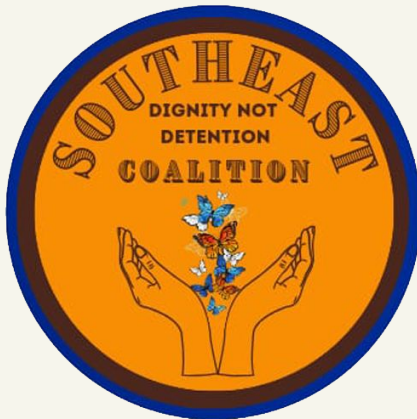


Welcome & Introductions

**ROBERT F.
KENNEDY
HUMAN
RIGHTS**



ACLU
Louisiana

Today's Program

ISSUE SPOTTING

**Common Factual
Scenarios**

**FEDERAL
LITIGATION NUTS &
BOLTS**

What & How to File

**ORGANIZING
STRATEGIES**

**Amplifying with Power
Building Tools**

Q & A

Actions You Can Take Now

Issue Spotting

Identifying Facts that Support Legal
Claims for Release

Redetention Claims

- Argues that ICE suddenly detained someone without following proper procedures, including notice and opportunity to respond;
- May apply to people with a final order of removal, arrested at an ICE check-in after previous release from detention on an order of supervision (OSUP). The length of time released on an OSUP/attending check-ins may be many months or years;
- May apply where travel documents have not been/cannot be obtained;
- Can be combined with claims that ICE detained for impermissible reasons (ie. First Amendment retaliation);
- *See Torres-Jurado v. Biden* 2023 WL 7130898 (S.D.N.Y. Oct. 29, 2023); *Alam v. Nielsen*, 312 F. Supp. 3d 574 (S.D. Tex. 2018); *Rombot v. Souza*, 96 F. Supp. 3d 383, 388 (D. Mass. 2017).

First Amendment Retaliation Claims

- Argues that ICE selectively moved to enforce a removal order in order to punish someone for exercising freedom of speech.
- May apply to people who speak out against or protest government policy or practice through
 - Online/social media posts
 - Presence at in-person demonstrations (marches, manifestations at ICE offices, courts, etc.)
 - Filing complaints with civil rights/human rights bodies, including during previous detention (CRCL, OIDO)
 - Speaking with media (newspaper, TV)
- First Amendment protected activity need not be strictly “political” nor strictly “speech”

Pending USCIS Relief Claims

- Argues that ICE violates due process by deporting someone before their application for immigration relief before USCIS is adjudicated;
- May apply where pending USCIS relief can only be granted while physically present in the United States, ie. T-visa, SIJS, TPS;
- May be tried with other forms of USCIS relief, ie. VAWA, U-Visa, though the government likely to argue that relief can be awarded after removal;
- See *Joshua M. v. Barr*, 439 F. Supp. 3d 632 (E.D.Va. 2020); *S.N.C. v. Sessions*, 2018 WL 6175902 (S.D.N.Y. Nov. 26, 2018) (ordering a stay of petitioner's removal pending adjudication of a T visa); *Fatty v. Nielsen*, 2018 WL 3491278 (W.D. Wash. July 20, 2018).

Fourth Amendment Claims

- This is an extremely difficult claim;
- People in the United States are protected by the Fourth Amendment regardless of their immigration status;
- May consider for people who are arrested by ICE;
- Very fact specific;
- Need to carefully research case law in your district and circuit.

Medical & Mental Health Emergency Claims

- This is an extremely difficult claim;
- During COVID-19 pandemic many cases were brought to free people in ICE detention;
- But, there are claims that can be brought in non-pandemic times someone is going to be detained, is detained and/or is about to be deported and deportation;
- Before even considering this type of claim, you must have an expert medical opinion to support any claim;
- Establishing a medical-legal partnership is critical;
- *Vasquez v. Wolf*, 830 F. App'x 556 (9th Cir. 2020)

The Nuts & Bolts of Federal Litigation

How & What to File in Federal Court

Preparing to Go to Federal Court

- ❑ You must be admitted and registered for ECF
- ❑ You should look for local counsel if you are not admitted and make a plan for admission
- ❑ Most federal district courts require a sponsor for admission
- ❑ Not all District Courts permit admission by Zoom and so being prepared for potential physical appearance requirements
- ❑ Consider whether filing for emergency relief
- ❑ Consider contacting AUSA shortly before filing to see if will release to avoid litigation-highly unlikely during a Trump Two administration if Trump One administration was an indicator
- ❑ **Review relevant rules:**
 - Federal Rules of Civil Procedure
 - Local Rules of Civil Procedure
 - Individual Judge's Standing Orders, once assigned
 - Other notices on Court's website

What to File in Federal Court

- ❑ Civil Cover Sheet
- ❑ Verified Petition and Complaint (in some cases can combine a habeas petition with a complaint)
- ❑ Exhibits in support
- ❑ Filing fee- the filing fee for a habeas is currently \$5.00 and for a complaint is \$350.00
- ❑ Request for the Issuance of a Summons
 - You use the form summons provided for in federal court civil actions found here <https://www.uscourts.gov/forms/notice-lawsuit-summons-subpoena/summons-civil-action>
 - Fed. R. Civ. P. 4 governs summons.

