


Noncitizen Defendants and Conditions of Pretrial Release


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Objective

- Understanding how to treat noncitizen defendants in bond proceedings



Is your job different when the defendant is a noncitizen?

- Follow same procedures for noncitizens
- Practical challenges
 - Language issues: make sure D understands rights
 - Possible ID issues



Limited English proficient defendants

- use AOC phone interpretation to ensure that D understands proceedings & his rights
- Problems/questions?
 - contact Brooke Bogue, AOC Interpreting Services
 - tel: 919.890.1213
 - email: brooke.a.bogue@nccourts.org

What if defendant refuses to identify himself?

- Follow written, local procedure
- Hold initial appearance within reasonable time -- that is, allow reasonable time for officer to investigate and verify identity
- Set ID as condition of pretrial release *or* set bond factoring in lack of ID

How to determine identity of noncitizen?

- Written forms of ID
 - No legal requirement that it be state-issued
 - Immigration/travel docs
 - School records, pay stubs, utility bills, etc.
- Non-written forms
 - Responsible member of community vouching for D

Inquiring about immigration status

1. Are you required to inquire about D's immigration status under federal law?
 - No
2. May you inquire?
 - Yes

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***Should* you inquire?**

- Magistrates/judges should stay away from that line of questioning
- May be custodial interrogation when you question unrepresented D about potential immigration crimes
- Let law enforcement determine legal status

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What if D does not appear to have lawful immigration status?

- ***Cannot deny pretrial conditions***
 - GS 15A-533(b): can only deny conditions in limited situations, this is not one of them
 - GS 162-62 - lack of legal status is not a basis for denying bond
- Can consider lack of legal status as a *factor* in setting conditions (may go to flight risk)

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Effect of ICE hold on bond determination

- Still must set conditions of release
- May be factor in determining whether D is flight risk
- What if you learn that ICE is *considering* placing a hold on D?
 - Must still set conditions of release, but can be a factor in determining bond
 - No legal authority to hold D, as in case of extradition warrant

Magistrates in counties with 287(g)

- Agreements between jails and ICE, not magistrates
- Magistrates are not immigration or law enforcement officers

Permanent resident card (Green Card), Form I-551



Resident alien card (old version of green card)



Unexpired foreign passport



Arrival-Departure Record, Form I-94



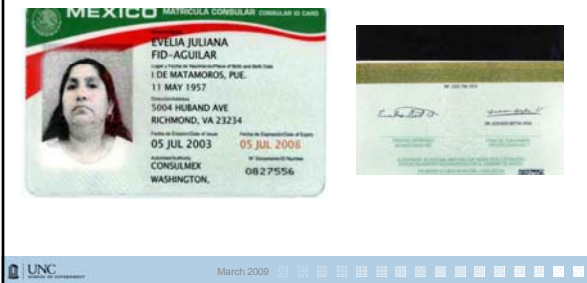
Employment authorization card I-766



Employment authorization card I-688B



Matrícula Consular



What is the Matrícula Consular (consular registration)?

- Official record for Mexican nationals living abroad
- Issued by Mexican consulate & considered *high security* document
- Accepted by some police dep'ts, banks, cities, & emergency rooms in many states
- Accepted by NC DMV to establish residency



Comments or Questions?

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