



WICKED

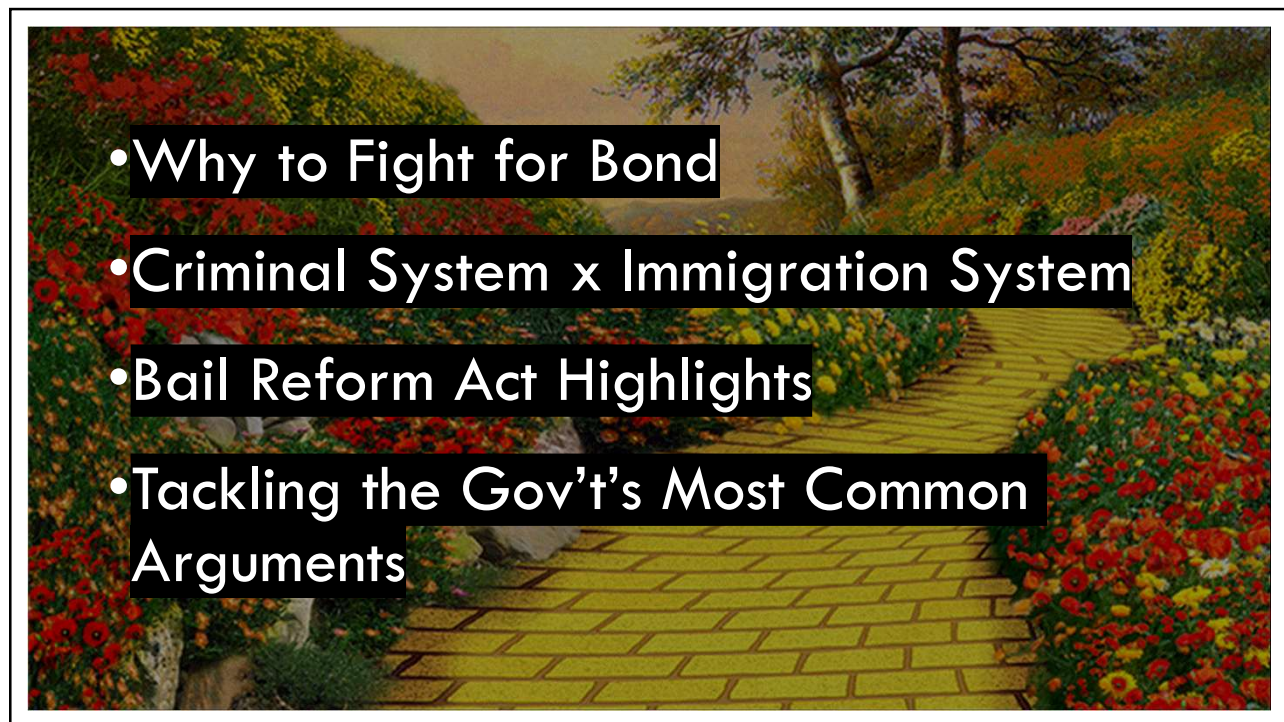
Arguments to Get Your Non-Citizen Clients Bond

Carson P. Baucher, Trial Attorney
Federal Defenders of San Diego, Inc.
Carson_Baucher@fd.org

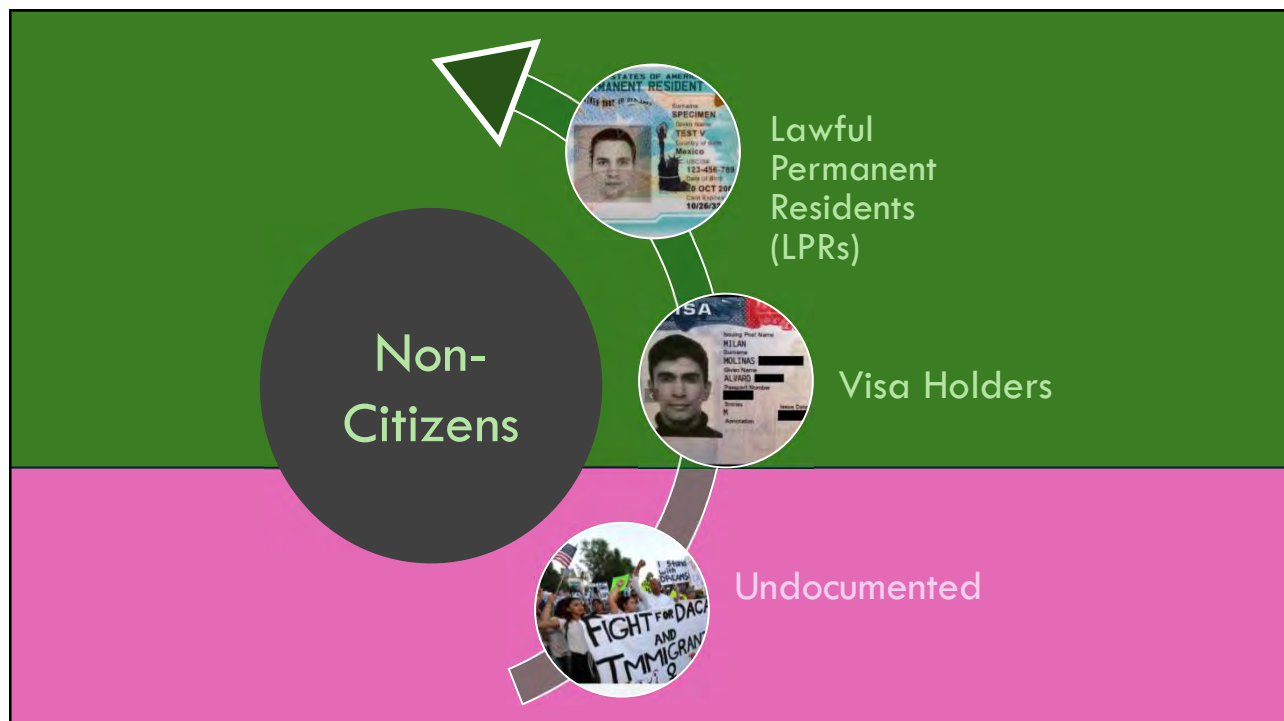
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Non-citizens in federal court?

- 35% - Nationally
- 11% - S.D. Ohio



U.S.S.C. Statistical Information Packet, FY2024, S.D. Ohio

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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics



SPECIAL REPORT

MARCH 2022

NCJ 252837

Pretrial Release and Misconduct in Federal District Courts, Fiscal Years 2011–2018

George E. Browne, Ph.D., *BJS Statistician*
Suzanne M. Strong, Ph.D., *former BJS Statistician*

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TABLE 2

Defendants released pretrial with cases disposed in federal district courts, by most serious offense and demographic characteristics, FYs 2011–18

Demographic characteristic	Number of defendants	Percent released						
		All offenses	Violent	Property	Drug	Public order	Weapons	Immigration
Total	747,468	32.3%	30.5%	72.7%	36.6%	55.8%	27.5%	11.9%
Citizenship status								
U.S. citizen	368,085	53.1%	31.0%	81.9%	47.1%	57.4%	28.5%	67.9%
Documented non-U.S. citizen	31,457	42.3	33.5	68.4	27.3	53.8	32.2	58.9
Undocumented non-U.S. citizen	340,179	8.4	6.8	28.8	3.3	20.0	6.0	8.0

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TABLE 2

Defendants released pretrial with cases disposed in federal district courts, by most serious offense and demographic characteristics, FYs 2011–18

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		Property	Drug	Public order	Weapons	Immigration
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Documented non-U.S. citizen	31,457	68.4	27.3	53.8	32.2	58.9
Undocumented non-U.S. citizen	340,179	28.8	3.3	20.0	6.0	8.0

8



9

TABLE 9 Defendants released pretrial with cases disposed in federal district courts, by type of release violation and demographic characteristics, FYs 2011–18						
Demographic characteristic	Number of released defendants	Percent who had—				
		At least one release violation	Failure to appear	Technical violation ^a	Rearrest for new offense ^b	Release revoked
Total	241,164	18.9%	1.0%	17.2%	2.1%	10.5%
Citizenship status						
U.S. citizen	195,609	21.8%	0.9%	20.0%	2.5%	12.1%
Documented non-U.S. citizen	13,295	15.3	3.4	12.6	1.6	9.0
Undocumented non-U.S. citizen	28,472	2.0	0.5	1.6	0.2	1.1

10

TABLE 9 Defendants released pretrial with cases disposed in federal district courts, by type of release violation and demographic characteristics, FYs 2011–18		Percent who had—			
Demographic characteristic		Failure to appear	Technical violation ^a	Rearrest for new offense ^b	Release revoked
Total	18.9%	1.0%	17.2%	2.1%	10.5%
Citizenship status					
U.S. citizen	21.8%	0.9%	20.0%	2.0%	12.1%
Documented non-U.S. citizen	15.3	3.4	12.6	1.6	9.0
Undocumented non-U.S. citizen	2.0	0.1	1.6	0.2	1.1

