

ADVISORY FOR NONCITIZEN DEFENDANTS IN CRIMINAL CUSTODY | 2/6/2020

If you are not a U.S. citizen or were born outside the U.S., it is possible that Immigration and Customs Enforcement (“ICE”) of Customs and Border Protection (“CBP”) agents will try to speak with you while you are in jail, or when you are being released from jail. They may also try to get you to sign documents. If any officer tries to question you or asks you to sign something, it is important that you know your rights:

Should I tell anyone at the jail where I was born or that I am not a U.S. citizen? NO. Any information you give to jail officials might be shared with Immigration and Customs Enforcement (“ICE”) or Customs and Border Protection (“CBP”) and used against you. You have a RIGHT to not answer questions.

Should I talk with ICE if they try to interview me while I am in jail? NO. You have a RIGHT to not answer questions from ICE agents. The jail may ask you if you want to talk to ICE and give you a paper to sign. DO NOT sign the paper. Tell them you do not want to talk to ICE unless you have talked with a lawyer. Also, do not sign papers from an ICE agent without talking with a lawyer. Ask to talk to your lawyer. Tell your lawyer as soon as possible if ICE tries to question you.

Should I tell my public defender that I am not a U.S. Citizen? Even if I am undocumented? YES. If you are not a U.S. citizen you have a RIGHT (even if you are undocumented) to have your lawyer tell you whether a conviction will result in your deportation. Tell your lawyer right away if you are not a U.S. citizen and that you do not want to decide whether to plead guilty until you know if this will trigger your deportation. Your lawyer must keep this information confidential and will not share it with anyone without your permission.

What can my public defender do to help me avoid deportation? Your public defender works for YOU. If you tell your lawyer that avoiding deportation is your most important goal in resolving your criminal charges, they can try to negotiate with the prosecutor to get you a plea bargain to a crime that will not trigger deportation (sometimes they can negotiate to get your charges dismissed). If that is not possible, you have a right to take your case to trial and let a jury decide if you are guilty or not. Your lawyer will represent you if you decide to go to trial. If you lose your trial, you will have a criminal conviction that may trigger deportation.

Should I plead “guilty” to get out of jail? NO: A guilty plea will result in you having a criminal conviction. Many criminal convictions can trigger deportation. If your conviction triggers deportation, you could LOSE your green card, work permit, or other lawful immigration status/documents. If you are undocumented, your conviction can also make you INELIGIBLE to get a green card or work permit in the future.

The jail tells me I have an ICE or CBP “hold.” Will ICE pick me up when I am released from jail? MAYBE. No jail in Washington is allowed to share your non-public personal information with ICE, The jails are not allowed to tell ICE when you are being released unless that information is available publicly (for example, on the jail website). The jail also cannot legally hold you for extra time to let ICE come get you. However, sometimes ICE agents are outside the jail when people get released. Ask your lawyer before you are released if ICE comes to your jail. ICE may come to your home after you are released from jail. When you get out of jail, DO NOT TALK to ICE or answer questions from people you do not know. DO NOT OPEN THE DOOR OR LET ICE INTO YOUR HOUSE.