph.D., "Interpreting After the Largest ICE Raid in U.S. History: A Personal Account," Jun. 13, 2008, available at <http://graphics8.nytimes.com/packages/pdf/national/20080711IMMIG.pdf>.

<sup>1120</sup> See *id.*; American Civil Liberties Union, "Immigration Raids: Postville and Beyond," Jul. 24, 2008, available at <http://www.aclu.org/immigrants/gen/36231leg20080731.html>; U.S. Congress, House Judiciary Committee, *Immigration raids: Postville and beyond*, hearing before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, 110th Congress, 2nd session, July 24, 2008. 2009. 296 pages, <http://purl.access.gpo.gov/GPO/LPS112381>. The American Immigration Law Foundation (AILF) maintains a webpage on ICE raids and resulting litigation; for more information, visit [http://www.ailf.org/lac/clearinghouse\\_122106\\_ICE.shtml](http://www.ailf.org/lac/clearinghouse_122106_ICE.shtml). A full-length documentary about the raid entitled "The Abused" has been produced; for more information, see <http://www.abusedthepostvilleraid.com/>.

<sup>1121</sup> See *Flores-Figueroa v. Holder*, no. 08-108, 129 S.Ct. 1886 (May 4, 2009).

<sup>1122</sup> See *id.* For a further discussion, see Considerations in Federal Criminal Proceedings, *infra* at 8-12 to 8-24.

plants, other agricultural occupations, manufacturing, and construction.<sup>1123</sup> The majority of these non-citizens living in rural areas are Latino.<sup>1124</sup> For example, 35 percent of Cargill's 2,300 workers at its hog processing plant in Cass County, Illinois are Latino.<sup>1125</sup> The non-citizen population in Cass County grew from 41 to 1,049 in the 1990s.<sup>1126</sup> Cass County's employers also include a pallet plant and hardwood drying company where non-citizens work.<sup>1127</sup> On April 4, 2007, 62 sanitation workers employed by Quality Service Integrity, Inc. were arrested at Cargill Inc.'s pork plant in Beardstown, Illinois.<sup>1128</sup>

As almost half of all foreign-born individuals work in the agricultural industry in the U.S., ICE has targeted that industry for enforcement.<sup>1129</sup> The single largest ICE operation, Operation Wagon Train, took place on December 12, 2006 when ICE arrested 1,282 undocumented workers at six Swift & Company meat packing plants in Colorado, Nebraska, Texas, Utah, Iowa, and Minnesota.<sup>1130</sup> Recent reports indicate that 120 were arrested and charged with criminal offenses such as identity theft, and others were arrested and charged with civil immigration law violations.<sup>1131</sup>

ICE has also been targeting smaller businesses in the Midwest, resulting in fines and imprisonment for the owners who harbor or employ undocumented non-citizens or deportation for the non-citizens who work illegally. On October 4, 2006, sixteen employees from a Springfield, Illinois restaurant were taken into ICE custody and faced deportation. The two owners of the restaurant were arrested and indicted in federal and district court for harboring and employing illegal aliens and money laundering.<sup>1132</sup> ICE also raided a restaurant in Chicago's Greektown on January 9, 2007, arresting 10 employees suspected of being undocumented and using false social security numbers and green cards.<sup>1133</sup> Eleven Polish non-citizens working for a cleaning service in the Chicago area were arrested on January 23, 2007 for overstaying visas granted to temporarily visit the U.S.<sup>1134</sup> Seventeen

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<sup>1123</sup> See Leif Jensen, *New Immigrant Settlements in Rural America: Problems, Prospects, and Policies*, Carsey Institute, University of New Hampshire, 2006, Vol. 1, No. 3, pp. 7, 12; Karina Fortuny, Randy Capps & Jeffrey Passel, *The Characteristics of Unauthorized Immigrants in California, Los Angeles County, and the United States*, The Urban Institute, Mar. 2007, p. 20.

<sup>1124</sup> See Leif Jensen, *New Immigrant Settlements in Rural America: Problems, Prospects, and Policies*, Carsey Institute, University of New Hampshire, 2006, Vol. 1, No. 3, p. 12.

<sup>1125</sup> See *id.* at 19.

<sup>1126</sup> See *id.*

<sup>1127</sup> See *id.*

<sup>1128</sup> See Bob Burgdorfer, "Immigration Officials Arrest 62 at Pork Plant," *Reuters*, [www.reuters.com](http://www.reuters.com), Apr. 4, 2007.

<sup>1129</sup> See Randolph Capps, Karina Fortuny & Michael E. Fix, *Trends in the Low-wage Immigrant Labor Force, 2000-2005*, The Urban Institute, Mar. 2007.

