

A Criminal Lawyers Responsibility

Legal Interpretation, Its Impact on the Judicial Process, the Immigration Consequences of Criminal Convictions and Padilla v. Kentucky

Sponsored by: Tony Colon, President, *Techno-Logic Solutions, Inc.*

Chair: Mark A. Wolber, Esq., *Law Office of Mark A. Wolber*

**Presented by: *Oneida County Bar Association
Oneida County Public Defender, Criminal Division
Oneida County District Attorney's Office
New York State Defenders Association, Inc.***

**Speakers: Tony Colon, *President
Techno-Logic Solutions, Inc., Utica, NY***

**Joanne Macri, Esq., *Director
Criminal Defense Immigration Project
New York State Defenders Association***

**Carla Hengerer, Esq., *Deputy Chief Counsel
Immigration and Customs Enforcement
Department of Homeland Security***

Thursday, April 7, 2011

**Radisson Hotel
200 Genesee Street, Utica**

RECEPTION: 5 - 6:00 PM PROGRAM: 6 - 8:00 PM

MCLE Credits: (1) Professional + (1) Ethics

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the Immigration Consequences of Criminal Convictions
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Thursday, April 7, 2011

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6 p.m. – 6:50 p.m: Understanding the role, duties and ethical obligations of the interpreter in the courtroom.

Tony Colon, *President*
Techno-Logic Solutions, Inc., Utica, NY

MCLE Credits: (1) Professional

6:50 p.m. – 8 p.m.: A criminal lawyer's responsibility after the U.S. Supreme Court's decision in *Padilla v. Kentucky* and the immigration consequences a criminal conviction may trigger leading to detainment and deportation.

Joanne Macri, Esq., *Director*
Criminal Defense Immigration Project
New York State Defenders Association

Carla Hengerer, Esq., *Deputy Chief Counsel*
Immigration and Customs Enforcement
Department of Homeland Security

MCLE Credits: (1) Ethics

Anthony Colon's "Bio":

Anthony "Tony" Colón has over 20 years of experience as a business professional including a multifaceted employment background with a track record of success at local, regional, national and international levels. Known as a creative problem solver, he consistently demonstrated an ability to drive revenue growth, resolve conflicts, improve morale, and consistently exceed expectations. He left the corporate sector in 1999 to establish Techno-Logic Solutions, Inc. to provide services in various disciplines including language, cultural, and human services along with IT and medical recruitment. He speaks 3 foreign languages and is a Legal and Medical Spanish Interpreter. Having relocated to the Mohawk Valley from the NY City area in 1986 he now considers this area his home and resides in South Utica with his wife Marabella.

Volunteer Affiliations:

BOY SCOUTS OF AMERICA -- REVOLUTIONARY TRAILS COUNCIL, INC. — UTICA, NY

- Council President (2010 to Present)
- Executive Vice President – Council Board of Directors (2005 to 2010)
- Vice President of Inner City Outreach Initiative (2008 to 2010)
- Vice President of Marketing & Communications (2005 to 2008)

MOHAWK VALLEY COMMUNITY COLLEGE – UTICA, NY

- Board Trustee (Appointed in 2009)

MOHAWK VALLEY LATINO ASSOCIATION – UTICA, NY

- Member-At-Large (2008 to Present)
- Vice President of the Board of Directors (2004 to 2008)

NAACP UTICA BRANCH – UTICA, NY

- Member – (2008 to Present)

NEIGHBORHOOD CENTER – UTICA, NY

- Member of the Board (2008 to Present)

ONEIDA COUNTY WORKFORCE DEVELOPMENT – ONEIDA COUNTY, NY

- Civil Service Minority Community Outreach (2008)

SOUTH GATE MINISTRIES & CHURCH– WATERVILLE, NY

- Member-At-Large

UNITED WAY OF THE VALLEY AND THE GREATER UTICA AREA – UTICA, NY

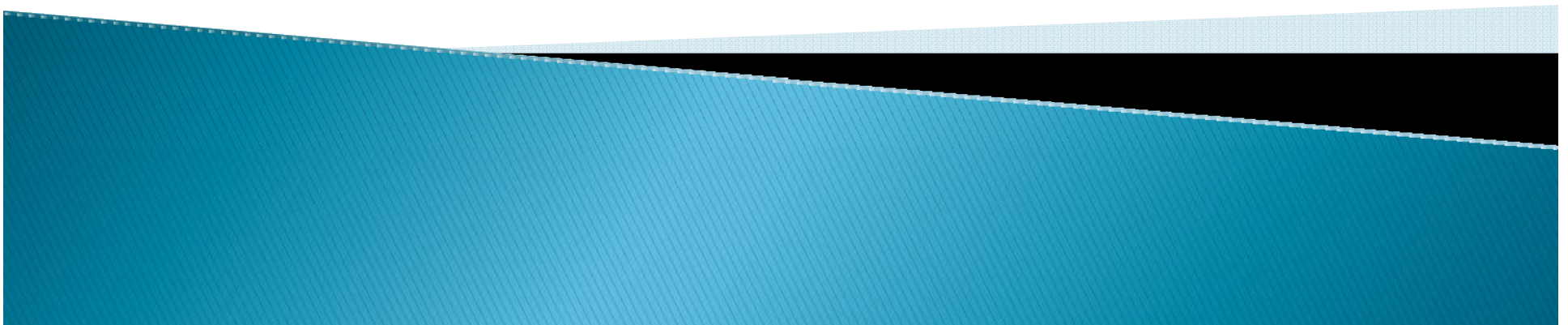
- Board Member (2010 to Present)
- Governance & Nominating Committee Chairperson (2008 to 2010)
- Executive Board Member (2008 to 2010)

JOANNE MACRI is the Director of the Criminal Defense Immigration Project (CDIP) of the New York State Defenders Association (NYSDA). On behalf of NYSDA, Ms. Macri travels across New York State training criminal defense attorneys on the immigration consequences of New York criminal convictions. For her service, Ms. Macri was recently recognized by the New York State Bar Association's Criminal Justice Section for her Outstanding Contribution to Criminal Law Education. Ms. Macri served as a legal advisor to the New York State Immigration Pardon Panel established by former Governor David Patterson and as the former Director of the NYSDA Immigrant Defense Project as a Managing Attorney for Prisoners' Legal Services of New York. Prior to joining the staff of NYSDA, Ms. Macri served as a NYSDA Board Member. She is currently an adjunct professor at the State of New York University at Buffalo Law School where she teaches immigration law, immigration law practice and criminal/immigration law. Ms. Macri received her Honors Bachelor degree from the University of Ottawa and her Juris Doctorate from Albany Law School. She serves as a committee member of the NYSBA Immigration and Federal Litigation Subcommittee and has served on the New York City Bar Association Criminal Justice Operations Committee, the WNY AILA Chapter Subcommittees for Immigration and Customs Enforcement and Customs and Border Protection.

CARLA HENGERER is Deputy Chief Counsel for Immigration and Customs Enforcement (ICE) for the Department of Homeland Security in Buffalo, New York. Prior to her current position, she served as Assistant Chief Counsel for the Immigration and Customs Enforcement, Department of Homeland Security in Buffalo (formerly the Immigration and Naturalization Service (INS) and as an Immigration Inspector and Immigration Examiner with the INS. She is a graduate of SUNY Buffalo Law School.

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**ONEIDA COUNTY BAR ASSOCIATION
CLE SEMINAR-RADISSON HOTEL-UTICA, NY- APRIL 7, 2011**



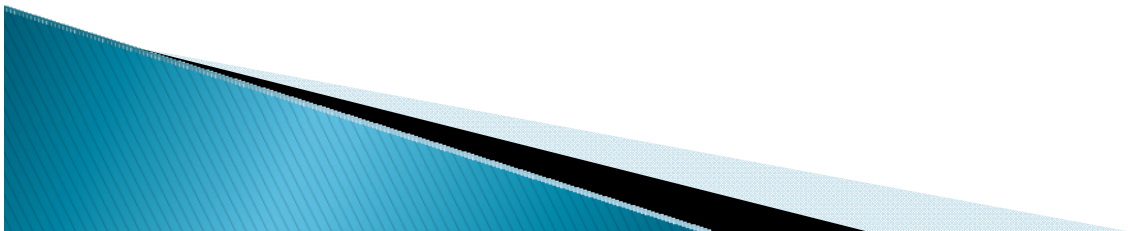
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LEGAL INTERPRETATION & THE JUDICIAL PROCESS

▶ HANDOUTS:

- WORKING WITH INTERPRETERS IN THE COURTROOM – BENCHCARD FOR JUDGES
- NYS UCS CANNON OF PROFESSIONAL RESPONSIBILITY FOR THE COURT INTERPRETER
- “IS YOUR CLIENT FROM A DIFFERENT ETHNIC OR RELIGIOUS GROUP?”
- ONEIDA COUNTY COURT TELEPHONE DIRECTORY
- THE NEW SPANISH VERSION OF THE FAMILY COURT PATERNITY PETITION
- TECHNO-LOGIC SOLUTIONS, INC. – SERVICES OFFERED & CONTACT INFORMATION

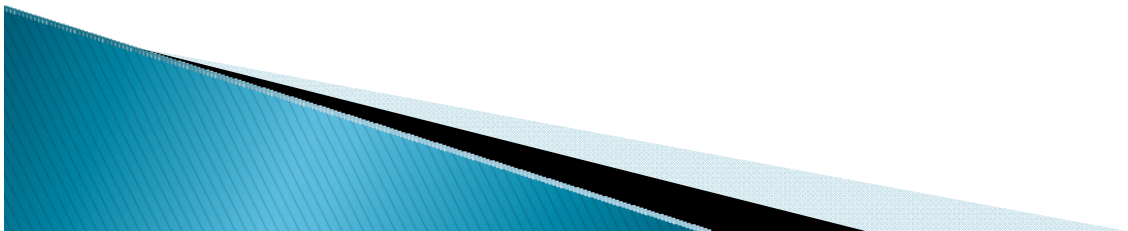


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LEGAL INTERPRETATION & THE JUDICIAL PROCESS

- ▶ The Legal Language Interpreter
 - Tony Colón, *Techno-Logic Solutions, Inc.*
- ▶ “From the Bench”
 - Hon. John Balzano and Hon. Randal Caldwell
- ▶ Local Legal Perspective –
 - Bernard Hymen, Esq., *Assistant DA, Oneida County*
 - Frank Nebush, Esq., *Oneida County Public Defender – Criminal*
- ▶ Q&A



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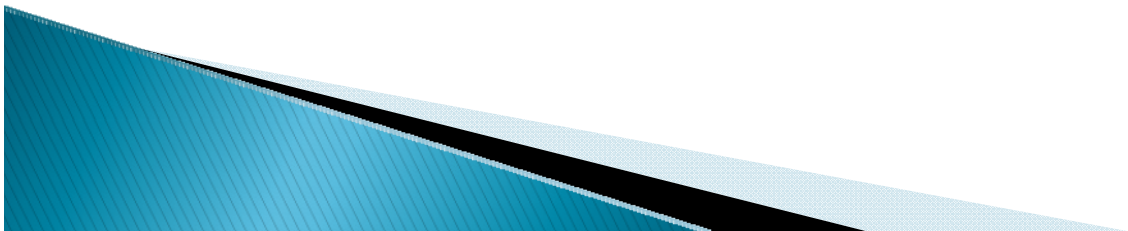
▶ The Mohawk Valley – A Changing Community:

◦ In The Last 10 Years:

- Oneida County's Latino Population up 43 percent, 10,819
- Herkimer County's Latino Population up 79 percent, 1,040
- By 2020 Latino's will be the largest ethnic minority in the US
- 43 languages are spoken in the Utica School District System with Spanish being the predominant second language

◦ Area Services Developed for the Community:

- Cultural Competence Consulting
- "Spanglish" GED Training
- Certified Puerto Rican Birth Certificates
- Spanish Legal and Medical Language Interpreting
- Spanish as a Second Language for "Gringos" Training

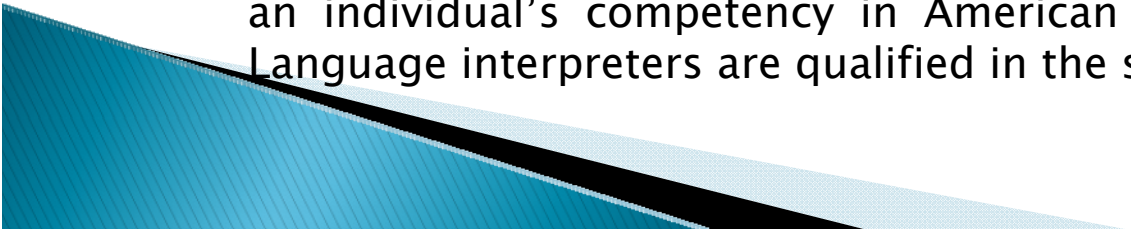


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THE ROLE OF THE LEGAL LANGUAGE INTERPRETER

▶ Legal Language Interpreting in NY State:

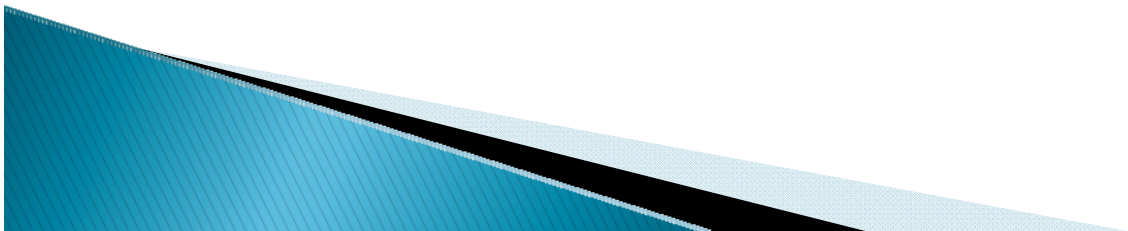
- The title of **Court Interpreter (Spanish)** is a competitive class position primarily responsible for interpreting between English and Spanish in the courtroom and other court settings. Permanent appointment to this title is by way of competitive civil service examination comprised of a written and an oral exam.
 - **Court Interpreter (non-Spanish)** is a non-competitive class position and is filled on the basis of the applicant's qualifications and experience, and the needs of the court.
 - **Court Interpreter (Sign)** is a non-competitive class position for which applicants qualify through listing on the Registry of Interpreters for the Deaf, Inc. (RID), a nationally recognized credentialing agency that certifies an individual's competency in American Sign Language. Per-Diem Sign Language interpreters are qualified in the same manner.
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THE ROLE OF THE LEGAL LANGUAGE INTERPRETER

- ▶ Medical Interpreting is not Legal Interpreting:
 - Clarifier – Language register is adjusted, word pictures of terms are used that have no linguistic equivalent
 - Culture Broker – Cultural framework for understanding the message being interpreted. Used when cultural differences lead to misunderstanding on the part of provider or client
 - Advocate – Used when the needs of the client are not being met due to a systemic barrier such as complexity of the system or racism. Takes the form of giving information or resolving the client's problem



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THE ROLE OF THE LEGAL LANGUAGE INTERPRETER

- ▶ Legal Language Interpreting has evolved into three modes to protect the due process of the client:
 - Simultaneous Interpreting – spoken virtually at the same time while a true and accurate interpretation of one language to another is provided
 - Consecutive Interpreting – spoken in brief sound bites successively so that the parties can understand each other slowly and deliberately
 - Sight Translation – verbal translation of written material into the spoken form so that the parties can understand what documents written in foreign languages say

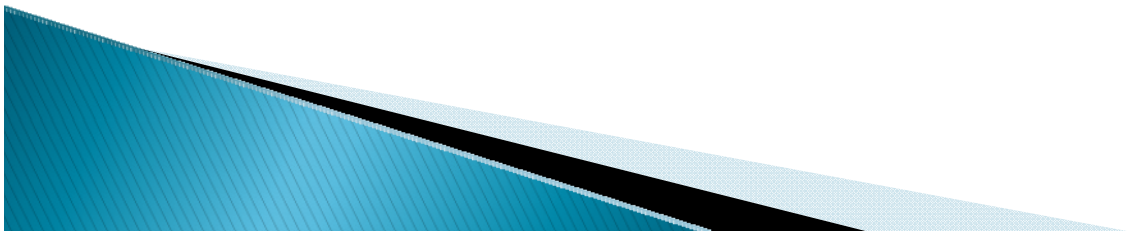


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THE ROLE OF THE LEGAL LANGUAGE INTERPRETER

- ▶ When using an Interpreter follow these guidelines:
 - When a client's English is limited arrange for an Interpreter to be assigned.
 - Speak directly to the client, act as if the Interpreter were not present.
 - Use first person: Don't say, "Could you ask him...", just ask the question.
 - Do not ask the Interpreter for his opinion or input.
 - Watch your speed, keep your pace slightly slower than normal.
 - Do not interrupt or try to communicate with the Interpreter while he/she is simultaneously interpreting. It requires intense, high levels of concentration and accumulated skill to be performed properly.
 - Refrain from several individuals talking at the same time.
 - If your not present, do not direct the Interpreter to convey information.



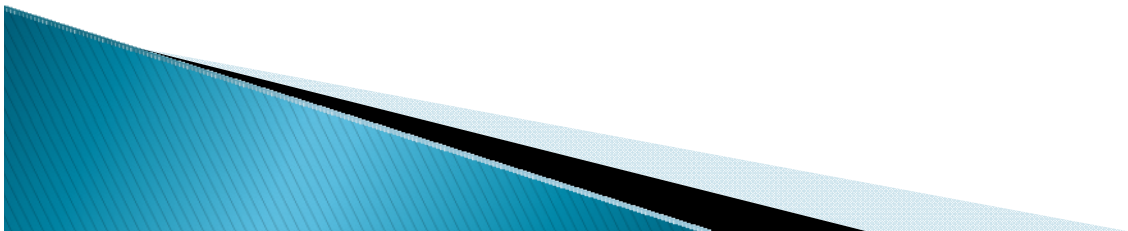
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THE ROLE OF THE LEGAL LANGUAGE INTERPRETER

ASSIGNED COUNSEL PROGRAM PARTICIPANTS:

The reasonable and authorized cost for the services of a certified Legal Language Interpreter are paid above and beyond the established Rates for Representation through the Oneida County Assigned Counsel Program.



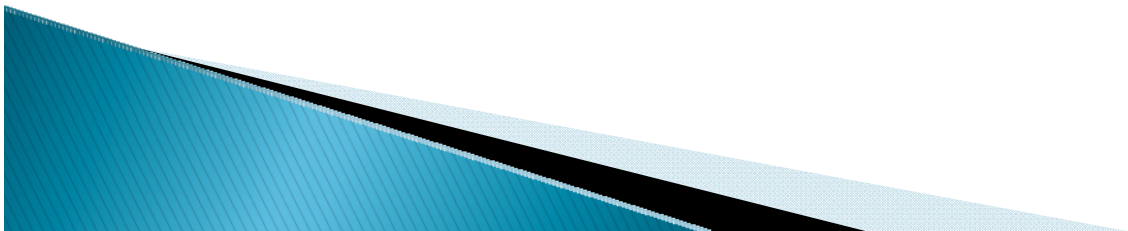
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THE ROLE OF THE LEGAL LANGUAGE INTERPRETER

Certified Court Legal Language Interpreters are highly trained individuals that serve as the “invisible hands” of justice. We are expected to be invisible in the courtroom yet maintain acute mental presence at all times. We are expected to possess a vast legal vocabulary as well as instant, accurate recall. Often, we are whisked from courtroom to courtroom, simultaneously interpreting for defendants at an arraignment, interpret for victims at a trial at another, and simultaneously interpreting for parents of juveniles at a hearing in yet another. On many occasions, the Interpreter is handed a document and is asked to “read it to the defendant.” Frequently the Interpreter walks into courtroom situations without knowing any of the background or context, adding another layer of difficulty to the Interpreter’s tasks.

.....and it’s a pleasure working with all of you, thank you!

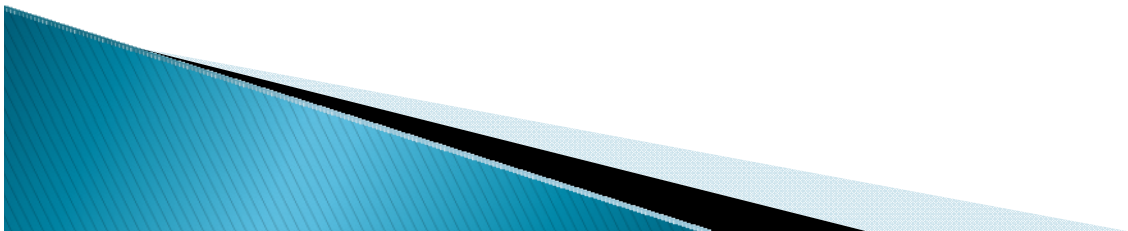


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Techno-Logic Solutions, Inc.

Tony Colón, President

32 Auburn Avenue Utica*NY 13501-5602*315.733.1399*tcolon699@aol.com

Legal and Medical Interpretation Services

Multi-Cultural Consulting Services

Marketing Consulting Services

“The Invisible Hand of Justice”*

In judicial, legal and quasi-legal settings, interpreters are obligated to interpret all communication made between parties of different languages directly and accurately, without omissions or embellishments. All those involved, such as judges, defense attorneys, prosecutors, law enforcement, court staff, court support services, defendants, victims, and witnesses, can make best use of interpreting services by following these guidelines:

1. **Talk *through* the interpreter, not to the interpreter.** When using an interpreter to address a non-English speaker, speak directly to that person as if the interpreter weren't even there.
2. **Use the first person when addressing the other party.** Do not say, “Could you ask him if he is aware of the maximum penalty for this offense.” Instead, turn directly to the party you are addressing and say, “Are you aware of the maximum penalty for this offense?” See NAJIT's position paper, “Direct Speech in Legal Settings,” for more details on this point.
3. **Do not ask the interpreter for his opinion or input.**
4. **Watch your speed.** This goes both ways. When speaking extemporaneously, don't speak too fast, and don't speak too slowly. When reading something aloud (such as jury instructions, waiver of rights, or a specific evidence code section), keep your pace slower than normal.
5. **Do not try to communicate with the interpreter or otherwise interrupt him while simultaneously interpreting.** Simultaneous interpreting requires intense, high levels of concentration and accumulated skill in order to be performed properly. Distracting the interpreter during simultaneous interpreting can cause an immediate breakdown in communication for all parties.
6. **Parties must refrain from talking at the same time in order for the interpreter to interpret court proceedings properly.** Just as court reporters are duty-bound to stop parties from talking over one another during recorded proceedings, interpreters have an equal duty do the same in order to protect the due process right of the defendant.
7. **Do not direct the interpreter to convey information to the LEP individual when you are not present.**

Conclusion

Certified court interpreters are highly trained individuals who are, in many ways, the “invisible hand” of justice. They are expected to be nearly invisible in the courtroom yet must maintain acute mental presence at all times. They are expected to possess a vast legal vocabulary as well as instant, accurate recall. Often, they are whisked from courtroom to courtroom, simultaneously interpreting for defendants at the arraignment stage at one moment, consecutively interpreting for witnesses or victims at a trial at another, and simultaneously interpreting for parents of juveniles at a hearing in yet another. On many occasions, the interpreter is handed a document and is asked to “read it to the defendant.” Frequently the interpreter walks into courtroom situations without knowing any of the background or context, adding another layer of difficulty to the interpreter's tasks. Parties occasionally ask their interpreter to simply summarize what is being said, allowing her to pick and choose what part of the conversation is relevant to interpret, which is never allowable.

For parties needing to communicate from English into another language, having some background knowledge of the interpreter's role in the legal field is fundamental for the administration of justice. Understanding the three modes of interpreting is an essential part of helping ensure equal access to justice to all parties — including members of linguistic minorities — who find themselves in any judicial setting, whether inside and outside of the courtroom.