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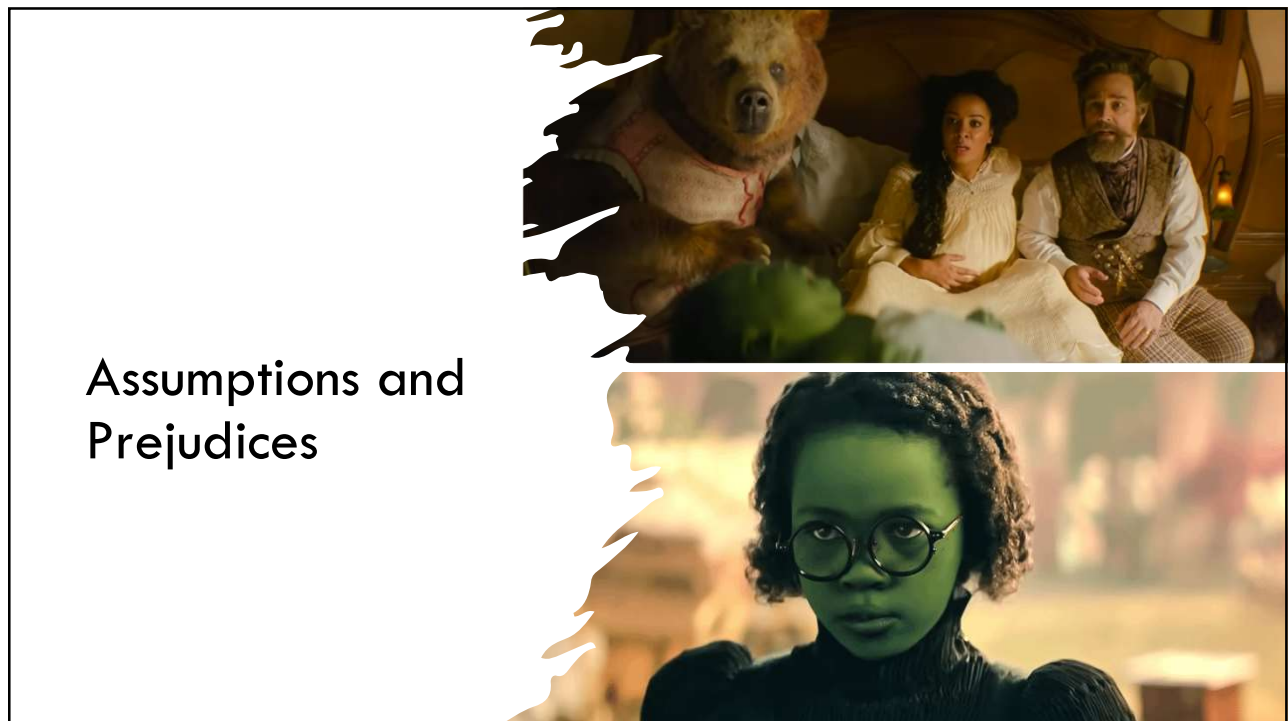
TABLE 9 Defendants released pretrial with cases disposed in federal district courts, by type of release violation and demographic characteristics, FYs 2011–18		Percent who had—			
Demographic characteristic	Number of released defendants	At least one release violation	Failure to appear	Technical violation ^a	Rearrest for new offense ^b
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Citizenship status					
U.S. citizen	195,609	21.8%	0.9%	20.0%	2.0%
Documented non-U.S. citizen	13,290	15.3	3.4	12.6	1.6
Undocumented non-U.S. citizen	28,472	2.0	0.1	1.6	0.2

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So what's the disconnect?

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Assumptions and
Prejudices

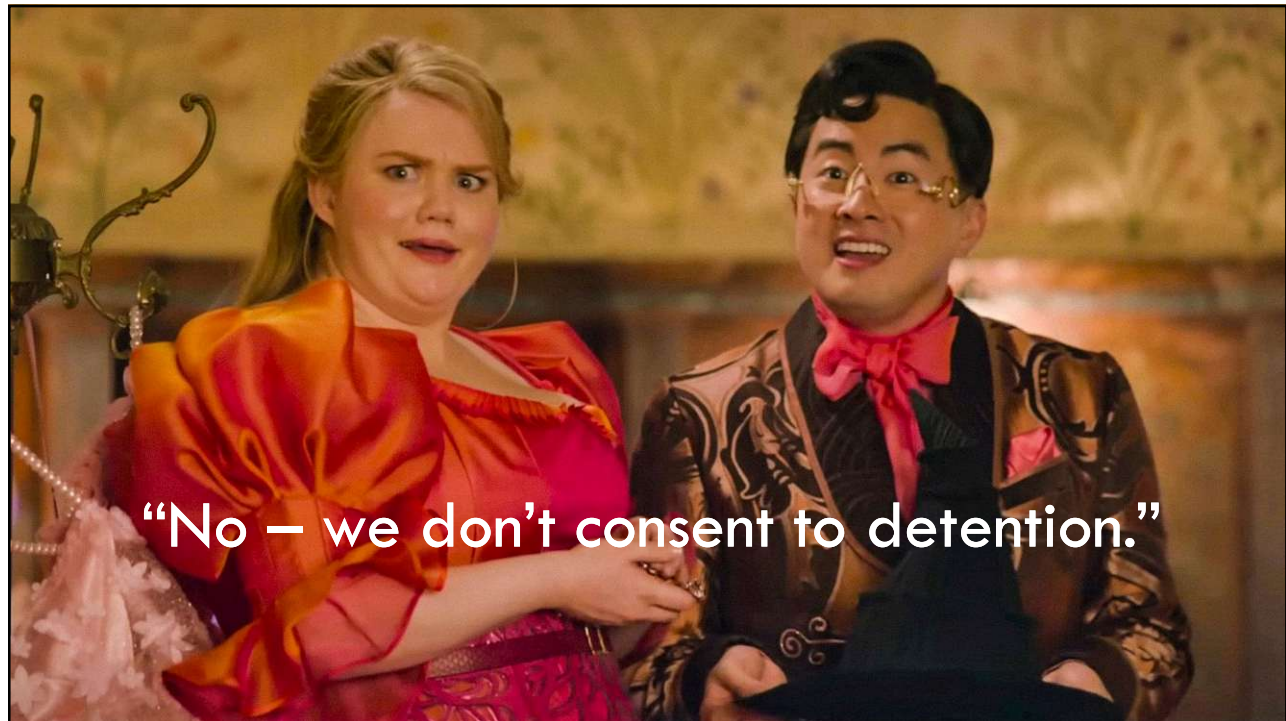
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15



16



17



18



19



20

Immigration Detainer:

How ICE Gets Ahold of Released Clients

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: [REDACTED] File No: [REDACTED]
Event #: [REDACTED] Date: September 26, 2024

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)
SAN DIEGO MCC
WARDEN

FROM: (Department of Homeland Security Office Address)
2411 BOSWELL ROAD
CHULA VISTA, CA 919143519

Name of Alien: [REDACTED]
Date of Birth: [REDACTED] Citizenship: MEXICO Sex: M

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2).

☐ A final order of removal against the alien;
☐ The pendency of ongoing removal proceedings against the alien;
☐ Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law, and/or
☐ Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

☒ Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- Notify DHS as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling ☒ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at 1-800-544-7889. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (602) 875-6020.
- Maintain custody of the alien for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien must be served with a copy of this form for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

☐ If checked, please cancel the detainer related to this alien previously submitted to you on _____ (SSE).

ROBERTA PATRICIA ABERNETHY JALILIA A. BRADLEY
(Name and title of Immigration Officer)

Jalilia Bradley
(Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (602) 875-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____.

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____, in the following manner:

☐ in person ☐ by inmate mail delivery ☐ other (please specify): _____

(Name and title of Officer) (Signature of Officer) (Sign in ink)

DHS Form I-247A (3/17) Page 1 of 3

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TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)
SAN DIEGO MCC
WARDEN

To: The Jailer

FROM: (Department of Homeland Security Office Address)
2411 BOSWELL ROAD
CHULA VISTA, CA 919143519

From: DHS

22

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

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- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

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24

Will there be a
detainer?



25

Legal Status

Likelihood of Detainer

Undocumented



LPR/Visa Holder



26

<u>Arresting Agency</u>	<u>Likelihood of Detainer</u>
Federal Agency	
State/Local Agency	

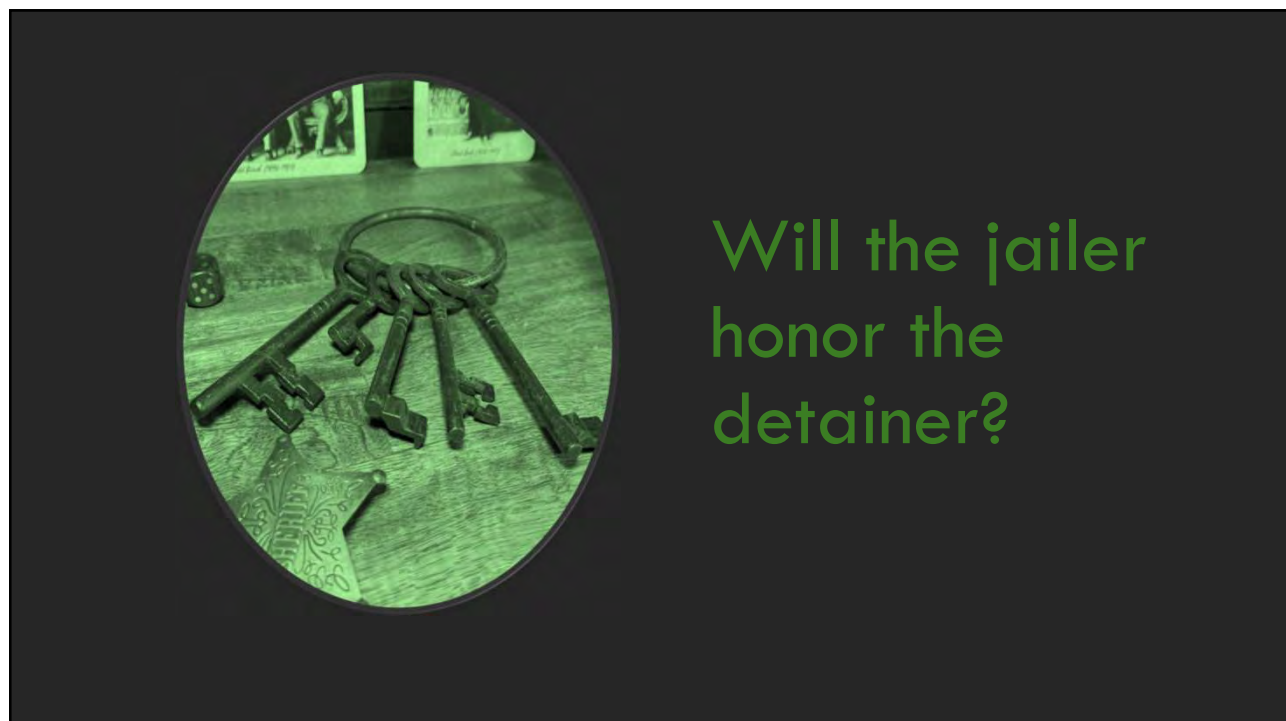
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<u>Cooperation with ICE</u>	<u>Likelihood of Detainer</u>
Agency Cooperates	
Agency Doesn't Cooperate	