<sup>1130</sup> See "U.S. Uncovers Large-Scale Identity Theft Scheme Used by Illegal Aliens to Gain Employment at Nationwide Meat Processor," *ICE News Release*, [www.ice.gov](http://www.ice.gov), Dec. 13, 2006.

<sup>1131</sup> See "Criminal Charges Mount After Immigration Raids at Swift," *Pioneer Press*, [www.twincities.com](http://www.twincities.com), Jan. 5, 2007.

<sup>1132</sup> See Sarah Antonacci, "Second Buffet City Defendant in Court," *The State Journal-Register Online*, [www.sj-r.com](http://www.sj-r.com), Sept. 30, 2006.

<sup>1133</sup> See "ICE Arrests 10 Illegal Aliens Working at Chicago Restaurant," *ICE News Release*, [www.ice.gov](http://www.ice.gov), Jan. 10, 2007.

<sup>1134</sup> See "ICE Arrests 11 Illegal Aliens Working at Cleaning Service," *ICE News Release*, [www.ice.gov](http://www.ice.gov), Jan. 24, 2007.

non-citizen workers hired by SCI, a temporary staffing agency, to work at Cano Packaging Corporation in Arlington Heights, Illinois were arrested on February 27, 2007.<sup>1135</sup>

- **Harboring non-citizens unlawfully present in the U.S. is a federal felony and punishable by up to 10 years in prison per non-citizen.**<sup>1136</sup>
- **Hiring or recruiting unauthorized non-citizens for employment is a misdemeanor punishable by up to six months in prison and a fine of \$3,000 for each non-citizen.**<sup>1137</sup>

Some of the arrested non-citizens have signed voluntary departure or removal orders which may have adverse effects for applications for future immigration benefits. Other non-citizen workers have been placed in removal proceedings where they may be eligible to apply for immigration relief before the Immigration Court.

The charges against company owners, managers, supervisors, and their employees often arise from the DHS's review of Form I-9, an employment verification form which employers are required to have completed and to maintain for each employee (U.S. citizens and non-citizens alike) for a specified period.<sup>1138</sup> They can also result from tips from local law enforcement or anonymous tips from the public to the ICE hotline for suspicious activity.<sup>1139</sup>

### ***Defense of Non-Citizens***

Federal criminal charges against undocumented non-citizens may include providing false information on a government form, falsely claiming to be a U.S. citizen, possession of a fraudulent alien registration document, possession of a false social security number, or use or possession of the social security number of another person.<sup>1140</sup> On September 18, 2008, ICE arrested 21 people for involvement in a fraudulent ID operation that allegedly produced fraudulent identification documents.<sup>1141</sup>

<sup>1135</sup> See Kari Lydersen, "Abuses Alleged During Immigration Raid," *In These Times*, [www.inthesetimes.com](http://www.inthesetimes.com), Apr. 23, 2007.

<sup>1136</sup> See I.N.A. §§ 274(a)(1)(A)(iii), (a)(2)(B)(ii)-(iii), 8 U.S.C. §§ 1324(a)(1)(A)(iii), (a)(2)(B)(ii)-(iii).

<sup>1137</sup> See I.N.A. §§ 274A(a)(1), (f)(1), 8 U.S.C. §§ 1324a(a)(1), (f)(1); *see also*, "Two Owners of a Springfield Restaurant Indicted," *ICE News Release*, [www.ice.gov](http://www.ice.gov), Oct. 5, 2006.

<sup>1138</sup> See 8 C.F.R. §§ 274a.2(b)(1)(i), (ii), 1274a.2(b)(1)(i), (ii) (regarding completion of Form I-9 within three days for jobs lasting longer than three days), 8 C.F.R. §§ 274a.2(b)(1)(iii), 1274a.2(b)(1)(iii) (regarding completion on day of hire for jobs lasting three days or less).

<sup>1139</sup> See "Immigration Raids Target Meat Plants: Interview with Julie Meyers, Assistant Secretary of Homeland Security for ICE," *NPR All Things Considered*, [www.npr.org](http://www.npr.org), Dec. 16, 2006.

<sup>1140</sup> See 18 U.S.C. § 1001(a) (regarding providing false material information); 18 U.S.C. § 1015 (regarding false claim to U.S. citizenship and possession of fraudulent alien registration card); 18 U.S.C. § 1028(a)-(b) (regarding possession or use of false social security number).

