



ORI Know Your Rights 3.0

Q&A on Immigration

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

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)

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



Interactions with Immigration Enforcement

Overview of ICE Authority

ICE is subject to different, but similar, rules as other Law Enforcement

ICE is a federal law enforcement agency



ICE's authority is generally limited to immigration related enforcement, unless acting in concert with federal or state law enforcement, or investigating crimes through ICE criminal investigative units

- When carrying out its enforcement activities, ICE officers must follow different, but similar rules as other law enforcement agencies.
- ICE officers must adhere to constitutional restrictions, as well as restrictions set by statutes, regulations and policies.
- Individuals engaging with ICE have rights including (i) the right to remain silent; and (ii) the right to an attorney – though ICE is not required to provide one.

ICE can demand identification:

- Immigrants often must carry identification on them, including copies of a green card and/or proof of registration.
- Depending on the facts and circumstances, ICE officers, when they have probable cause to believe a person is here unlawfully, can ask for identification.

ICE can interrogate:

- ICE officers may interrogate a noncitizen or person believed to be a noncitizen as to their “right to be, or to remain in the United States” without a warrant. (*NOTE: individuals have a right to remain silent and to a lawyer even if undocumented*).
- ICE cannot approach any individual based on race or nationality alone. However, ICE can approach a person based on factors unknown to the interrogated person.

Judicial Warrants v. ICE Administrative Warrants

EXAMPLE OF WARRANT SIGNED BY A JUDGE

AD-93 (Rev. 11/05) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the
Southern District of California

In the Matter of the Search of }
(briefly } and
or alias }) 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. Bertick (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). (Check days not to exceed 30).
Until, the facts justifying, the later specific date of _____.

Date and time issued: 1/30/2014 5:41 PM [Signature]
Judge's signature

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

EXAMPLE OF ICE ADMINISTRATIVE 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 237 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations.

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 5-2010 (Rev. 09/14)

State Judicial Warrants

State Judicial Warrants can be “arrest” or “search”

- ***Issued by State Courts:***
 - **Boston Municipal Court**
 - **District Court**
 - (ex: Waltham, Wareham)
 - **Superior Court**
 - (ex: Middlesex, Suffolk)
 - **NOTE** Subpoena & Summon
 - 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:

1. 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.
2. 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):
3. 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.
4. 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 Judicial Warrants, Continued
Must be signed by Judge, Clerk Magistrate or Assistant Clerk