28



29



30



31



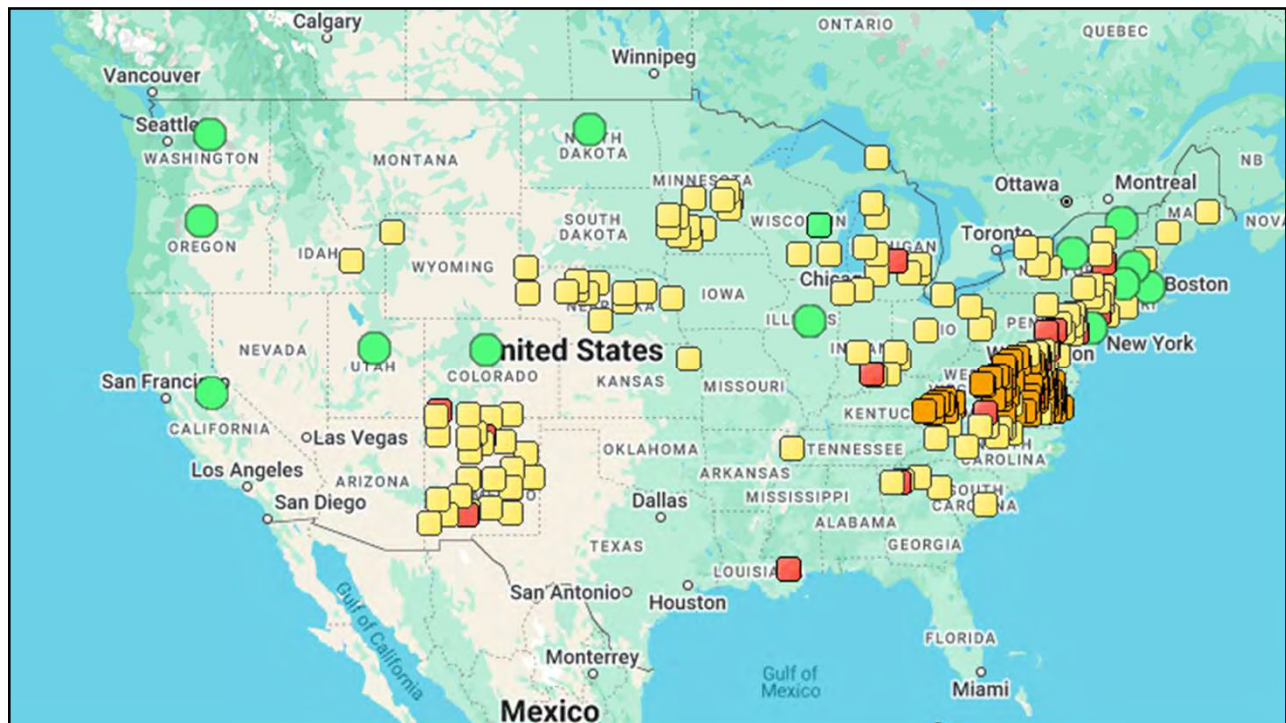
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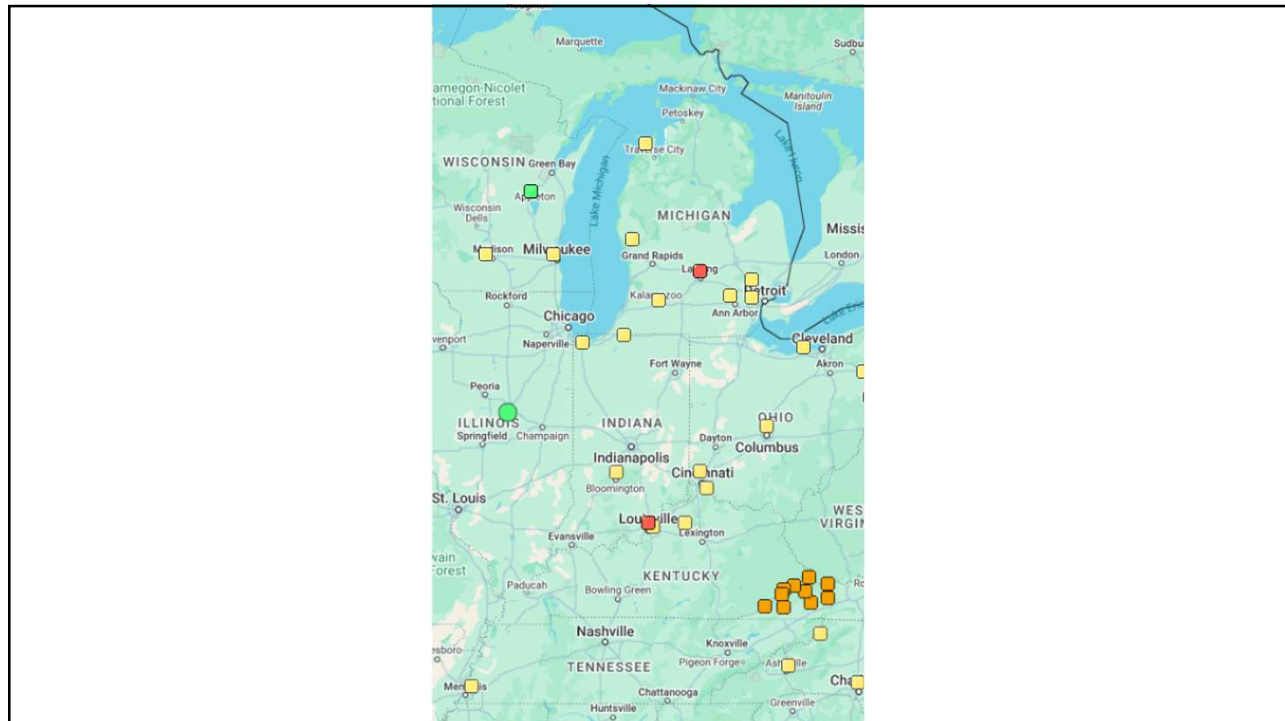
Center for Immigration Studies

Low-immigration, Pro-immigrant

33



34

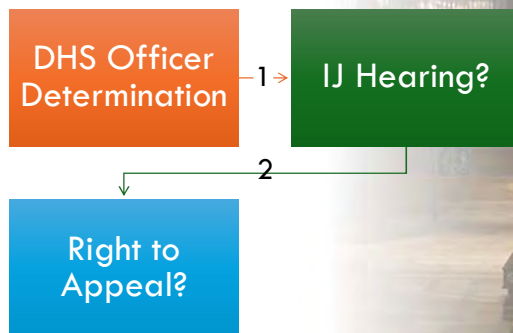


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36

Immigration Bond Procedure



37

Not eligible for
immigration
bond?



Mandatory Detention for Certain
Criminal Convictions (INA § 236)

"Arriving aliens"

