

**IMMIGRANT & NON-CITIZEN  
RIGHTS CLINIC**

**| MAIN STREET  
LEGAL SERVICES**

**CUNY SCHOOL OF LAW**

# **Toolkit to Challenge Gang Allegations against Immigrant New Yorkers**

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2019**

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# Introduction

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The City University of New York (CUNY) School of Law's Immigrant and Non-Citizen Rights Clinic (INRC) has created a web-based Toolkit to help challenge gang allegations against immigrant New Yorkers, particularly those vulnerable to aggressive enforcement efforts on Long Island.

*Toolkit to Challenge Gang Allegations against Immigrant New Yorkers* ("Toolkit") contains *pro se* materials and practice guides for immigration practitioners that can be used to assist individuals facing gang allegations in proceedings before immigration court, when submitting applications to USCIS, and in schools.

The Toolkit is compilation of resources aimed at preventing and protecting against gang allegations, challenging and defending against gang allegations in immigration proceedings, and documenting the unreliability of gang allegations and aggressive police practices.

**To access the complete and current web-based *Toolkit to Challenge Gang Allegations against Immigrant New Yorkers*, please visit our website at: <http://bit.ly/CUNY-Law-INRC-Toolkit>.**

# Toolkit Highlights

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## **Swept Up in the Sweep: Impact of Gang Allegations on Immigrant New Yorkers**

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Published in May 2018, [\*Swept Up in the Sweep: The Impact of Gang Allegations on Immigrant New Yorkers\*](#) is a report that examines and documents how the government uses overbroad gang allegations to deport and detain Latinx communities in New York State. Through an extensive field study, the report shows how Immigration and Customs Enforcement (ICE), with other federal agencies and law enforcement, uses arbitrary methods to profile immigrant youth of color to allege gang affiliation. The report was written in collaboration with the Immigrant and Non-Citizen Rights Clinic (INRC) at the CUNY School of Law and the New York Immigration Coalition (NYIC).



## **Strategies For Suppression or Termination in the “Gang-Related” Immigration Enforcement Context**

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Published in June 2019, [\*Strategies For Suppression or Termination in the “Gang-Related” Immigration Enforcement Context\*](#) is a practice note to help practitioners move to terminate removal proceedings by motion to suppress due to egregious or widespread Fourth Amendment violations or due to regulatory violations arising out of “gang-related” enforcement. This practice note was written by the Immigrant and Non-Citizen Rights Clinic (INRC) at the CUNY School of Law.

# Toolkit Highlights

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## **Guide to Completing U.S. Citizenship and Immigration Services (USCIS) Forms in the Gang Allegations Context**

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Published in June 2019, [\*Guide to Completing U.S. Citizenship and Immigration Services \(USCIS\) Forms in the Gang Allegations Context\*](#) is a guide to filling out common immigration applications addressing where gang allegations may arise in USCIS adjudications and where to exercise caution when applying for discretionary immigration relief before USCIS. This guide was written by the Immigrant and Non-Citizen Rights Clinic (INRC) at the CUNY School of Law.



## **Evidentiary Objections to Challenge Commonly Introduced Evidence Used in Support of Gang Allegations**

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Published in July 2019, [\*Evidentiary Objections to Challenge Commonly Introduced Evidence Used in Support of Gang Allegations\*](#) is a practice note containing tips and strategies for raising evidentiary objections when DHS introduces evidence to support gang allegations in immigration proceedings. This practice note was written by the Immigrant and Non-Citizen Rights Clinic (INRC) at the CUNY School of Law.



## **Long Island Directed Referral List**

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The [\*Long Island Directed Referral List \(English\)\*](#) | [\*\(Spanish\)\*](#) is a list of legal and community organizations in New York serving Long Island residents that may be useful for individuals facing gang allegations. It includes immigrant rights, students and youth advocacy, public defense, legal services, and various community support organizations.

# I. Preventing & Protecting against Gang Allegations

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This section includes guides, know your rights materials, template letters, and other practice-oriented materials related to preventing and protecting against gang allegations, particularly in the immigration context.