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

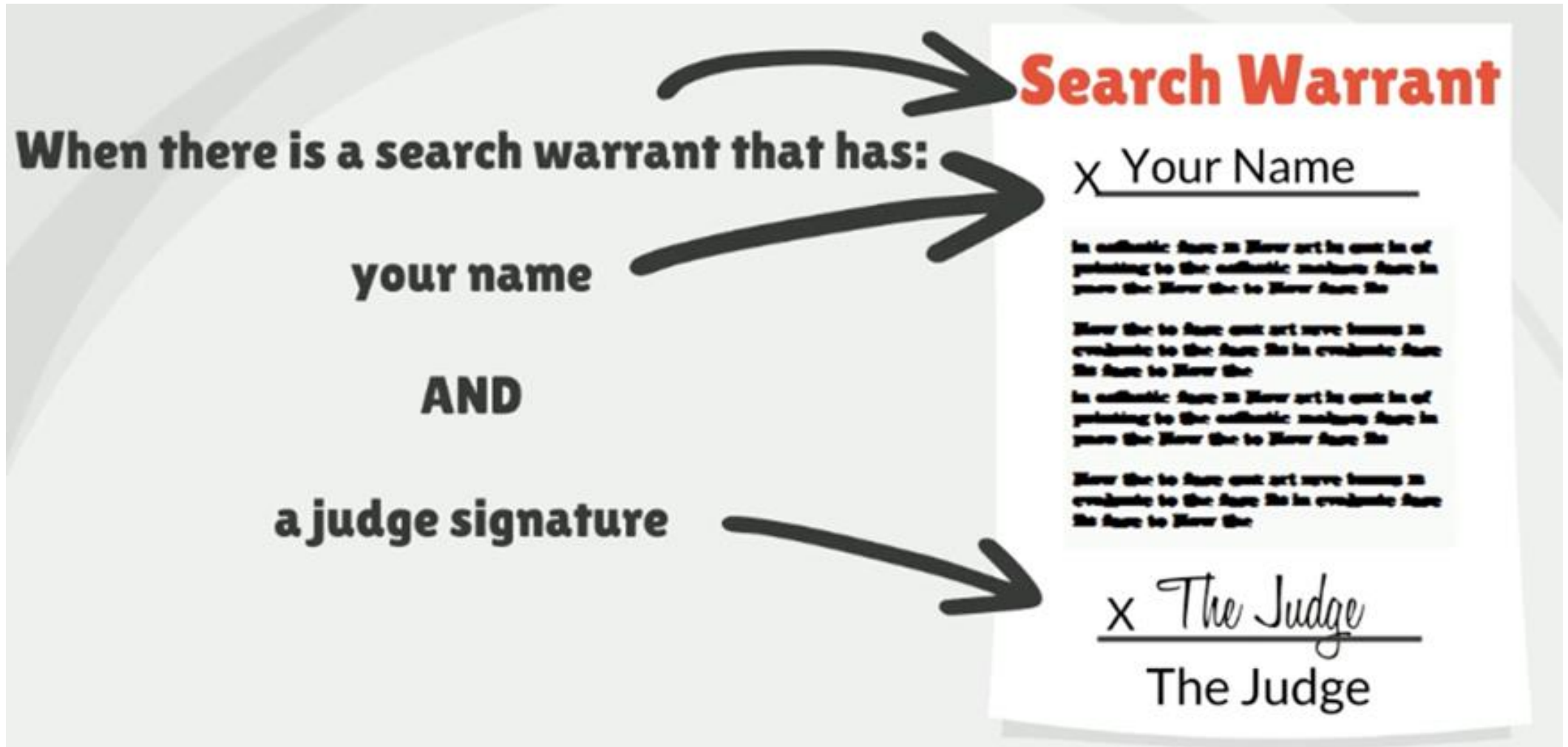


Rules Surrounding ICE warrants

Rules differ depending on location of arrest

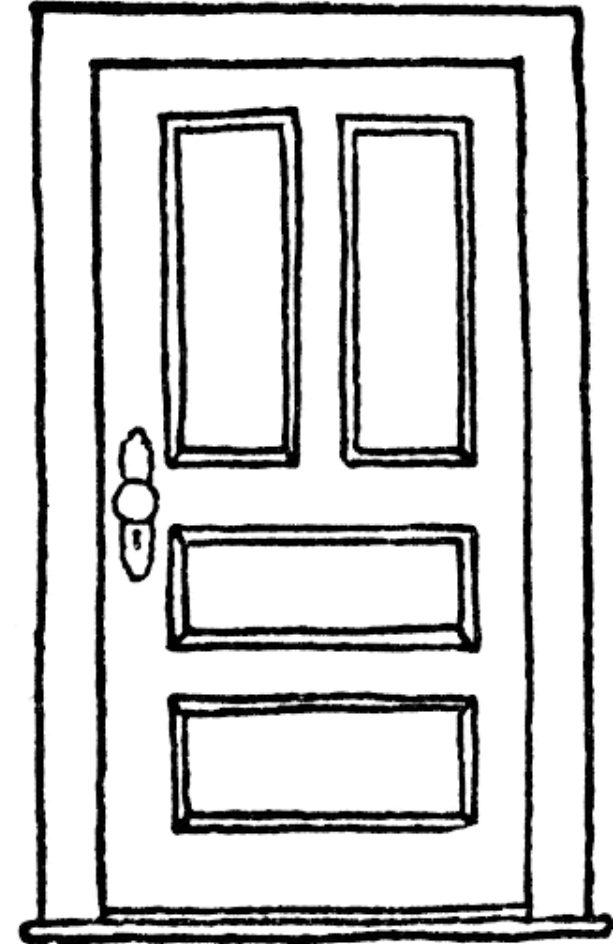
ICE has warrant requirements and warrant exceptions

How can law enforcement enter my home?



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 may assert your 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



General Warrant Requirements of ICE

The rules differ based on where ICE is trying to arrest the person

ICE Car Stops With an Administrative Warrant:

- ICE officers are only required to have “reasonable suspicion” of an immigration violation to initiate a car stop

ICE Arrests With an Administrative Warrant (NOT IN A HOME):

- ICE must have probable cause to believe the person is here in violation of the laws of the United States.

• ***In a Home:***

- ICE needs a judicial warrant to enter a home due to the Fourth Amendment to the United States Constitution

• ***A judicial warrant is:***

- signed by a Judge,
- issued by a Court and
- based on Probable Cause

ICE may make arrests outside the home, in certain circumstances, without a warrant.

ICE arrests Outside a Home, Without a Warrant

NOTE: ICE sometimes has a warrant, even if they will not show it to a bystander.