Subject to expedited removal

38



Bond Alternatives

- Parole
- “Alternative to Detention” programs

39

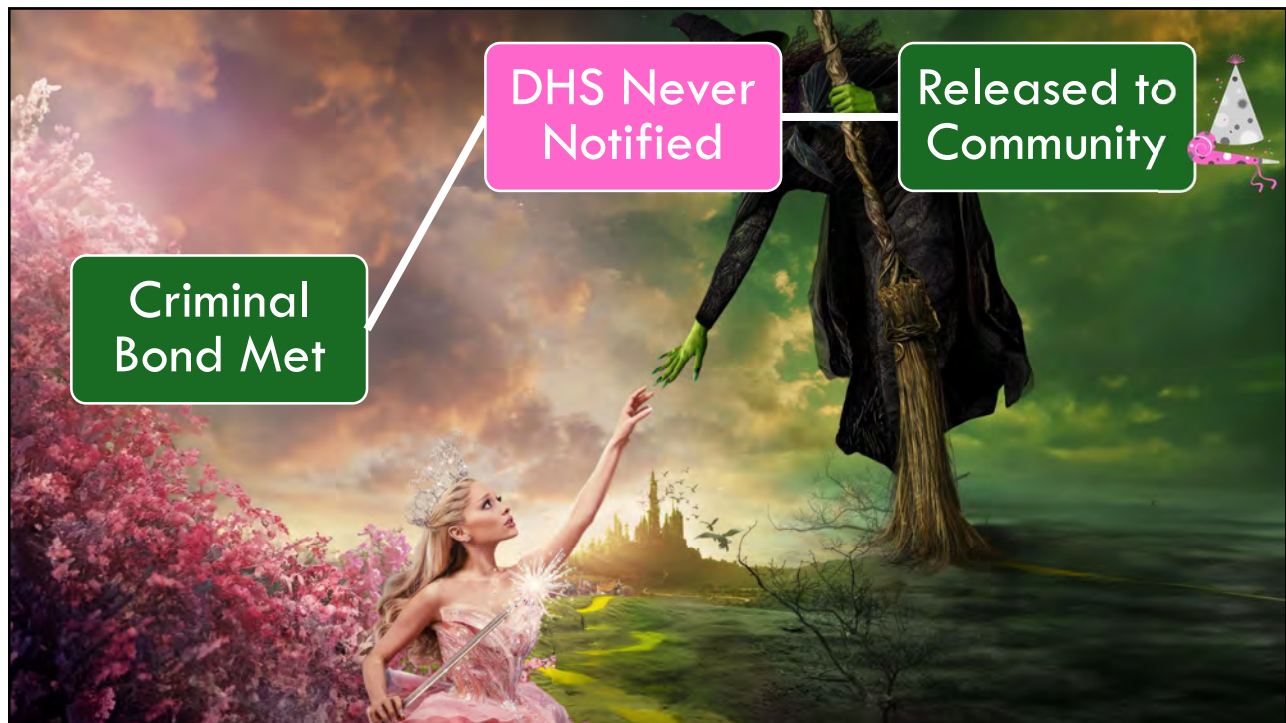


Release at AUSA's Request

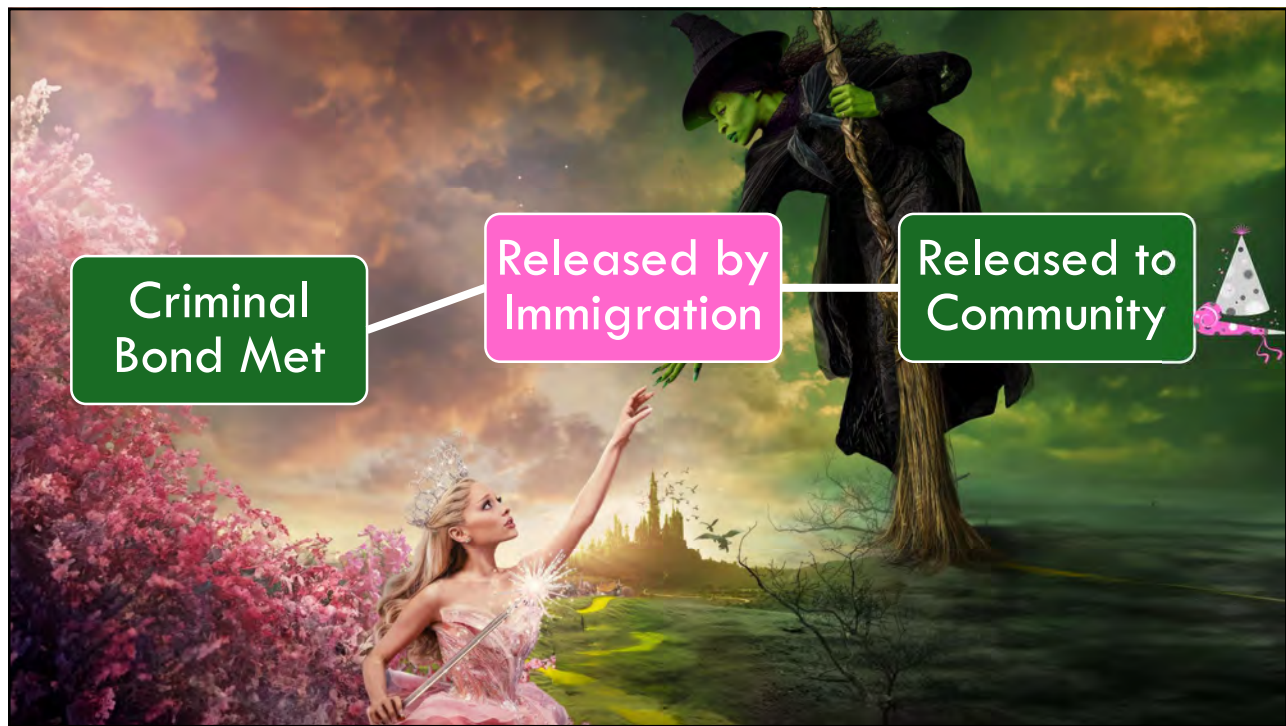
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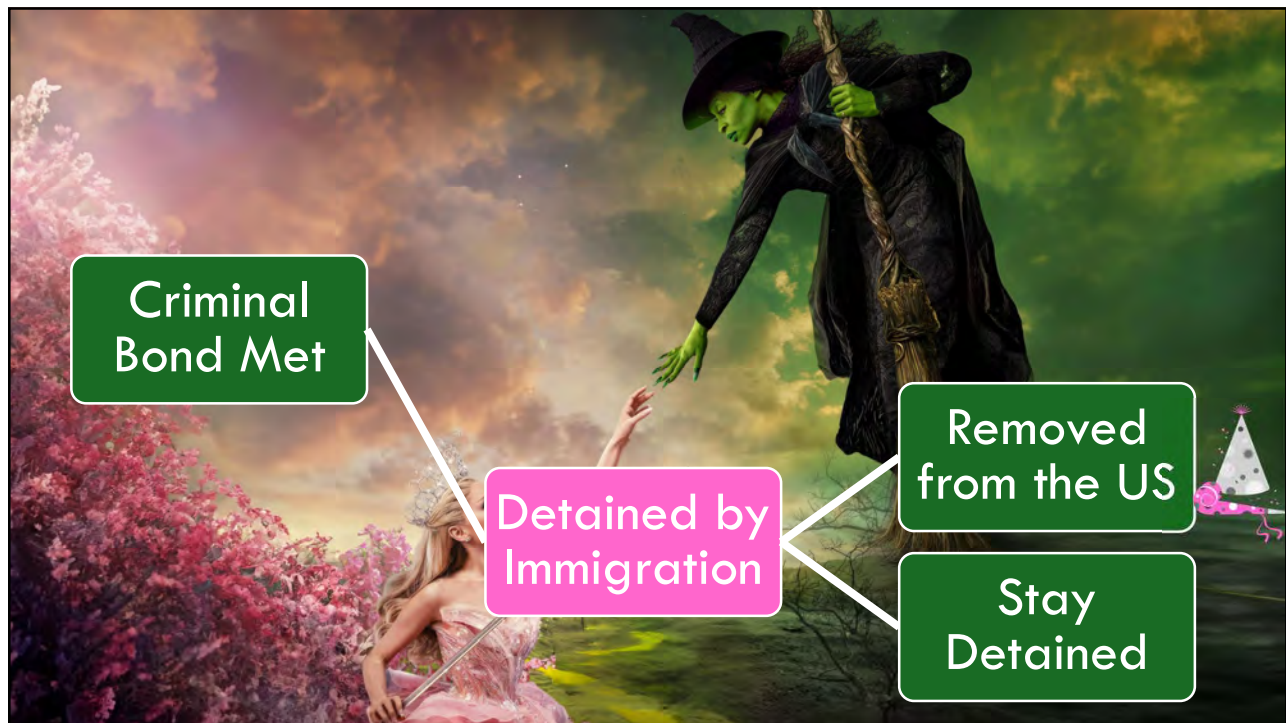
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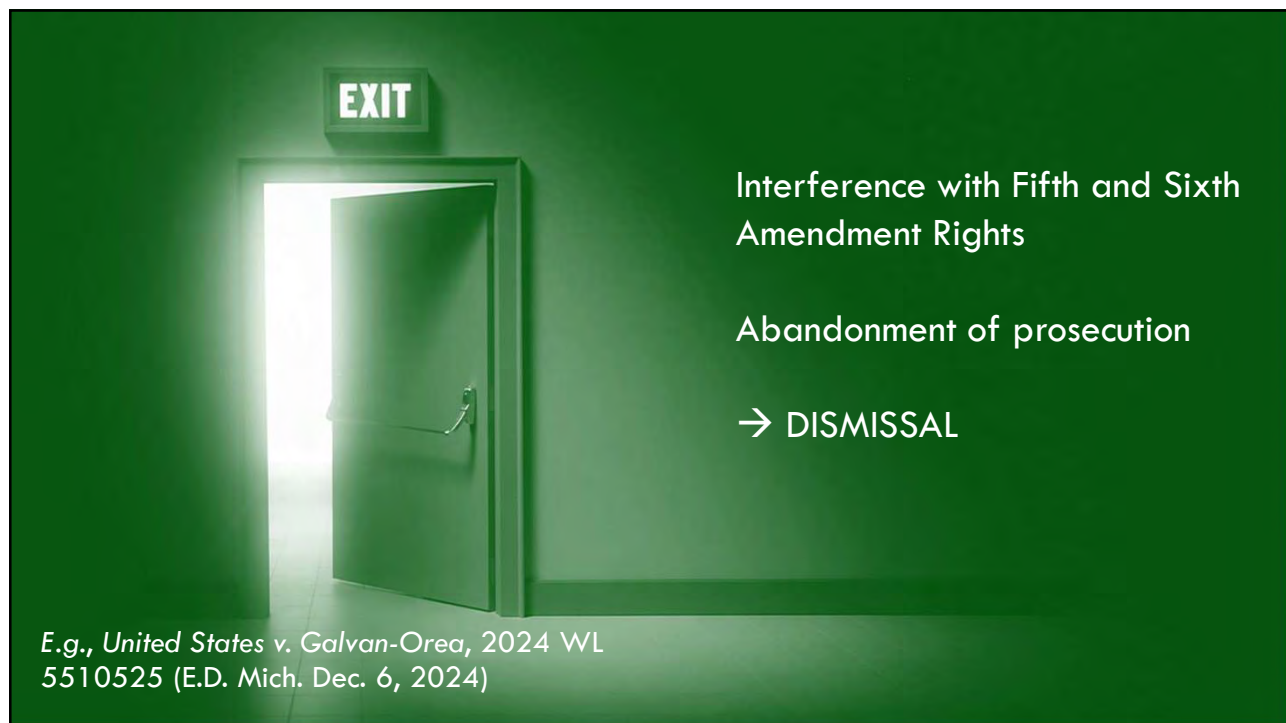
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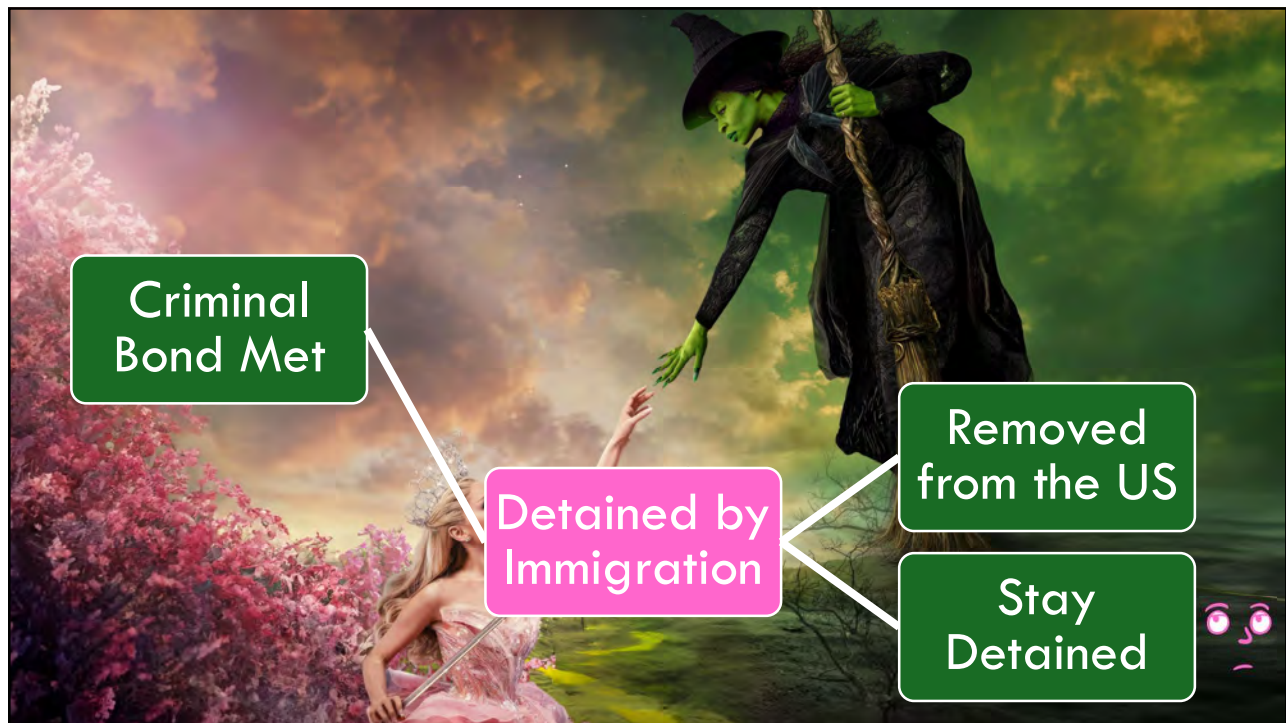
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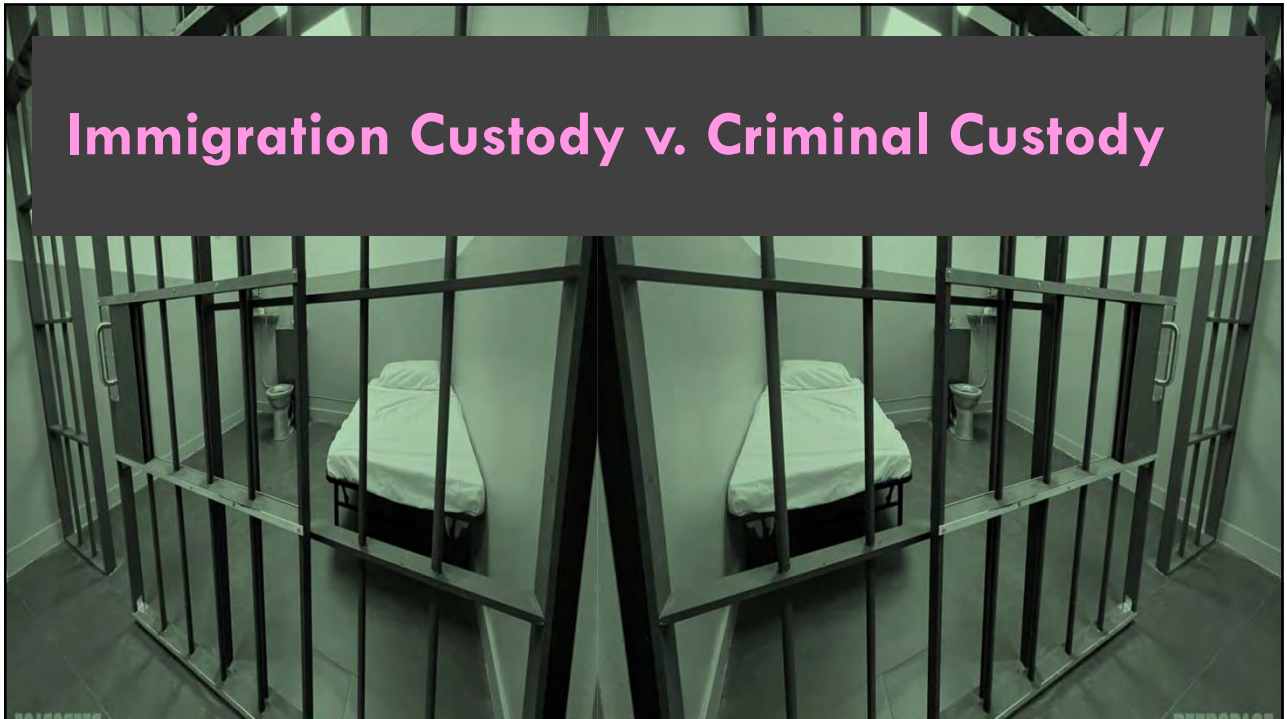
48

