

**MOTIONS TO SUPPRESS:  
PROTECTING THE CONSTITUTIONAL RIGHTS OF IMMIGRANTS IN  
REMOVAL PROCEEDINGS  
4<sup>TH</sup> EDITION**

**TABLE OF CONTENTS**

<b>Chapter 1</b>	<b>Introduction</b>	
§ 1.1	Introduction .....	1-1
§ 1.2	Recent Immigration Enforcement Policy Changes .....	1-3
§ 1.3	Background of Immigration Enforcement Operations .....	1-4
§ 1.4	Why Motions to Suppress & Other Legal Challenges Are Important to Combat Unlawful Immigration Enforcement.....	1-7
§ 1.5	Contents of This Manual .....	1-8
<b>Chapter 2</b>	<b>Law and Theory in Support of Motions to Suppress in Removal Proceedings</b>	
§ 2.1	Overview of the Chapter .....	2-1
§ 2.2	Questioning and Types of “Stops” of Immigrants .....	2-5
§ 2.3	Identifying a Seizure in the Immigration Context.....	2-7
§ 2.4	Was the Seizure an Arrest? .....	2-14
§ 2.5	The Warrant Requirement in Immigration Arrests .....	2-18
§ 2.6	Searches and Search Warrants .....	2-20
§ 2.7	Was the Fourth Amendment Violation Egregious?.....	2-24
§ 2.8	Was the Violation Widespread?.....	2-30
§ 2.9	Evidence Obtained in Violation of Due Process .....	2-30
§ 2.10	Right to Remain Silent .....	2-33
§ 2.11	Due Process Rights Secured by Regulations.....	2-34
§ 2.12	Warrantless Arrests: Examination and Notifications under 8 CFR § 287.3 .....	2-36
§ 2.13	Consulting with a Consulate.....	2-38
§ 2.14	Interrogations and Agency Conduct during Stops and Arrests .....	2-39
§ 2.15	Conclusion.....	2-40
<b>Chapter 3</b>	<b>Applications of the Law for Immigrants</b>	
§ 3.1	Introduction and Overview of This Chapter.....	3-1
§ 3.2	ICE Collaboration with State and Local Law Enforcement Agencies .....	3-1
§ 3.3	Secure Communities and Policy Changes in Local Enforcement .....	3-3
§ 3.4	The Priority Enforcement Program and Return to Secure Communities .....	3-4
§ 3.5	Current Authority of Local Police to Make Immigration Stops.....	3-6
§ 3.6	The Fourth Amendment in Context.....	3-8
§ 3.7	The Warrant Requirement in Immigration Arrests and Searches.....	3-9
§ 3.8	Rights in the Home and Other Private Places .....	3-13
§ 3.9	Rights in Public Places .....	3-17
§ 3.10	Rights in Schools and Places of Worship.....	3-17
§ 3.11	Arrests Based on Race or Ethnic Appearance.....	3-19

§ 3.12	Workplace Raids .....	3-21
§ 3.13	Rights in Automobiles.....	3-24
§ 3.14	Rights at the Border.....	3-27
§ 3.15	Rights at Border Equivalents.....	3-31
§ 3.16	The REAL ID ACT and Drivers Licenses .....	3-35
§ 3.17	“Stop and Identify” Statutes .....	3-36
<b>Chapter 4</b>	<b>Immigration Detainer Abuses and Actions of Local Law Enforcement Agents</b>	
§ 4.1	Introduction .....	4-1
§ 4.2	Local Police and Immigration Enforcement.....	4-2
§ 4.3	The Changing Contours of Immigration Detainers .....	4-3
§ 4.4	Fourth Amendment Violations.....	4-6
§ 4.5	Due Process Violations .....	4-11
§ 4.6	Lingering Issues in Detainer Regulations.....	4-13
§ 4.7	Other Forms of Collaboration to Watch Out For .....	4-15
<b>Chapter 5</b>	<b>Procedure for Filing and Litigating a Motion to Suppress in a Removal Proceeding</b>	
§ 5.1	Introduction .....	5-1
§ 5.2	Initiation of Removal Proceedings, Initial Client Interview, and Preparation for the Master Calendar Hearing.....	5-2
§ 5.3	The Master Calendar Hearing: Denying the Charges in the Notice to Appear and Filing the Motion to Suppress.....	5-5
§ 5.4	Preparing the Motion to Suppress and Terminate .....	5-8
§ 5.5	Service of the Motion to Suppress .....	5-10
§ 5.6	Evidentiary Hearing on the Motion to Suppress .....	5-11
§ 5.7	Notice of Appeal to the BIA within 30 Days of the IJ Decision Denying Suppression of Evidence .....	5-13
<b>Chapter 6</b>	<b>Litigation beyond Immigration Court and Discovery</b>	
§ 6.1	Introduction .....	6-1
§ 6.2	The Need for Records from Government Agencies .....	6-3
§ 6.3	State Open Records Laws.....	6-3
§ 6.4	Freedom of Information Act.....	6-4
§ 6.5	Who May Request Records and What May Be Requested .....	6-6
§ 6.6	An Agency’s Obligation to Respond.....	6-9
§ 6.7	Conducting a Reasonable Search for Records.....	6-11
§ 6.8	Agency Denials of FOIA Requests and Appeals Procedures.....	6-13
§ 6.9	Introduction to Litigation Options.....	6-17
§ 6.10	Section 1983 Actions against State or Local Agents.....	6-18
§ 6.11	<i>Bivens</i> Actions against Federal Agents .....	6-19
§ 6.12	<i>Monell</i> Actions against Local Governments .....	6-23
§ 6.13	Actions under the Federal Tort Claims Act.....	6-25
§ 6.14	Introduction to <i>Habeas Corpus</i> Petitions .....	6-28