## Filling out Immigration Forms

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1. CUNY School of Law, INRC, [\*Guide to Completing U.S. Citizenship and Immigration Services \(USCIS\) Forms in the Gang Allegations Context\*](#) (2019).
2. Nikki Marquez & Melissa Rodgers, [\*The N-400, Application for Naturalization: A Step-by-Step Guide to Completing the New Naturalization Application\*](#), Immigrant Legal Resource Center (2017).
3. Immigrant Defense Project (IDP), [\*Advisory for Lawyers: Naturalization Considerations for People with Prior Law Enforcement Contacts\*](#) (2017).

## Sensitive Locations

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4. Catholic Legal Immigration Network, Inc. (CLINIC), [\*DHS Sensitive Locations Policy\*](#) (2018).
5. Immigrant Defense Project (IDP), [\*The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018\*](#) (2019).
6. ICE Out of Courts Coalition, [\*Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State\*](#) (2019).
7. Immigrant Defense Project (IDP), Various Resources, [\*ICE Out of Courts New York State Campaign\*](#) (2019), <https://www.immigrantdefenseproject.org/ice-courts-nys>.

# I. Preventing & Protecting against Gang Allegations

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## Schools

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8. CUNY School of Law, INRC, [Template Letter for Students and Parents to Give to Schools Regarding Rights with Police in Schools](#) (2019). [Spanish](#) | [English](#)
9. CUNY School of Law, INRC, [Template Letter for Students and Parents to Give to Schools Regarding Rights during Enrollment and Registration](#) (2019). [Spanish](#) | [English](#)
10. CUNY School of Law, INRC, [Know Your Rights When Interacting With Law Enforcement at Home, on the Streets, or in Schools](#) (2019). [Spanish](#) | [English](#)
11. CUNY School of Law, INRC, [My School Thinks I Am in a Gang](#) (2019). [Spanish](#) | [English](#)
12. New York Civil Liberties Union, Palm Card, [Know Your Rights with Police in Schools](#) (2011).
13. New York Civil Liberties Union, [Know Your Rights When Facing a Suspension](#) (2015).
14. Long Island Advocacy Center (LIAC), [Student Suspension LIAC Fact Sheet](#).
15. Long Island Advocacy Center (LIAC), [Links/Law/Info](#) <http://www.theliac.org/links--laws-info.html>.
16. [New York State Education Department FOIL Requests](#), <http://www.nysed.gov/new-york-state-education-department-foil-requests>.
17. [Select Gang-Related School Suspension Decision](#), Appeal of LL, Decision No. 15,835 (Oct. 1, 2008) (“a student’s mere reference to MS-13, without more, does not constitute an ‘activity, affiliation and/or communication in connection with a ... gang.’”).

# I. Preventing & Protecting against Gang Allegations

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## Home Raids and Community Arrests

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18. Immigrant Defense Project (IDP) & Center for Constitutional Rights (CCR), [\*ICE Raids Toolkit, Defend against ICE Raids and Community Arrests: A Toolkit to Prepare and Protect Our Communities\*](#) (last updated July 2019).
19. Immigrant Defense Project (IDP), [\*Know Your Rights with ICE\*](#) (2018).
20. CASA, *Know Your Rights: Learn How to Protect Yourself and Your Family* (2017).  
[\*Spanish\*](#) | [\*English\*](#)
21. American Civil Liberties Union, [\*What to do if you are an Immigrant Stopped by Law Enforcement Agents.\*](#)
22. Immigrant Defense Project (IDP), [\*ICEwatch: ICE Raids Tactics Map\*](#) (2018).



# II. Challenging & Defending against Gang Allegations

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This section includes materials specific to challenging and defending against gang allegations in immigration proceedings.