Detained by Immigration



49

Immigration Custody v. Criminal Custody



50



Opportunities for Government Error

Gov't Mistakes

=

Defense Wins

51



**A federal judge has
ordered release.**

**...How is ICE
Custody Even Legal?**

52

United States v. Veloz-Alonso

910 F.3d 266 (6th Cir. 2018)



53

Despite release
order, ICE can still
detain

Veloz-Alonso



54

BUT WAIT!!!



55

Open Question Re:
Pretextual Detention
by ICE

United States v. Ventura, 96 F.4th 496
(2d Cir. 2024); *United States v. Lett*, 944 F.3d 467
(2d Cir. 2019)



56



**Credit
towards
criminal
sentence?**

57

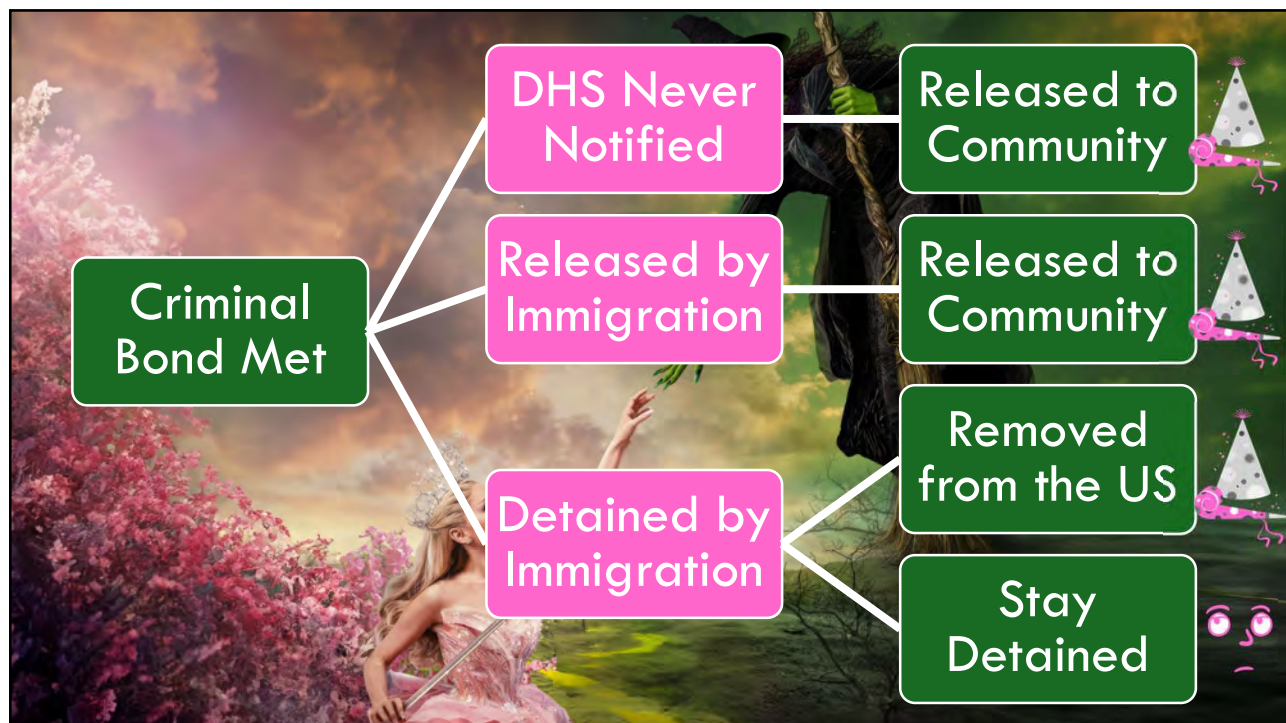
**IN CASE OF
EMERGENCY**

The Self-Surrender Failsafe?

58



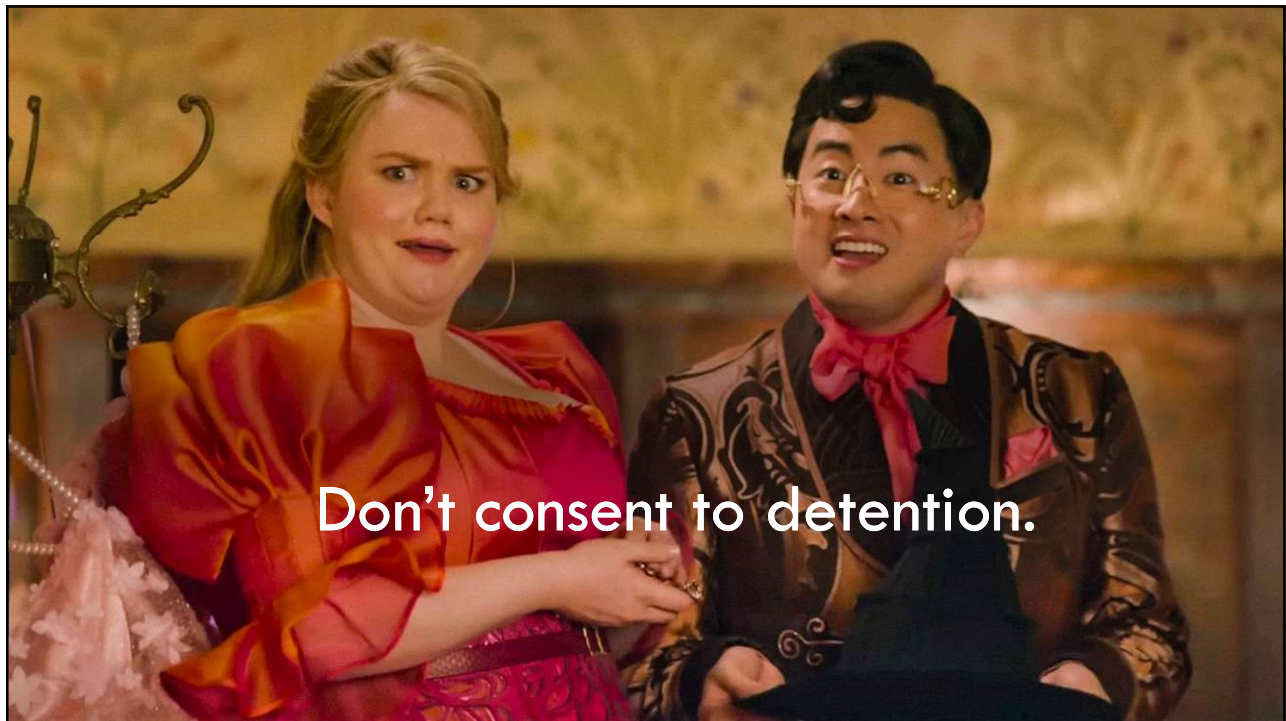
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60

Moral of the story?

61



62



63



How do I get bond set?