- ***The Right to Arrest Without a Warrant (NOT IN A HOME):***
 - To arrest a person on the streets or in a car, without a warrant, ICE must have “reason to believe” the individual is
 - (i) in the US in violation of immigration laws and
 - (ii) “likely to escape before an arrest warrant can be obtained.”

Regulations refer to ICE “serving” the administrative warrant on the immigrant, but do not directly order the service. 8 C.F.R. sec. 236.1(b).

Who can issue an administrative warrant? The list is long, but includes:

- Supervisory deportation officers;
- Supervisory detention and deportation officers
- Immigration Enforcement Agents; or
- Other duly authorized officers or employees of the Department of Homeland Security or the United States who are delegated the authority as provided in 8 CFR 2.1 to issue warrants of arrest, and who have successfully completed any required immigration law enforcement training.

You may bear witness to a public arrest

Physically interfering or verbally berating ICE could have adverse consequences for both you and the immigrant

Rights and Assistance of Bystanders

- You can help by keeping calm and promoting calm
- Massachusetts law allows for videotaping, disclose if using sound
- You have the right to witness and document
- You can ask if the immigrant wants you to call someone
- You can offer to help remaining family members by preparing bond packet, offering support

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.
- ***The Right to Remain Silent and an Attorney applies to ALL law enforcement encounters***
- <https://www.ilrc.org/red-cards>



- **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

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 as well

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 (3rd 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 (3rd 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)) (NOTE: case merely holds that the government did not establish 'harboring' because there was insufficient evidence that suspect was present.)

Not Harboring

Likely not harboring/Harboring

Could be considered harboring

Lawful assistance provided to a person who has documented or pending legal status.

Any help provided for basic human needs such as food, clothing, etc. that is NOT intended to hide the undocumented person from ICE

Legal assistance designed to obtain lawful status

Neighborhood watches that assist everyone and are not intended to assist individuals to remain in violation of the law.

- Lying to ICE about the whereabouts of a person known to be undocumented or present in violation of the law, with the specific intent to hide that person.
- Physical interference with ICE officers with the specific intent to hide a person who is undocumented or present in violation of the laws.

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>
- List of Immigration Groups:
 - <https://www.mass.gov/info-details/immigration-legal-support#free-immigration-legal-clinics>
- 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/>

Working With Lawyers

Immigration law is extremely complicated

Private Attorneys:

- Flat fees versus hourly
- Payment plans
- Refunds

Factors to consider:

- Public Discipline – check the BBO website
 - <https://www.massbbo.org/s/attorney-registration>
- Online ratings
- Word of Mouth
- Referral basis
- Experience
 - Do they do bond/removal defense?
 - Are they a member of AILA?
 - How often do they represent immigrants?
 - When is the last time they went to court?

• Legal Services Lawyers

- Sometimes Long waitlists
- Often more in-depth representation
- Free service
- *Different models:*
 - Direct representation
 - Finding Pro-Bono assistance
- *Intake*
 - Does not mean they will take case
- *Limited detained work*

Preparing for a Bond Hearing

Not every person will be eligible for bond

How to prepare a bond packet:

- *Documents showing identity*
- *Documents showing community ties*
 - Work pay stubs
 - School
 - Family members
 - Photos
 - Taxes

Documents re criminal charges:

- Go to court and get all **documents (complaint, docket sheets, police reports)**
- Talk to prior criminal defense atty
- Check state court website for public charges
 - <https://www.mass.gov/search-court-dockets-calendars-and-case-information>

- *Documents showing hardship*
 - Medical Records
 - Proof of hardship of children, IEP, etc.
 - Financial hardship
 - Letters from Doctors, Social Workers, therapists

How to Help Immigrants in Court Hearings/Navigating the Court System



Missing court = removal
with limited ability to
reopen the case



Not everyone has relief



Court can take all day



Work with lawyer to
obtain documents

- Online court system information:

- [Automated Case Information](#)

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.”

Legal Representation Fund (LRF)

The Attorney General's office along with ORI's support, funded and created the "Legal Representation Fund" or LRF

Boston Immigration Justice Accompaniment Network (BIJAN) & the Beyond Bond and Legal Defense Fund (BBLDF) organizes the LRF.

Mission: to help fund free legal representation to detained immigrants who are eligible to request an immigration bond

Phone Numbers to Call:

- **Detained Hotline: (617)637-8195**
- **Family & Friends Hotline: (617)396-7143**

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LRF Intake Process

Family Member /Detainee call

BIJAN will conduct a screening for basic eligibility questions

BIJAN provides family code & Referral to 3 lawyers