<sup>1141</sup> See ICE, "U.S. Charges 21 Defendants in Allegedly Fraudulent Document Ring Based in Chicago's Little Village Community," Sept. 19, 2008, available at



As with the ICE operation in Whitewater, Wisconsin, ICE may conduct a joint operation with local law enforcement and/or bring undocumented non-citizens to the attention of local police for prosecution under state criminal laws. State criminal offenses can include possession of a fraudulent driver's license or state identity document, counterfeiting, perjury related to forms completed with false information to obtain a driver's license or state identification card, identity theft, and failure to file state tax returns.<sup>1142</sup> If convicted, non-citizens may be deportable and/or inadmissible.<sup>1143</sup>

While federal and/or state charges are pending against non-citizens in criminal courts, ICE may file detainers against the non-citizens with the jails where they are being held.<sup>1144</sup> Non-citizens who are deportable and/or inadmissible to the U.S. will be transferred to ICE for processing upon completion of the criminal proceedings and service of any prison term ordered by the criminal court. As a result of criminal convictions, non-citizens may not be eligible for release from ICE custody, pending the completion of removal proceedings, reinstatement of a prior deportation or removal order, or execution of a deportation or removal order.<sup>1145</sup>

### ***Defense of Employers***

To comply with the federal laws, a company can participate in ICE Mutual Agreement between Government and Employers (IMAGE).<sup>1146</sup> Through IMAGE, ICE provides trainings on proper hiring procedures and fraudulent document detection so that a company can effectively verify the eligibility of all potential employees to work in the U.S. USCIS runs the E-Verify Program which allows participating employers to match the names and social security numbers of their employees, thereby checking for potentially false and stolen numbers and identities.<sup>1147</sup>

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<http://www.ice.gov/pi/nr/0809/080919chicago.htm>. For a report about the prior arrests, see M. Tarm, "Feds Announce Arrests in False ID Documents Case," *Chicago Tribune*, Apr. 25, 2007.

<sup>1142</sup> See e.g., Wis. Stat. § 943.201 (regarding identity theft), Wis. Stat. § 943.38 (regarding counterfeiting/forgery), Wis. Stat. § 343.50 (regarding use of false identification document)

<sup>1143</sup> For more information about the immigration consequences of criminal dispositions, see *Grounds of Deportability for Non-citizens*, *supra* at 3-1, *Grounds of Inadmissibility and Adjustment of Status*, *supra* at 4-1 to 4-11, and *Immigration Remedies and Defenses under the I.N.A. for Non-citizens*, *supra* at 6-1.

<sup>1144</sup> If ICE files an immigration detainer with the prosecuting authorities, then the non-citizen will not be released on bond while the criminal proceedings are pending.

<sup>1145</sup> For family and friends to find out the custody status of a non-citizen arrested in an ICE workplace raid, information may be available through the ICE Family and Friends hotline at (866) 341-3858. The hotline may, however, only have information available for the most recent ICE raid. For more information about custody by ICE, see *Mandatory Detention*, *infra* at 7-3; Appendix 7A for ICE Broadview Center and county jail contact information; see also, *Final Administrative Removal Orders*, *supra* at 6-3; *Reinstatement of Removal Orders*, *supra* at 6-5.

<sup>1146</sup> See "IMAGE," last modified Mar. 2, 2009, available at <http://www.ice.gov/partners/opaimage/>.

<sup>1147</sup> See USCIS, "About Form I-9 and E-Verify, with links to information about E-verify and employer compliance," <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1914c9676d006110VgnVCM1000004718190aRCRD&vgnnextchannel=1847c9ee2f82b010VgnVCM10000045f3d6a1RCRD>.

If a company decides to comply with IMAGE's requirements, employers should take care to avoid claims of employment discrimination. After the December 12, 2006 raid, no charges were brought against Swift & Company because of its compliance with the IMAGE's Basic Pilot Employment Verification Program. However, a complaint was brought against the company in 2001 for document-based discrimination against job applicants, and the lawsuit was later settled for \$200,000 awarded to the plaintiffs.<sup>1148</sup> The Equal Employment Opportunity Commission (EEOC) also filed a complaint against the City of Joliet, alleging that it began requiring all employees to complete the I-9 form as a form of retaliation for complaints involving harassment and a hostile work environment.<sup>1149</sup>

If an employer or non-citizen who is facing or is likely to face charges for criminal law violations or civil immigration law violations, contact an immigration attorney for advice. This should be done as soon as possible, such as immediately after a raid and before criminal or civil charges are filed.