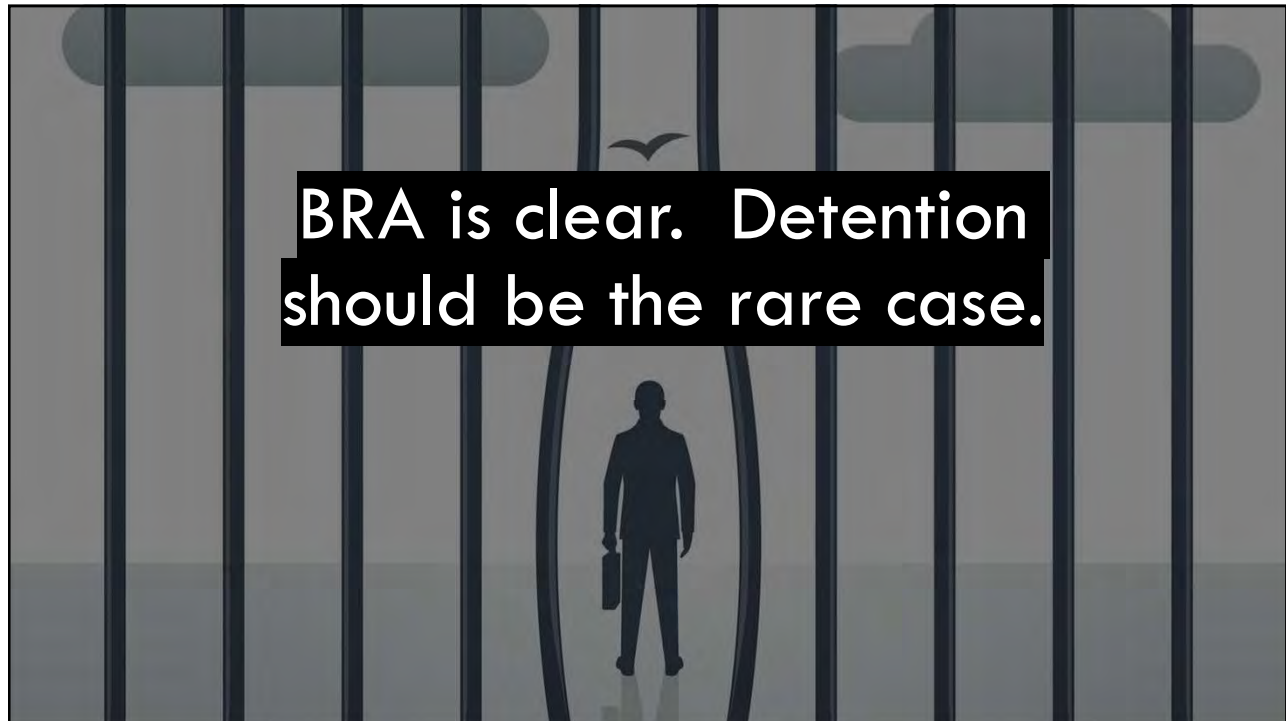
64



65

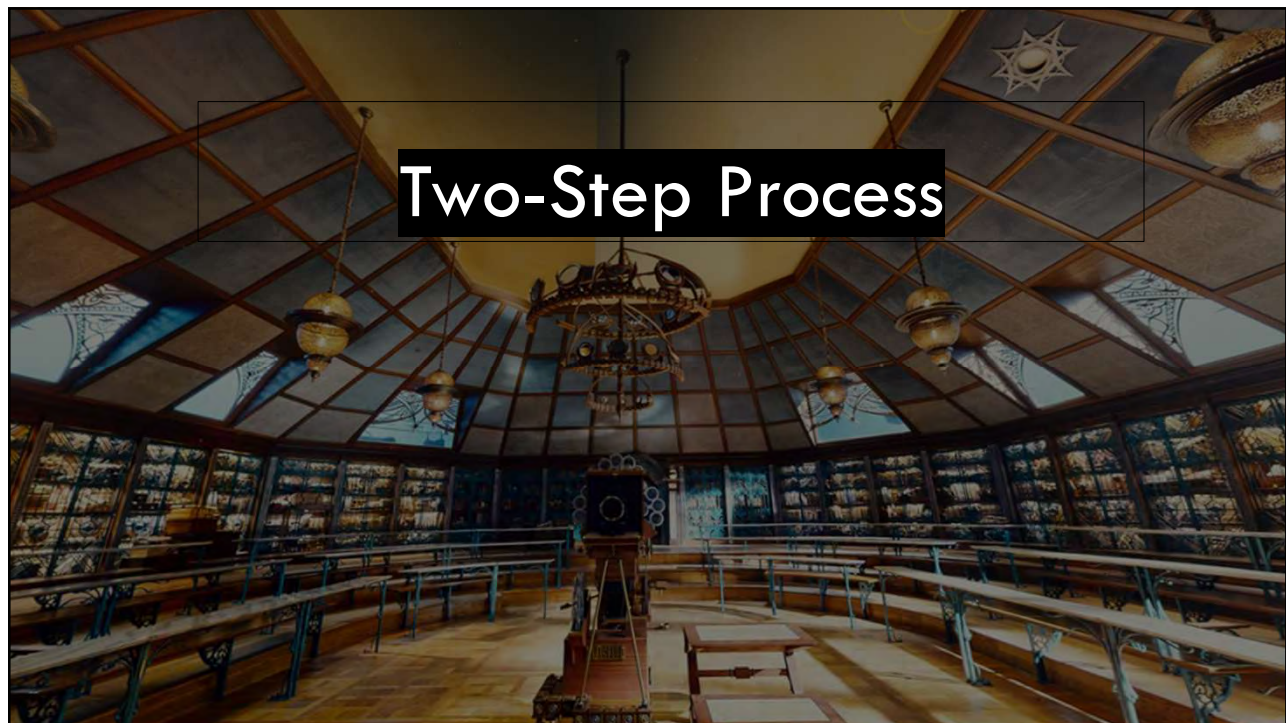


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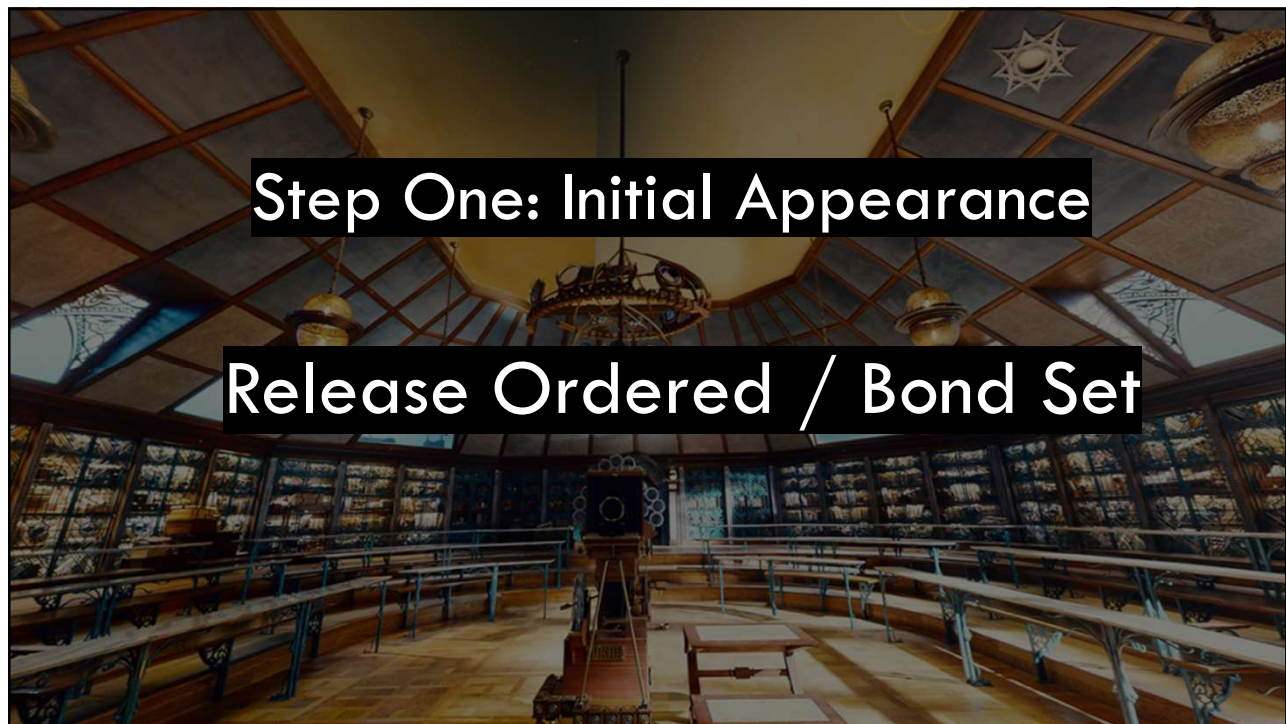
BRA is clear. Detention
should be the rare case.

