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PRACTICE ADVISORY¹
Advising Non-Citizen Clients About Their Right to Protest

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Since the tragic murder of George Floyd by the Minneapolis police, mass demonstrations have taken place around the country to protest the gross, systemic injustices perpetrated by law enforcement against Black people in the United States. Thousands of people across the country have joined these demonstrations, often risking their safety and liberty to make their voices heard. Noncitizens face additional risks when participating in protests and demonstrations and are often forced to make a decision about whether or not to join an action without enough knowledge of those risks.

The purpose of this practice advisory is to assist immigration attorneys who are advising their clients regarding their decision to participate in a protest or demonstration by providing a checklist of issues to consider and address. While the decision rests with the client, it is important to provide information so they may make an informed decision about their choice to participate and so they may understand the consequences of participating as well as measures they can take to minimize their risks. The goal is not to scare clients with the worst-case scenario or convince them to take a particular course of action, but rather to provide them with accurate information about situations they may encounter and how their immigration status may be impacted.

This advisory focuses on risks particular to noncitizens and does not discuss general risks associated with participation in protests. Attorneys advising clients should also refer to general Know Your Rights advice on attending protests and the law of their jurisdictions.²

I. Conduct Research in Your Jurisdiction

The potential risks to noncitizens of participating in protests or demonstrations is generally highly specific to the jurisdiction where the action is occurring. Therefore, before advising a client, immigration attorneys should research the points below as applicable in their respective

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² National Lawyers Guild, Know Your Rights, available at <https://www.nlg.org/know-your-rights/>; ACLU, Know Your Rights – Protesters' Rights, available at <https://www.aclu.org/know-your-rights/protesters-rights/>; Scottie Andrew, *If You're Planning to Take Part in Protests, Know Your Rights. Read This.*, CNN (Jun, 3, 2020), available at <https://www.cnn.com/2020/06/02/us/how-to-protest-safely-know-your-rights-wellness-trnd/index.html>.

jurisdictions. This is not an exhaustive list and each client’s situation may prompt further inquiries, but this list highlights some of the most pertinent issues that may come up for noncitizens.³

- Identification laws. Determine whether your jurisdiction has stop-and-identify laws⁴ or if your client is required to carry identification under immigration laws.⁵ As explained below, if your client has some form of state, local, or student identification, they should generally carry it to protests. It is generally not advisable for noncitizens to bring with them any foreign ID or other forms of identification that reveal their immigration status, including work permits.
- Processing of a criminal case. Learn how a typical criminal case in your jurisdiction gets processed when someone has contact with law enforcement. This information will help you and your client understand and prepare for what may happen if your client comes into contact with law enforcement at a protest.
- Law enforcement presence at demonstrations. Determine what law enforcement agencies may be present at local protests and demonstrations and how they may interact with protesters. These agencies may include, among others, state and local police, state National Guard, federal security services, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), Federal Bureau of Information (FBI), and U.S. Marshals.
 - ICE and CBP officers have been deployed at recent demonstrations in various cities to assist federal, state, and local law enforcement.⁶ ICE’s list of “sensitive locations,” where enforcement actions are limited, include public demonstrations, such as a marches, rallies, or parades.⁷ However, it is unclear the degree to which ICE follows its own policies on sensitive locations, and also unclear whether ICE is carrying out immigration enforcement during or immediately following recent demonstrations.
- State and local law enforcement collaboration with ICE. Regardless of whether ICE has a presence at demonstrations in your jurisdiction, determine the extent of communication and collaboration between state and local police in your jurisdiction and ICE.⁸ Determine whether your state or local police department has 287(g) agreements with ICE, limits ICE

³ For more resources, visit [Law For Black Lives](#) (nationwide); [Immigrant Defense Project](#) (New York); [Immigrant Legal Resource Center](#) (California); and [National Lawyers Guild Local Chapters](#) (nationwide).

⁴ Stop-and-identify laws authorize law enforcement to order individuals who are suspected of committing a crime to identify themselves. Knowing whether your jurisdiction has stop-and-identify laws may help your clients know when they have the right to refuse to identify themselves or provide ID to law enforcement. See Immigrant Legal Resource Center, Stop and Identify Statutes in the United States (Feb. 1, 2018), available at https://www.ilrc.org/sites/default/files/resources/stop_identify_statutes_in_us-lg-20180201v3.pdf.

⁵ See e.g., INA 264(e) (requiring all lawful permanent resident (LPR) holders to have “at all times” official evidence of LPR status and making it a misdemeanor for failing to have your green card).

⁶ Jana Winter, *Exclusive: Leaked Document Reveals Details of Federal Law Enforcement Patrolling Washington Amid Protests*, Yahoo News (Jun. 5, 2020), available at <https://news.yahoo.com/exclusive-leaked-document-reveals-details-of-federal-law-enforcement-patrolling-washington-amid-protests-154138680.html>.