## Renewals of Lawful Permanent Resident Cards

Alien registration cards ("green cards") for lawful permanent residents are valid for ten years and every ten years a lawful permanent resident is required to renew his card. As part of the process, he files Form I-90 with the CIS and must appear to have his fingerprints and biometric information taken.<sup>1150</sup> The CIS reviews his criminal history in the U.S. and if he has criminal or driving offenses which may render him deportable, ICE officers may arrest and detain him, issue him a Notice to Appear, and place him in removal proceedings. Non-citizens who have deportable offenses should consult an immigration attorney prior to filing Form I-90 with the CIS.

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<sup>1148</sup> See "U.S. Immigration Officials Commence Employee Interviews at Six Swift & Company Facilities," *Market Wire News*, [www.marketwire.com](http://www.marketwire.com), Dec. 12, 2006.

<sup>1149</sup> See *EEOC v. City of Joliet*, 239 F.R.D. 490, 2006 U.S. Dist. LEXIS 88979 (N.D.IL May 5, 2006) (granting a motion for a protective order barring the City of Joliet from seeking any further information about their employees' immigration status until the termination of the cause of action or subsequent court order as the City did not require evidence of immigration status from any employees from 1989 until after the complaint had been filed in the district court).

<sup>1150</sup> To review Form I-90, see Immigration Forms at [www.uscis.gov](http://www.uscis.gov). For CIS processing times for Form I-90, see <https://egov.immigration.gov/cris/jsps/ptimes.jsp>.

**IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)  
CHICAGO ICE DETENTION FACILITIES FOR  
ILLINOIS, INDIANA, AND WISCONSIN**

**McHenry County Detention Center**

2200 North Seminary  
Woodstock, IL 60098  
Phone: (815) 334-4093  
(815) 334-4741  
Fax: (815) 338-7902

Note: houses detained female non-citizens

**Tri-County Detention Center**

1026 Shawnee College Road  
Ullin, IL 62992  
Phone: (618) 845-3512  
Fax: (618) 854-3533

**Jefferson County Jail**

911 Casey Avenue  
Mount Vernon, IL 62864  
Phone: (618) 244-8015  
(618) 246-2183  
Fax: (618) 244-8999

**Boone County Jail**

3020 Conrad Lane  
Burlington, KY 41005  
Phone: (859) 334-2143  
Fax: (859) 334-3613

**Dodge County Detention Center**

216 West Center Street  
Juneau, WI 53039  
Phone: (920) 386-3219  
Fax: (920) 386-3917

**Kenosha County Detention Center**

4777 88<sup>th</sup> Avenue  
Kenosha, WI 53144  
Phone: (262) 605-5800 (KCDC)  
(262) 605-0511 (downtown)  
Fax: (262) 605-5902

All facilities will schedule attorney-detainee conference calls upon request with 24 hours notice. Contact the individual facility for its current policy as the need arises. Requests for faxed documents to be received and signed by detained non-citizens should only be made in emergencies. Mail sent to detained non-citizens by counsel should be marked "Legal Mail".

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A non-citizen will be transferred and processed by ICE at the Broadview Processing Center several times during the course of his detention, including after being taken into custody by ICE, before being transferred to a different detention facility, for video teleconference hearings conducted by the Chicago Immigration Court, and before being deported from the U.S. Non-citizens detained at the McHenry County Detention Center will appear for their Immigration Court hearings via video teleconference. Officers at the Broadview Processing Center have the information for the location of detained non-citizens.

**Broadview Processing Center**

1930 Beach Street  
Broadview, IL 60155  
Phone: (708) 449-2985  
(708) 449-6722/23  
Fax: (708) 343-8832

## Unlawful Employment of Aliens

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### I.N.A. § 274A, 8 U.S.C. § 1324a

#### (a) Making employment of unauthorized aliens unlawful

##### (1) In general

It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to such employment, or

(B) (i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) of this section or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of Title 29), to hire or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b) of this section.

##### (2) Continuing employment

It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

##### (3) Defense

##### (4) Use of labor through contract...

##### (5) Use of State employment agency documentation...

##### (6) Treatment of documentation for certain employees...

#### (b) Employment verification

The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) of this section are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

##### (1) Attestation after examination of documentation

##### (A) In general

The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

Such attestation may be manifested by either a hand-written or an electronic signature. A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document

or as requiring the individual to produce another document.

(B) Documents establishing both employment authorization and identity

A document described in this subparagraph is an individual's—

- (i) United States passport;[sic]
- (ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document—
  - (I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,
  - (II) is evidence of authorization of employment in the United States, and
  - (III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(C) Documents evidencing employment authorization

A document described in this subparagraph is an individual's—

- (i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or
- (ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual

A document described in this subparagraph is an individual's—

- (i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or
- (ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.