## Challenging “Gang-Related” Evidence and Raising Objections

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23. CUNY School of Law, INRC, [\*Evidentiary Objections to Challenge Commonly Introduced Evidence Used in Support of Gang Allegations\*](#) (2019).
24. Hon. Dorothy Harbeck, [\*Objections in Immigration Court: Dost Thou Protest Too Much or Too Little?\*](#), 5 Stetson J. Advoc. & L. 1 (2018).
25. Immigrant Defense Project (IDP), Practice Note, [\*Challenging Evidence of Gang-Related Activity at Immigration Court Bond Hearings\*](#) (2017).
26. Simon Azar-Farr, [\*A Synopsis of the Rules of Evidence in Immigration Removal Proceedings\*](#) (2014).

## Practice Advisories, Sample Motions & Court Documents

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27. CUNY School of Law, INRC, Practice Note, [\*Strategies for Suppression or Termination in the “Gang-Related” Immigration Enforcement Context\*](#) (2019).
28. American Immigration Council, Practice Advisory, [\*Motions to Suppress in Removal Proceedings: A General Overview\*](#) (2017).
29. CUNY School of Law, INRC, [\*Sample Amici Curiae Brief of Immigration Law Professors and Scholars\*](#), (Nov. 7, 2018).

# II. Challenging & Defending against Gang Allegations

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## Practice Advisories, Sample Motions & Court Documents (Continued)

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30. Decision, [\*Flores Zabaleta v. Nielsen\*, No. 17 Civ. 7512](#) (S.D.N.Y. Mar. 20, 2019).
31. Decision, [\*R.F.M. et al. v. Nielsen\*, No. 18 Civ. 5068, 2019 WL 1219425](#) (S.D.N.Y. Mar. 15, 2019).
32. Decision, [\*Reversing Bond Denial in Gang Allegations Case - Redetermination of Custody Status\*](#) (BIA Dec. 17, 2018).
33. Decision, [\*People ex. Rel. Wells o.b.o. Francis v. DeMarco\*](#), 2018 NY Slip Op 07740, 2018 WL 5931308 (2d Dep't 2018) (holding that New York law does not permit New York state and local officers to effectuate civil immigration arrests).  
[NYCLU Francis Decision Practice Advisory](#)  
[NYCLU Francis Decision One Pager \(English\)](#)  
[NYCLU Francis Decision One Pager \(Spanish\)](#)
34. NYIC, [NYIC Submits FOIA for Operation Matador](#) (Nov. 27, 2017).  
[NYIC FOIA Request CBP](#) – Operation Matador  
[NYIC FOIA Request ICE](#) – Operation Matador  
[NYIC FOIA Request USCIS](#) – Operation Matador  
[NYIC FOIL Request NCPD](#) – Operation Matador  
[NYIC FOIL Request NYPD](#) – Operation Matador  
[NYIC FOIL Request SCPD](#) – Operation Matador
35. [Sample Intel Gang Memos](#), Oct. 18, 2018, Aug. 1, 2017, July 5, 2017, June 16, 2017, Mar. 28, 2017.

# II. Challenging & Defending against Gang Allegations

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## Other Guides

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36. Rebecca Scholtz & Michelle Mendez, [\*Practitioner's Guide: Obtaining Release from Immigration Detention\*](#) (2018).
37. Make the Road New York (MRNY), [\*Deportation Defense Manual\*](#) (2017).
38. Catholic Legal Immigration Network, Inc. (CLINIC), [\*Rapid Response Toolkit\*](#) (July 2019).

# III. Unreliability of Gang Allegations & Aggressive Police Practices

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This section includes reports and other materials on the impact of gang allegations on immigration outcomes, the ineffectiveness of gang databases, and aggressive policing. It includes overarching, national, and New York metropolitan area-specific materials. These resources may be useful for practitioners seeking to educate themselves, judges, or the public. These resources can also be used as evidentiary exhibits in immigration court proceedings.