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Legal and Medical Interpretation Services

Multi-Cultural Consulting Services

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Is Your Client from a Different Ethnic or Religious Group?*

- Guard against stereotypes about culture: *“Asian or Muslim women are submissive.”*
- Avoid imposing on your client or her/his culture your own ethnocentric judgments:
“She’s a bad parent; her child sleeps in her bed than alone in a crib.”
- *A common practice in many cultures.*
“He won’t look me in the eyes, he must be lying.”
- *In many cultures this is a sign of deference and or respect.*
- You may have questions about your client’s religious beliefs and cultural customs that may become an issue in court. Do not hesitate to ask questions through the interpreter.
- Through the interpreter ask about religious holidays and avoid scheduling court dates and trial preparation sessions on those days.
- Be aware that violence against women often takes different forms in different cultures. Organizations that serve victims of domestic violence from particular ethnic groups exist to not only provide emotional support for your client but can also provide you with crucial information about your client’s culture.
- Common *faux pas* that you should consider in a general business setting:
 - Accept and give business cards with both hands. Study the card first as it represents the person you’re meeting. Never write on it or put it in your wallet, use a small card case.
 - When dining, do not start to eat or drink prior to your host.
 - Don’t compliment anyone for speaking good English.
 - Personal contact must be avoided at all cost. It is highly inappropriate for a man to touch a woman in public.
 - Stand up when others enter the room.
 - Avoid embarrassing topics, such as politics or unusual customs.
 - When dining with a group and taking food from a common plate, use the implements provided and not your own, choose the items closest to you even if you prefer something on the other side of the plate. As a cultural courtesy, you should taste all the dishes you are offered. Do not eat all of your meal or it will be assumed you did not receive enough food and are still hungry.
 - Show deference if someone appears to be senior to you.
 - Allow your foreign guest to leave a meeting first.
 - Do not discuss business at meals.
 - If presenting a gift, clocks, storks, cranes, handkerchiefs and anything white, blue or black are definite no-no’s because of their association with death in Asian Cultures.

*Source: Segments taken from *Lawyer’s Manual on Domestic Violence REPRESENTING THE VICTIM, 5TH EDITION* Edited by Jill Laurie Goodman and Dorchen A. Leidholdt Supreme Court of the State of New York Appellate Division, First Department

NEW YORK STATE UNIFIED COURT SYSTEM'S CANONS OF PROFESSIONAL RESPONSIBILITY FOR THE COURT INTERPRETER

As officers of the court, interpreters are obligated to observe high standards of professional conduct to effectively perform their duties and to ensure public confidence in the administration of justice. The New York State Unified Court System has approved "**Canons of Professional Responsibility for Court Interpreters.**" These Canons set forth principles of professional conduct for all court interpreters. To perform their duties, interpreters are obligated to meet these professional guidelines.

Canon 1 Court interpreters are obligated to interpret accurately and objectively without indicating any personal bias or beliefs, avoiding even the appearance of partiality.

Canon 2 Court interpreters shall maintain impartiality by avoiding undue contact with witnesses, attorneys, defendants and their families, and any contact with jurors. This should not limit, however, those appropriate contacts necessary to prepare adequately for their assignments.

Canon 3 Court interpreters shall reflect proper court decorum and treat with dignity and respect all court officials and personnel and all parties before the court.

Canon 4 Court interpreters shall avoid professional or personal conduct that could discredit the court.

Canon 5 Court interpreters shall not disclose, except upon court order, any information of a confidential nature about court proceedings and cases, obtained while performing interpreting duties.

Canon 6 Court interpreters shall not engage in, nor have any interest, direct or indirect, in any activity, business or transaction, nor incur any obligation, that is in conflict, or that creates an appearance of conflict, with the proper discharge of their interpreting duties or that affects their independence of judgment in the discharge of those duties.

Canon 7 Court interpreters shall disclose to the court and to the parties in a case any prior involvement with that case or private involvement with the parties or others significantly involved in the case.

Canon 8 Court interpreters shall work unobtrusively with full awareness of the nature of the proceedings.

Canon 9 Court interpreters shall refrain from giving advice of any kind to any party or individual and from expressing personal opinions in a matter before the court.

Canon 10 Court interpreters must accurately state their professional qualifications and shall refuse any assignment for which they are not qualified or under conditions that substantially impair their effectiveness.

Canon 11 Court interpreters shall not accept remuneration, gifts, gratuities or valuable consideration in excess of their authorized compensation in the performance of their official interpreting duties.

Canon 12 Court interpreters shall not take advantage of knowledge obtained in the performance of official duties, or by their access to court records, facilities, or privileges, for their own or another's personal gain.

Canon 13 Court interpreters are obligated to inform the court of any impediment in the servance of these Canons or of any effort by another to cause these Canons to be violated.

NEW TELEPHONE NUMBERS – EFFECTIVE JUNE 1, 2010

Oneida County Supreme and County Courts

MAIN NUMBER	266 - 4200	
Civil Actions	266 - 4201, 266 - 4202	Fax 798 -6436
Criminal Actions	266 - 4203, 266 - 4204	Fax 793 -6047
Matrimonial Actions	266 - 4206, 266 - 4207	
Integrated Domestic Violence Part	266 - 4228, 266 - 4229	Fax 798 - 6423
Chief Clerk	266 - 4211	

CHAMBERS

Hon. Anthony F. Shaheen, JSC	266 - 4297	Hon. John W. Grow, JHO	266 - 4319
Court Clerk	266 - 4257	Court Clerk	266 - 4229
Hon. Samuel D. Hester, JSC	266 - 4300	Linda Hughes, Ct Atty Referee	266 - 4215
Fax Number	356 - 0603		
Court Clerk	266 - 4305		
Hon. Bernadette T. Clark, JSC	266 - 4310	Office of Court Administration	
Fax Number	798 - 5861	Child Welfare Court Improvement	
Court Clerk	266 - 4213	Project	
		Christine Kiesel, Esq.	266-4254
Hon. David A. Murad , JSC	266 - 4314	Cynthia Roth	266-4255
Fax Number	798 - 6457	Sue Shafer	266-4256
Court Clerk	266 - 4226	Fax	798-6472
Hon. Norman I. Siegel, AJSC	793 - 2184		
Fax Number	793 - 2217		
Court Clerk	793 - 2323		
Hon. Barry M. Donalty, CCJ	266 - 4321		
Fax Number	731 - 3416		
Court Clerk	266 - 4242		
Hon. Michael L. Dwyer, CCJ	266 - 4322		
Fax Number	798 - 5848		
Court Clerk	266 -4248		

THE NEW YORK STATE UNIFIED COURT SYSTEM

Working with Interpreters in the Courtroom

BENCHCARD FOR JUDGES

Persons with limited English proficiency and those who are deaf or significantly hearing-impaired face special challenges when they use the judicial system, and Court Interpreters serve a fundamental role in providing access to justice for these individuals.

WHO IS ENTITLED TO AN INTERPRETER?

IN NEW YORK STATE, PARTIES AND WITNESSES WHO ARE UNABLE TO UNDERSTAND OR COMMUNICATE IN ENGLISH OR CANNOT HEAR THE COURT PROCEEDINGS, are entitled to an interpreter at every stage of a proceeding, in all types of court cases. (*Part 217 of the Rules of the Chief Administrator of the Courts, 22 NYCRR Part 217; Judiciary Law §390.*) In addition, section 390 of Judiciary Law requires the provision of an interpreter for hearing-impaired victims and members of their immediate families in criminal cases.

A judge may presume a need for an interpreter when an attorney or self-represented party advises the Court that a party or a witness has difficulty communicating or understanding English, or that a party is deaf or significantly hearing-impaired. If a request for an interpreter has not been made, but it appears that a party or witness has limited ability to communicate or understand court proceedings in English, a judge should ask a few questions (on the record) to determine if an interpreter is necessary:

SAMPLE QUESTIONS TO ASSESS THE ENGLISH PROFICIENCY OF A PARTY OR WITNESS:

- What is your name?
- How comfortable are you in proceeding with this matter in English?
- In what language do you feel most comfortable speaking and communicating?
- Would you like the court to provide an interpreter in that language to help you communicate and to understand what is being said?

HOW DO I GET AN INTERPRETER FOR MY COURT?

Depending on your location, a court administrator, clerk or senior court interpreter is responsible for scheduling and

assigning interpreters to the court. If there is no local interpreter available to appear in court, **REMOTE INTERPRETING**, by phone or video-conference from another UCS location, can be arranged.

HOW DO I KNOW IF THE INTERPRETER IS QUALIFIED?

The UCS uses two types of Court Interpreters:

- (1) Staff Court Interpreter (UCS employee) or
- (2) Per Diem Court Interpreter (freelancer) from the UCS List of Eligible Court Interpreters.

Foreign language interpreters from both groups have fully satisfied the court systems' language-skills screening process and assessment exams, as well as a criminal background check. Sign language interpreters are required to hold certification from the Registry of Interpreters for the Deaf, Inc (RID). The clerk or other court staff are responsible for confirming an interpreter's qualifications prior to scheduling the interpreter to appear in your court.

Occasionally, the court may need to call upon an interpreter who is neither a staff court interpreter nor a per diem interpreter on the List of Eligible Court Interpreters. Such interpreters should be used only on an emergency basis, if a staff or eligible per diem interpreter is not available, and if remote interpreting cannot be arranged or is not suitable for the proceeding. If the court is unsure of an interpreter's qualifications, the court should review the interpreter's credentials by asking a few questions:

SAMPLE VOIR DIRE QUESTIONS TO ASSESS COURT INTERPRETER QUALIFICATIONS:

- How did you learn English?
- How did you learn the foreign language or sign language that you will be interpreting today?
- What training or credentials do you have to serve as a court interpreter?
- How long have you been an interpreter?
- How many times have you interpreted in court?

SUGGESTED BEST PRACTICES FOR WORKING WITH COURT INTERPRETERS:

EXPLAIN THE ROLE OF THE COURT INTERPRETER

It is important that the individual who needs an interpreter understands the role of the interpreter. Here are some basic points which may help ensure this understanding. You may instruct the individual, through the interpreter, as follows:

- An interpreter's role is to listen to what is said in the courtroom in English, and convey it in sign language or the foreign language.
- The interpreter cannot give advice, make suggestions, or engage in private conversations with the person needing the interpreter. The person should raise a hand if s/he has a question or does not understand something during the proceeding.

Following this explanation, ask if the person needing the interpreter is able to understand and communicate through the interpreter, to confirm that the person and the interpreter can understand each other's language, or specific dialect.

ADVISE THE JURY

Explain that languages other than English may be used during the proceeding. Even if members of the jury understand the non-English language being spoken, jurors must base their decision on the evidence presented in the English interpretation.

SWEAR IN THE INTERPRETER

All interpreters should be sworn-in. Placing the interpreter's appearance on the record underscores the importance of adhering to the principles of good court interpreting. Also, when the interpreter states his or her name, it is a good opportunity to inquire whether any party knows the inter-

preter. This question can eliminate potential conflicts or the appearance of impropriety.

SAMPLE INTERPRETER OATH:

"Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the duties and obligations of legal interpretation and translation?"

ASSESS THE PERFORMANCE OF THE COURT INTERPRETER

A judge's observations can aid in the evaluation of an interpreter's performance. Accordingly, consider the following to determine if the interpreter is communicating effectively during the proceeding:

- Are there significant differences in the length of interpretation as compared to the original testimony?
- Does the individual needing the interpreter appear to be asking questions of the interpreter?
- Is the interpreter leading the witness, or trying to influence answers through body language or facial expressions?
- Is the interpreter acting in a professional manner?
- Is the interpretation being done in the first-person? For example, while verbally translating what is being said in court, the interpreter will relay the words as if he/she is the person speaking.
- If the interpreter has a question, does he or she address the Court in the third-person (e.g. "Your honor, the interpreter could not hear the last question...") to keep a clear record?

If you have any concerns or questions about an interpreter's performance, contact the Chief Clerk of the court. You may also contact the Office of Court Interpreting Services at (646) 386-5670 or by e-mail: InterpreterComplaints@courts.state.ny.us

THE NEW YORK STATE UNIFIED COURT SYSTEM

Working with Interpreters in the Courtroom

BENCHCARD FOR JUDGES

Nota: Estas son solo instrucciones generales y es posible que no sean aplicables en su condado. Por favor, contacte al Tribunal de Familia para solicitar más información.

Solicitud para establecer Paternidad

*** NO firme la Solicitud de Paternidad sino hasta estar frente a un Notario Público. ***

¿Que debo hacer?

Debe firmar la copia en inglés de la Solicitud y el Notario Público debe notariarla.

Su petición no será registrada hasta que la entregue al tribunal de Familia junto con los demás documentos pertinentes.

¿Cómo hago llegar mi solicitud al Tribunal de Familia?

Debe entregar la versión de los documentos en inglés directamente a la oficina del Secretario del Tribunal. No se aceptará la versión en español. Esa es para usted.

Algunos, -no todos-, los condados permiten el envío postal de los documentos. Por favor, llame al Tribunal de Familia de su localidad para obtener más información.

¿Qué documentos necesito traer al Tribunal de Familia?

- Solicitud para Establecer Paternidad (*Paternity Petition*) – firmada y notariada
- Copia de la Partida de Nacimiento del niño
- NYS DIY Información sobre formularios para los usuarios (*NYS DIY Forms User Survey*)

¿Cómo envío por correo mi solicitud al Tribunal de Familia?

Si su condado lo autoriza a realizar el envío postal de su solicitud, por favor, envíe a dicho tribunal lo descrito en la lista a continuación. Abajo hallará también la dirección para el envío.

- Solicitud para Establecer Paternidad (*Paternity Petition*) – firmada y notariada
- Tres (3) copias de la Solicitud para Establecer Paternidad
- Copia de la Partida de Nacimiento del niño
- NYS DIY Información sobre formularios para los usuarios (*NYS DIY Forms User Survey*)

¿Dónde está ubicado el Tribunal de Familia?

Oneida County Family Court
200 Elizabeth Street
Utica, NY 13501

(315) 266-4444

¿Cuánto cuesta el trámite de solicitud?

Los trámites en el Tribunal de Familia son libres de costo.

¿Hay algún otro costo posible?

Si se ordena un examen de ADN, usted o el otro litigante deberá abonar el costo, a menos que el Tribunal determine que no pueden costearlo.

New York State Courts DIY Forms

Este Formulario ha sido creado en colaboración con el Programa de Acceso a la Justicia de los Tribunales del Estado de Nueva York, *LawNY's SOPHIA Project*, *Legal Services Corporation*, y *el State Justice Institute*

Nota: Estas son solo instrucciones generales y es posible que no sean aplicables en su condado. Por favor, contacte al Tribunal de Familia para solicitar más información. .

¿Qué ocurre después de registrar mi solicitud?

La oficina del Secretario del Tribunal le dará cita para una audiencia y usted recibirá una copia de la solicitud y el citatorio.

También se le darán instrucciones si usted tiene que realizar el emplazamiento de la otra parte.

¿Qué puedo hacer para que se cambie el nombre del niño en la partida de nacimiento?

El nombre del padre será inscripto en la partida de nacimiento una vez que se emita un fallo de paternidad. El Tribunal de Familia NO modificará el apellido del niño. Si usted quiere hacer tal cambio, debe informárselo al juez antes de que éste emita la orden.

¿Debo hacer una petición diferente si también deseo solicitar manutención infantil?

No. Una solicitud adicional no es necesaria para la manutención. El tribunal emitirá una orden temporaria o definitiva de manutención luego del fallo de paternidad.

New York State Courts DIY Forms

Este Formulario ha sido creado en colaboración con el Programa de Acceso a la Justicia de los Tribunales del Estado de Nueva York, *LawNY's SOPHIA Project*, *Legal Services Corporation*, y el *State Justice Institute*

Note: These are general instructions only and may not apply in your county. Please contact the Family Court for more information and any additional requirements.

Paternity Petition

***** Do NOT sign the petition unless you are in front of a Notary Public *****

What do I do now?

The petition must be signed and notarized by a Notary Public.

Your petition is not filed until you give it and any other necessary documents to Family Court.

How do I submit my petition to Family Court?

Take your papers to the Family Court Clerk's Office.

Some, but not all, counties let you return your papers by mail. Please call your local Family Court for more information.

What documents should I bring to Family Court?

- Paternity Petition – signed and notarized
- Copy of the child's birth certificate
- NYS DIY Forms User Survey

How do I mail my petition to Family Court?

If your county lets you mail in your petition, please mail the following to the Family Court. The address is below.

- Paternity Petition – signed and notarized
- Three (3) copies of the Paternity Petition
- Copy of the child's birth certificate
- NYS DIY Forms User Survey

Where is the Family Court located?

Oneida County Family Court
200 Elizabeth Street
Utica, NY 13501

(315) 266-4444

How much is the filing fee?

There are no filing fees in Family Court.

Are there any other costs?

If a DNA test is needed, you or the other person may have to pay for the test, unless the court finds that you cannot afford it.

What happens after I submit my petition?

The Family Court Clerk's Office will give you a hearing date and you will get a copy of the petition with the summons.

If you have to serve the papers, instructions will be included.

How do I get the child's name changed on the birth certificate?

The father's name will be added to the child's birth certificate after there is a finding of paternity. The Family Court does not automatically change the child's last name. If you want to change the child's last name, you must tell the court before the order is entered.

Do I need to file a separate petition if I am also asking for child support?

No. If you want support, you do not need to file a separate child support petition. The court will enter a temporary or final order of support after the court finds paternity.

New York State Courts DIY Forms

This form was created in partnership with the New York State Courts Access to Justice Program, LawNY's SOPHIA Project, Legal Services Corporation, and the State Justice Institute

**TRIBUNAL DE FAMILIAS DEL ESTADO DE
NUEVA YORK
CONDADO DE(L) ONEIDA**

En una Demanda de **Paternidad**

No. de expediente: _____

No. de Causa: _____

FULANO TAL

Demandante ,

– contra –

MADRE MIA

Demandada.

PETICIÓN DE PATERNIDAD

El demandante suscrito respetuosamente expone que:

1. **FULANO TAL, demandante, con dirección domiciliaria ABC de DEF, 1, UTICA, NY 13501.**

MADRE MIA, demandada, con dirección domiciliaria 123 de 456, 1, UTICA, NY 13501.

2. **FULANO TAL** sostuvo relaciones sexuales con **MADRE MIA** antes mencionada, durante un período de tiempo que empezó el día o aproximadamente en January 1, 2000 y terminó el día o aproximadamente en January 1, 2000 y dando como resultado que **MADRE MIA** quedase embarazada.

3. **MADRE MIA** está embarazada y probablemente dé a luz a un menor fuera de matrimonio.

4. **FULANO TAL** es el padre del menor.

5. Al momento de concebir al menor, la madre estaba soltera.

6. **FULANO TAL** reconoce la paternidad del menor.

7. Ningún individuo ha sido adjudicado como padre de este menor en este tribunal ni en ningún otro, incluyendo los tribunales indígenas norteamericanos; y nadie ha firmado un Reconocimiento de Paternidad admitiendo la paternidad del menor.

8. No se han presentado solicitudes previas ante ningún tribunal o juez en cuanto a la reparación aquí solicitada.

9. El demandante no califica para servicios para hacer cumplir la manutención infantil.

10. El menor en cuestión no es indígena norteamericano sujeto al Acta del Bienestar para niños Indígenas del año 1978 (25 U.S.C. §§ 1901-1963).

11. Por consiguiente al F.C.A. §§ 545, el tribunal fijará una orden para la manutención del menor en cuestión al registrarse una Orden de Filiación por solicitud de una de las partes

POR LO CUAL, FULANO TAL solicita que este Tribunal emita un citatorio o auto de comparecencia exigiéndole a MADRE MIA que demuestre por qué el tribunal no debería emitir una declaración de paternidad, una orden de manutención o cualquier otra reparación judicial apropiada bajo estas circunstancias.

AVISO: (1) CUALQUIER ORDEN DE MANUTENCIÓN QUE RESULTE DE UN PROCEDIMIENTO COMENZADO POR ESTA SOLICITUD SERÁ AJUSTADA, BAJO LA DIRECCIÓN DE LA UNIDAD DE COBROS DE MANUTENCIÓN, APLICÁNDOSELE UN AJUSTE POR EL ALZA DE COSTO DE VIDA NO ANTES DE VEINTICUATRO MESES DESPUÉS QUE DICHA ORDEN HAYA SIDO EMITIDA, DE SU MÁS RECIENTE MODIFICACIÓN O AJUSTE, YA SEA POR SOLICITUD DE UNA DE LAS PARTES O CONFORME AL PÁRRAFO (2) DEBAJO. TAL AJUSTE POR EL ALZA DEL COSTO DE VIDA SERÁ NOTIFICADO A AMBAS PARTES QUIENES, SI SE OPUSIERAN AL AJUSTE POR EL ALZA DE COSTO DE VIDA, TENDRÁN EL DERECHO DE SER ESCUCHADOS POR EL TRIBUNAL Y DE PRESENTAR EVIDENCIAS QUE SERÁN CONSIDERADAS POR EL TRIBUNAL AL AJUSTAR LA ORDEN DE MANUTENCIÓN INFANTIL.

(2) SI UNA PARTE QUE RECIBE ASISTENCIA DE FAMILIA SOLICITA MANUTENCIÓN PARA UNO O MÁS NIÑOS, ESTA RECIBIRÁ UNA ORDEN DE MANUTENCIÓN INFANTIL REVISADA Y AJUSTADA BAJO LA DIRECCIÓN DE LA UNIDAD DE COBROS DE MANUTENCIÓN NO ANTES DE VEINTICUATRO MESES DESPUÉS DE QUE DICHA ORDEN HAYA SIDO EMITIDA, DE SUS MÁS RECIENTE MODIFICACIÓN O AJUSTE POR PARTE DE LA UNIDAD DE COBROS DE MANUTENCIÓN SIN QUE NINGUNA DE LAS PARTES HAYA PRESENTADO SOLICITUDES ADICIONALES. TODAS LA PARTES RECIBIRÁN UNA COPIA DE LA ORDEN AJUSTADA.

(3) DONDE ALGUNA DE LAS PARTES FALLE EN PROVEERLE E INFORMARLE, EN CASO DE ALGÚN CAMBIO, A LA UNIDAD DE COBROS DE MANUTENCIÓN UNA DIRECCIÓN ACTUAL, TAL COMO LO REQUIERE LA SECCIÓN CUATROCIENTOS CUARENTA Y TRES DEL ACTA DEL TRIBUNAL DE FAMILIAS, A LA CUAL SE LE PUEDA ENVIAR DICHA ORDEN AJUSTADA, EL MONTO OBLIGATORIO DE MANUTENCIÓN CONTENIDO EN DICHA ORDEN QUEDARÁ PENDIENTE Y ADEUDADO EN LA FECHA QUE SE VENICE EL PRIMER PAGO BAJO LOS TÉRMINOS DE LA ORDEN DE MANUTENCIÓN LA CUAL FUE REVISADA Y AJUSTADA OCURRIENDO ESTO EN LA FECHA O DESPUÉS DE LA FECHA EN QUE ENTRA EN VIGENCIA LA ORDEN AJUSTADA, SIN TOMAR EN CUENTA SI LA PARTE HAYA RECIBIDO O NO UNA COPIA DE LA ORDEN AJUSTADA.

Fecha

FULANO TAL, Demandante

VERIFICACIÓN

ESTADO DE NUEVA YORK)

CONDADO DE _____)

:ss.:

FULANO TAL quien debidamente juramentado, atestigua y dice:

Que él es el demandante en el procedimiento arriba mencionado y que está familiarizado con los hechos y circunstancias del mismo; que él ha leído lo anterior y conoce su contexto, que de acuerdo a su conocimiento, excepto en cuestiones que aquí se aleguen por conocimiento y entendimiento sobre asuntos que él cree ser ciertos.

FULANO TAL

Jurado ante mi en esta
fecha:

Secretario (Suplente) del Tribunal
Notario Público

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA**

In the Matter of a **Paternity** Proceeding

File #: _____

Docket #: _____

FULANO TAL

Petitioner,

– against –

MADRE MIA

Respondent.

PATERNITY PETITION

The undersigned petitioner respectfully shows that:

1. **Petitioner, FULANO TAL, resides at ABC de DEF, 1, UTICA, NY 13501.**

Respondent, MADRE MIA, resides at 123 de 456, 1, UTICA, NY 13501.

2. Petitioner had sexual intercourse with the above-named Respondent during a period of time beginning on or about January 1, 2000 and ending on or about January 1, 2000 and as a result thereof Respondent became pregnant.