⁷ U.S. Immigration and Customs Enforcement, Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

⁸ See Immigrant Legal Resource Center, National Map of Local Entanglement with ICE (Nov. 13, 2019), available at <https://www.ilrc.org/local-enforcement-map>.

notifications or ICE holds, prohibits asking about immigration status, or generally prohibits assistance to ICE. This will help you evaluate whether your client has a higher risk of being transferred to ICE in case of an arrest.

- Immigration consequences of local offenses. Research offenses in your jurisdiction that may trigger immigration consequences for your client. Depending on whether the protest is taking place on federal, state, or local property, your client may face federal, state, or local charges. Common offenses charged in protests vary by jurisdiction.⁹ These include, but are not limited to, disorderly conduct, civil disobedience, unlawful assembly, failure to disperse, obstruction of a police officer, resisting arrest, or assault. Be sure to check any stay-at-home orders or curfews in place in your locality and any potential charges resulting from violations. Note the possible immigration consequences for your particular client of the common charges in your jurisdiction, including whether they trigger any bars from relief, mandatory detention or deportation, or delays in relief.¹⁰ For example, some offenses may be considered aggravated felonies or crimes involving moral turpitude, preventing individuals from being granted certain forms of relief. Others may prevent establishing the good moral character requirement, potentially delaying the filing of a benefits application.
 - In 2017, Donald Trump signed an Executive Order requiring DHS to consider those who “[h]ave been charged with any criminal offense, where such charge has not been resolved” or who “[h]ave committed acts that constitute a chargeable criminal offense” as priorities for enforcement.¹¹ Therefore, noncitizens may be at increased risk of deportation if they are charged with offenses, even if those charges are later dropped. Despite this Executive Order, you should independently determine potential ways to resolve charges in your jurisdiction that would reduce immigration consequences for your client.
- Support networks for protesters. If necessary, identify any support networks in your jurisdiction that may be willing to provide additional support to your client in case of an arrest, including bail funds¹² and immediate legal support hotlines.¹³

⁹ Local news organizations have analyzed jail data and are reporting on common offenses that protesters are being charged with in their respective localities. See e.g., Ceili Doyle, Holly Zachariah & John Fuddy, *Those Arrested During Columbus Protests Were Mostly Local Residents*, Columbus Dispatch (Jun. 3, 2020), available at <https://www.dispatch.com/news/20200603/those-arrested-during-columbus-protests-were-mostly-local-residents>; Caitlin Johnson, *Here’s How Police Are Charging Protesters, When They’re Charging Them At All*, Tampa Bay Times (Jun. 5, 2020), available at <https://www.tampabay.com/news/crime/2020/06/05/heres-how-police-are-charging-protesters-when-theyre-charging-them-at-all/>.

¹⁰ See Immigrant Defense Project, *Immigration Consequences of Crimes Summary Checklist* (Jun. 2017), available at <https://www.immigrantdefenseproject.org/wp-content/uploads/Imm-Consq-checklist-2017-v3.pdf>.

¹¹ Executive Order: Enhancing Public Safety in the Interior of the United States (Jan. 25, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

¹² For a list of verified bail funds compiled by the Movement For Black Lives, visit: <https://docs.google.com/document/d/1DLzLgMjIHA7NoQiumnyzYf0c4AnCma8Vp68IIQUO9eg/edit>.

¹³ Local National Lawyers Guild chapters operate Legal Support Hotlines, which can provide support to protesters who are arrested. See National Lawyers Guild, *Mass Defense Program*, available at <https://www.nlg.org/massdefenseprogram/>.

II. Advise Your Client

The vast majority of people who attend actions and do not participate in civil disobedience are able to avoid law enforcement contact. If your clients wish to participate, they may be able to utilize strategies that lower their risk of questioning or arrest by law enforcement.¹⁴ However, the risk of potential contact with law enforcement at an action cannot be eliminated, especially for immigrants of color and particularly for Black immigrants.

Therefore, in addition to providing resources and strategies to clients about how to lower their risk of law enforcement contact, it is important to inform clients how a potential arrest at a protest may impact their immigration status. Although it is usually unlikely that your client will be questioned or arrested if they are participating in a peaceful demonstration, especially if they are taking precautions, they should still be aware of the risks. You should aim to provide a realistic assessment of the risks based on your research and your client's particular circumstances. For instance, someone who is an LPR holder has a different risk profile than someone who is in removal proceedings or who has no authorized status. Being arrested does not necessarily mean that a person's immigration status is automatically in jeopardy, and many noncitizens have interactions with police and still retain their status.

You should provide general information to your clients about their rights during demonstrations and practical information to ensure that they are empowered while participating. While there is a lot of general strategy and Know Your Rights information for citizens participating in actions,¹⁵ it is important to convey the following points to your noncitizen clients:

- Everyone, including noncitizens, has a right to remain silent when interacting with police. Noncitizens arrested at a protest usually should not disclose their immigration status, their birth country, or how they entered the country. They should not falsely claim U.S. citizenship or provide fake documents. Noncitizens can carry an ILRC red card and show it to law enforcement if they are questioned or arrested.¹⁶
 - The Department of Justice announced on May 31, 2020 that they will deploy FBI Joint Terrorism Task Forces (JTTF) to investigate “violence instigated and carried out by Antifa and other similar groups” in recent demonstrations.¹⁷ There have been reports of FBI interrogating individuals about their political beliefs at these demonstrations.¹⁸ It is important to advise your client about their right to remain

¹⁴ Louryn Strampe & Lauren Goode, *How to Protest Safely: What to Bring, What to Do, and What to Avoid*, Wired (Jun. 2, 2020), available at <https://www.wired.com/story/how-to-protest-safely-gear-tips/>.