67

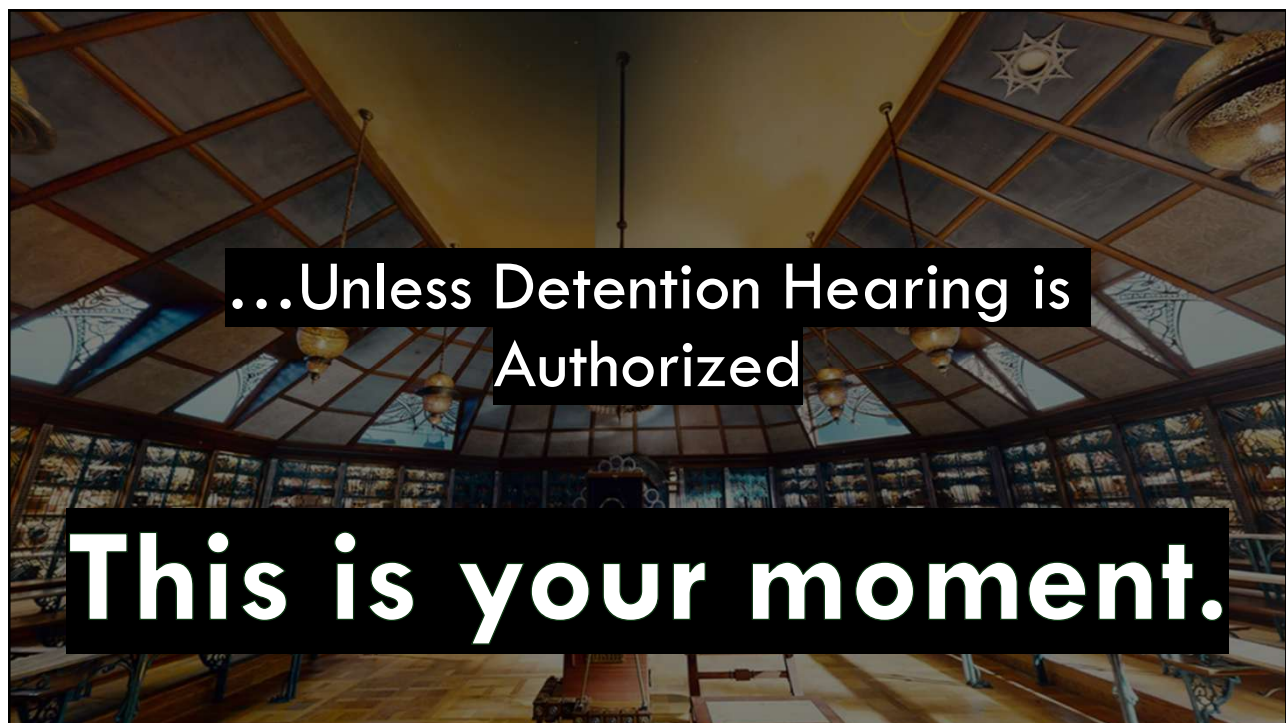


Two-Step Process

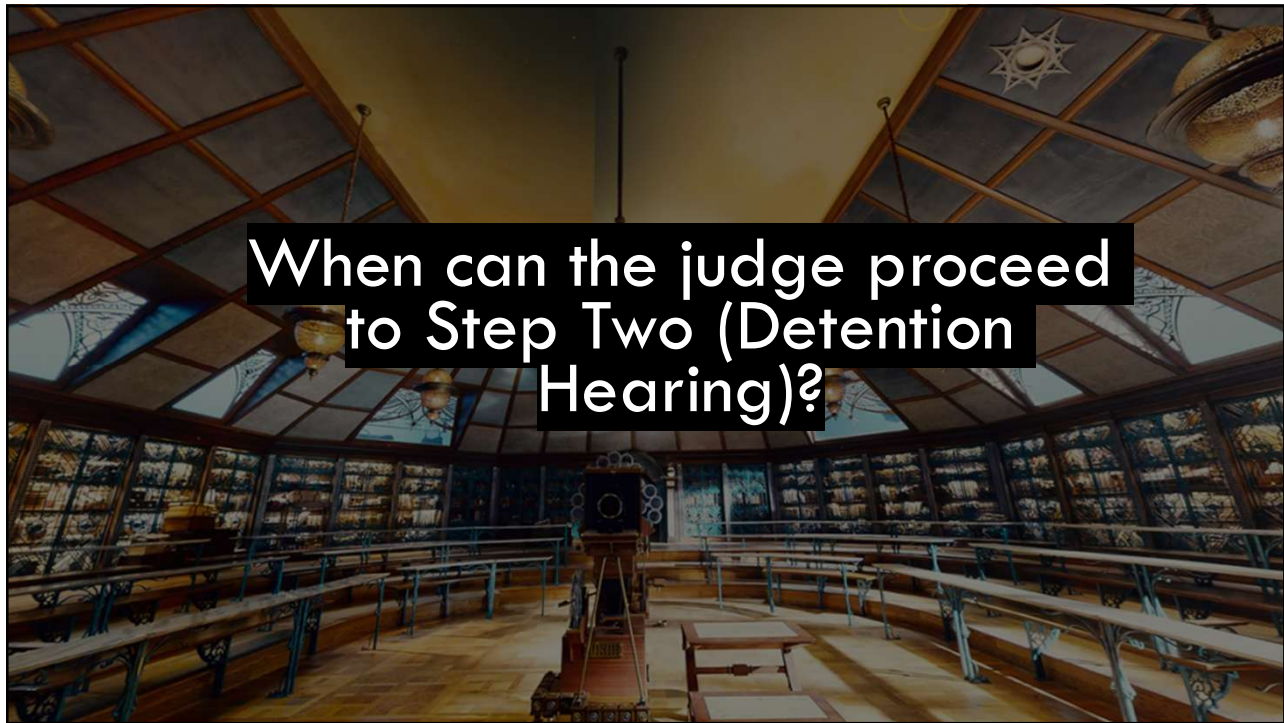
68



69



70



When can the judge proceed
to Step Two (Detention
Hearing)?

71



3142(f)

Detention hearing
authorized under
(f)(1) and (f)(2)

72



Enumerated (f)(1) Cases

- Crime of Violence
- Drug
- Gun: 924(c), 922(g)
- Minor Victim
- Terrorism

73

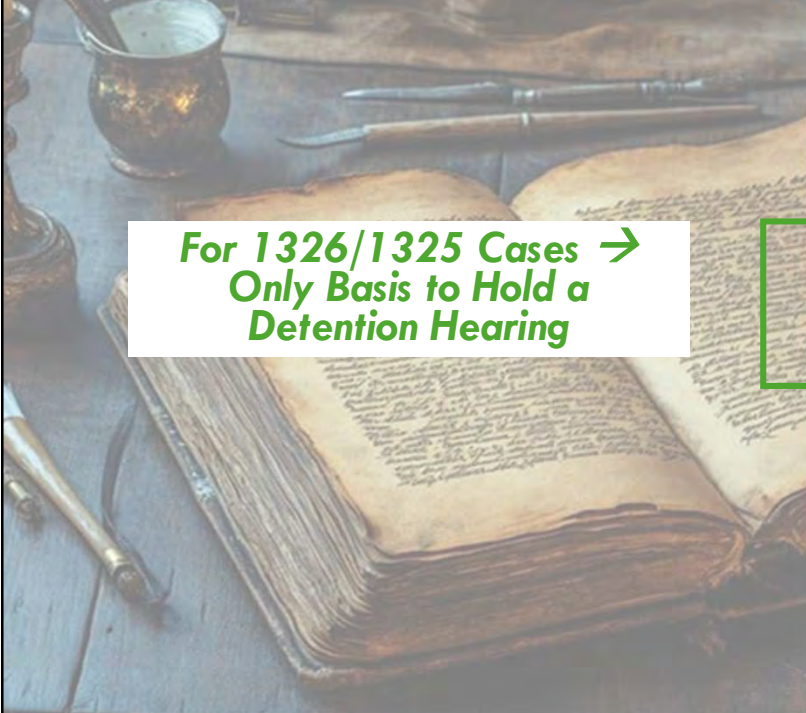


PRESUMPTION OF RELEASE CASES!

Not in (f)(1)

- Illegal Entry/Re-Entry Cases

74



(f)(2)

**For 1326/1325 Cases →
Only Basis to Hold a
Detention Hearing**

- Serious Risk of Flight
- Serious Risk of Obstruction

75



“Serious Risk of Flight”

“deliberate, voluntary action to flee or evade judicial oversight”

76



“Serious Risk of Flight”

“serious” – i.e.
“substantial, rather than
speculative or theoretical”

77



“Serious Risk of Flight”

Serious = more than
ordinary risk of flight

78



“Serious Risk of Flight”

Government’s burden by preponderance of the evidence

79



“Serious Risk of Flight”

Government must present concrete evidence

80



“Serious Risk of Flight”

Individualized to defendant

81



Common
Gov't
Arguments

82

*“There’s a
detrainer. She’s
just going to
be deported
anyway.”*



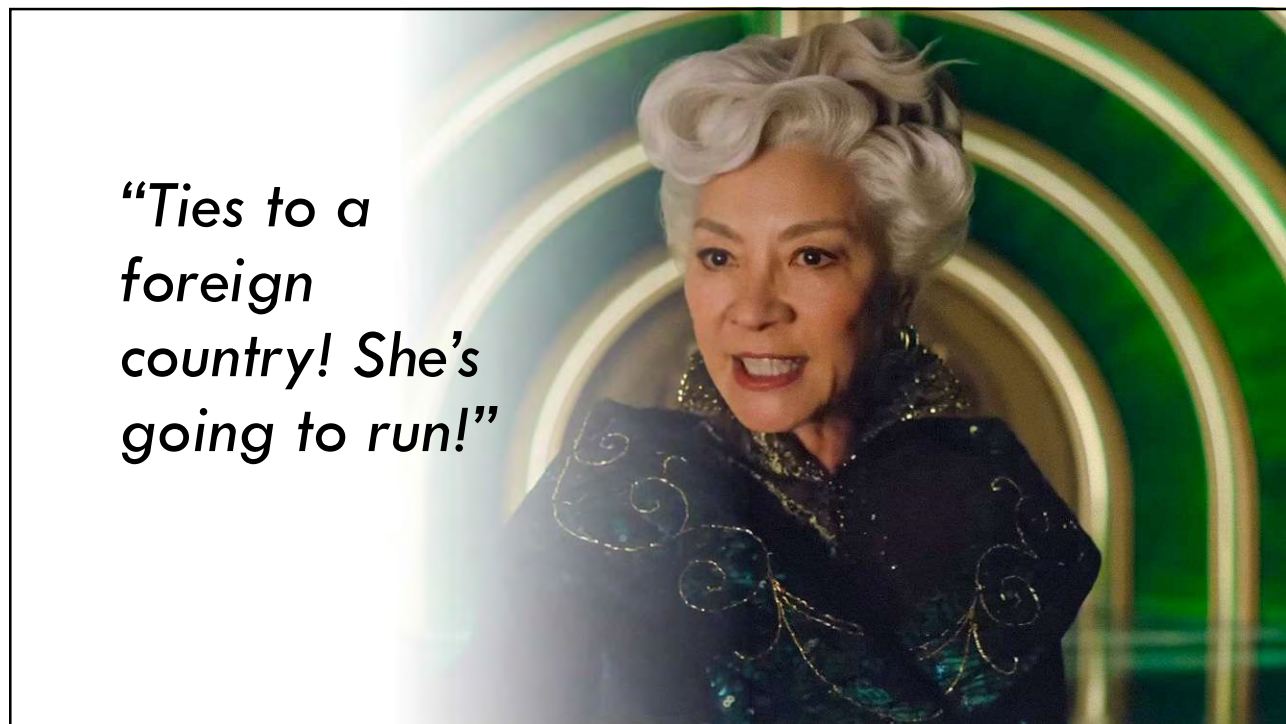
83



Nope!

- Not certain she'll be detained or deported.
- Deportation would be involuntary, not *volitional*

84



85



Not so fast!

- That’s a generic argument! Not individualized.
- True of every 1326/1325 defendant
- Speculative!

86



Moreover!

- Ties to US
- Efforts taken to get to the US
- *U.S. v. Figueroa-Alvarez*, 681 F. Supp. 3d 1131, 1139–40 (D. Idaho 2023).