## Understanding Gang Allegations against Immigrants

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39. CUNY School of Law, INRC & New York Immigration Coalition (NYIC), [\*Swept Up in the Sweep: The Impact of Gang Allegations on Immigrant New Yorkers\*](#) (2018).
40. New York Civil Liberties Union (NYCLU) & New York Immigration Coalition (NYIC), [\*Stuck with Suspicion: How Vague Gang Allegations Impact Relief and Bond for Immigrant New Yorkers\*](#) (2019).
41. Immigrant Legal Resource Center, [\*Practice Advisory April 2017: Understanding Allegations of Gang Membership/Affiliation in Immigration Cases\*](#) (2017).
42. Laila L. Hlass & Rachel Prandini, Immigrant Legal Resource Center (ILRC), [\*Deportation by Any Means Necessary: How Immigration Officials are Labeling Immigrant Youth as Gang Members\*](#) (2018).

# III. Unreliability of Gang Allegations & Aggressive Police Practices

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## Gang Allegations in Schools

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43. Nikki Marquez & Rachel Prandini, [\*Fact Sheet, The School to Prison to Deportation Pipeline: The Relationship between School Delinquency and Deportation Explained\*](#) (2018).
44. Laila L. Hlass, [\*The School to Deportation Pipeline\*](#), 34 Ga. St. U. L. Rev. 697 (2018).
45. The New York Equity Coalition, [\*Stolen Time: New York State's Suspension Crisis\*](#) (2018).

## Unreliability of Gang Databases & Gang Policing Efforts

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46. Babe Howell, [\*Prosecutorial Misconduct: Mass Gang Indictments and Inflammatory Statements\*](#), 123 Dick. L. Rev. 691 (2019).
47. Babe Howell & Priscilla Bustamante, [\*Report on the Bronx 120 Mass "Gang" Prosecution\*](#) (2019), <https://bronx120.report>.
48. Keegan Stephan, Note, [\*Conspiracy: Contemporary Gang Policing and Prosecutions\*](#), 40 Cardozo L. Rev. 991 (2018).
49. Katherine Conway, Note, [\*Fundamentally Unfair: Databases, Deportation and the Crimmigrant Gang Member\*](#), 67 Am. U. L. Rev. 269 (2017).
50. National Immigration Law Center, [\*Untangling the Immigration Enforcement Web: Basic Information for Advocates about Databases and Information-Sharing among Federal, State, and Local Agencies\*](#) (2017).

# III. Unreliability of Gang Allegations & Aggressive Police Practices

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## Unreliability of Gang Databases & Gang Policing Efforts (Continued)

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51. Rebecca A. Hufstader, Note, [\*Immigration Reliance on Gang Databases: Unchecked Discretion and Undesirable Consequences\*](#), 90 N.Y.U. L. Rev. 671 (2015).
52. Babe Howell, [\*Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing\*](#), 5 Univ. Denver Crim. L. Rev. 1 (2015).
53. Kevin Lapp, [\*Databasing Delinquency\*](#), 67 Hastings L. J. 195 (2015).
54. Babe Howell, [\*Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention\*](#), 23 St. Thomas L. Rev. 620 (2011).
55. Alice Speri, [\*NYPD Gang Database Can Turn Unsuspecting New Yorkers into Instant Felons\*](#), Intercept (Dec. 5, 2018).
56. Melissa del Bosque, [\*Immigration Officials Use Secretive Gang Databases to Deny Migrant Asylum Claims\*](#), ProPublica (July 8, 2019).

# Acknowledgments

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*Toolkit to Challenge Gang Allegations against Immigrant New Yorkers* is the outgrowth of generations of advocacy by City University of New York (CUNY) School of Law's Immigrant and Non-Citizen Rights Clinic (INRC) law students, faculty, and staff on behalf of marginalized populations long subjected to discriminatory law enforcement surveillance, racial, ethnic, and religious profiling, and labeling as suspect communities. The result is this web-based Toolkit to help challenge gang allegations against immigrant New Yorkers, particularly those vulnerable to discriminatory gang policing in Long Island.

We thank the immigrant communities of Long Island and the attorneys who serve them for the inspiration for this work.

## **Authors and Researchers**

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