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LONG ISLAND
REGIONAL IMMIGRATION ASSISTANCE CENTER

PEOPLE EX REL. WELLS O.B.O. FRANCIS V. DEMARCO: NEW YORK OFFICERS CAN NO LONGER HONOR ICE DETAINERS

On November 14, 2018, the Second Department in *The People, ex rel. Jordan Wells, on behalf of Susai Francis v. Demarco,* 2018 NY Slip Op 07740, 2018 WL 5931308 (2d Dept. 2018), held that the Suffolk County Sheriff's Office violated state law by holding an inmate past the point of release in his criminal case based solely on the existence of a civil U.S. Immigration and Customs Enforcement ("ICE") detainer. The decision applies statewide and found that the honoring of ICE detainers by state and local officers constitutes an unauthorized arrest in violation of state law. The Court noted that the authority that state and local officers have to make arrests stems from state law, which does not provide authority to arrest people for civil immigration offenses. Further, the accompaniment of an "administrative warrant," which is a document issued by ICE alleging that there is probable cause to arrest someone for violating civil immigration law, does not give state and local officers the authority to arrest, seize, or detain someone for civil immigration purposes.

As a result of Francis, the Sherriffs' Offices in both Nassau and Suffolk have ceased their policies of honoring ICE detainers. They continue however, to notify ICE whenever anyone with a detainer is set to be released from criminal custody. As a result of the notifications, although people are no longer being held on ICE detainers, it has been reported that people with ICE detainers often go directly into ICE custody upon release from their criminal case. For more information about the Francis decision or for any questions or concerns, please contact the LIRIAC. If you believe your client has been detained in violation of *Francis*, please contact the LIRIAC.

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UPCOMING TRAININGS

On April 25th, the LIRAC will be co-hosting a CLE titled, "Immigration Law Issue Spotting for the Criminal Lawyer, Family Lawyer, and General Practitioner." The CLE will be held at the Suffolk County Bar Association 560 Wheeler Road, Hauppauge, NY 11788 at 6:00 PM. To register please fax registration form to 631-234-5899 or email nicolette@scba.org.

Doe v. U.S.: Padilla's Requirement for Accurate and Specific Advice Even in Light of Assurances from the Government

On February 14, 2019, the Second Circuit in *Doe v. U.S.* vacated a felony conviction of a noncitizen facing deportation, holding that his attorney was ineffective in misleading him about the immigration consequences of the guilty plea. Doe pled guilty to a one-count information charging him with conspiracy. As part of his agreement, Doe consented to cooperate with the Government. Government officials told him that they would do everything possible to keep him in the country. Rather than consulting with an immigration expert, Doe's attorney merely relied on the Government's assurances and advised him that his plea should not result in removal. In fact, however, because the admitted loss was greater than $10,000, the conviction was an "Aggravated Felony" for immigration purposes, resulting in a lifetime citizenship bar, a conclusive presumption of deportability, and automatic denial of discretionary relief. See 8 U.S.C. §§ 1101(a)(43)(M)(i) (defining aggravated felony as including "an offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000"), 1101(f)(8), 1227(a)(2)(A)(iii), 1228(c), 1229b(a)(3), 1229b(b)(1)(C), 1427(a).

In its decision, the Second Circuit noted several issues, which required a finding of ineffective assistance of counsel. In particular, it was the attorney's lack of knowledge of immigration law and his decision not to seek out the assistance of someone with expertise before making guarantees to his client. Instead, he relied on the assertions of government agents, who themselves were not in a position to advise either the attorney or Doe on possible immigration consequences. The court found that allowing Doe's conviction to stand would be a "miscarriage of justice." While the mandate of *Padilla* might seem fairly clear to attorneys, *Doe* is a good reminder that the failure to fully and accurately apprise your client of immigration consequences is per se ineffective assistance of counsel.

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