3. Respondent is now pregnant with a child who is likely to be born out of wedlock.

4. Petitioner is the father of the child.

5. At the time of conception of the child, the mother was not married.

6. Petitioner acknowledges paternity of the child.

7. No individual has been adjudicated father of this child, either in this court, or any other court, including a Native-American court; and no individual has signed an Acknowledgment of Paternity admitting paternity for this child.

8. No previous application has been made to any court or judge for the relief herein requested.

9. Petitioner is not eligible for child support enforcement services.

10. The subject child is not a Native American child subject to the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901-1963).

11. Pursuant to F.C.A. §§ 545, upon the entry of an Order of Filiation, the Court shall, upon application of either party, enter an order of support for the subject child.

WHEREFORE, Petitioner requests that this Court issue a summons or warrant requiring the Respondent to show cause why the Court should not enter a declaration of paternity, an order of support and such other and further relief as may be appropriate under the circumstances.

NOTE: (1) A COURT ORDER OF SUPPORT RESULTING FROM A PROCEEDING COMMENCED BY THIS APPLICATION (PETITION) SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. SUCH COST OF LIVING ADJUSTMENT SHALL BE ON NOTICE TO BOTH PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THE RIGHT TO BE HEARD BY THE COURT AND TO PRESENT EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT, KNOWN AS THE CHILD SUPPORT STANDARDS ACT.

(2) A PARTY SEEKING SUPPORT FOR ANY CHILD(REN) RECEIVING FAMILY ASSISTANCE SHALL HAVE A CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED BY THE SUPPORT COLLECTION UNIT, WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION FOUR HUNDRED FORTY-THREE OF THE FAMILY COURT ACT, TO WHICH AN ADJUSTED ORDER CAN BE SENT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

Date

FULANO TAL, Petitioner

VERIFICATION

STATE OF NEW YORK)

:ss.:

COUNTY OF _____)

FULANO TAL being duly sworn, deposes and says:

That he is the Petitioner in the above-entitled proceeding and is acquainted with the facts and circumstances thereof; that he has read the foregoing and knows the contents thereof; that the same is true to his own knowledge, except as to matters herein stated to be alleged on information and belief and as to those matters he believes it to be true.

FULANO TAL

Sworn to before me this

Dated:

(Deputy) Clerk of the Court
Notary Public

FAMILY COURT INFORMATION SHEET

This information is not part of the Petition.

All information on this sheet is for court purposes only.

PETITIONER'S INFORMATION

Name: **FULANO TAL**

Date of birth: _____ Social Security #: _____

Address: ABC de DEF, 1, UTICA, NY 13501

Telephone: (315) 733-1399 Email address: TCOLON699@AOL.COM

Employer: _____

Do you need an interpreter? Yes No

If yes, what language? _____

RESPONDENT'S INFORMATION

Name: **MADRE MIA**

Date of birth: _____ Social Security #: _____

Address: 123 de 456, 1, UTICA, NY 13501

Telephone: _____ Email address: _____

Employer: _____

Does MADRE MIA need an interpreter? Yes No

If yes, what language? _____

CHILD'S INFORMATION

<u>Name</u>	<u>Gender</u>	<u>Date of Birth</u>	<u>Social Security #</u>
Child not born yet	N/A	N/A	

NYS DIY Forms User Survey

Gracias por llenar este breve cuestionario. Sírvase devolverlo junto con sus documentos.

1. ¿Cuán cómodo se siente utilizando una computadora o la Internet?
 incómodo
 cómodo
 muy cómodo
2. ¿Tiene Internet en su casa?
 Sí.
 No.
3. ¿Dónde usó este programa?
 En mi casa
 En las oficinas del secretario del tribunal
 En el Centro de Asistencia Judicial
 En la biblioteca del tribunal
 En mi trabajo
 En otro lugar: _____
4. ¿Pudo entender las preguntas, las definiciones y los "Learn More" claramente?
 Sí.
 No. ¿Qué no pudo entender? _____
5. ¿Escuchó al guía hablando durante el programa?
 Sí.
 No.
6. ¿Ha usado anteriormente un programa judicial de auto ayuda?
 Sí. ¿Cuáles? _____
 No.
7. ¿Cree que el "Programa 'Hágalo Usted Mismo'" le ahorró tiempo?
 Sí.
 No
8. ¿Cómo se enteró de este programa?
 Me lo dijo alguien
 Lo busqué en la Internet
 Por un empleado de la corte
 Un afiche, un letrero, una tarjeta, etc.
 Otro: _____
9. Le agradecemos su ayuda. ¿Tiene alguna sugerencia o comentarios que añadir?

Preguntas Opcionales:

1. ¿Qué edad tiene?
 Entre 18 y 24
 Entre 25 y 34
 Entre 35 y 44
 Entre 45 y 54
 Entre 55 y 64
 65 o más
2. ¿Cuál es su ingreso anual?
 Menos de \$19,999
 \$20,000 a \$34,999
 \$35,000 a \$49,999
 \$50,000 a \$64,999
 \$65,000 a \$79,999
 \$80,000 a \$99,999
 \$100,000 a \$124,999
 \$125,000 a \$149,999
 \$150,000 o más

Office Use:

Court Clerk: Fax this survey to Deputy Chief Administrative Judge Fern A. Fisher at (212) 295-4931 or mail to New York State Courts Access to Justice Program, 111 Centre Street, 12th Floor, New York, NY 10013 or digitally send to DIYfeedback@courts.state.ny.us

Oneida County Paternity - Spanish printed on April 5, 2011

Anthony “Tony” Colón * (315) 733-1399 * tcolon699@aol.com

ABOUT ANTHONY COLON

Established Techno-Logic Solutions, Inc. to provide consulting services that include community based Spanish Interpreting and/or Instructional services to public and private sector entities in the Mohawk Valley. Qualified for the role of New York State Spanish Court Interpreter after successfully passing competitive written and oral examinations in 2003. The Mohawk Valley’s only NYS UCS Qualified Spanish Legal Interpreter. 20+ years of experience as a Spanish Interpreter/Translator.

- **Professionally trained as a Simultaneous Interpreter**
- **Court Interpreter in the State of New York for nearly 10 years**
- **Services available 24/7**
- **Cultural Diversity Training & Consulting**

Services in Language & Diversity Training provided in all settings:

- ✓ **Civil**
- ✓ **Commercial**
- ✓ **Criminal Justice**
- ✓ **Digital Media**
- ✓ **Education**
- ✓ **Legal**
- ✓ **Literary**
- ✓ **Marketing**
- ✓ **Web Based Solutions**

Current & or Recent Language & Cultural “Client Partners”

- **Kids Oneida – ICAN, Inc.**
 - **Coordination of family services provided by contracted service providers**
 - **Professional Interpreting Services**
- **New York State Court, Legal and Medical Spanish Interpreter**
 - **Spanish Legal and Medical Interpretation Services in the Public and Private sector**
- **Sales & Marketing Consultant**
 - **Volunteer assistance provided to community and religious organizations located in Central NY**
 - **Non-Profit Organizations**
- **NYS Office of Mental Health (2004-2010)**
 - **Spanish Bilingual interpreting services for the professional staff assigned to the facility**

Anthony “Tony” Colón * (315) 733-1399 * tcolon699@aol.com

- Academic Instructor @ the CNYPC Patient Education Department
- Cultural Diversity Instructor

Volunteer Affiliations

MOHAWK VALLEY COMMUNITY COLLEGE – UTICA, NY

- Board Trustee (Appointed in 2009)

NAACP UTICA BRANCH – UTICA, NY

- Member – (2008 to Present)

ONEIDA COUNTY WORKFORCE DEVELOPMENT – ONEIDA COUNTY, NY

- Civil Service Minority Community Outreach (2008 to Present)

UNITED WAY OF THE VALLEY AND THE GREATER UTICA AREA – UTICA, NY

- Governance & Nominating Committee Chairperson – Board of Directors (2008 to Present)
- Nominating Committee Member – (2007 to Present)

HOPE HOUSE – UTICA, NY (2008 to 2010)

- Member of the Board (2008 to 2010)

NEIGHBORHOOD CENTER – UTICA, NY

- Member of the Board (2008 to Present)

BOY SCOUTS OF AMERICA, INC. – REVOLUTIONARY TRAILS COUNCIL

- Council President (2010 to Present)
- Executive Vice President – Council Board of Directors (2005 to 2010)
- Vice President of Marketing & Communications (2005 to Present)

SOUTH GATE MINISTRIES & CHURCH– WATERVILLE, NY

- Church Treasurer – (2005 to 2011)
- Member-At-Large

MOHAWK VALLEY LATINO ASSOCIATION – UTICA, NY

- Vice President of the Board of Directors (2004 to 2008)

MULTI-CULTURAL ASSOCIATION OF MEDICAL INTERPRETERS OF CNY

- Vice President of the Board of Directors (2003-2004)
- Assistant Trainer (2003 – 2004)
- Spanish Medical Interpreter (2000 to 2004)



**NEW YORK STATE DEFENDERS
ASSOCIATION
CRIMINAL DEFENSE
IMMIGRATION PROJECT**

**Life After *Padilla v. Kentucky*:
What Is Effective Representation?**

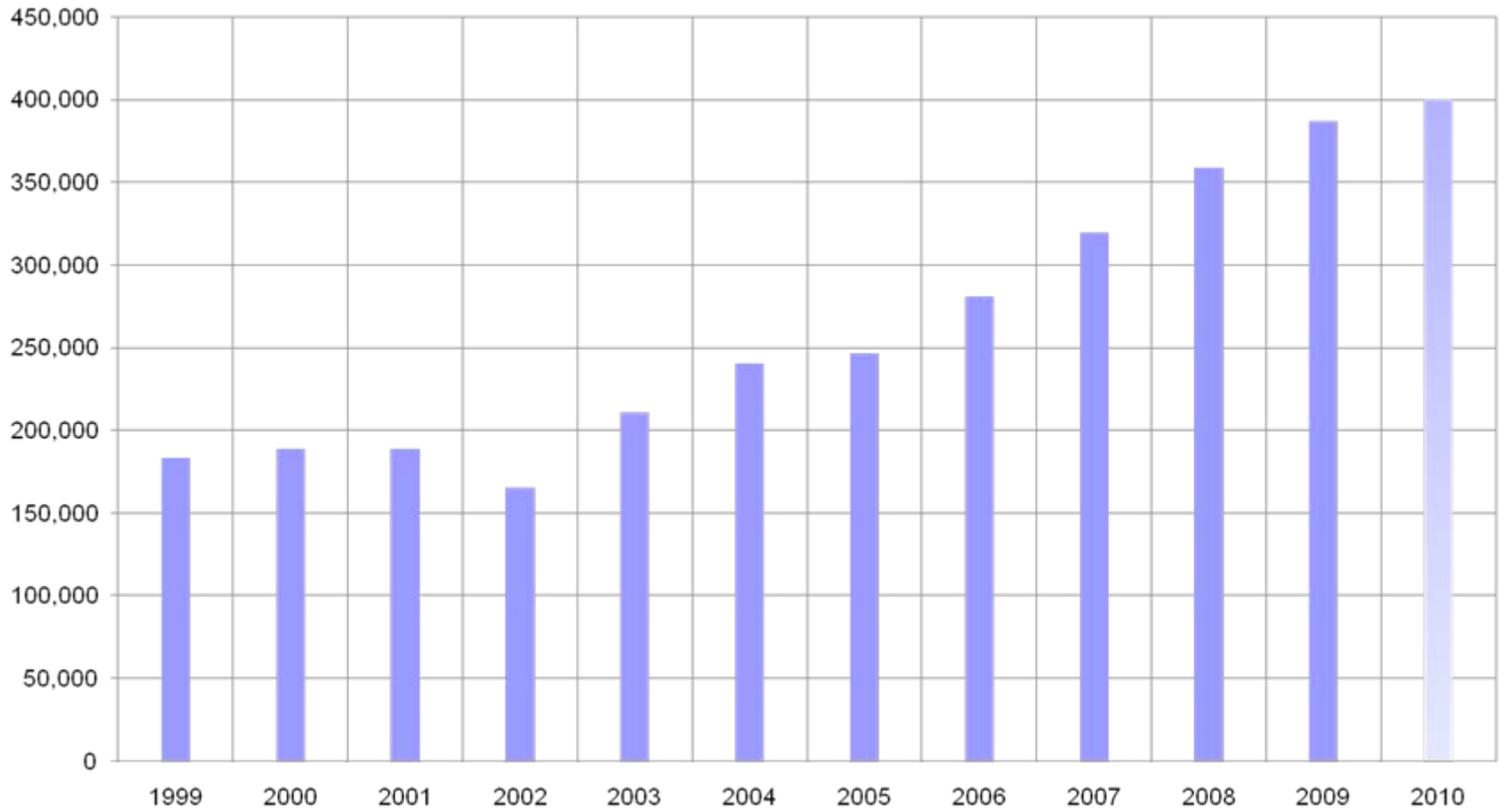
**NYSDA Criminal Defense Immigration Project
Advanced Criminal/Immigration CLE**

**Oneida County Bar Association
Continuing Legal Education Seminar
Utica, NY**

April 7, 2011

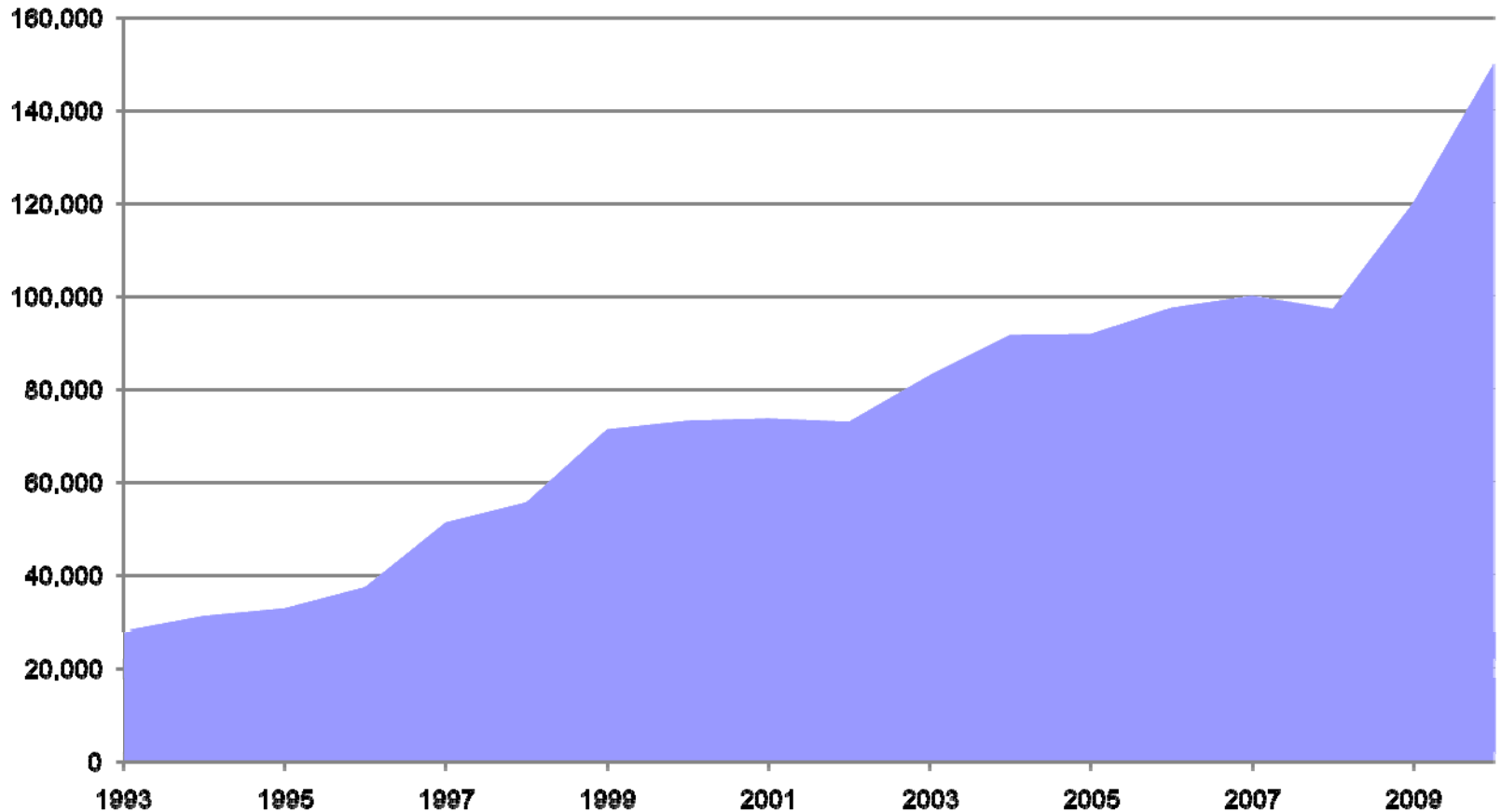
The NYSDA Criminal Defense Immigration Project is sponsored in part by a grant from the New York State Bar Foundation

TOTAL NUMBER OF DEPORTATIONS PER YEAR



Source: Office of Immigration Statistics/Department of Homeland's 2008 Yearbook of Immigration Statistics

Deportations/Removals Based on Criminal Conviction (1993 - 2010)



DHS Secretary Napolitano's October 2010 Announcement of record-breaking statistics for immigration enforcement of "criminal aliens"



**Who is at risk of
removal and how?**

WHO CAN BE REMOVED?

- **LAWFUL PERMANENT RESIDENT**
- (i.e., “Green Card Holders”)

- **REFUGEES & ASYLEES**
- (i.e., Those granted humanitarian protection in U.S.)

- **NONIMMIGRANTS**
- (ex. temporary visitors, students, workers)

- **UNDOCUMENTED**
- (ex. entered the U.S. without being inspected and admitted)

= SUBJECT TO REMOVAL FROM THE U.S.

EVIDENCE OF VISITOR ADMISSION TO U.S. FORM I-94, DEPARTURE RECORD

Departure Number

742831632 01

Immigration and
Naturalization Service

I-94
Departure Record

U.S. IMMIGRATION
WAS ADMITTED 2003

NOV 21 2002

CLASS UNTIL B-2
May 20, 2003

14 Family Name

DOE

15 First (Given) Name

JOHN

16 Birth Date (Day/Mo/Yr)

01/01/91

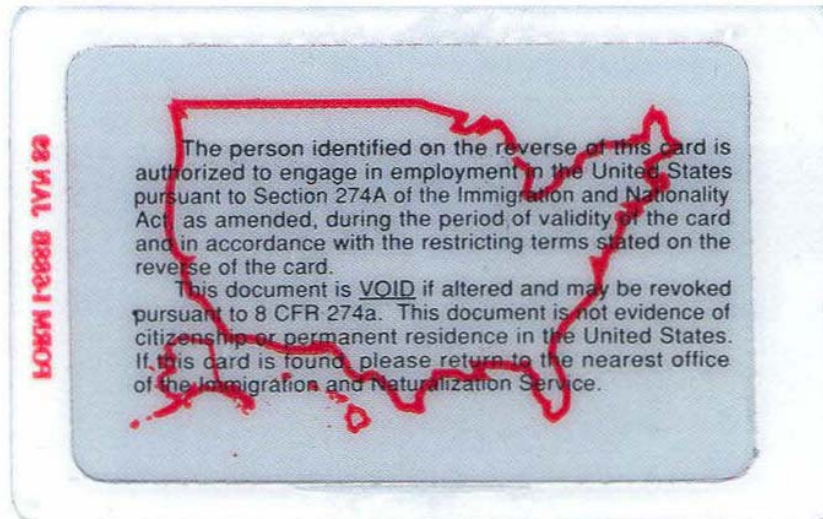
17 Country of Citizenship

ENGLAND

See Other Side

STAPLE HERE

FORMER EMPLOYMENT AUTHORIZATION

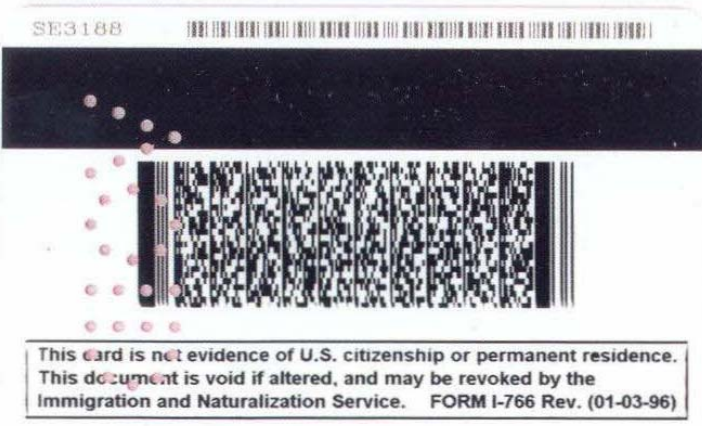


code identifies type of pending or granted immigration status.

