

**NDS Immigration Services Project  
Bulletin #2 December 9, 2008**

## **NEW MEMO RE PROBATION REPORTING TO ICE**

On Dec. 3, the NY State Division of Probation and Correctional Alternatives (DPCA) issued a memo regarding "illegal non-resident probationers." There are two main aspects of this memo that affect our practice – I) reporting requirements and II) probation supervision for deported individuals.

### **I. Reporting Requirements**

The memo requires probation departments to contact Immigration and Customs Enforcement (ICE) anytime "it is believed" that an individual is unlawfully present in the U.S. This mandate applies not only to those under probation supervision but also those subject to probation investigation.

**Reporting Process:** On identification of an individual "believed" to be in the U.S. unlawfully, the memo instructs the probation department to contact ICE via an immigration status query, referred to as an INSQ, via a NYSPIN terminal. This procedure is an interim one, as the memo indicates that in the future it will be possible to make INSQ inquiries through the "Integrated Justice Portal," the replacement for eJustice, making referrals even easier.

#### **Impact on our practice:**

This memo indicates a greatly increased risk of referral to ICE and subsequent detention and removal for the following individuals:

- 1) Undocumented or otherwise removable clients sentenced to probation supervision;
- 2) Undocumented or otherwise removable youth clients subject to probation investigation for the purpose of a YO adjudication; and
- 3) Undocumented or otherwise removable clients subject to probation investigation prior to sentencing on a felony conviction.

### **II. Probation Supervision for Deported Individuals**

The memo additionally provides for uniform handling of "illegal non-resident deported probationers." Probation departments are instructed *not* to file a violation of probation for those deported subsequent to a sentence of probation supervision but prior to the date of expiration of probation. Instead, the case is simply to be closed at the date of expiration as long as the individual has not unlawfully reentered the U.S. during the period of supervision. Additionally, the memo instructs probation departments to notify the Division of Criminal Justice Services (DCJS) of each deported probationer, subsequent to which DCJS updates the individual's criminal history record with the deportation date and deportation history.

#### **Impact on our practice:**

*Non-jail dispositions for removable clients:* The good news out of this memo is the clarification that judges can give clients facing deportation pursuant to an ICE hold probation as a non-jail disposition even if the individual will likely not be in the U.S. to comply.

*Risks of unlawful reentry for those deported while under probation supervision:* The memo also, unfortunately, heightens the risks accompanying unlawful reentry for those deported while under probation supervision. On re-arrest, a "deported alien" banner will appear on any rap sheet produced, making both an ICE hold and prosecution for unlawful reentry a near certainty.