§ 6.15	Federal <i>Habeas Corpus</i> .....	6-29
§ 6.16	State <i>Habeas Corpus</i> .....	6-30

**Chapter 7      Immigration Detention**

§ 7.1	Introduction .....	7-1
§ 7.2	Background on Immigration Detention.....	7-2
§ 7.3	Family Detention.....	7-3
§ 7.4	Children and Youth in Immigration Detention .....	7-4
§ 7.5	Select Ongoing Problems with Detention Conditions.....	7-5
§ 7.6	Detention Standards .....	7-7
§ 7.7	Additional Detention Guidelines.....	7-10
§ 7.8	Implementation and Enforcement of Detention Standards .....	7-11
§ 7.9	Rights When Arrested for an Immigration Violation.....	7-13
§ 7.10	Right to Legal Representation.....	7-14
§ 7.11	Rights in Immigration Detention.....	7-17
§ 7.12	Release on an Order of Recognizance (ROR).....	7-18
§ 7.13	Release on Bond.....	7-19
§ 7.14	Mandatory and Prolonged Detention .....	7-27
§ 7.15	Alternatives to Detention.....	7-34

**Chapter 8      Administrative Complaints**

§ 8.1	Overview .....	8-1
§ 8.2	Administrative Complaints.....	8-2
§ 8.3	Department of Homeland Security (DHS) Complaint Procedures.....	8-3
§ 8.4	Department of Justice (DOJ) Complaint Procedures .....	8-10
§ 8.5	Filing Discrimination Complaints with Other Federal Administrative Complaint Bodies.....	8-13
§ 8.6	Summary of Complaint Procedures .....	8-13

**Appendix**

Appendix A	New Immigration Detainer Form I-247A
Appendix B	Immigration Detainer Forms from 2015; 2012; 2011, 2010, 1997, and 1983
Appendix C	Sample Notice to Appear (NTA)
Appendix D	Sample Intake Form, Including Questions Relating to Motions to Suppress
Appendix E	Sample Form I-213, Record of Deportable Alien
Appendix F	Sample Motion to Suppress, Covering 4th and 5th Amendment Arguments, Including an Argument on Widespread 4th Amendment Violations
Appendix G	Sample Motion to Suppress from the Stanford Immigrant Rights Clinic
Appendix H	Sample Motion to Suppress and Motion for Discovery
Appendix I	Sample Motion to Terminate

Appendix J	Sample Brief in Support of Motion to Suppress and Terminate: ICE Home Raid
Appendix K	Sample Brief in Support of Motion to Suppress and Terminate: Local Law Enforcement and ICE
Appendix L	Sample Brief in Support of Motion to Suppress and Terminate: Local Police and ICE
Appendix M	Three Sample IJ Orders Granting Suppression Hearings
Appendix N	Chart of State Stop-and-Identify Statutes
Appendix O	BIA Appeals: Sample BIA Brief and Decision
Appendix P	Examples of Local Policies against ICE Detainers: Philadelphia, PA; Riverside County, CA; King County, WA; San Francisco, CA; Fulton County, AL; Cook County, IL
Appendix Q	August 10, 2011 Letter from ICE Field Office Director, Thomas Decker, Regarding the 48-Hour Hold Policy
Appendix R	Sample Community Letter of Concern about Local Jail Cooperation with ICE, Monterey, CA, October 2015
Appendix S	Government’s Interrogatory Responses Re: ICE Detainer Policy, <i>Moreno v. Napolitano</i> , No. 1:11-cv-5452 (N.D. Ill. filed Aug. 11, 2011)
Appendix T	Sample Motion to Suppress Addressing Verbal Hold Requests
Appendix U	Chart of State Open Record Laws
Appendix V	Lawsuit for FOIA Compliance
Appendix W	Sample Complaint and Motion for Summary Dismissal for Constitutional Violations, under Sections 1981 and 1983
Appendix X	Sample FTCA Claims
Appendix Y	Sample Brief for a Discovery Violation: Requiring ICE to Release Documents
Appendix Z	Chart of State Habeas Corpus Statutes
Appendix AA	Sample Habeas Petition and TRO Motion
Appendix BB	Sample Habeas Case Materials: Petition
Appendix CC	Sample Habeas Case Materials: Transcript
Appendix DD	Sample Habeas Case Materials: Order
Appendix EE	Sample Bond Worksheet
Appendix FF	ICE Custody Determination Form
Appendix GG	ICE Amended Medical Escort Policy