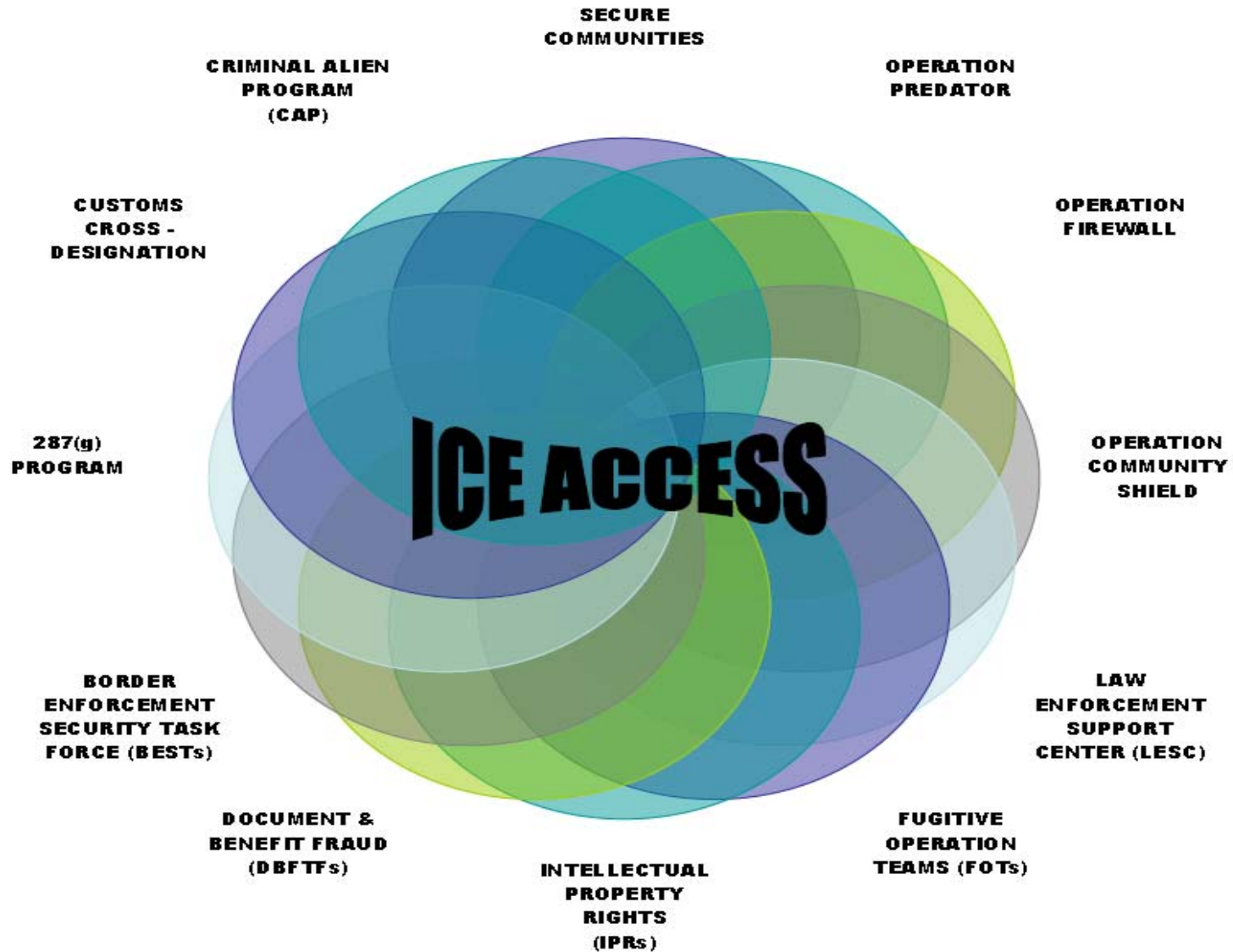
NEWER EMPLOYMENT AUTHORIZATION



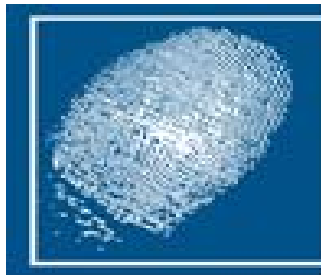
Check Alien Registration Number to Confirm Whether in Removal Proceedings



ICE ACCESS = AGREEMENTS OF COOPERATION IN COMMUNITIES TO ENHANCES SAFETY AND SECURITY



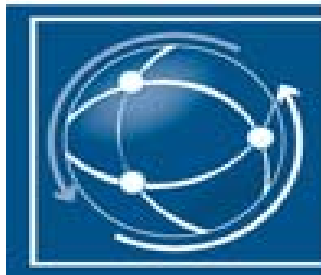
SECURE COMMUNITIES



IDENTIFY criminal aliens through modernized information sharing



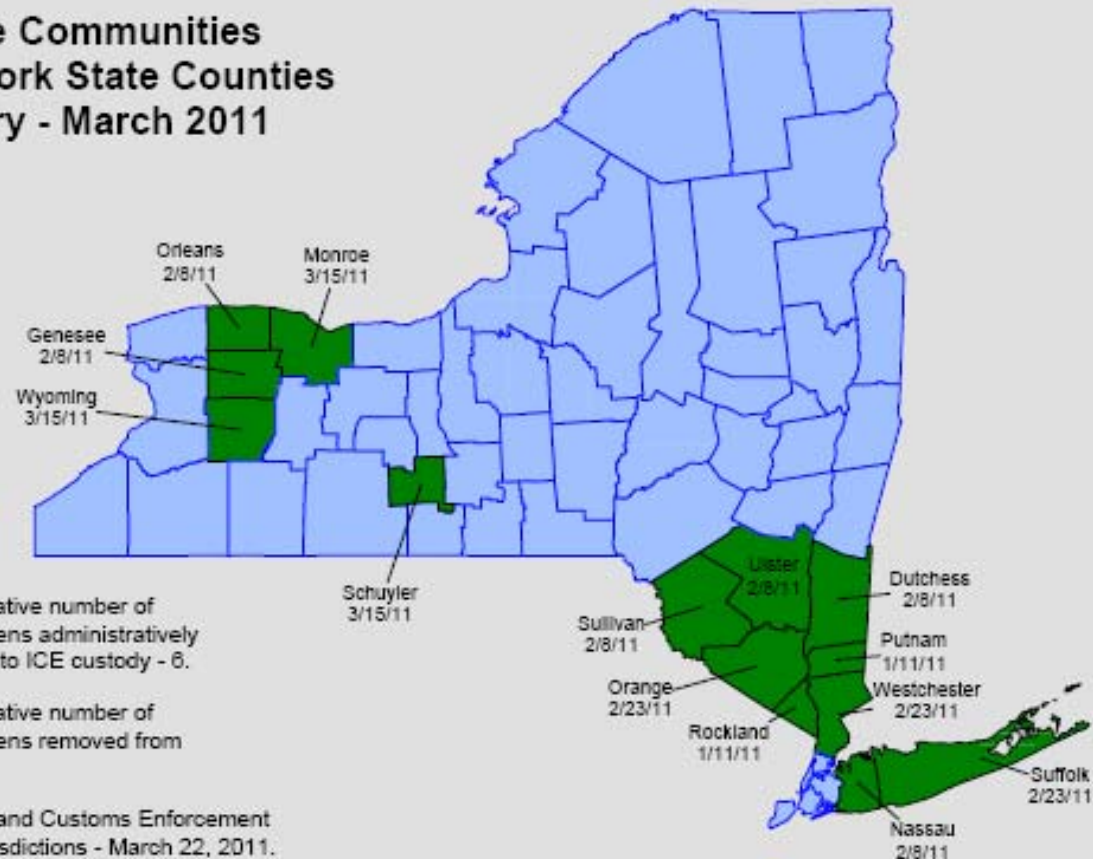
PRIORITIZE enforcement actions to ensure apprehension and removal of dangerous criminal aliens



TRANSFORM criminal alien enforcement processes and systems to achieve lasting results

S-COMM PRIORITY AREAS

Secure Communities New York State Counties January - March 2011



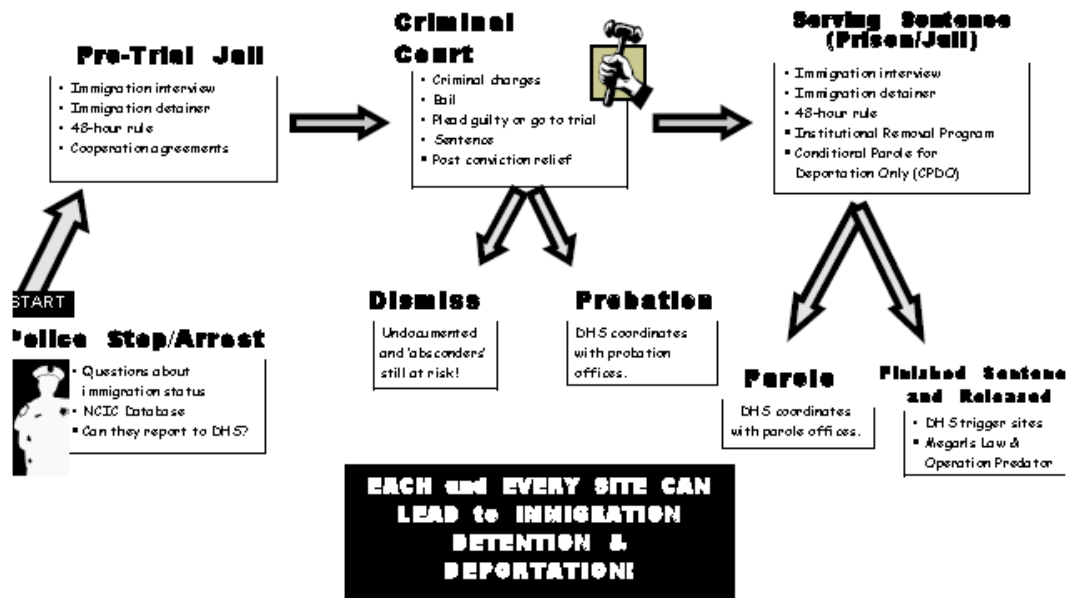
The statewide cumulative number of convicted criminal aliens administratively arrested or booked into ICE custody - 6.

The statewide cumulative number of convicted criminal aliens removed from the U.S. - 0.

Source: Immigration and Customs Enforcement
Activated Jurisdictions - March 22, 2011.

Increasing Federal Immigration Enforcement and State and Local Collaboration

IMMIGRATION IN THE CRIMINAL JUSTICE SYSTEM



BAIL AND IMMIGRATION DETAINERS as STRATEGY

- Posting Bail = referral to ICE authorities
(i.e., 48-hour rule)
- Transfer to immigration detention
nationwide or remain in Riverhead Jail for
local assistance on immigration matter
- Bench warrant or Dismissal of charges?

WHAT IS AN IMMIGRATION DETAINER?

- **IMMIGRATION DETAINER** is a “hold” that will prevent a client’s release.
- Pursuant to 8 C.F.R. Sec. 287.7(d):
“... such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.”



OVERVIEW: Grounds for Removal

NYSDA Immigrant Defense Project

Immigration Consequences of Convictions Summary Checklist*

GROUNDS OF DEPORTABILITY (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR)—greencard holder)	GROUNDS OF INADMISSIBILITY (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)	INELIGIBILITY FOR US CITIZENSHIP
<p>Aggravated Felony Conviction</p> <p>➤ <i>Consequences</i> (in addition to deportability):</p> <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Ineligibility for voluntary departure ◆ Permanent inadmissibility after removal ◆ Subjects client to up to 20 years of prison if s/he illegally reenters the US after removal <p>➤ <i>Crimes covered</i> (possibly even if not a felony):</p> <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (may include, whether felony or misdemeanor, any sale or intent to sell offense, second or subsequent possession offense, or possession of more than 5 grams of crack or any amount of flunitrazepam) ◆ Firearm Trafficking ◆ Crime of Violence + 1 year sentence** ◆ Theft or Burglary + 1 year sentence** ◆ Fraud or tax evasion + loss to victim(s) > \$10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + 1 year sentence** ◆ Obstruction of justice or perjury + 1 year sentence** ◆ Certain bail-jumping offenses ◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ◆ Attempt or conspiracy to commit any of the above 	<p>Conviction or <i>admitted commission</i> of a Controlled Substance Offense, or DHS has reason to believe individual is a drug trafficker</p> <p>➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)</p> <hr/> <p>Conviction or <i>admitted commission</i> of a Crime Involving Moral Turpitude (CIMT)</p> <p>➤ Crimes in this category cover a broad range of crimes, including:</p> <ul style="list-style-type: none"> ◆ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery) ◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes) ◆ Most sex offenses <p>➤ <i>Petty Offense Exception</i>—for one CIMT if the client has no other CIMT + the offense is not punishable > 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months</p>	<p>Conviction or admission of the following crimes bars a finding of good moral character for up to 5 years:</p> <p>➤ Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana)</p> <p>➤ Crime Involving Moral Turpitude (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months)</p> <p>➤ 2 or more offenses of any type + aggregate prison sentence of 5 years</p> <p>➤ 2 gambling offenses</p> <p>➤ Confinement to a jail for an aggregate period of 180 days</p>
<p>Controlled Substance Conviction</p> <p>➤ EXCEPT a single offense of simple possession of 30g</p>	<p>Prostitution and Commercialized Vice</p> <p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p>	<p>Aggravated felony conviction on or after Nov. 29, 1990 (and murder conviction at any time) <i>permanently</i> bars a finding of moral character and thus citizenship eligibility</p>

DEPORTABILITY VS. INADMISSIBILITY

DEPORTABILITY

LPR's ("Greencard Holder)

Nonimmigrants

(ex. visitors, students, workers on valid status)

Visa "Overstayers"

(ex. overstayed authorized period of stay in U.S.)

INADMISSIBILITY

Refugees, Asylees,
Undocumented, Non-LPRs

Returning LPR's (Green Card Holders) (i.e., even after brief departure from U.S.)

Nonimmigrants (i.e., persons seeking permission to visit, work or go to the school in the U.S.)

CATEGORICAL APPROACH

- Immigration Court will look solely to the elements and the nature of the offense of conviction, rather than to the particular facts relating to the noncitizen defendant's crime.

See Leocal v. Ashcroft, 543 U.S. 1, 125 S.Ct. 377, 381 (2004)

MODIFIED CATEGORICAL APPROACH

- If the statute is not a categorical match to a “generic” definition because it is divisible and contains elements that do and do not qualify (for example to meet the definition of an aggravated felony)
- But see *Gonzales v. Duenas Alvarez*, 549 U.S. ____, 127 S.Ct. 815 (2007)



RECORDS FOR USE IN MODIFIED CATEGORICAL APPROACH

Limitation on documents that can be used in modified categorical approach:

- The charging document
- Written plea agreement
- Transcript of plea colloquy and
- Any explicit findings by the trial judge to which the defendant assented.

See *Shepard v. U.S.*, 544 U.S. 13, 125 S.Ct. 1254, 1257(2005)

WHAT IS NOT INCLUDED IN THE RECORD OF CONVICTION

- Prosecutor's remarks,
- Police reports,
- Probation or "pre-sentence" reports,
- Statements by the noncitizen outside of the judgment and sentence transcript, (e.g., to police or immigration authorities or the immigration judge), or
- Statements from co-defendants

(EXCEPTION: *Nijhawan v. Holder*, 08-495 (June 15, 2009))

“CONVICTION” DEFINED

CONVICTION DEFINED

A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where:

- (i) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, AND
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed.

THUS:

- A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)
- A deferred adjudication disposition without a guilty plea (e.g., NY ACD) is NOT a conviction
- A youthful offender adjudication (e.g., NY YO) is NOT a conviction

WHICH NEW YORK DISPOSITIONS ARE “CONVICTIONS” ?

CONVICTION	NOT A CONVICTION
Formal judgment of guilt in adult criminal court (including NY Juvenile Offender conviction)	Youthful offender disposition (even though entered in adult court) and juvenile delinquency* dispositions (*possibly not “conduct” grounds)
Diversion, drug treatment or family counseling IF PLEA OR ADMISSION OF GUILT made by defendant	Diversion, drug treatment or family counseling IF <u>PLEA</u> OR ADMISSION OF GUILT <u>WAIVED</u> **
Conditional Discharge Sentence or Alfred Plea	Adjournment in contemplation of dismissal
Post Conviction Relief/Motion pending on collateral challenge	Conviction on direct appeal or NYS late notice of appeal (460.30)
Disposition vacated/expunged in the “interest of justice” – based on rehabilitation ONLY!	Disposition vacated based on legal defect in criminal case (i.e., NYCPL 440.10 motion)



**POSSIBLE STRATEGIES
&
ALTERNATIVE DISPOSITIONS**

****DRUG DIVERSION PROGRAMS**

ROCKEFELLER DRUG LAW REFORM: N.Y. CPL Sec. 216.05(4)

- “Prior to the court's issuing an order granting judicial diversion, the eligible defendant shall be required to enter a plea of guilty to the charge or charges...”

****DRUG DIVERSION PROGRAMS**

....**no** such guilty plea shall be required when:

(a) the people and the court consent..., **or**

(b) based on a finding of exceptional circumstances, the court determines that a plea of guilty shall not be required...

...**exceptional circumstances** exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe collateral consequences.

DEFENSE STRATEGIES & TIPS

DRUG OFFENSES:

- Consider value of weight/type of drug (consider 30gms or less)
- Plea to Non-Drug charge
- Avoid SALE or INTENT TO SELL (i.e., negotiate higher possession charge)
- Avoid sentencing or treatment as “recidivist” drug offender

SEX OFFENSES:

- Avoid statute involving sexual activity + minor
 - Keep out reference of victim as a “minor”
- (Remember: “OPERATION PREDATOR” program)

ASSAULT OFFENSES:

- Avoid “intent,” “knowing,” “willingly,” as *mens rea*
(*ex. plead to “negligence”*)
- 364 days or less imprisonment (includes probation violation time)
- Avoid victim or aggravating factors being reference
(DV relationship, minor, use of firearm, serious bodily injury, etc.)

DEFENSE STRATEGIES & TIPS

THEFT OR BURGLARY OFFENSES:

- Seek 364 days or less sentence of imprisonment
- Seek an alternate plea to an offense that punishes mere temporary conversion rather than “permanent taking” (ex. unauthorized use of vehicle or “joyriding” versus “grand larceny”)

FRAUD AND DECEIT OFFENSES:

- Seek theft offense (no fraud or deceit element) if loss is \$10,000 +
- Create an affirmative record where loss is less than \$10,000

Remember: Still may be a CIMT

DEFENSE STRATEGIES & TIPS

FIREARM OFFENSES:

- Avoid trafficking of “firearm” or “destructive device”
- Consider value of reference to weapon in record of conviction
- Avoid statute involving “possession with intent to use” weapon and affirmatively state that on the record

MISCELLANEOUS TIPS:

- Seek Y.O. or Juvenile Delinquency disposition, where available
- Consider ACD or violation vs misdemeanor/felony
- DWI offenses not deportable (unless involves possession of drugs)
- Avoid admissions of conduct beyond elements of offense
- Move to withdraw an uninformed guilty plea prior to sentencing
(*Padilla v. Kentucky*, 6th Amendment right to effective assistance)
- File an appeal or seek post-judgment relief

EARLY CONDITIONAL RELEASE FOR REMOVAL ONLY & “RAPID REPAT”

NEW YORK EXECUTIVE LAW Section § 259-i (d)(i) (amended on July 18, 2007, S.6228/A.3286)

- The Board of Parole may grant discretionary early release to non-citizen inmates sentenced to determinate and indeterminate sentences for purposes of turning them over to federal immigration authorities for deportation only
- Statutorily barred if convicted of either a violent felony offense or an A-1 felony offense, other than a section 220 controlled substance A-1 felony offense.
- Requires a FINAL removal order & assurances from DHS that removal will occur promptly.



OVERVIEW:
PADILLA V. KENTUCKY

INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

Padilla v. Commonwealth of Kentucky 599 U.S.
___ (2010); (Docket No. 08-651)

- 6th Amendment guarantee of effective assistance requires defense counsel to provide affirmative, competent advice to a noncitizen defendant regarding the immigration consequences of a guilty plea, and, absent such advice, a noncitizen may raise a claim of ineffective assistance of counsel.



Life After *Padilla*: Defending In Criminal Court

- Unique nature of deportation is “particularly severe penalty” that is intimately tied to criminal process.

Id. at 8-9.

- Preserving the client’s right to remain in the U.S. may be more important to the client than any potential jail sentence.”

Id. at 10.

Affirmative Advice & The Strickland Standard

- The Court expressly rejected option of limiting application of *Strickland* to claims of affirmative misadvice:
- “ A holding limited to affirmative misadvice...would give counsel an incentive to remain silent on matters of great importance...when answers are readily available.”

What Is Effective Assistance?

- Scope of 6th Amendment duty extends to not just avoiding deportation but also to the possibility of **preserving discretionary relief from deportation.**
- “[P]reserving the possibility of discretionary relief from deportation...would have been one of the principle benefits sought by defendants deciding whether to accept a plea offer or instead of proceed to trial.”

Id. at 10.



Life After *Padilla v. Kentucky?*

- Non-advice (silence) is insufficient (ineffective)
- Deportation is a “penalty,” not a “collateral consequence”
- “Informed consideration” of deportation consequences required during plea-bargaining
- Professional standards require counsel to determine citizenship/immigration status



What Is Effective Assistance?

1. Investigate Facts
2. Determine client's defense goals
3. Analyze immigration consequences
4. Defend the case according to client's priorities



OFFICE PROTOCOL: STEP 1

- Intake System screens for immigration
- Translator service available for screening
- Collect copies of noncitizen documents
- Identify the file for “noncitizens”
- Develop intake sheet for screening of “noncitizens”



OFFICE PROTOCOL: STEP 2

- Review charge and plea offer NYPL sections
- Document client's immediate goals on intake sheet
- Discuss and document long term immigration goals
- Negotiate plea options, if any requested and document them on intake sheet



OFFICE PROTOCOL: STEP 3

- Analyze the immigration consequences
- Contact immigration expert to discuss plea or sentencing
- Document expert advice on intake sheet
- Discuss options with client
- Memorialize discussion

OFFICE PROTOCOL: STEP 4

- If plea offered – discuss with ADA the need to sterilize the plea or to recommend specific sentencing
- Document discussion on intake sheet
- Confirm client's understanding of any immigration consequences
- Encourage client follow up with immigration expert or attorney
- **BEWARE OF COURT ADVISALS!!!!**



PART VI:

Where To Get Help

**Immigration
Resources**

ATTORNEY RESOURCES

- **Seek assistance:**

NYSDA CDIP - JOANNE MACRI

(716) 913-3200 or (518) 465-3524; jmacri@nysda.org

IMMIGRANT DEFENSE PROJECT – HOTLINE

(Available Tues. & Thurs. 1:30 p.m.-4:30 p.m.)

(212) 725-6422; www.immigrantdefenseproject.org

DEFENDING IMMIGRANTS PARTNERSHIP

www.defendingimmigrants.org

- ***Representing Immigrant Defendants in New York, 4th Edition (*5th Edition expected for release by IDP)***

Immigration/Criminal Website Resources

- **NYSDA**
www.nysda.org
- **Immigrant Defense Project**
www.immigrantdefenseproject.org
- **Defending Immigrants Partnership**
www.defendingimmigrants.org
- **NLG National Immigration Project**
www.nationalimmigrationproject.org
- **Immigrant Legal Resource Center**
www.ilrg.org



Questions & Answers

THE NEW YORK STATE UNIFIED COURT SYSTEM

Working with Interpreters in the Courtroom

BENCHCARD FOR JUDGES

Persons with limited English proficiency and those who are deaf or significantly hearing-impaired face special challenges when they use the judicial system, and Court Interpreters serve a fundamental role in providing access to justice for these individuals.

WHO IS ENTITLED TO AN INTERPRETER?

IN NEW YORK STATE, PARTIES AND WITNESSES WHO ARE UNABLE TO UNDERSTAND OR COMMUNICATE IN ENGLISH OR CANNOT HEAR THE COURT PROCEEDINGS, are entitled to an interpreter at every stage of a proceeding, in all types of court cases. (*Part 217 of the Rules of the Chief Administrator of the Courts. 22 NYCRR Part 217; Judiciary Law §390.*) In addition, section 390 of Judiciary Law requires the provision of an interpreter for hearing-impaired victims and members of their immediate families in criminal cases.

A judge may presume a need for an interpreter when an attorney or self-represented party advises the Court that a party or a witness has difficulty communicating or understanding English, or that a party is deaf or significantly hearing-impaired. If a request for an interpreter has not been made, but it appears that a party or witness has limited ability to communicate or understand court proceedings in English, a judge should ask a few questions (on the record) to determine if an interpreter is necessary:

SAMPLE QUESTIONS TO ASSESS THE ENGLISH PROFICIENCY OF A PARTY OR WITNESS:

- What is your name?
- How comfortable are you in proceeding with this matter in English?
- In what language do you feel most comfortable speaking and communicating?
- Would you like the court to provide an interpreter in that language to help you communicate and to understand what is being said?

HOW DO I GET AN INTERPRETER FOR MY COURT?

Depending on your location, a court administrator, clerk or senior court interpreter is responsible for scheduling and

assigning interpreters to the court. If there is no local interpreter available to appear in court, **REMOTE INTERPRETING**, by phone or video-conference from another UCS location, can be arranged.

HOW DO I KNOW IF THE INTERPRETER IS QUALIFIED?

The UCS uses two types of Court Interpreters:

- (1) Staff Court Interpreter (UCS employee) or
- (2) Per Diem Court Interpreter (freelancer) from the UCS List of Eligible Court Interpreters.

Foreign language interpreters from both groups have fully satisfied the court systems' language-skills screening process and assessment exams, as well as a criminal background check. Sign language interpreters are required to hold certification from the Registry of Interpreters for the Deaf, Inc (RID). The clerk or other court staff are responsible for confirming an interpreter's qualifications prior to scheduling the interpreter to appear in your court.

Occasionally, the court may need to call upon an interpreter who is neither a staff court interpreter nor a per diem interpreter on the List of Eligible Court Interpreters. Such interpreters should be used only on an emergency basis, if a staff or eligible per diem interpreter is not available, and if remote interpreting cannot be arranged or is not suitable for the proceeding. If the court is unsure of an interpreter's qualifications, the court should review the interpreter's credentials by asking a few questions:

SAMPLE VOIR DIRE QUESTIONS TO ASSESS COURT INTERPRETER QUALIFICATIONS:

- How did you learn English?
- How did you learn the foreign language or sign language that you will be interpreting today?
- What training or credentials do you have to serve as a court interpreter?
- How long have you been an interpreter?
- How many times have you interpreted in court?

SUGGESTED BEST PRACTICES FOR WORKING WITH COURT INTERPRETERS:

EXPLAIN THE ROLE OF THE COURT INTERPRETER

It is important that the individual who needs an interpreter understands the role of the interpreter. Here are some basic points which may help ensure this understanding. You may instruct the individual, through the interpreter, as follows:

- An interpreter's role is to listen to what is said in the courtroom in English, and convey it in sign language or the foreign language.
- The interpreter cannot give advice, make suggestions, or engage in private conversations with the person needing the interpreter. The person should raise a hand if s/he has a question or does not understand something during the proceeding.

Following this explanation, ask if the person needing the interpreter is able to understand and communicate through the interpreter, to confirm that the person and the interpreter can understand each other's language, or specific dialect.

ADVISE THE JURY

Explain that languages other than English may be used during the proceeding. Even if members of the jury understand the non-English language being spoken, jurors must base their decision on the evidence presented in the English interpretation.

SWEAR IN THE INTERPRETER

All interpreters should be sworn-in. Placing the interpreter's appearance on the record underscores the importance of adhering to the principles of good court interpreting. Also, when the interpreter states his or her name, it is a good opportunity to inquire whether any party knows the inter-

preter. This question can eliminate potential conflicts or the appearance of impropriety.