Securing Local Counsel



What to File for Emergency Relief

Temporary Restraining Order

Seeking Stay of
Removal/Transfer or
Immediate Release

Preliminary Injunction

Seeking to Immediately Halt
or Require Government
Conduct

Order to Show Cause

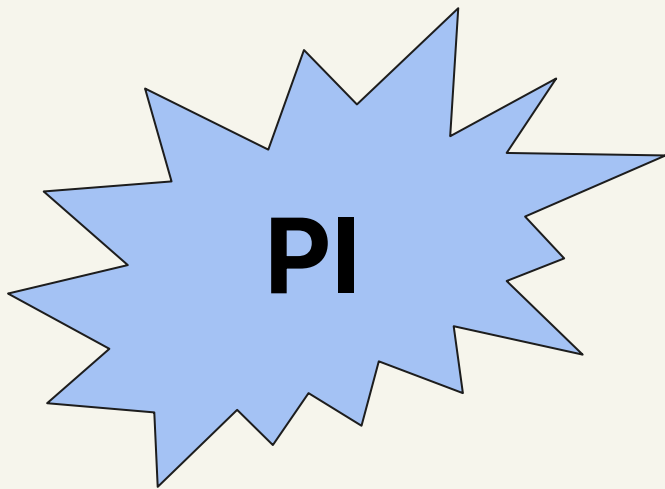
Seeking Expedited Briefing
Schedule

Temporary Restraining Order



- TROs are governed by FRCP 65(b) and a court's local rules;
- Used when seeking to stay transfer or removal or immediate release due to medical issue or other condition of confinement;
- Used to request that the government be ordered to do or not do something that presents an immediate and irreparable injury, loss, or damage;
- May be issued without notice to the opposing party, but best practice to provide opposing party with notice prior to filing;
- Remember to check in the local rules-some courts require that an attorney certify there is an emergency and if there is no genuine emergency, a court can issue sanctions;
- See e.g., *Joshua M. v. Barr*, 439 F. Supp. 3d 632 (E.D. Va. Feb. 20, 2020); *Rodriguez Vasquez v. Wolf*, 830 F. App'x 556 (9th Cir. 2020) (staying removal of five-year-old with traumatic brain injury); *Sillah v. Barr*, No. 19-CV-1747 (VEC), 2019 WL 1219438, 2019 U.S. Dist. LEXIS 48493 (S.D.N.Y. Mar. 14, 2019) (continuing stay of removal initially granted via TRO).

Preliminary Injunction



- PIs are governed by FRCP 65(b) and a court's local rules;
- Can be used for same purposes as TRO;
- PI motion must be made on notice to the opposing party;
- Court may hold PI hearing before trial or at the same time;
- The standard for the grant of a preliminary injunction is the same for the grant of a TRO. You should research the case law in your district and circuit before seeking a preliminary injunction regarding the standard;
- PI lasts until it is dissolved; can later move for it to be permanent;
- Prepare a list of witnesses and exhibits that will be present at hearing, and summary of anticipated testimony of witnesses at hearing;
- ***For both a TRO and a PI, FRCP 65(c), the district court may issue require a security (money) in the event of wrongful enjoinder or restraint. But, in habeas corpus cases for non-citizens you can successfully request that this requirement be waived.

Order to Show Cause



- 28 U.S.C. § 2243 grants federal courts the authority to issue OSC, which then provides timelines for setting returns (like an answer), hearings, etc.;
- In Districts with standing orders, an OSC can be used to ask the court to act sooner;
- In cases where you are *not* seeking a TRO, an OSC can be used in conjunction with a PI in order to ask the Court to set a briefing schedule so your PI motion can be heard expeditiously;
- Consult local rules in respective District to ensure you follow the correct process.

Understanding Your Audience

After you file, a district court judge and a magistrate judge will be appointed to your case. You can decline or accept the appointment of a magistrate judge. Some considerations:

- Are there issues that a magistrate can decide before the dispositive decision?
- Is there any indication that a magistrate judge will treat habeas corpus with more urgency than the district court judge?
- Has the magistrate issued reports & recommendations that are favorable on your issues?