¹⁵ *Id.*; *supra* note 2.

¹⁶ Immigrant Legal Resource Center, Red Cards, available at <https://www.ilrc.org/red-cards>.

¹⁷ Press Release, Office of Public Affairs, Department of Justice, Attorney General William P. Barr's Statement on Riots and Domestic Terrorism (May 31, 2020), available at <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>.

¹⁸ Ryan Devereaux, *Brooklyn Man Was Arrested For Curfew Violation. The FBI Interrogated Him About His Political Beliefs.*, The Intercept (Jun. 4, 2020), available at <https://theintercept.com/2020/06/04/fbi-nypd-political-spying-antifa-protests/>.

silent as answering such questions may subject them to criminal charges and/or immigration consequences.

- It is generally not advisable for most noncitizens to carry any foreign ID card or any other document that would show that they are a noncitizen at a protest. Instead, they should carry state, local, or student identification if they have it. In some circumstances, noncitizens may be required to show identification to law enforcement when asked.¹⁹ However, showing immigration identification may alert law enforcement to a noncitizen's status. Whether or not to carry identification to a protest is an individual decision that your client has to make, but you should make sure your client is aware of all the applicable requirements and risks.
- Noncitizens attending protests should take digital privacy precautions in advance.²⁰ It may be best to leave cell phones at home given that the police may confiscate them and try to search for incriminating evidence. However, if your client needs to bring their phone, it is strongly recommended that they turn off fingerprint or Face-ID unlock features, add a strong password, and turn off location tracking, Bluetooth, and Wi-Fi.
- Noncitizens attending protests should make sure they have contact information for their immigration attorney, an emergency contact, and any support networks they may need to contact urgently at the demonstration.
- Noncitizens should take significant precautions and learn about the possible consequences of posting about the action on social media, even after it is over. Social media activity may be monitored and may draw the attention of immigration enforcement authorities.²¹

As a general matter, it is important to walk through various scenarios with your noncitizen client, explain possible immigration consequences or risks resulting from those scenarios, and provide strategies they can utilize to mitigate their risks. These scenarios could include, for example, a police officer stopping your client while they are marching and asking about their immigration status, a police officer detaining your client in the field and asking for identification, and a police officer arresting your client and taking them to a precinct.

III. If Your Client Decides to Participate

If your noncitizen client decides to participate in a demonstration, you should ensure that you are available by phone or provide your client with a referral to another attorney who will be on call if your client needs to reach an immigration attorney urgently during the action. Some organizations provide hotlines or lists of legal service providers that you may be able to point your client to if you are not able to be on call at the time of the protest.

¹⁹ See *supra*, notes 4-5.

²⁰ United We Dream, *Top 6 Digital Safety Tips for Undocu Folks* (Jun. 2, 2020), available at <https://unitedwedream.org/2020/06/top-6-digital-security-tips-for-undocu-folks/>.

²¹ National Immigration Project of the National Lawyers Guild & Research Action Design, *Community Advisory: Social Media, Criminalization, and Immigration* (Apr. 3, 2017), available at https://www.nationalimmigrationproject.org/PDFs/community/2017_03Apr_comm-adv-social.pdf.

If your noncitizen client is charged with an offense and has a criminal defense attorney, you should make sure your client is aware that the defense attorney should consult with you or another immigration expert before they negotiate with the prosecutor on their behalf or go before a judge.

If your noncitizen client is mistreated by the police and/or arrested, you should emphasize the importance of gathering the details of the event while it is still fresh. When speaking with your client, keep in mind that this may have been a highly traumatic experience. Screen the facts for any instances of police misconduct, including police using excessive force or making racist comments, and consider potential litigation or referring your client to another attorney or to a civil rights organization like the National Immigration Project.

If relevant, submit a new FOIA request to ICE regarding your client as there has been increased monitoring and surveilling of protesters in recent years.

IV. Conclusion

At this critical moment of uprising and resistance, communities across this nation and around the world are standing up in solidarity with Black people in this country. Our role as attorneys is to make sure people have what they need to make an informed choice and take advance measures to be adequately prepared. While there are risks for anyone attending a demonstration or participating in civil disobedience, noncitizens face additional risks related to their immigration status that they should be aware of when deciding whether to participate in an action. As attorneys, we can help empower our clients with the knowledge they need to make an informed decision and to support them if they decide to participate.

Please contact Amber Qureshi at aqureshi@nipnlg.org with any questions about this practice advisory, requests for technical assistance, or if you need any further information.