SAMPLE INTERPRETER OATH:

"Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the duties and obligations of legal interpretation and translation?"

ASSESS THE PERFORMANCE OF THE COURT INTERPRETER

A judge's observations can aid in the evaluation of an interpreter's performance. Accordingly, consider the following to determine if the interpreter is communicating effectively during the proceeding:

- Are there significant differences in the length of interpretation as compared to the original testimony?
- Does the individual needing the interpreter appear to be asking questions of the interpreter?
- Is the interpreter leading the witness, or trying to influence answers through body language or facial expressions?
- Is the interpreter acting in a professional manner?
- Is the interpretation being done in the first-person? For example, while verbally translating what is being said in court, the interpreter will relay the words as if he/she is the person speaking.
- If the interpreter has a question, does he or she address the Court in the third-person (e.g. "Your honor, the interpreter could not hear the last question...") to keep a clear record?

If you have any concerns or questions about an interpreter's performance, contact the Chief Clerk of the court. You may also contact the Office of Court Interpreting Services at (646) 386-5670 or by e-mail: InterpreterComplaints@nycourts.gov

THE NEW YORK STATE UNIFIED COURT SYSTEM

Working with Interpreters in the Courtroom

BENCHCARD FOR JUDGES

THE RIGHT TO INTERPRETATION SERVICES IN NEW YORK STATE CRIMINAL PROCEEDINGS

***A Listing of Various New York-based State and Federal Case Cites Supporting the Right of Interpretation and Translation Services In Criminal Court.*

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<p>Pursuant to U.S. Constitution 14th Amend.; fundamental fairness and due process of law, including the rights to be present at and participate in the proceedings, to know and defend against the charges, and to testify in one's own behalf.</p>	<p><i>United States ex rel. Negron v New York</i>, 434 F.2d 386 (2d Cir. 1970); <i>Delgado v Walker</i>, 798 F. Supp. 107 (EDNY 1992); <i>United States v Quesada Mosquera</i>, 816 F.Supp. 168 (EDNY. 1993); <i>Benjamin v. Greiner</i>, 296 F.Supp.2d 321 (E.D.N.Y 2003), (if a witness is incapable of communicating in English, a defendant's right to have his witnesses' testimony translated into an intelligible language is part of the Sixth Amendment right to present a defense); <i>People v Ramos</i>, 26 NY2d 272, 309 N.Y.S.2d 906, 258 N.E.2d 197 (1970); <i>People v Duenas</i>, 120 A.D.2d 978, 502 N.Y.S.2d 873 (4th Dept. 1986); <i>People v. Torres</i>, 772 N.Y.S.2d 125 (3rd Dept. 2004); <i>People v De Armas</i>, 106 A.D.2d 659, 483 N.Y.S.2d 121 (2d Dept. 1984); <i>In re Ejoel M.</i>, 824 N.Y.S.2d 660 (2d Dept. 2006); <i>People v Pizzali</i>, 159 A.D.2d 652, 552 N.Y.S.2d 961 (2d Dept. 1990); <i>People v Perez</i>, 198 A.D.2d 446, 604 N.Y.S.2d 152, <i>app den</i> 82 N.Y.2d 929, 610 N.Y.S.2d 181, 632 N.E.2d 491 (2d Dept. 1993); <i>People v Pineda</i>, 160 A.D.2d 649, 559 N.Y.S.2d 266, <i>app den</i> 76 N.Y.2d 794, 559 N.Y.S.2d 999, 559 N.E.2d 693 (1st Dept. 1990); <i>People v Adamez</i>, 177 A.D.2d 980, 578 N.Y.S.2d 1, <i>app den</i> 79 N.Y.2d 852, 580 N.Y.S.2d 724, 588 N.E.2d 759 (4th Dept. 1991); <i>People v Robles</i>, 203 A.D.2d 172, 614 N.Y.S.2d 1, <i>app gr</i> 83 N.Y.2d 971, 616 N.Y.S.2d 24, 639 N.E.2d 764 (1st Dept. 1994); <i>People v. Husband</i>, 135 A.D.2d 406, 411 (1st Dept. 1987); <i>People v. Garcia-Cepero</i>, 874 N.Y.S.2d 689 (2008); <i>People v Johnny P.</i>, 112 Misc.2d 647, 445 N.Y.S.2d 1007 (1981); <i>People v Rivera</i>, 125 Misc.2d 516, 480 N.Y.S.2d 426 (1984); <i>People v Rodriguez</i>, (1989) 145 Misc.2d 105, 546 N.Y.S.2d 769 (1984) (U.S. Const. 5th Amend.; New York Const Art I § 6); <i>People v Dun Chin</i>, 146 Misc.2d 431, 550 N.Y.S.2d 778 (City. Crim. Ct., 1989); and <i>People v Park</i>, 168 Misc.2d 342, 645 N.Y.S.2d 399 (City. Crim. Ct., 1995) (by implication).</p>

THE RIGHT TO INTERPRETATION SERVICES IN NEW YORK STATE CRIMINAL PROCEEDINGS

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Guarantee of right to meaningful confrontation and cross examination of adverse witnesses.	<i>United States ex rel. Negron v New York</i> , 434 F.2d 386 (2d Cir. 1970); <i>United States v Quesada Mosquera</i> , 816 F. Supp 168 (EDNY 1993); and <i>People v Dun Chin</i> , 146 Misc.2d 431, 550 N.Y.S.2d 778 (City. Crim. Ct., 1998).
Guarantee of right to the effective assistance of counsel.	<i>United States ex rel. Negron v New York</i> , 434 F.2d 386 (2d Cir. 1970); <i>United States v Quesada Mosquera</i> , 816 F. Supp 168 (EDNY 1993); <i>People v De Armas</i> , 106 A.D.2d 659, 483 N.Y.S.2d 121 (2d Dept. 1984); and <i>People v Dun Chin</i> , 146 Misc.2d 431, 550 N.Y.S.2d 778 (City. Crim. Ct., 1989).
Lack of qualified interpreters available to a court does not overcome defendant’s due process right to be provided with interpretation services – failure to provide necessary interpretation may require government to forego prosecution.	<i>United States v Quesada Mosquera</i> , 816 F. Supp 168 (EDNY 1993), (although there were too few qualified interpreters in the federal court system, this could not defeat a criminal defendant's due process right to interpretation and translation services under the Sixth Amendment to the United States Constitution).

SUPPORTING CONSTITUTIONAL PROVISION, STATUTE, OR RULE GOVERNING PROVISION OF INTERPRETERS PURSUANT TO THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION	
Court Interpreters Act of 1978, 28 U.S.C. § 1827 (Supp. V 1981)	<p><i>United States v Sun Myung Moon</i>, 718 F.2d 1210, 83-2 (2d Cir. 1983), <i>USTC ¶ 9581</i>, 14 Fed Rules Evid Serv 133, 52 AFTR 2d 83-6026, <i>cert den</i> 466 US 971, 80 L.Ed 2d 818, 104 S.Ct 2344 (1981);</p> <p><i>United States v Villegas</i>, 899 F.2d 1324, (2d Cir. 1990), <i>motion gr.</i> 498 US 933, 112 L.Ed 2d 300, 111 S.Ct 334 <i>and cert den</i> 498 US 991, 112 L.Ed 2d 545, 111 S.Ct 535 (1982);</p> <p><i>United States v Huang</i>, 960 F.2d 1128 (2d Cir. 1992);</p> <p><i>Hrubec v United States</i>, 734 F. Supp 60 (EDNY 1990); and</p> <p><i>United States v Quesada Mosquera</i>, 816 F. Supp 168 (EDNY 1993).</p> <p>NOTE: But see <i>Costa v Williams</i>, 830 F.Supp 223, (SDNY 1993), (In denying a habeas corpus petition, the court pointed out that procedures for interpreters set forth in 28 U.S.C.A. §§ 1827, 1828, applied only to federal proceedings, and that these procedures were neither constitutional in nature, nor had to be followed in state courts).</p>

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New York Judiciary Law § 387	<i>People v Miller</i> , 140 Misc.2d 247, 530 N.Y.S.2d 490 (1988); and <i>People v Dun Chin</i> , 146 Misc.2d 431, 550 N.Y.S.2d 778 (City. Crim. Ct., 1989).
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RIGHT TO INTERPRETATION AND TRANSLATION SERVICES DURING CRIMINAL PRETRIAL MATTERS AND PROCEEDINGS

Entitled by statute, or by the federal or a state constitution, to a translation or interpretation of the indictment or information.	<i>United States v Quesada Mosquera</i> , 816 F. Supp 168 (EDNY 1993), (U.S. Const. 6 th Amend.) <i>United States v Nissim</i> , 1994 US Dist LEXIS 108 (SDNY 1994); and <i>Sanders v. U.S.</i> , 130 F. Supp.2d 447 (SDNY 2001), (failure to request translated indictment, plea agreement and pre-sentence report did not violate U.S. Const. 5 th Amend.).
Entitled to a written interpretation of the indictment into his/her own language – oral translation is insufficient.	<i>United States v Quesada Mosquera</i> , 816 F. Supp 168 (EDNY 1993), (U.S. Const. 6 th Amend. and Court Interpreters Act of 1978, 28 U.S.C. § §1827; 1828 (Supp. V 1981)). NOTE: But see <i>Sanders v. U.S.</i> , 130 F.Supp.2d 447 (S.D.N.Y 2001), (failure of defense counsel to request written Spanish translations of the indictment, plea agreement and pre-sentence report did not violate defendant's due process and equal protection rights; defendant was provided the services of a certified interpreter at every court appearance and in meetings with his lawyers prior to his plea and sentencing, and the interpreters provided him with oral Spanish translations of the indictment, plea agreement and pre-sentence report).
Entitled to competent interpreter at arraignment.	<i>People v Dun Chin</i> , 146 Misc.2d 431, 550 N.Y.S.2d 778 (City. Crim. Ct. 1989), (New York Judiciary Law § 387).
Not entitled to an interpreter at a pretrial jurisdictional hearing, where no factual issues are presented therein to require defendant to testify or understand the proceedings.	<i>United States v Paroutian</i> , 299 F.2d 486 (2d Cir. 1962), (court affirmed defendant's conviction when it found no prejudice nor error committed when interpreter not provided for a hearing on a defense motion contesting the trial court' jurisdiction which did not involve questions of fact or require testimony or understanding from the defendant of the hearing); and

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	<p><i>United States v Sanchez</i>, 483 F.2d 1052, cert. den. 415 US 991, 39 L.Ed.2d 888, 94 S. Ct. 1590 (1973), (defendant was not denied interpretative services during a pretrial discussion between the trial judge and the defendant's appointed and retained lawyers about which of the latter would try the case, and that although the defendant alleged unawareness of what was going on because of a language barrier, his apparent ability to understand English and to communicate with the attorneys in Spanish belied his claim that he did not consent to the appointed lawyer's assignment as trial counsel).</p> <p><i>DuQuin v. Cunningham</i>, 2009 WL 899434 (W.D.N.Y. 2009), (defendant failed to articulate any prejudice or disadvantage stemming from the failure to provide him a sign interpreter at the time of his arrest or during his arraignment. The defendant was hearing impaired and provided with a sign interpreter at all post-indictment proceedings. He had not identified any incriminating statements made by him at either the arraignment or during his arrest which the government sought to be introduced had the matter gone to trial).</p>
<p>Peremptory challenge of juror permitted based on allegations of inability to defer to official court-appointed interpretation and translation.</p>	<p><i>Hernandez v. New York</i>, 111 S.Ct. 1859 (1991), (upheld prosecutor's use of peremptory challenges to strike Spanish-speaking jurors upon claim that he doubted juror's ability to defer to official translation of anticipated Spanish language testimony).</p>
<p>Delay in proceedings for the purposes of securing an interpreter does not waive statutory period for speedy trial purposes.</p>	<p><i>People v. Dun Chin</i>, 146 Misc.2d 431, 550 N.Y.S.2d 778 (City. Crim. Ct. 1989), (In vacating the conviction, the court held that the adjournment necessary to secure a Cantonese-speaking interpreter to assist with defendants' arraignment does not amount to a "waiver" of the delay in proceedings for statutory speedy trial purposes).</p>
<p>(a) RIGHT TO TRANSLATION SERVICES AT SUPPRESSION HEARING</p>	
<p>Entitled to an interpreter at a pretrial suppression hearing or other proceeding to determine the admissibility of evidence.</p>	<p><i>People v Fogel</i>, 97 A.D.2d 445, 467 N.Y.S.2d 411 (2d Dept. 1983), (Wade Hearing – admissibility of pretrial identification evidence).</p> <p><i>People v Duenas</i>, 120 A.D.2d 978, 502 N.Y.S.2d 873 (4th Dept. 1986), (pretrial suppression hearing); and</p> <p><i>People v Robles</i>, 203 A.D.2d 172, 614 N.Y.S.2d 1, app gr 83 N.Y.2d 971, 616 N.Y.S.2d 24, 639 N.E.2d 764 (1st Dept. 1994), (admissibility of impeachment evidence at pretrial "Sandoval" hearing).</p>

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Entitled to interpretation of impeachment evidence at pretrial hearing.	<i>People v Robles</i> , 203 A.D.2d 172, 614 N.Y.S.2d 1, app gr 83 N.Y.2d 971, 616 N.Y.S.2d 24, 639 N.E.2d 764 (1 st Dept. 1994), (reversed conviction following admissibility of impeachment evidence at pretrial "Sandoval" hearing due to lack of interpretation).
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RIGHT TO INTERPRETATION SERVICES DURING TRIAL

(a) RIGHT TO INTERPRETATION OF TRIAL TESTIMONY OF WITNESS AND/OR DEFENDANT

Where interpretation services are required for interpretation of defendant or witness testimony – interpretation should be provided in a simultaneous, continuous, and literal manner, without delay, interruption, omission from, addition to, or alteration of the matter spoken, so that the participants receive a timely, accurate, and complete interpretation.	<i>United States ex rel. Negron v New York</i> , 434 F.2d 386 (2d Cir. 1970); <i>United States v Huang</i> , 960 F.2d 1128 (2d Cir. 1992); <i>In re James L.</i> , 143 A.D.2d 533, 532 N.Y.S.2d 941 (4 th Dept. 1988); and <i>People v Rivera</i> , 125 Misc.2d 516, 480 N.Y.S.2d 426 (1984).
Federal statute requires use of a court- appointed for defendant’s trial testimony.	<i>United States v Sun Myung Moon</i> , 718 F.2d 1210, 83-2 (2d Cir. 1983), USTC ¶ 9581, 14 Fed Rules Evid Serv 133, 52 AFTR 2d 83-6026, <i>cert den</i> 466 US 971, 80 L.Ed 2d 818, 104 S.Ct 2344 (1981), (The judge ruled that the defendant was free to use the interpreter of his own choice for purposes of translating the trial proceedings to him, but that if he elected to take the witness stand, his testimony would have to be translated by a certified, court-appointed interpreter. After this ruling, the defendant elected not to testify at his trial. The court observed that under 28 U.S.C.A. § 1827(d), a certified, court-appointed interpreter must be utilized in a federal criminal action if the presiding judicial officer determines that the defendant or a witness testifying in the action speaks only or primarily a language other than English).

(b) RIGHT TO THE TRANSLATION OF HEARING DOCUMENTS AND EVIDENCE

Entitled to translation of plea hearings and documents (i.e., including questions and statements	<i>United States v Quesada Mosquera</i> , 816 F. Supp 168, 175-177 (EDNY 1993), (court stated that non-English-speaking defendants are entitled to translations, at the government's
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<p>between the accused and the judge, an explanation of the charges and the plea's consequences, and the provisions of a written plea agreement or like document).</p>	<p>expense, of: (1) The indictment and relevant parts of the statute, (2) The pretrial documents if the defendant is represented by CJA counsel,⁵⁹ (3) The plea agreement, if any, and (4) The pre-sentence reports prepared by a probation officer); <i>United States v. El-Jassem</i>, 147 F.R.D. 22, 23 (E.D.N.Y. 1993), (ordering the government to prepare an Arabic translation of the pre-sentence report); and <i>United States v Nissim</i>, 1994 US Dist LEXIS 108 (SDNY 1994).</p>
<p>There is no absolute right to written translation of documents at the expense of the court.</p>	<p><i>Sanders v. United States</i>, 130 F. Supp. 2d 447, 449 (S.D.N.Y. 2001); and <i>De La Rosa v. United States</i>, CA-No. 94-7623 1995 U.S. Dist. LEXIS 5721, at *4-7 (E.D. Pa. Apr. 25, 1995) (<i>unpublished</i>) (holding that the Court Interpreters Act does not require a written translation of documents so long as the Act's purposes have been fulfilled, and disagreeing with the Quesada Mosquera holding "that ... all criminal defendants who are not conversant in English are entitled to receive written translations, or ... that oral interpretation is never sufficient to ensure adequate comprehension by such a defendant"); <i>United States v. Wattanasiri</i>, 97-1380, 1998 U.S. App. LEXIS 4432, at *4 (2d Cir. Mar. 9, 1998) (<i>unpublished</i>), ("There is no specific statute that allows a district court to order the Government to translate documents for an individual to assist him in preparing for a § 2255 motion [a petition in federal court for a writ of habeas corpus, a civil proceeding]"). The <i>Wattanasiri</i> court held that the defendant could request the translations under the Court Interpreters Act, 28 U.S.C. § 1827(g)(4) (2000), only if he was able to pay for them); and <i>People v. Pena</i>, 156 Misc. 2d 791, 794, 594 N.Y.S.2d 586, 588 (County Ct. Schenectady County 1993), ("[T]he written document produced and signed by defendant was concededly not able to be read by him" so to admit it would be "prejudicial to defendant and impermissible"; "defendant gave a statement in Spanish which speaks for itself.").</p>
<p>Generally, entitled to interpretation of tape-recorded statements offered into evidence against defendant - Not entitled to translation of tape-recorded statements offered in evidence against defendant, for the defendant's own benefit, when</p>	<p><i>Castillo v Harris</i>, 491 F. Supp 33, (SDNY 1980), <i>affd without op</i> 646 F.2d 559 (2d Cir. 1980).</p>

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<p>language in which the statements were made is understood.</p>	
<p>(c) WRITTEN OR RECORDED EVIDENCE THAT IS PRESENTED IN A FOREIGN LANGUAGE</p>	
<p>Evidence that is written or recorded in a foreign language should be, at minimum, interpreted and, where necessary, translated, for jury consideration.</p>	<p><i>People v. Batista</i>, 703 N.Y.S.2d 885 (2000), (audio tapes of defendant's conversations in Spanish with undercover officer were sufficiently audible as required to be admissible, where translator was able to prepare accurate transcript of tapes, even though official court interpreter was unable to produce transcription of conversations on tapes at audibility hearing). <i>People v. Pagan</i>, 437 N.Y.S.2d 384 (2d Dept. 1981), (trial judge incorrectly instructed court interpreter to determine if there was conversation on Spanish language tape recording of alleged drug sale, instead of inquiring whether the interpreter was able to comprehend the meaning of the words, and improperly allowed interpreter to use transcript of the tape prepared by an undercover police officer who participated in recorded conversation while evaluating the tape, instead of requiring him to independently verify the audibility of the tape); and <i>U.S. v. Bahadar</i>, 954 F.2d 821 (2nd Cir. 1992), (district court did not abuse its discretion in allowing English transcripts of tape-recorded conversations that had been conducted in Punjab and Urdu to serve as primary form of evidence and in reminding jurors that tape recordings had been admitted into evidence and that they could listen to tapes following determination that listening to tapes would have been long and cumbersome enterprise and by allowing defense counsel to cross-examine translator as to her competence and to argue translator's inabilities in summation).</p>
<p>Interpretations may be received as party admissions under agency exception to hearsay rule if party has made interpreter agent for purpose of translating what he or she says – interpretations may be received as party admissions if there is no motive to mislead and no reason to believe interpretation to be inaccurate.</p>	<p><i>U.S. v. Lopez</i>, 937 F.2d 716 (2nd Cir. 1991), (testimony of confidential informant, who did not speak Spanish, as to statements made in Spanish by defendants, which were translated for him by DEA agent was nonhearsay and translation was attributable to defendants as their own admission. Court noted that, except in unusual circumstances, an interpreter is no more than language conduit and therefore his translation does not create additional level of hearsay.). <i>U.S. v. DaSilva</i>, 725 F.2d 828 (2nd Cir. 1983), (defendant authorized Spanish-speaking Drug</p>

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	<p>Enforcement Administration agent to speak for him in interview with another agent, thus bringing defendant's admissions within nonhearsay rule, notwithstanding that interpreter was employee of the Government); <i>U.S. v. Ben-Shimon</i>, 249 F.3d 98 (2nd Cir. 2001), (admission of transcript of tape-recorded conversation was not abuse of discretion, even though cooperating witness, who was not certified translator, provided English-language translations for portions of conversation that occurred in foreign language, given that defendant specified no inaccuracy in transcript aside from redacted passages, district court repeatedly advised defendant that he was free to prepare competing transcript assisted by court-appointed translator, transcript was sufficiently authenticated, and jury was properly instructed on what weight to give transcript and limited purpose for its admission); <i>People v. Morel</i>, 798 N.Y.S.2d 315 (2005), (Spanish-speaking defendant's statements to bystander who acted as translator at accident scene were admissible under party admissions exception to hearsay rule in prosecution; defendant implicitly ratified the translator's role after investigating officer asked for assistance from group of onlookers, translator performed in a public, non-custodial atmosphere in which defendant was free to reject the translator's efforts to facilitate communication, and there was no indication that translator was biased or that there was any inaccuracy in the translations); and <i>People v. Romero</i>, 581 N.E.2d 1048, (1991).</p> <p>NOTE: But see <i>People v. Sanchez</i>, 479 N.Y.S.2d 602 (1984), (where defendant's confession was given through interpreter, who was not called to testify before grand jury, testimony as to defendant's confession given at grand jury was inadmissible hearsay).</p>
<p>(d) RIGHT TO INTERPRETATION OF PLEA ALLOCUTION</p>	
<p>Entitled to an interpreter at the time of allocution, (i.e., when the court asks the defendant whether he/she has any legal cause why judgment should not be pronounced against him/her).</p>	<p><i>People ex rel. Berrios v Murphy</i>, 31 Misc.2d 966, 222 N.Y.S.2d 254 (1961), (habeas corpus petition sustained and defendant remanded for resentencing when judge allowed defense attorney to answer the statutory allocution question without an interpreter present (New York Crim Proc Law § 480) as to whether the defendant had any legal cause why judgment should not be pronounced against him. Pointing out that at the time the defendant entered his guilty plea all of the proceedings were translated to him by a sworn Spanish interpreter, and that certain portions of the proceedings at the time of sentencing were explained to the defendant in Spanish by his attorney, the court found it inferable that at</p>

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	the time of his sentencing, the defendant did not have sufficient knowledge of the English language to comprehend the proceedings, and that the propounded question was not translated to him. While an accused may waive his right to personally answer the question if he understands it, the court explained, neither he nor his attorney may waive the requirement that his right to speak for himself be understandably communicated to him.)
No entitlement of interpretation services if defendant is able to answer statutorily required allocution in the English language and makes no claim of an inability to understand the nature of the proceeding or the meaning of the question.	<i>People v Medina</i> , 24 A.D.2d 516, 261 N.Y.S.2d 831, (2d Dept. 1965), (on the record presented the defendant failed to show that he did not understand the allocution as required under the statutory provision, when he personally answered in the negative. The court pointed out that at the time the question was asked of the defendant, no claim was made by him or by the public defender representing him that he did not comprehend the nature of the proceeding or the meaning of the question); <i>Guerrero v Harris</i> , 461 F. Supp 583 (SDNY 1978), (no error found in failure to appoint interpreter at pleading stage when interpreter provided at sentencing and defendant affirmed his intent to plead guilty and was given an opportunity to withdraw his guilty plea); <i>People v Navarro</i> 134 A.D.2d 460, 521 N.Y.S.2d 82 (2d Dept. 1987); <i>People v Williams</i> , 189 A.D.2d 910, 592 N.Y.S.2d 471, <i>app. den.</i> 81 N.Y.2d 978, 598 N.Y.S.2d 780, 615 N.E.2d 237 (2d Dept. 1993); and <i>People v Laureano</i> , 209 A.D.2d 201, 618 N.Y.S.2d 290, <i>app. gr.</i> 85 N.Y.2d 911 (1 st Dept. 1994).
No absolute right to interpretation of closing arguments unless it can be demonstrated that interpreter's absence compromised the trial's basic fairness.	<i>People v Adamez</i> , 177 A.D.2d 980, 578 N.Y.S.2d 1, <i>app den</i> 79 N.Y.2d 852, 580 N.Y.S.2d 724, 588 N.E.2d 759 (4th Dept. 1991).
Not entitled to a written translation of a jury waiver.	<i>People v. Familia</i> , 273 A.D.2d 49, 49-50, 710 N.Y.S.2d 821, 822 (1st Dept. 2000) (defendant was entitled to a verbatim interpretation of the jury waiver, not a waiver printed in his native language).
Interpretation services necessary where testimony is required to be read back to the jury if an interpreter was used and required throughout the trial.	<i>People v Pizzali</i> , 159 A.D.2d 652, 552 N.Y.S.2d 961 (2d Dept. 1990).