Article III District Court Judges

- Nominated by the President and confirmed by US Senate for a lifetime appointment

Magistrate Judges

- Hired by the district court by majority vote to serve a period of 8 years
- In general, MJs hold bail hearings, issue warrants, conduct and oversee preliminary proceedings
- MJs cannot rule on dispositive matters such as grant/denial of habeas petition, but can issue a report & recommendation that will be adopted or rejected by the federal judge

Organizing Strategies

Amplifying Federal Litigation with
Power-building Tools

Accompanying People to ICE Check-ins

- Provide moral and logistical support to individuals attending ICE check-ins, reducing fear and preventing detentions or deportations.
- Community accompaniment can prevent ICE from taking individuals into custody and, if they are detained, a community response (rally, release campaign, etc.) can be built + person accompanying can gather information of the re-detention for legal action



Detention Visitation Projects

- Family & friend visits to ICE jails allows volunteers (organizers/advocates) to monitor conditions, provide emotional support, and gather testimonies for litigation.
- Sheds light on the conditions of detention and highlights abuses, which can drive legal action for improved treatment or release (individually) + support calls for shut down



Detention KYR Projects



- Focus specifically on informing detained immigrants about their rights while in custody, including options for release and/or fighting deportation.
- Ensures that individuals have the necessary information to advocate for themselves or to alert outside advocates about human rights violations that could lead to litigation.

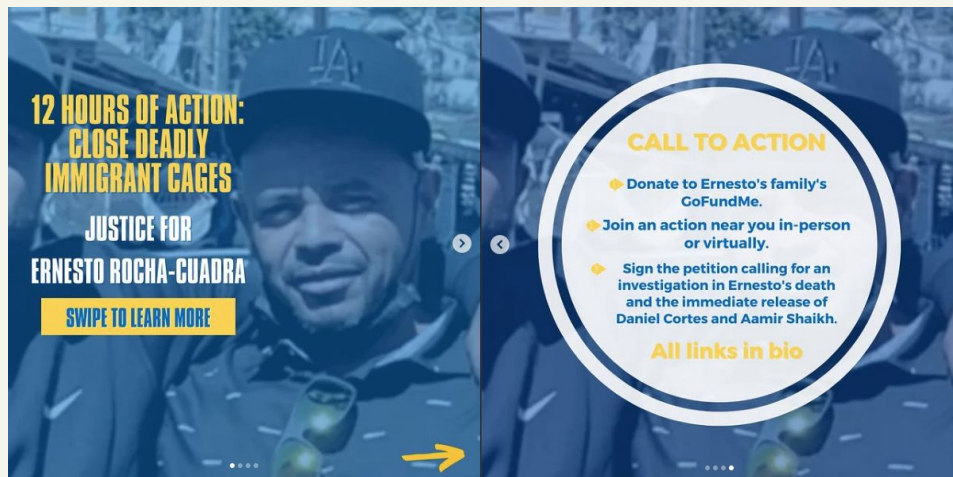
Creating Supportive Housing Programs

- Provide housing and stability for individuals and families facing deportation or detention
- Community housing designed to meet emergency or transitional needs + serve as proof of domicile in release requests/legal proceedings



Digital & Social Media Campaigns

- Use online platforms to share stories and mobilize large-scale support for immigrant rights
- Tool for public advocacy, spreading awareness of individual cases and collective struggles
- Resource mobilization + sharing calls to action



Letter Writing Campaigns

- Mobilize public opinion/builds public pressure and raise awareness about specific individuals, creating pressure for change
- Letters can serve as public support for individual cases and can generate media coverage of legal work



Establishing Relationships with Local Medical Providers

- Ensure that immigrants in detention or at risk of detention have access to necessary medical care
- Medical providers can testify in legal cases about inadequate care, or advocate for the release of individuals due to medical conditions

Factual Documentation of ICE Raids

- Organize immediate community action in response to ICE raids, detentions, or deportation orders, often by staging protests or helping families with emergency legal assistance.
- Factual documentation can support any legal challenges

What You Should Do Now to Get Prepared

- ❑ Apply for admission to your local federal court(s)
- ❑ Build relationships with admitted local practitioners
- ❑ Reach out to local organizers/movement leaders
- ❑ File any applications for relief before USCIS
- ❑ File any Appeals/Motions to Reopen before BIA or immigration court
- ❑ Document any health conditions with medical providers
- ❑ Consider the pros and cons of public advocacy or reaching out to press
- ❑ Prior to any upcoming ICE check-in, ensure that you are prepared to file

Q&A

**Please share your questions and
comments using the zoom the Q&A
feature**

Additional Resources

Sample Templates

- **Sample Pleading:**
<https://rfkhumanrights.org/wp-content/uploads/2024/12/TEMPLATE-PLEADING-PDF-.pdf>
- **Sample OSC:**
<https://rfkhumanrights.org/wp-content/uploads/2024/12/TEMPLATE-OSC-REQUEST-AND-TEMPLATE-OSC.pdf>
- **Sample TRO:**
<https://rfkhumanrights.org/wp-content/uploads/2024/12/TEMPLATE-MOTION-FOR-TRO-MEMO-OF-LAW-AND-PROPOSED-ORDER-PDF.pdf>

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Post-Webinar Survey

Please take two minutes to complete this survey so we can identify our partner's needs for future programs



<https://forms.gle/vZNuJyhFjv4cGvfi7>