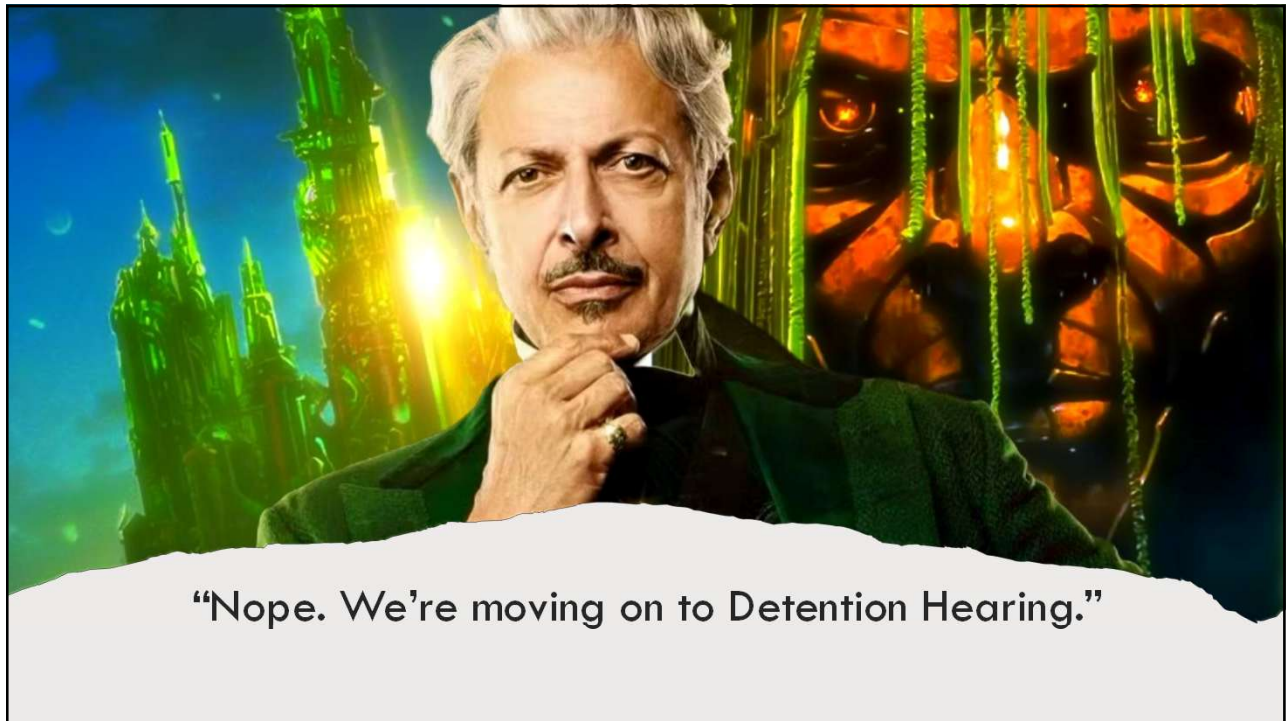
87



Government
Hasn't Met
Burden.

Don't Proceed
to Step Two.

88



89

Law at Detention
Hearing
-3142(e)



90

Government's Burden



91

“no conditions or
combination of
conditions
that will
reasonably
assure...”
appearance in
court and safety
of the community



92

Rebuttable presumption of detention

- Serious drug offenses
- 924(c) and terrorism cases
- Kidnapping
- Minor victim



93

No presumption
in 1326/1325
cases!



94

History & Characteristics – 3142(g)

- Person's character
- Physical/mental condition
- Family ties
- Employment
- Financial Resources
- Length of Residence in Community
- Community Ties

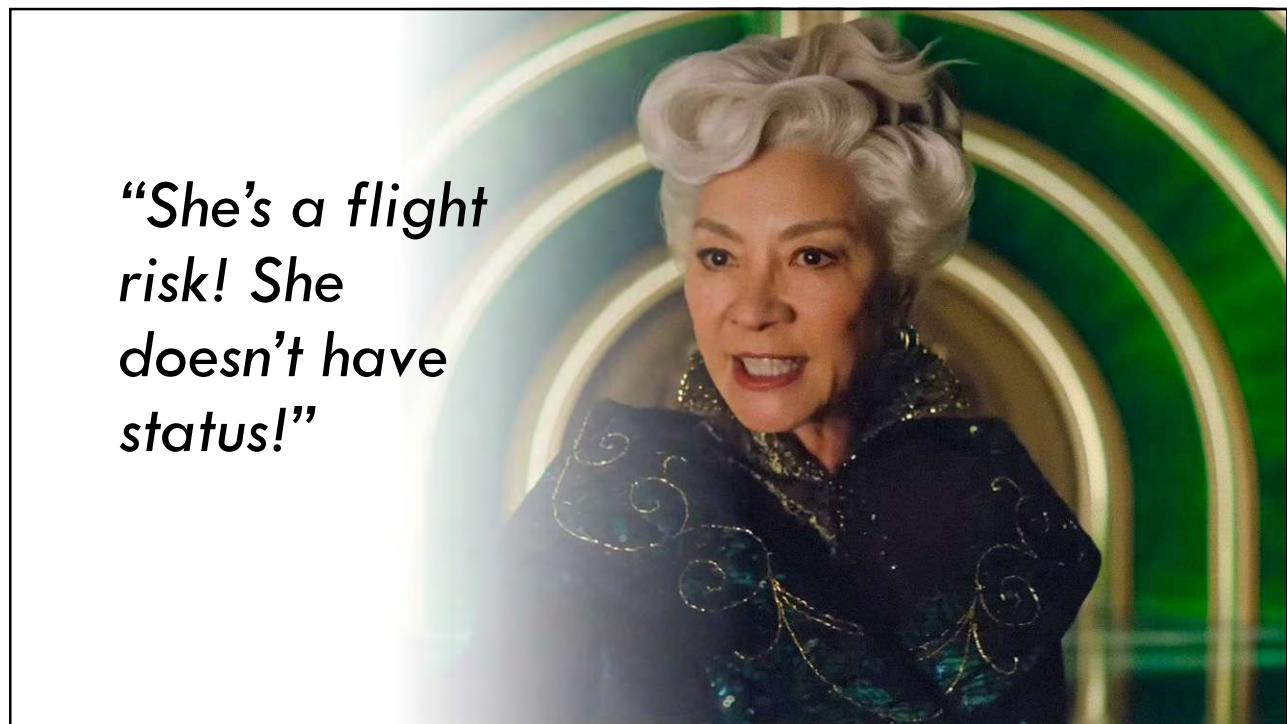


95

Alienage /
legal status not
listed



96



97



98

*“She’s been
deported
multiple times.
Can’t follow
the rules.”*



99



*United States v. Figueroa-Alvarez, 681 F. Supp. 3d
1131, 1144 (D. Idaho 2023)*

100



Non-Citizens perform BETTER on bond.

101

TABLE 9
Defendants released pretrial with cases disposed in federal district
demographic characteristics, FYs 2011–18

Rearrest for new offense^b
2.1%

Demographic characteristic	Number of released defendants	At least one release violation	Failure to appear	Release revoked
Total	241,164	18.9%	1.0%	10.0%
Citizenship status				
U.S. citizen	195,609	21.8%	0.8%	12.1%
Documented non-U.S. citizen	15,295	15.3	3.4	9.0
Undocumented non-U.S. citizen	28,472	2.0	0.2	1.1

2.5%

1.6

0.2

102

TABLE 9
Defendants released pretrial with cases displaying demographic characteristics, FYs 2011-18

Failure to appear
1.0%

Demographic characteristics	Number of released defendants	At least one release violation	Type of release violation and
Total	241,104	181	had—
			6.7% Returned for new offense ^a Release revoked
Citizenship status			
U.S. citizen	195,609	214	2.3% 12.1%
Documented non-U.S. citizen	13,295	151	1.6 9.0
Undocumented non-U.S. citizen	32,472	24	0.2 1.1

0.9%

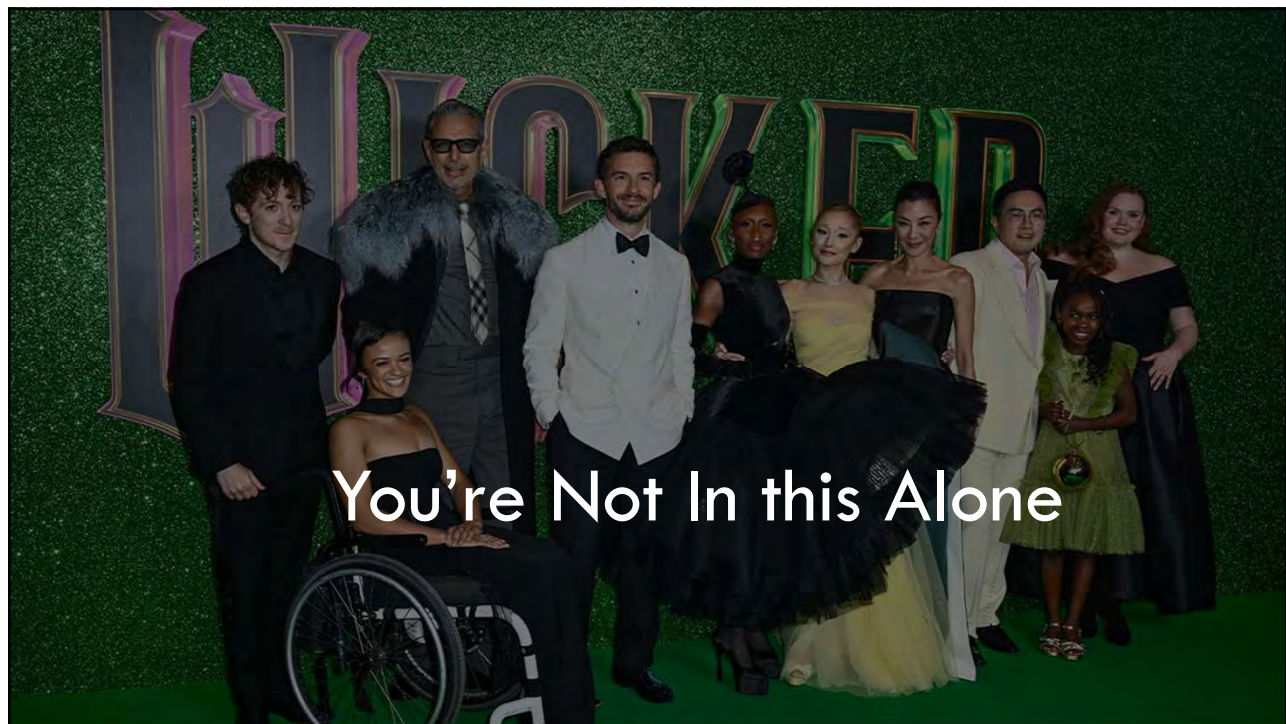
3.4

0.5

103



104



105




Bail Resources

Freedom Denied – Alison Siegler
<https://freedomdenied.law.uchicago.edu/>

Motion Bank
<https://tinyurl.com/UChicagoBriefs>

FD.org materials
<https://www.fd.org/criminal-defense-topics/essential-topics/bail-pretrial-release>

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Sixth Circuit Cases

United States v. Rodriguez-Fuentes, 2025 WL 711955
(E.D. Ky. Mar. 5, 2025)

United States v. Cobix-Espinoza, 655 F. Supp. 3d 584
(E.D. Ky. 2023)

United States v. Martinez, 2025 WL 1295180 (N.D. Ohio
May 5, 2025)

United States v. Juarez-Morente, 2025 WL 950869
(W.D. Ky. Mar. 28, 2025)

United States v. White, 2021 WL 2155441 (M.D. Tenn.
May 27, 2021)

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Out of Circuit Authorities

United States v. Figueroa-Alvarez, 681 F. Supp. 3d
1131 (D. Idaho 2023)

United States v. Mejias-Mejias, --- F. Supp. 3d ---,
2025 WL 846435 (D. Md. Mar. 18, 2025)

United States v. Runsdorf, 2022 WL 303548 (S.D.
Fla. Jan. 24, 2022)

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109



110