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RIGHT TO INTERPRETATION OF POST-TRIAL MATTERS AND PROCEEDINGS	
Entitled to a written translation of the Presentence Report.	<i>United States v Quesada Mosquera</i> , 816 F. Supp 168 (EDNY 1993), (U.S. Const. 6 th Amend. and Court Interpreters Act of 1978, 28 U.S.C. § §1827(d)(1)(A) (Supp. V 1981)).
Entitled to a complete interpretation of the proceedings and evidence presented at the sentencing hearing.	<i>People v Diaz</i> , 212 A.D.2d 412, 622 N.Y.S.2d 686 (1st Dept. 1995), (conviction vacated); NOTE: But see <i>People v. Rios</i> , 868 N.Y.S.2d 295 (2d Dept. 2008), (defendant was not denied the right to be present or the effective assistance of counsel by alleged inability to communicate with court-appointed sign language interpreter at sentencing hearing; there was one instance during hearing where the interpreter and defendant advised the court that they had difficulty in communication, however, neither the interpreter nor the defendant advised that they could not communicate, defense counsel did not indicate she could not communicate with defendant, and defendant provided counsel with information used to successfully argue in sentencing hearing).
No entitlement to interpretation services at the sentencing hearing if a determination is made that the defendant is sufficient competent in the English language to understand and effectively participate in the sentencing hearing.	<i>People v Ortiz</i> 198 A.D.2d 912, 604 N.Y.S.2d 462, <i>app den</i> 82 N.Y.2d 928, 610 N.Y.S.2d 180, 632 N.E.2d 490 (4th Dept. 1993), (no error found when trial judge determined English proficiency by observations that, during his guilty plea colloquy, the defendant reported a ninth grade education, that he could read and write English, and that, in the drug transaction underlying his guilty plea, the defendant interpreted for those participants who could not speak English. Sentencing judge also observed that defendant had had no difficulty understanding or conversing with his lawyer during several previous court appearances, and that the defendant first requested an interpreter immediately before sentencing); and <i>People v. Santos</i> , 848 N.Y.S.2d 57 (1 st Dept. 2007), (Defendant was not deprived of a fair trial by failure to have an interpreter present at his sentencing; sentencing minutes demonstrated that defendant was able to speak and understand English, notwithstanding his use of an interpreter at other proceedings).

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DETERMINING THE NECESSITY AND THE RIGHTS OF INTERPRETATION AND TRANSLATION SERVICES	
(a) WAIVER OF RIGHT TO INTERPRETATION SERVICES	
Entitled to an interpreter - where a timely request is made or if brought to the court's attention that the defendant or a witness has a language difficulty that may prevent meaningful understanding of, or communication in, the proceeding.	<p><i>United States ex rel. Negron v New York</i>, 434 F.2d 386 (2d Cir. 1970); <i>People v Ramos</i>, 26 N.Y.2d 272, 309 N.Y.S.2d 906, 258 N.E.2d 197 (1970); <i>People v Medina</i> 24 A.D.2d 516, 261 N.Y.S.2d 831 (2d Dept. 1965); <i>People v Ramos</i> 25 A.D.2d 791, 269 N.Y.S.2d 309 (3d Dept. 1966); <i>People v Jean-Charles</i> 122 A.D.2d 166, 504 N.Y.S.2d 544 (2d Dept. 1982); <i>People v Navarro</i> 134 A.D.2d 460, 521 N.Y.S.2d 82 (2d Dept. 1987); <i>People v Gamal</i> 148 A.D.2d 468, 538 N.Y.S.2d 620 (2d Dept. 1989); <i>People v Reyes</i> 158 A.D.2d 626, 551 N.Y.S.2d 596, <i>app den</i> 77 N.Y.2d 965, 570 N.Y.S.2d 499, 573 N.E.2d 587 (2d Dept. 1990); <i>People v Pineda</i>, 160 A.D.2d 649, 559 N.Y.S.2d 266, <i>app den</i> 76 N.Y.2d 794, 559 N.Y.S.2d 999, 559 N.E.2d 693 (1st Dept. 1990); <i>People v Adamez</i>, 177 A.D.2d 980, 578 N.Y.S.2d 1, <i>app den</i> 79 N.Y.2d 852, 580 N.Y.S.2d 724, 588 N.E.2d 759 (4th Dept. 1991); <i>People v Pellor</i> 179 A.D.2d 844, 578 N.Y.S.2d 669, <i>app den</i> 79 N.Y.2d 951, 583 N.Y.S.2d 205, 592 N.E.2d 813 (3d Dept. 1992); <i>People v Smolyanski</i> 186 A.D.2d 601, 588 N.Y.S.2d 583, <i>app den</i> 81 N.Y.2d 766, 594 N.Y.S.2d 729, 610 N.E.2d 402 (2d Dept. 1992); <i>People v Drici</i> 188 A.D.2d 611, 591 N.Y.S.2d 505, <i>app den</i> 81 N.Y.2d 884, 597 N.Y.S.2d 945, 613 N.E.2d 977 (2d Dept. 1992); <i>People v Williams</i> 189 A.D.2d 910, 592 N.Y.S.2d 471, <i>app den</i> 81 N.Y.2d 978, 598 N.Y.S.2d 780, 615 N.E.2d 237 (2d Dept. 1993). <i>People v Calizaire</i> 190 A.D.2d 857, 593 N.Y.S.2d 879 (2d Dept. 1993); <i>People v Ortiz</i> 198 A.D.2d 912, 604 N.Y.S.2d 462, <i>app den</i> 82 N.Y.2d 928, 610 N.Y.S.2d 180, 632 N.E.2d 490 (4th Dept. 1993); <i>Delgado v Walker</i>, 798 F. Supp 107 (EDNY 1992); <i>United States v Quesada Mosquera</i>, 816 F. Supp 168 (EDNY 1993); <i>People v Duenas</i>, 120 A.D.2d 978, 502 N.Y.S.2d 873 (4th Dept. 1986); <i>People v. Torres</i>, 772 N.Y.S.2d 125 (3rd Dept. 2004); <i>People v De Armas</i>, 106 A.D.2d 659, 483 N.Y.S.2d 121 (2d Dept. 1984);</p>

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	<p><i>In re Ejoel M.</i>, 824 N.Y.S.2d 660 (2d Dept. 2006); <i>People v Pizzali</i>, 159 A.D.2d 652, 552 N.Y.S.2d 961 (2d Dept. 1990); <i>People v Perez</i>, 198 A.D.2d 446, 604 N.Y.S.2d 152, app den 82 N.Y.2d 929, 610 N.Y.S.2d 181, 632 N.E.2d 491 (2d Dept. 1993); <i>People v Robles</i>, 203 A.D.2d 172, 614 N.Y.S.2d 1, app gr 83 N.Y.2d 971, 616 N.Y.S.2d 24, 639 N.E.2d 764 (1st Dept. 1994);</p>
<p>Waiver of right to interpretation requires personal and express waiver by accused, where right to or need for interpretation is established or apparent .</p>	<p><i>United States v Nissim</i>, 1994 US Dist LEXIS 108 (SDNY 1994), (plea allowed to be withdrawn when judge did not ask defendant personally as to need for interpreter and instead relied on defense counsel’s off-the-record statement).</p> <p>NOTE: But see <i>U.S. v. Marigin</i>, 66 Fed. Appx. 266 (2d Cir. 2003), (in which personal and express waiver by accused not required to waive right to interpretation, where need for interpretation not indicated or found).</p>
<p>Waiver of Right to Interpretation – when failure to request or indicate a need for interpretation precludes from alleging a barrier in failure to provide an interpreter.</p>	<p><i>People v Ramos</i>, 26 N.Y.2d 272, 309 N.Y.S.2d 906, 258 N.E.2d 197 (1970); <i>People v Medina</i> 24 A.D.2d 516, 261 N.Y.S.2d 831 (2d Dept. 1965); <i>People v Ramos</i> 25 A.D.2d 791, 269 N.Y.S.2d 309 (3d Dept. 1966); <i>People v Jean-Charles</i> 122 A.D.2d 166, 504 N.Y.S.2d 544 (2d Dept. 1982); <i>People v Navarro</i> 134 A.D.2d 460, 521 N.Y.S.2d 82 (2d Dept. 1987); <i>People v Gamal</i> 148 A.D.2d 468, 538 N.Y.S.2d 620 (2d Dept. 1989); <i>People v Reyes</i> 158 A.D.2d 626, 551 N.Y.S.2d 596, app den 77 N.Y.2d 965, 570 N.Y.S.2d 499, 573 N.E.2d 587 (2d Dept. 1990); <i>People v Pineda</i>, 160 A.D.2d 649, 559 N.Y.S.2d 266, app den 76 N.Y.2d 794, 559 N.Y.S.2d 999, 559 N.E.2d 693 (1st Dept. 1990); <i>People v Adamez</i>, 177 A.D.2d 980, 578 N.Y.S.2d 1, app den 79 N.Y.2d 852, 580 N.Y.S.2d 724, 588 N.E.2d 759 (4th Dept. 1991); <i>People v Pellor</i> 179 A.D.2d 844, 578 N.Y.S.2d 669, app den 79 N.Y.2d 951, 583 N.Y.S.2d 205, 592 N.E.2d 813 (3d Dept. 1992); <i>People v Smolyanski</i> 186 A.D.2d 601, 588 N.Y.S.2d 583, app den 81 N.Y.2d 766, 594 N.Y.S.2d 729, 610 N.E.2d 402 (2d Dept. 1992); <i>People v Drici</i> 188 A.D.2d 611, 591 N.Y.S.2d 505, app den 81 N.Y.2d 884, 597 N.Y.S.2d 945, 613 N.E.2d 977 (2d Dept. 1992);</p>

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	<p><i>People v Williams</i> 189 A.D.2d 910, 592 N.Y.S.2d 471, <i>app den</i> 81 N.Y.2d 978, 598 N.Y.S.2d 780, 615 N.E.2d 237 (2d Dept. 1993). <i>People v Calizaire</i> 190 A.D.2d 857, 593 N.Y.S.2d 879 (2d Dept. 1993); <i>People v Ortiz</i> 198 A.D.2d 912, 604 N.Y.S.2d 462, <i>app den</i> 82 N.Y.2d 928, 610 N.Y.S.2d 180, 632 N.E.2d 490 (4th Dept. 1993); and <i>People v Robles</i>, 203 A.D.2d 172, 614 N.Y.S.2d 1, <i>app gr</i> 83 N.Y.2d 971, 616 N.Y.S.2d 24, 639 N.E.2d 764 (1st Dept. 1994).</p>
<p>No waiver of right to interpretation services – even in absence of request for interpretation services where court is otherwise apprised of language problem.</p>	<p><i>United States ex rel. Negron v New York</i>, 434 F.2d 386 (2d Cir. 1970), (classic definition of a waiver—the intentional relinquishment or abandonment because petitioner, unaccustomed to asserting "personal rights" against the authority of the state's judicial arm, has no of the "right" or "privilege" to assert); <i>People v Adamez</i>, 177 A.D.2d 980, 578 N.Y.S.2d 1, <i>app den</i> 79 N.Y.2d 852, 580 N.Y.S.2d 724, 588 N.E.2d 759 (4th Dept. 1991); <i>People v Robles</i>, 203 A.D.2d 172, 614 N.Y.S.2d 1, <i>app gr</i> 83 N.Y.2d 971, 616 N.Y.S.2d 24, 639 N.E.2d 764 (1st Dept. 1994), (“interpreter” stamped on back of felony complaint and written on attorney’s notice of appearance).</p>
<p>(b) COURT’S DUTIES AND POWERS – WHEN NEED FOR INTERPRETATION IS INDICATED OR FOUND</p>	
<p>Court has a duty to inquire into and determine need for interpretation upon indication of language problem.</p>	<p><i>United States ex rel. Negron v New York</i>, 434 F.2d 386 (2d Cir. 1970); <i>Hrubec v United States</i>, 734 F. Supp 60 (EDNY 1990), (28 U.S.C.A. § 1827 imposes a mandatory duty on a trial court to inquire concerning the need for an interpreter when the defendant has difficulty with English, and such difficulty would inhibit comprehension of the proceedings or communication with counsel or the presiding judge); and <i>People v Ramos</i>, 26 N.Y.2d 272, 309 N.Y.S.2d 906, 258 N.E.2d 197 (1970), (only when a defendant exhibits an inability to understand the proceedings or to communicate with counsel must a court inquire whether an interpreter is needed). <i>People v Robles</i>, 203 A.D.2d 172, 614 N.Y.S.2d 1, <i>app gr</i> 83 N.Y.2d 971, 616 N.Y.S.2d 24, 639 N.E.2d 764 (1st Dept. 1994), (observing the word “interpreter” stamped on back of felony complaint and the word “Spanish” written on attorney’s notice of appearance was sufficient to establish that defendant's due process right to be present at and participate in all material stages of the prosecution was violated when he was not provided with an interpreter at his pretrial "Sandoval" even though defendant failed to raise the request for</p>

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	<p>an interpreter); and <i>People ex rel. Berrios v Murphy</i>, 31 Misc.2d 966, 222 N.Y.S.2d 254 (1961), (habeas corpus granted upon a finding that the English incompetence and need for an interpreter was inferable from the fact that at the time the defendant entered his guilty plea, all of the proceedings were translated to him by a sworn Spanish interpreter, and that certain portions of the proceedings at the time of sentencing were explained to the defendant in Spanish by his attorney).</p>
<p>Court has a duty to inform accused of right to interpretation services upon the determination that there is a need for interpretation.</p>	<p>Upon determining that an accused cannot effectively understand or communicate in English, and therefore needs the services of an interpreter, the trial court must inform the accused of his right to have an interpreter assist him, at public expense if need be. <i>United States ex rel. Negron v New York</i>, 434 F.2d 386 (2d Cir. 1970); <i>People v De Armas</i>, 106 A.D.2d 659, 483 N.Y.S.2d 121 (2d Dept. 1984); <i>People v Navarro</i> 134 A.D.2d 460, 521 N.Y.S.2d 82 (2d Dept. 1987); and <i>People v Dun Chin</i>, 146 Misc.2d 431, 550 N.Y.S.2d 778 (City. Crim. Ct. 1989).</p>
<p>Determination as to whether interpretation is needed or should be appointed is within judicial discretion – requires finding of abuse of discretion to overturn determination.</p>	<p><i>Perovich v United States</i>, 205 US 86, 51 L.Ed 722, 27 S. Ct. 456 (1907); <i>United States v. Fuentes</i>, 563 F.2d 527, 536-37 (2d Cir. 1977), (finding no abuse of discretion where judge denied the use of an interpreter upon finding the defendant able to communicate effectively in English); <i>United States v. Chang Ho Lee</i>, No. 99-1098. 1999 U.S. App. LEXIS 28901, at *2 (2d Cir. Nov. 1, 1999) (<i>unpublished</i>), (accepting district court's determination that interpretation provided at trial was adequate where defendant understood some English, did not object to the quality of interpretation until the third day of trial, and complained only when confronted with prior inconsistent statements); <i>People v. Rios</i>, 868 N.Y.S.2d 295 (2d Dept. 2008), (determination as to whether an interpreter is necessary lies within the sound discretion of the trial court, which is in the best position to make the fact-intensive inquiries necessary to determine whether there exists a language barrier such that the failure to appoint an interpreter will deprive the defendant of his or her constitutional right); <i>United States v Desist</i>, 384 F.2d 889, 36 A.L.R.3d 255, (2d Cir. 1967) <i>aff'd</i>. 394 US 244, 22 L.Ed.2d 248, 89 S.Ct. 1030, reh. den. 395 US 931, 23 L.Ed.2d 251, 89 S.Ct 1766 (1969); <i>United States v Quesada Mosquera</i>, 816 F. Supp 168 (EDNY 1993), (including translation of</p>

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	<p>indictment, plea agreement, presentence report, and other key documents); <i>People v De Armas</i>, 106 A.D.2d 659, 483 N.Y.S.2d 121 (2d Dept. 1984), (New York Judiciary Law § 387); <i>People v Navarro</i>, 134 A.D.2d 460, 521 N.Y.S.2d 82 (2d Dept. 1987); <i>People v Laureano</i>, (1994, 1st Dept) 209 App Div 2d 201, 618 NYS2d 290, <i>app. gr.</i> 85 NY2d 911 (including guilty plea hearing); <i>People v Johnny P.</i>, 112 Misc.2d 647, 445 N.Y.S.2d 1007 (1981), (New York Judiciary Law § 387); and <i>People v Dun Chin</i>, 146 Misc.2d 431, 550 N.Y.S.2d 778 (City. Crim. Ct., 1989).</p>
<p>Inquiry into need for interpretation services should be directed to the defendant or witness.</p>	<p><i>United States v Nissim</i>, 1994 US Dist LEXIS 108 (SDNY 1994), (motion to withdraw plea sustained when defendant explained understood Hebrew and little English and had no interpreter when plea was entered and judge apparently relied on defense counsel's statement to the judge that an interpreter was not needed).</p>
<p>No inquiry into the need of interpretation services required when the defendant admits or demonstrates an ability to comprehend or communicate effectively in the English language.</p>	<p><i>Hrubec v United States</i>, 734 F. Supp 60 (EDNY 1990), (if defendant's primary language is something other than English - does not of itself create a duty to inquire regarding the need for an interpreter. 28 U.S.C.A. § 1827 states, that duty arises only when the defendant's language difficulties would "inhibit comprehension of the proceedings or communication with counsel or the presiding judicial officer."); and <i>People v Ortiz</i> 198 A.D.2d 912, 604 N.Y.S.2d 462, <i>app den</i> 82 N.Y.2d 928, 610 N.Y.S.2d 180, 632 N.E.2d 490 (4th Dept. 1993), (No reversible error where defendant displayed signs of language comprehension by stating that he had been educated up to the ninth grade; could read and write English, acted as an interpreter for those participants who could not speak English and only requested an interpreter immediately prior to sentencing).</p>
<p>Employing interpretation services in one stage or part of the hearing process does not guarantee interpretation services in other stages or parts of the criminal proceedings.</p>	<p><i>People v Ramos</i>, 26 N.Y.2d 272, 309 N.Y.S.2d 906, 258 N.E.2d 197 (1970), (although the defendant testified in his own behalf through a court-appointed interpreter, who did not translate for the defendant the rest of the trial proceedings, the judge was not effectively apprised of the defendant's alleged inability to understand English, and so did not err in failing to ascertain the defendant's need for, or to provide him with, interpretive services throughout the trial); and</p>

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	<p><i>People v De Armas</i>, 106 A.D.2d 659, 483 N.Y.S.2d 121 (2d Dept. 1984), (Reversible error in ruling that an interpreter for the defendant could assist him and defense counsel only "when needed" or with respect to particular questions if and when the judge deemed it necessary, particularly where the defendant's proficiency in English was extremely limited, and the judge was so restrictive in allowing assistance by the interpreter that the defendant's testimony was virtually unintelligible).</p>
<p>(c) DEFENSE COUNSEL'S DUTY TO INFORM COURT</p>	
<p>Defense counsel should call to the attention of the court, a defendant's inability to communicate in the English language if defendant is unable to relay this information to the court.</p>	<p><i>People v. Pineda</i>, 559 N.Y.S.2d 266 (1st Dept. 1990), (while defendant who cannot understand English is entitled to have interpreter, such right may be waived where defendant or his attorney fails to call to attention of trial court, in some appropriate manner, his lack of sufficient knowledge of the English language).</p>

<p>(d) DEFENDANT'S COMPETENCE IN ENGLISH</p>	
<p>Defendant must show a language disability - requires more than merely making a request for an interpreter or claim for the need of such assistance.</p>	<p><i>People v. Smith</i>, 195 Misc.2d 434, 759 N.Y.S.2d 315 (Sup. 2003), (Although Krio contains English, Krio is amalgam of English with non-English expressions that could not be understood readily without an interpreter - following standard procedure for use of interpreter would minimize confusion as supported by McKinney's Judiciary Law § 387). <i>Perovich v United States</i>, 205 US 86, 51 L.Ed 722, 27 S. Ct. 456 (1907); <i>People v Smolyanski</i>, 186 A.D.2d 601, 588 N.Y.S.2d 583, <i>app. den.</i> 81 N.Y.2d 766, 594 N.Y.S.2d 729, 610 N.E.2d 402, (2d Dept. 1992), (no error found when judge ordered interpreter for cross examination when difficulty demonstrated on direct examination of defendant which included occasional nonresponsive and rambling answers but no efforts made to subsequently "correct" the direct testimony). <i>People v. Cambrero</i>, 794 N.Y.S.2d 366 (1st Dept. 2005), (defendant not deprived of right to be present when hearing conducted without waiting for an interpreter when record is replete with evidence of language competency);</p>

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	<p><i>People v Jean-Charles</i> 122 A.D.2d 166, 504 N.Y.S.2d 544 (2d Dept. 1982), (defendant attending college courses, attorney assured court of ability to understand English and at no time during proceeding did defendant dispute his understanding of the proceedings);</p> <p><i>People v Gamal</i> 148 A.D.2d 468, 538 N.Y.S.2d 620 (2d Dept. 1989), (defendant makes no request for an interpreter at trial, nor any showing of having trouble understanding the testimony or proceedings, or that he could not assist in preparing his defense due to a language barrier), (court found that defendant's command of the English language was quite good, and a Spanish interpreter was immediately provided to the defendant on the single occasion in his murder trial when he requested one);</p> <p><i>People v Perez</i>, 154 A.D.2d 485, 546 N.Y.S.2d 31, <i>app. den.</i> 75 N.Y.2d 774, 551 N.Y.S.2d 916, 551 N.E.2d 117 <i>later proceeding</i> (2d Dept.) 191 A.D.2d 466, 594 N.Y.S.2d 285, <i>app. den.</i> 81 N.Y.2d 975, 598 N.Y.S.2d 776, 615 N.E.2d 233 (2d Dept. 1989), (defendant presented no evidence that he did not understand the trial testimony or proceedings, or that he was unable to communicate with counsel or assist in preparing his defense due to a language barrier, and never requested the services of an interpreter at trial);</p> <p><i>People v Reyes</i> 158 A.D.2d 626, 551 N.Y.S.2d 596, <i>app. den.</i> 77 N.Y.2d 965, 570 N.Y.S.2d 499, 573 N.E.2d 587 (2d Dept. 1990);</p> <p><i>People v Drici</i> 188 A.D.2d 611, 591 N.Y.S.2d 505, <i>app. den.</i> 81 N.Y.2d 884, 597 N.Y.S.2d 945, 613 N.E.2d 977 (2d Dept. 1992), (defendant had no difficulty communicating with counsel or understanding the proceedings at his trial and no request for an interpreter was made);</p> <p><i>People v. Bell</i>, 773 N.Y.S.2d 155 (3d Dept. 2004), (while witness did not have masterful grasp of English language, he understood and responded to defense counsel's questions, and defendant had not requested an interpreter); and</p> <p><i>People v. Niedzwiecki</i>, 127 Misc.2d 919, 921, 487 N.Y.S.2d 694 (City Crim. Ct. 1985), (the court found that a non-English speaking defendant must "reach a threshold point of understanding the choice presented to him, so he may at least be able to make a decision as to the course of conduct he will take.").</p>
<p>The effect of providing, using, or recognizing need for interpreter during one stage or part of proceeding <u>alone</u> is not sufficient to establish the need for, or right to, interpreter during other stage or part.</p>	<p><i>Perovich v United States</i>, 205 US 86, 51 L.Ed 722, 27 S. Ct. 456 (1907);</p> <p><i>People v Ramos</i>, 26 N.Y.2d 272, 309 N.Y.S.2d 906, 258 N.E.2d 197 (1970), (although defendant afforded an interpreter at the time of testifying at trial, this alone does not imply that he lacked English skills necessary to follow the other testimony and proceedings. Therefore, failure to provide an interpreter for the balance of the proceedings was not</p>

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	<p>found improper absent a request for an interpreter from the defendant). <i>People v Smolyanski</i>, 186 A.D.2d 601, 588 N.Y.S.2d 583, <i>app. den.</i> 81 N.Y.2d 766, 594 N.Y.S.2d 729, 610 N.E.2d 402, (2d Dept. 1992), (no error found when judge ordered interpreter for cross examination of defendant when difficulty demonstrated on direct examination included occasional nonresponsive and rambling answers but no efforts made by court to subsequently “correct” the direct testimony).</p> <p>NOTE: But see <i>People v Pizzali</i>, 159 A.D.2d 652, 552 N.Y.S.2d 961 (2d Dept. 1990), (reversible error where judge allowed testimony to be read back to the jury without waiting for the interpreter to return to the courtroom).</p>
<p>(e) WITNESS COMPETENCE IN ENGLISH</p>	
<p>Denial of a witness – denial of a meaningful cross examination of a witness when interpretation services are not provided for a witness that is not sufficiently competent in English (i.e., cannot understand or clearly respond to questioning in the English language).</p>	<p><i>People v Fogel</i>, 97 A.D.2d 445, 467 N.Y.S.2d 411, (2d Dept. 1983), (held that the trial judge improperly denied the defendant's repeated requests that an interpreter be employed for the direct and cross examination of one of the complaining witnesses, who had difficulty understanding and communicating in English at trial and at a "Wade" hearing concerning the admissibility of pretrial identification evidence in which the prosecution succeeded in eliciting direct testimony primarily by asking, over objection, a series of leading questions).</p>
<p>(f) DEFENSE COUNSEL COMPETENCE IN FOREIGN LANGUAGE</p>	
<p>The interpretation by defense counsel is sufficient at a proceeding other than trial if defense counsel is competent in use of language spoken by the defendant.</p>	<p><i>United States v Desist</i>, 384 F.2d 889, 36 A.L.R.3d 255, (2d Cir. 1967) <i>aff'd.</i> 394 US 244, 22 L.Ed.2d 248, 89 S.Ct. 1030, <i>reh. den.</i> 395 US 931, 23 L.Ed.2d 251, 89 S.Ct 1766 (1969), (in light of the French-speaking defendant's apparent ability to communicate with his privately retained attorneys, there was no merit to a claim that the trial judge's refusal to provide him with a court-appointed interpreter violated his rights to witness confrontation, effective counsel, and due process of law. Although the trial counsel claimed a lack of fluency in French, the presiding judge stated after the trial that from his own observation, he had no doubt that the defendant had been sufficiently in communication with trial counsel to permit the latter to conduct a vigorous and able defense).</p> <p><i>United States v Paroutian</i>, 299 F.2d 486 (2d Cir. 1962), (court affirmed defendant's conviction when it found no prejudice nor error committed from allegations that, at a hearing on a defense motion contesting the court's jurisdiction, defense counsel, who was forced to act as an interpreter, could not fulfill his normal functions).</p>

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<p>Defense counsel's functioning as an interpreter at proceedings of a foreign language speaking defendant does not entail ineffective assistance.</p>	<p><i>People v. Rodriguez</i>, 31 A.D.2d 753, 297 N.Y.S.2d 332 (2d Dept. 1969), (although defendant claimed he was denied effective assistance of counsel because he could not understand the Spanish spoken by one of his assigned attorneys, who frequently acted as the interpreter, the court held appointed defense counsel's acting as an interpreter for a Spanish-speaking defendant did not amount to incompetent representation).</p>
<p>(g) JUDGE'S COMPETENCE IN FOREIGN LANGUAGE</p>	
<p>No entitlement to interpretation services when the presiding judge is able to comprehend, speak to and to interpret for the defendant and/or is able to assure the accuracy of interpretation provided by a third person.</p>	<p><i>Baez v Henderson</i>, 1992 US Dist LEXIS 774 (SDNY 1992), (petitioner's right to be heard at the sentencing hearing was not violated by the absence of an interpreter at the hearing, where the bilingual presiding judge undertook to translate the proceedings into Spanish for the petitioner, as well as the latter's statements at the hearing into English).</p>
<p>(h) DEFENDANT'S ABILITY TO PAY FOR INTERPRETATION AND TRANSLATION SERVICES</p>	
<p>Indigent defendant has a right to interpretation at government expense.</p>	<p><i>United States ex rel. Negron v New York</i>, 434 F.2d 386, 389 (2d Cir. 1970), (While one of the purposes of the Court Interpreters Act was to protect the rights of the indigent, courts typically do not inquire about a criminal defendant's ability to pay before furnishing an interpreter. This does not mean that courts do not have the right to require a showing of an inability to pay before providing an interpreter at the state's expense; they just typically do not bother to do so); <i>United States v Quesada Mosquera</i>, 816 F. Supp 168 (EDNY 1993); <i>People v De Armas</i>, 106 A.D.2d 659, 483 N.Y.S.2d 121 (2d Dept. 1984); <i>People v Rivera</i>, 125 Misc.2d 516, 480 N.Y.S.2d 426 (1984); and <i>Beretin v. Kuhlman</i>, 135 Misc. 2d 492, 493, 516 N.Y.S.2d 154, 155 (Civ. Ct. Kings County 1987), (allowing the petitioner to proceed as a poor person and finding that "since respondent cannot afford to pay for [an interpreter] and petitioner has no obligation to do so, the only solution is for the court to provide an official interpreter.").</p>
<p>Generally, a defendant who is <u>not</u> indigent, and therefore presumably can employ and pay for his own interpreter, is not entitled to a court-appointed interpreter serving at public expense.</p>	<p><i>United States v Desist</i>, 384 F.2d 889, 36 A.L.R.3d 255, (2d Cir. 1967) <i>aff'd</i>. 394 US 244, 22 L.Ed.2d 248, 89 S.Ct. 1030, <i>reh. den.</i> 395 US 931, 23 L.Ed.2d 251, 89 S.Ct 1766 (1969), (in light of the French-speaking defendant's apparent ability to communicate with his privately retained attorneys, there was no merit to a claim that the trial judge's refusal to provide him with a court-appointed interpreter violated his rights to witness confrontation, effective</p>

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	counsel, and due process of law. The court also expressed doubt that the defendant's asserted absolute constitutional right to an interpreter was stronger than the absolute right to a court-appointed attorney, which right is available only to the indigent).
Where a criminal defendant has privately retained counsel, he presumably could pay for his own interpreter and therefore is not entitled to a court-appointed interpreter at public expense.	<p><i>United States v Desist</i>, 384 F.2d 889, 36 A.L.R.3d 255, (2d Cir. 1967) <i>aff'd</i>. 394 US 244, 22 L.Ed.2d 248, 89 S.Ct. 1030, <i>reh. den.</i> 395 US 931, 23 L.Ed.2d 251, 89 S.Ct 1766 (1969)</p> <p>NOTE: But see <i>United States v Quesada Mosquera</i>, 816 F. Supp 168 (EDNY 1993), (the court, noting but not discussing the fact that some of the 18 Spanish-speaking criminal defendants had privately retained counsel, ruled that all of them were to be supplied by the government with written translations of the indictments and any plea agreements or presentence reports in the case).</p>

COMPETENCY OF INTERPRETER OR TRANSLATOR

(a) QUALIFICATION AND SELECTION OF INTERPRETER

A court-assigned interpreter must have the qualifications and competence necessary to render an accurate and complete interpretation of the language spoken by defendant or witness.	<p><i>United States v Villegas</i>, 899 F.2d 1324, (2d Cir. 1990), <i>motion gr</i> 498 US 933, 112 L.Ed 2d 300, 111 S.Ct 334 <i>and cert den</i> 498 US 991, 112 L.Ed 2d 545, 111 S.Ct 535 (1982), (Pursuant to 28 U.S.C.A. § 1827(d)(1) (1982), an interpreter appointed to assist a non-English-speaking accused must be qualified to translate properly. The court observed that under the statute, an accused in a federal prosecution who speaks only or primarily a language other than English, so as to inhibit his comprehension of judicial proceedings, is entitled to have the court appoint for him a certified or otherwise qualified interpreter. Implicit in this requirement, the court reasoned, is the notion that the interpreter should be competent to render accurate interpretations);</p> <p><i>Delgado v Walker</i>, 798 F. Supp. 107 (EDNY 1992);</p> <p><i>In re James L.</i>, 143 A.D.2d 533, 532 N.Y.S.2d 941 (4th Dept. 1988);</p> <p><i>People v Pavao</i>, 59 N.Y.2d 282, 464 N.Y.S.2d 458, 451 N.E.2d 216 (1983), (Where the interpreter for a prosecution witness could not assure the trial judge of her ability to render an exact interpretation, explaining that she had difficulty understanding the witness because she and he spoke different variants of Portuguese, the judge erred in denying the defendant's motion that the interpreter be disqualified and replaced); and</p> <p><i>People v. Harley</i>, 632 N.Y.S.2d 39 (4th Dept. 1995), (interpreter's identification of herself as a "certified sign interpreter" and taking oath to act as sign interpreter during every court appearance in case may have been insufficient and additional inquiry may have been required to determine whether interpreter satisfied credential requirements, had</p>
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<p>A court-assigned interpreter must be unbiased toward the parties and disinterested in the proceeding's outcome - an interested person may be used if no better qualified person is available to translate.</p>	<p>defendant not waived objections to credential determination).</p> <p><i>In re James L.</i>, 143 A.D.2d 533, 532 N.Y.S.2d 941 (4th Dept. 1988), (an interpreter appointed to translate witness testimony in a criminal proceeding should be one who has no bias or interest in the outcome of the case. The court explained that this is so because the danger that a primary witness' message will be distorted through interpretation is compounded when the interpreter is biased one way or the other. Thus, the court declared, the better practice is to avoid appointing as an interpreter a friend or relative of a party or witness. The court acknowledged that it is sometimes necessary to appoint an interested interpreter, as where no competent, disinterested translator is available. However, the court cautioned, such an interested person should not be utilized unless and until the trial judge is satisfied that no disinterested person is available who can adequately translate the primary witness' testimony. Even where the judge permissibly appoints an interested interpreter, the court said, the judge must interrogate him in order to gauge the extent of his bias, and admonish him that he must translate exactly what the primary witness has said).</p>
<p>Determinations regarding the qualification and selection of interpreters are within judicial discretion - requires finding of abuse of discretion or showing of prejudicial error to overturn determination.</p>	<p><i>People v Catron</i>, 143 A.D.2d 468, 532 N.Y.S.2d 589, app. den. 73 N.Y.2d 853, 537 N.Y.S.2d 500, 534 N.E.2d 338 (3d Dept. 1988).</p>
<p>As to uncertified translators – need to timely raise and substantiate objection and to show that a certified translator would have been reasonably available.</p>	<p><i>States v Huang</i>, 960 F.2d 1128 (2d Cir. 1992), (Although the Court Interpreters Act (28 U.S.C.A. §§ 1827, 1828) generally requires interpretation through certified interpreters, it does not preclude a defendant from waiving his rights, after consultation with counsel and with leave of the court (28 U.S.C.A. § 1827(f)(1), nor does it preclude him from waiving any objection he may have to the lack of certification of a witness interpreter).</p> <p><i>Costa v Williams</i>, 830 F.Supp 223, (SDNY 1993), (In denying a habeas corpus petition, the court pointed out that procedures for interpreters set forth in 28 U.S.C.A. §§ 1827, 1828, applied only to federal proceedings, and that these procedures were neither constitutional in nature, nor had to be followed in state courts).</p>
<p>Generally - Reversible error if a co-defendant or a close relative of the defendant or complaining witness is used as an interpreter in a criminal</p>	<p><i>In re James L.</i>, 143 A.D.2d 533, 532 N.Y.S.2d 941 (4th Dept. 1988), (judge erred in appointing the complainant's son to translate her testimony, without first ascertaining that the son had a sufficient grasp of English and was otherwise qualified to act as an interpreter. The court observed that from the nature of the testimony, including the son's repeated use of the</p>

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<p>proceeding when the court failed to explore and determine the interpreter's qualifications to translate, before allowing him to act in that capacity.</p>	<p>third person, it was clear that he improperly paraphrased much of the witness' testimony and there was a danger that details were being supplied by the translator that may have been originally admitted in the witness testimony).</p>
<p>No reversible error from the failure to administer an oath to the interpreter despite statutes or rules generally requiring that interpreters be sworn to render a true and accurate interpretation – unless there is a timely objection and/or indication of deficient performance of interpreter.</p>	<p><i>Costa v Williams</i>, 830 F.Supp 223, (SDNY 1993); and <i>People v Bicet</i>, 180 A.D.2d 692, 580 N.Y.S.2d 55, <i>app. den.</i> 79 N.Y.2d 1046, 584 N.Y.S.2d 1014, 596 N.E.2d 412 (2d Dept. 1992), (The court explained that although an interpreter must be sworn to interpret properly and accurately, on appeal the presumption of regularity allows a court to assume that an official or person acting under an oath of office will not do anything contrary to his or her official duty, or omit to do anything which his or her official duty requires to be done. The court observed that the defendant had failed to come forward with any affirmative evidence of unlawful or irregular conduct to rebut this presumption, and made no complaint as to the accuracy of the interpretation).</p>
<p>Lack of experience does not render an interpreter unqualified - unless there is a showing that the interpretation rendered was unreliable or that the defendant could not understand what was being said, or the defendant timely objects to the interpreter's qualifications or requests a different interpreter.</p>	<p><i>Costa v Williams</i>, 830 F.Supp 223, (SDNY 1993); <i>U.S. v. Richards</i>, 48 Fed. Appx. 353 (2d Cir. 2002); and <i>People v. Warcha</i>, 792 N.Y.S.2d 627 (2d Dept. 2005), (Defendant's proficiency in Spanish was sufficient to allow trial to proceed with counsel and defendant assisted by Spanish interpreters, despite fact that defendant's native language was Quiche, a Guatemalan dialect. Two Spanish interpreters, after assessing defendant's proficiency, stated that they not only could make themselves understood to defendant, but could also understand what defendant had to say).</p>
<p>Generally – A law enforcement officer is presumed too interested in the proceeding outcome to give an unbiased and reliable interpretation of proceedings.</p>	<p><i>Marino v Ragen</i>, 332 US 561, 92 L.Ed 170, 68 S. Ct. 240 (1947), (At the time of conviction for murder, the petitioner did not understand the English language or American trial procedure; that he was only 18 years old and had been in this country for only 2 years; and that while interpreters purportedly advised the petitioner of his guilty plea's meaning and effect, he was nevertheless denied due process, since his arresting officer was one of the two interpreters at the hearing; and it did not appear that the petitioner was represented by counsel).</p>

THE RIGHT TO INTERPRETATION SERVICES IN NEW YORK STATE CRIMINAL PROCEEDINGS

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(b) ACCURACY OF INTERPRETATION SERVICES	
<p>Objections to defects or deficient in interpretation must be promptly made so as to allow for an opportunity to correct the problem not to be considered waived or found without merit.</p>	<p><i>United States v Guerra</i>, 334 F.2d 138, cert. den. 379 US 936, 13 L.Ed.2d 346, 85 S. Ct. 337 (1964) <i>United States v Villegas</i>, 899 F.2d 1324, (2d Cir. 1990), <i>motion gr.</i> 498 US 933, 112 L.Ed 2d 300, 111 S.Ct 334 <i>and cert den</i> 498 US 991, 112 L.Ed 2d 545, 111 S.Ct 535 (1982); <i>People v Ko</i>, 133 A.D.2d 850, 520 N.Y.S.2d 412, <i>app. den.</i> 70 N.Y.2d 957, 525 N.Y.S.2d 840, 520 N.E.2d 558 (2d Dept. 1987); <i>People v Adamez</i>, 177 A.D.2d 980, 578 N.Y.S.2d 1, <i>app. den.</i> 79 N.Y.2d 852, 580 N.Y.S.2d 724, 588 N.E.2d 759; (4th Dept. 1991); <i>People v Wilson</i>, 188 A.D.2d 405, 591 N.Y.S.2d 397, <i>app. den.</i> 81 N.Y.2d 849, 595 N.Y.S.2d 749, 611 N.E.2d 788 (1st Dept. 1992); <i>People v Smith</i>, 197 A.D.2d 373, 602 N.Y.S.2d 367, <i>app. den.</i> 82 N.Y.2d 903, 610 N.Y.S.2d 170, 632 N.E.2d 480 (1st Dept. 1993); and <i>People v Perez</i>, 198 A.D.2d 446, 604 N.Y.S.2d 152, <i>app. den.</i> 82 N.Y.2d 929, 610 N.Y.S.2d 181, 632 N.E.2d 491 (2d Dept. 1993).</p>
<p>Generally - Minor or isolated inaccuracies, omissions, interruptions, or other defects in interpretation do not warrant relief from a criminal conviction or judgment, where the interpretation is on the whole reasonably timely, complete, and accurate and the defects do not render the proceeding fundamentally unfair.</p>	<p><i>United States v Huang</i>, 960 F.2d 1128 (2d Cir. 1992); <i>United States v. Hernandez</i>, 994 F. Supp. 627, 630 (E.D. Pa. 1998) (interpretation errors are immaterial if they were either subsequently corrected or did not affect the substance of the testimony); <i>People v Rolston</i>, 109 A.D.2d 854, 486 N.Y.S.2d 768, <i>app. den.</i> 65 NY.2d 986 (2d Dept. 1985); <i>People v Ko</i>, 133 App Div 2d 850, 520 N.Y.S.2d 412, <i>app. den.</i> 70 N.Y.2d 957, 525 N.Y.S.2d 840, 520 N.E.2d 558 (2d Dept. 1987); <i>People v Perez</i>, 198 A.D.2d 446, 604 N.Y.S.2d 152, <i>app. den.</i> 82 N.Y.2d 929, 610 N.Y.S.2d 181, 632 N.E.2d 491 (2d Dept. 1993); and <i>People v. Rios</i>, 868 N.Y.S.2d 295 (2d Dep't 2008).</p>
<p>Inaccuracy in interpretation must be proven significant or so prejudicial as to render the trial fundamentally unfair or defect was not promptly and satisfactorily corrected upon object for a finding of reversible error.</p>	<p><i>United States v. Huang</i>, 960 F.2d 1128, 1136 (2d Cir. 1992), ("the ultimate question is whether the [interpreter's] performance has rendered the trial fundamentally unfair."); <i>People v. Watkins</i>, 786 N.Y.S.2d 133 (1st Dept. 2004), (defendant failed to show that interpreter was unqualified to translate victim's testimony in prosecution for attempted murder; although interpretation of victim's testimony was slow and difficult because interpreter and victim spoke different dialects, and although interpreter sometimes had to</p>

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	<p>make multiple attempts to translate a question, problems did not prevent defendant from conducting effective cross-examination or cause any other prejudice); <i>People v Smith</i>, 197 A.D.2d 373, 602 N.Y.S.2d 367, <i>app. den.</i> 82 N.Y.2d 903, 610 N.Y.S.2d 170, 632 N.E.2d 480 (1st Dept. 1993) <i>People v Olivieri-Perez</i>, 198 A.D.2d 240, 603 N.Y.S.2d 871, <i>app. den.</i> 82 N.Y.2d 900, 610 N.Y.S.2d 167, 632 N.E.2d 477 (2d Dept. 1993); <i>United States v Da Silva</i>, 725 F.2d 828, 14 Fed Rules Evid Serv 1217, (2nd. Cir. 1983); <i>United States v Villegas</i>, 899 F.2d 1324, (2d Cir. 1990), <i>motion gr.</i> 498 US 933, 112 L.Ed 2d 300, 111 S.Ct 334 <i>and cert den</i> 498 US 991, 112 L.Ed 2d 545, 111 S.Ct 535 (1982); <i>People v Soto</i>, 163 A.D.2d 889, 559 N.Y.S.2d 158, <i>app. den.</i> 76 N.Y.2d 991, 563 N.Y.S.2d 779, 565 N.E.2d 528 <i>app. den.</i> 79 N.Y.2d 953, 583 N.Y.S.2d 207, 592 N.E.2d 815, (1990) (no abuse of discretion where defendant challenged as inaccurate the transcripts of certain tape-recorded Spanish conversations which were prepared by court-appointed interpreters with the help of all parties, but the court, noting the trial judge's finding that the transcripts were sufficiently accurate to permit the jury to use them as an aid in understanding the tapes, held that the judge did not violate the defendants' right to confront adverse witnesses when he submitted the transcripts to the jury without first allowing cross examination of the interpreters).</p>
<p>Summary, paraphrased, or other nonsimultaneous or nonverbatim interpretation of trial testimony or proceedings that is inaccurate may result in violation of due process based on denial of the right to witness confrontation, effective counsel assistance, and denial of a fair hearing.</p>	<p><i>United States ex rel. Negron v New York</i>, 434 F.2d 386 (2d Cir. 1970); and <i>In re James L.</i>, 143 A.D.2d 533, 532 N.Y.S.2d 941 (4th Dept. 1988).</p> <p>NOTE: But see <i>United States v. Huang</i>, 960 F.2d 1128, 1135-36 (2d Cir. 1992), (giving of summaries by the interpreter did not cause a mistrial where no inaccuracies were found in those summaries).</p>
<p>Generally – Absent a showing of significant prejudice, the same translator may be used to interpret for the defendant and any witnesses.</p>	<p><i>People v Rodriguez</i>, 165 A.D.2d 705, 560 N.Y.S.2d 143, <i>app. den.</i> 76 N.Y.2d 1024, 565 N.Y.S.2d 774, 566 N.E.2d 1179 (1st Dept. 1990); and <i>People v Colon</i>, 213 A.D.2d 490, 623 N.Y.S.2d 633, <i>app. den.</i> 86 N.Y.2d 733, 631 N.Y.S.2d 614, 655 N.E.2d 711 (2d Dept. 1995).</p>
<p>No absolute right to require confirmation as to the accuracy of another interpretation alleged to include inaccuracies in interpretation.</p>	<p><i>People v Constantino</i>, 153 N.Y. 24, 47 N.E. 37 (1897), (No reversible error found when trial judge refused to appoint a second interpreter for the defendant, as a check on the official interpreter whom the judge appointed to translate the testimony of witnesses, even though</p>

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	the interpreter admitted some lack of knowledge as to the particular dialect spoken by the witnesses, and that he forgot an answer an answer by a witness. The record was void of any indication of lack of ability or integrity on the interpreter's part to translate adequately in the proceedings).
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NOTE: For purposes of this chart, the term "translation" is used to refer to the conversion of written communications from one language into another language, as opposed to "interpretation," which refers to the conversion of spoken communications.

****The above-list of case cites is not exhaustive and should be viewed as a resource for further research.¹**

¹ The following reference sources were reviewed in preparing this compilation of cases:

Gary Muldoon, *Handling A Criminal Case In New York*, 2008-2009 ed. (New York Practice Guide), (West Publishing 2008);

Thomas M. Fleming, *Right of Accused to Have Evidence or Court Proceeding Interpreted, Because Accused or Other Participant In Proceedings, Is Not Proficient in the Language Used*, 32 A.L.R.5th 149 (2009);

Gregory G. Sarno, *Ineffective Assistance of Counsel: Use or Nonuse of Interpreter at Prosecution of Foreign Language Speaking Defendant*, 79 A.L.R.4th 1102 (1990);

Columbia Human Rights Law Review, *A JailHouse Lawyer's Manual*, 8th Edition, Chapt. 16 (2009);

The Spangenberg Group, *The Spangenberg Report*, Vol. V, Iss. I (March 1999);



THE FACTS ABOUT "ICE ACCESS"

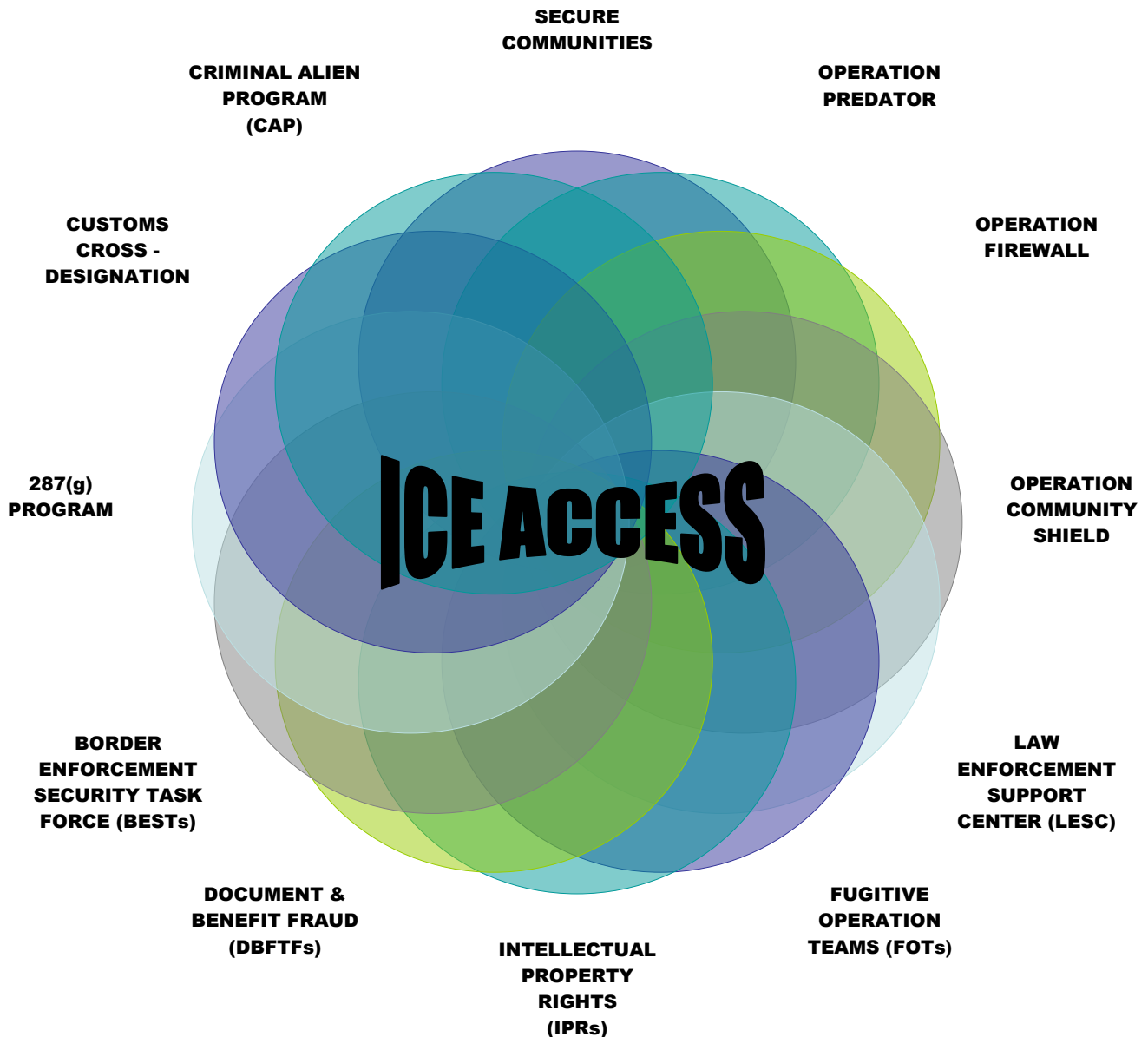
What is ICE ACCESS?

ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS):

A series of different programs and services designed to enhance the cooperation of local law enforcement agencies with ICE in enforcing immigration laws.

Incentive for participation in ICE ACCESS?

- ▶ Equitable Sharing in Asset Forfeiture
- ▶ Increased Jurisdiction & Legal Enforcement Authority
- ▶ Increased Resources (Advanced Enforcement Technology/Infosharing)



ICE ACCESS

287(g) PROGRAM: DELEGATION OF IMMIGRATION AUTHORITY

Deputizes state and local officers to enforce immigration laws as authorized by section 287(g) of the Immigration and Nationality Act. State, county and municipal enforcement agencies are cross-designated immigration officers pursuant to memorandums of agreement entered into with ICE and some immigration training.

BORDER ENFORCEMENT SECURITY TASK FORCES (BESTs)

Agencies working cooperatively to identify and dismantle criminal organizations posing threats to border security. BEST teams now appear in Arizona, California, Texas, and Washington with plans to expand to Buffalo, New York.

CRIMINAL ALIEN PROGRAM (CAP)

Focuses on identifying criminal aliens who are incarcerated in federal, state and local facilities. Secures final order of removal prior to termination of a criminal sentence to avoid release into the community.

- New York State Police Information Network (NYSPIN) allows police agencies to verify status of aliens who come into contact with law enforcement through the Alien Inquiry function (i.e., includes deportation information in NYS Criminal History Records).
- DOCS, PAROLE and ICE work together to manage the Institutional Removal (Hearing) Program.
- In 2005, DCJS and ICE developed a process which uses deportation data on the New York State Computerized Criminal History (CCH) to flag and detain previously deported criminal aliens who re-enter New York State. When a previously deported criminal alien is arrested, a special notice is generated at DCJS when the arrest fingerprints are received from the arresting agency. DCJS immediately notifies ICE, which coordinates with the arresting agency to detain the criminal alien.
- During 2005, ICE, DOCS and DCJS developed a quarterly review process in cooperation with the State's district attorneys' offices. Each quarter, data from ICE and DOCS is used to prepare a case specific report. The report provides information on criminal aliens in custody for whom deportation proceedings are on hold due to a pending appeal. This report is distributed to the nine district attorneys' offices which have 90% of the cases pending appeal. These offices review the cases and report back to DCJS and ICE on the status of each case.

CUSTOMS CROSS-DESIGNATION

Section 1401(I) of Title 19 of the United States Code allows for deputizing federal, state, and local officers into customs officers to enforce U.S. customs laws. This cross-designation is available to those who participate in ICE task force operations.

DOCUMENT AND BENEFIT FRAUD TASK FORCES (DBFTFs)

Investigate document and benefit fraud with local, state and other federal agency cooperation. Illicit proceeds are often seized and subject to equitable sharing of asset forfeiture. DBFTFs are located in Atlanta, Baltimore, Boston, Chicago, Dallas, Denver, Detroit, Los Angeles, Miami, New York, Newark, Philadelphia, Phoenix, St. Paul, San Francisco, Tampa, and Washington, DC.

FUGITIVE OPERATION TEAMS (FOTs)

Teams of ICE and state and local enforcement agencies identify, locate, apprehend, process, and remove fugitive aliens (ranging from those of high priority who have been convicted of serious crimes to those who have been previously ordered removed but have failed to depart the US). The goal of FOTs is to ensure that the number of aliens deported equals the number of final orders of removal issued by immigration courts in any given past, present or future year.

- Since most deported aliens are re-arrested in New York City, a special arrangement was put into place with the New York City Police Department (NYPD) to ensure that the detainer is made available to the court prior to arraignment.
- Beginning in 2006, Parole, DOCS, ICE and DCJS started working together to increase the number of deported criminal alien records on the State Computerized Criminal History (CCH). This ensures that if any of these deported criminal aliens re-enter the country and are re-arrested, they will be flagged as illegally present in the country, and immediately detained and prosecuted.

INTELLECTUAL PROPERTY RIGHTS (IPRs)

ICE's National Intellectual Property Rights Coordination Center enforces laws prohibiting the flow of counterfeit goods into U.S. commerce. The goal is to pursue illegal proceeds derived from the manufacture and sale of counterfeit merchandise.

LAW ENFORCEMENT SUPPORT CENTER (LESC)

Collaboration in which local, state and federal law enforcement agencies gain 24-hours-a-day, 7-days-a-week access to immigration status and identity information on aliens suspected, arrested, or convicted of criminal activity. LESC also provides assistance and information to corrections and court systems. ICE makes LESC records available electronically through the Immigration Alien Query screen on the International Justice and Public Safety Network.

- The United States Immigration and Customs Enforcement (ICE) agency operates the Law Enforcement Support Center (LESC) in Vermont, which has access to several nationwide databases and intelligence sources. Through an automated transaction, police agencies can request information on the immigration status of suspected or known aliens. Results are returned within minutes of making the request.

OPERATION COMMUNITY SHIELD

Initiated in February 2005 to focus enforcement on violent gangs. ICE uses its broad authority, both criminal and administrative; to conduct investigations and enforce violations allegedly committed by gangs and individual gang members.

OPERATION FIREWALL

ICE Financial, Narcotics and Public Safety Division and the U.S. Customs and Border Protection Office of Field Operations, Tactical Operations Division developed a joint Bulk Cash Smuggling (i.e., smuggling of bulk currency out of the US) initiative that commenced operations in August 2005.

OPERATION PREDATOR

Program designed to identify, investigate, and deport sex offenders. Originally designed to investigate and remove child predators, Operation Predator has expanded to include all sex offenders.

- In August 2007, DCJS and ICE conducted a data match to verify information associated with deported criminal aliens who were also on the New York State Sex Offender Registry. This match allowed DCJS to update the computerized criminal history with new deportation data for 500 sex offenders.

SECURE COMMUNITIES

Program through which ICE assists communities in identifying and removing high-risk criminal aliens held in state and local prisons through information sharing and technology. The cornerstone of this initiative is to share biometric data with federal, state and local enforcement agencies to ensure screening of all foreign-born detainees.

- In May 2006, ICE, DOCS and DCJS conducted a data match of all criminal aliens released from State prison since 1985 with ICE data systems. The match allowed DCJS to add deportation data to the CCH for 5,400 records.
- In August 2008, ICE and DCJS conducted a data match to update NYS criminal history records with deportation data from ICE's Rapid3 alien investigation initiative. The match resulted in deportation data being added to more than 7,000 criminal history records, an increase of 23%. In the four months since the upload, the number of criminal aliens flagged after illegal re-entry has doubled.

NYSDA Immigrant Defense Project
Immigration Consequences of Convictions Summary Checklist*

GROUND OF DEPORTABILITY (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR)—greencard holder)	GROUND OF INADMISSIBILITY (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)	INELIGIBILITY FOR US CITIZENSHIP
<p>Aggravated Felony Conviction</p> <p>➤ <i>Consequences</i> (in addition to deportability):</p> <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Ineligibility for voluntary departure ◆ Permanent inadmissibility after removal ◆ Subjects client to up to 20 years of prison if s/he illegally reenters the US after removal <p>➤ <i>Crimes covered</i> (possibly even if not a felony):</p> <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (may include, whether felony or misdemeanor, any sale or intent to sell offense, second or subsequent possession offense, or possession of more than 5 grams of crack or any amount of flunitrazepam) ◆ Firearm Trafficking ◆ Crime of Violence + 1 year sentence** ◆ Theft or Burglary + 1 year sentence** ◆ Fraud or tax evasion + loss to victim(s) > \$10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + 1 year sentence** ◆ Obstruction of justice or perjury + 1 year sentence** ◆ Certain bail-jumping offenses ◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ◆ Attempt or conspiracy to commit any of the above 	<p>Conviction or <i>admitted commission</i> of a Controlled Substance Offense, or DHS has reason to believe individual is a drug trafficker</p> <p>➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)</p> <hr/> <p>Conviction or <i>admitted commission</i> of a Crime Involving Moral Turpitude (CIMT)</p> <p>➤ Crimes in this category cover a broad range of crimes, including:</p> <ul style="list-style-type: none"> ◆ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery) ◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes) ◆ Most sex offenses <p>➤ <i>Petty Offense Exception</i>—for one CIMT if the client has no other CIMT + the offense is not punishable > 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months</p>	<p>Conviction or admission of the following crimes bars a finding of good moral character for up to 5 years:</p> <p>➤ Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana)</p> <p>➤ Crime Involving Moral Turpitude (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months)</p> <p>➤ 2 or more offenses of any type + aggregate prison sentence of 5 years</p> <p>➤ 2 gambling offenses</p> <p>➤ Confinement to a jail for an aggregate period of 180 days</p>
<p>Controlled Substance Conviction</p> <p>➤ EXCEPT a single offense of simple possession of 30g or less of marijuana</p>	<p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p>	<p>Aggravated felony conviction on or after Nov. 29, 1990 (and murder conviction at any time) <i>permanently</i> bars a finding of moral character and thus citizenship eligibility</p>
<p>Crime Involving Moral Turpitude (CIMT) Conviction</p> <p>➤ For crimes included, see Grounds of Inadmissibility</p> <p>➤ One CIMT committed within 5 years of admission into the US and for which a sentence of 1 year or longer may be imposed (e.g., in New York, may be a Class A misdemeanor)</p> <p>➤ Two CIMTs committed at any time “not arising out of a single scheme”</p>	<p>PROSTITUTION AND COMMERCIALIZED VICE</p> <p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p>	<p>CONVICTION DEFINED</p> <p>A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where:</p> <p>(i) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, AND</p> <p>(ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed.</p>
<p>Firearm or Destructive Device Conviction</p>	<p>THUS:</p>	
<p>Domestic Violence Conviction or other domestic offenses, including:</p> <p>➤ Crime of Domestic Violence</p> <p>➤ Stalking</p> <p>➤ Child abuse, neglect or abandonment</p> <p>➤ Violation of order of protection (criminal or civil)</p>	<p>➤ A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)</p> <p>➤ A deferred adjudication disposition without a guilty plea (e.g., NY ACD) is NOT a conviction</p> <p>➤ A youthful offender adjudication (e.g., NY YO) is NOT a conviction</p>	
INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL		
<p>➤ Aggravated felony conviction</p> <p>➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the United States</p>		
INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL		
<p>“Particularly serious crimes” make noncitizens ineligible for asylum and withholding. They include:</p> <p>➤ Aggravated felonies</p> <ul style="list-style-type: none"> ◆ All will bar asylum ◆ Aggravated felonies with aggregate 5 year sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding <p>➤ Other serious crimes—no statutory definition (for sample case law determination, see Appendix F)</p>		

*For the most up-to-date version of this checklist, please visit us at <http://www.immigrantdefenseproject.org>.

**The 1-year requirement refers to an actual or suspended prison sentence of 1 year or more. [A New York straight probation or conditional discharge without a suspended sentence is not considered a part of the prison sentence for immigration purposes.]

NYSDA Immigrant Defense Project

Suggested Approaches for Representing a Noncitizen in a Criminal Case*

Below are suggested approaches for criminal defense lawyers in planning a negotiating strategy to avoid negative immigration consequences for their noncitizen clients. The selected approach may depend very much on the particular immigration status of the particular client. For further information on how to determine your client's immigration status, refer to Chapter 2 of our manual, *Representing Noncitizen Criminal Defendants in New York* (4th ed., 2006).

For ideas on how to accomplish any of the below goals, see Chapter 5 of our manual, which includes specific strategies relating to charges of the following offenses:

- ◆ Drug offense (§5.4)
- ◆ Violent offense, including murder, rape, or other sex offense, assault, criminal mischief or robbery (§5.5)
- ◆ Property offense, including theft, burglary or fraud offense (§5.6)
- ◆ Firearm offense (§5.7)

1. If your client is a **LAWFUL PERMANENT RESIDENT**:

- First and foremost, try to avoid a disposition that triggers deportability (§3.2.B)
- Second, try to avoid a disposition that triggers inadmissibility if your client was arrested returning from a trip abroad or if your client may travel abroad in the future (§§3.2.C and E(1)).
- If you cannot avoid deportability or inadmissibility, but your client has resided in the United States for more than seven years (or, in some cases, will have seven years before being placed in removal proceedings), try at least to avoid conviction of an "aggravated felony." This may preserve possible eligibility for either the relief of cancellation of removal or the so-called 212(h) waiver of inadmissibility (§§3.2.D(1) and (2)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid conviction of a "particularly serious crime" in order to preserve possible eligibility for the relief of withholding of removal (§3.4.C(2)).
- If your client will be able to avoid removal, your client may also wish that you seek a disposition of the criminal case that will not bar the finding of good moral character necessary for citizenship (§3.2.E(2)).

2. If your client is a **REFUGEE** or **PERSON GRANTED ASYLUM**:

- First and foremost, try to avoid a disposition that triggers inadmissibility (§§3.3.B and D(1)).
- If you cannot do that, but your client has been physically present in the United States for at least one year, try at least to avoid a disposition relating to illicit trafficking in drugs or a violent or dangerous crime in order to preserve eligibility for a special waiver of inadmissibility for refugees and asylees (§3.3.D(1)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid a conviction of a "particularly serious crime" in order to preserve eligibility for the relief of withholding of removal (§3.3.D(2)).

3. If your client is **ANY OTHER NONCITIZEN** who might be eligible now or in the future for **LPR status, asylum, or other relief**:

IF your client has some prospect of becoming a lawful permanent resident based on having a U.S. citizen or lawful permanent resident spouse, parent, or child, or having an employer sponsor; being in foster care status; or being a national of a certain designated country:

- First and foremost, try to avoid a disposition that triggers inadmissibility (§3.4.B(1)).
- If you cannot do that, but your client may be able to show extreme hardship to a citizen or lawful resident spouse, parent, or child, try at least to avoid a controlled substance disposition to preserve possible eligibility for the so-called 212(h) waiver of inadmissibility (§§3.4.B(2),(3) and(4)).
- If you cannot avoid inadmissibility but your client happens to be a national of Cambodia, Estonia, Hungary, Laos, Latvia, Lithuania, Poland, the former Soviet Union, or Vietnam and eligible for special relief for certain such nationals, try to avoid a disposition as an illicit trafficker in drugs in order to preserve possible eligibility for a special waiver of inadmissibility for such individuals (§3.4.B(5)).

IF your client has a fear of persecution in the country of removal, or is a national of a certain designated country to which the United States has a temporary policy (**TPS**) of not removing individuals based on conditions in that country:

- First and foremost, try to avoid any disposition that might constitute conviction of a "particularly serious crime" (deemed here to include any aggravated felony), or a violent or dangerous crime, in order to preserve eligibility for asylum (§3.4.C(1)).
- If you cannot do that, but your client's life or freedom would be threatened if removed, try to avoid conviction of a "particularly serious crime" (deemed here to include an aggravated felony with a prison sentence of at least five years), or an aggravated felony involving unlawful trafficking in a controlled substance (regardless of sentence), in order to preserve eligibility for the relief of withholding of removal (§3.4.C(2)).
- In addition, if your client is a national of any country for which the United States has a temporary policy of not removing individuals based on conditions in that country, try to avoid a disposition that causes ineligibility for such temporary protection (TPS) from removal (§§3.4.C(4) and (5)).

*References above are to sections of our manual.

NYSDA Immigrant Defense Project
Immigration Consequences of Convictions Summary Checklist*

GROUND OF DEPORTABILITY (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR)—greencard holder)	GROUND OF INADMISSIBILITY (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)	INELIGIBILITY FOR US CITIZENSHIP
<p>Aggravated Felony Conviction</p> <p>➤ <i>Consequences</i> (in addition to deportability):</p> <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Ineligibility for voluntary departure ◆ Permanent inadmissibility after removal ◆ Subjects client to up to 20 years of prison if s/he illegally reenters the US after removal <p>➤ <i>Crimes covered</i> (possibly even if not a felony):</p> <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (may include, whether felony or misdemeanor, any sale or intent to sell offense, second or subsequent possession offense, or possession of more than 5 grams of crack or any amount of flunitrazepam) ◆ Firearm Trafficking ◆ Crime of Violence + 1 year sentence** ◆ Theft or Burglary + 1 year sentence** ◆ Fraud or tax evasion + loss to victim(s) > \$10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + 1 year sentence** ◆ Obstruction of justice or perjury + 1 year sentence** ◆ Certain bail-jumping offenses ◆ Various federal offenses and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.) ◆ Attempt or conspiracy to commit any of the above 	<p>Conviction or <i>admitted commission</i> of a Controlled Substance Offense, or DHS has reason to believe individual is a drug trafficker</p> <p>➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)</p> <hr/> <p>Conviction or <i>admitted commission</i> of a Crime Involving Moral Turpitude (CIMT)</p> <p>➤ Crimes in this category cover a broad range of crimes, including:</p> <ul style="list-style-type: none"> ◆ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery) ◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes) ◆ Most sex offenses <p>➤ <i>Petty Offense Exception</i>—for one CIMT if the client has no other CIMT + the offense is not punishable > 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months</p>	<p>Conviction or admission of the following crimes bars a finding of good moral character for up to 5 years:</p> <p>➤ Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana)</p> <p>➤ Crime Involving Moral Turpitude (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months)</p> <p>➤ 2 or more offenses of any type + aggregate prison sentence of 5 years</p> <p>➤ 2 gambling offenses</p> <p>➤ Confinement to a jail for an aggregate period of 180 days</p>
<p>Controlled Substance Conviction</p> <p>➤ EXCEPT a single offense of simple possession of 30g or less of marijuana</p>	<p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p>	<p>Aggravated felony conviction on or after Nov. 29, 1990 (and murder conviction at any time) <i>permanently</i> bars a finding of moral character and thus citizenship eligibility</p>
<p>Crime Involving Moral Turpitude (CIMT) Conviction</p> <p>➤ For crimes included, see Grounds of Inadmissibility</p> <p>➤ One CIMT committed within 5 years of admission into the US and for which a sentence of 1 year or longer may be imposed (e.g., in New York, may be a Class A misdemeanor)</p> <p>➤ Two CIMTs committed at any time “not arising out of a single scheme”</p>	<p>PROSTITUTION AND COMMERCIALIZED VICE</p> <p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p>	<p>CONVICTION DEFINED</p> <p>A formal judgment of guilt of the noncitizen entered by a court or, if adjudication of guilt has been withheld, where:</p> <p>(i) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, AND</p> <p>(ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed.</p>
<p>Firearm or Destructive Device Conviction</p>	<p>THUS:</p>	
<p>Domestic Violence Conviction or other domestic offenses, including:</p> <p>➤ Crime of Domestic Violence</p> <p>➤ Stalking</p> <p>➤ Child abuse, neglect or abandonment</p> <p>➤ Violation of order of protection (criminal or civil)</p>	<p>➤ A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)</p> <p>➤ A deferred adjudication disposition without a guilty plea (e.g., NY ACD) is NOT a conviction</p> <p>➤ A youthful offender adjudication (e.g., NY YO) is NOT a conviction</p>	
INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL		
<p>➤ Aggravated felony conviction</p> <p>➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the United States</p>		
INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL		
<p>“Particularly serious crimes” make noncitizens ineligible for asylum and withholding. They include:</p> <p>➤ Aggravated felonies</p> <ul style="list-style-type: none"> ◆ All will bar asylum ◆ Aggravated felonies with aggregate 5 year sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding <p>➤ Other serious crimes—no statutory definition (for sample case law determination, see Appendix F)</p>		

*For the most up-to-date version of this checklist, please visit us at <http://www.immigrantdefenseproject.org>.

**The 1-year requirement refers to an actual or suspended prison sentence of 1 year or more. [A New York straight probation or conditional discharge without a suspended sentence is not considered a part of the prison sentence for immigration purposes.]

NYSDA Immigrant Defense Project

Suggested Approaches for Representing a Noncitizen in a Criminal Case*

Below are suggested approaches for criminal defense lawyers in planning a negotiating strategy to avoid negative immigration consequences for their noncitizen clients. The selected approach may depend very much on the particular immigration status of the particular client. For further information on how to determine your client's immigration status, refer to Chapter 2 of our manual, *Representing Noncitizen Criminal Defendants in New York* (4th ed., 2006).

For ideas on how to accomplish any of the below goals, see Chapter 5 of our manual, which includes specific strategies relating to charges of the following offenses:

- ◆ Drug offense (§5.4)
- ◆ Violent offense, including murder, rape, or other sex offense, assault, criminal mischief or robbery (§5.5)
- ◆ Property offense, including theft, burglary or fraud offense (§5.6)
- ◆ Firearm offense (§5.7)

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