

IMMIGRATION ENFORCEMENT AT COURTHOUSES

A RESOURCE FOR ATTORNEYS

LAST REVISED JULY 1, 2018



Immigration and Customs Enforcement agents have been arresting individuals who appear at local courthouses for criminal or civil matters and those who are merely accessing court services. This advisory provides guidance for attorneys whose clients may be affected by immigration enforcement at courthouses.

ICE's New Policy Regarding Courthouse Enforcement

In early 2018, ICE issued a new policy regarding its enforcement in “sensitive locations” by providing some guidance as to when ICE agents will engage in enforcement actions (“immigration arrests”) in courthouses. It noted that ICE “should generally avoid enforcement actions” in and near non-criminal court proceedings and will not arrest witnesses or family members “absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE’s enforcement actions.”

Immigrants falling in the following categories are subject to enforcement action inside the courthouse if they:

- have criminal convictions;
- are perceived by law enforcement to be gang members;
- are considered to be national security or public safety threats;
- were ordered removed from the U.S. but failed to depart;
- re-entered the country illegally after being removed; and
- are perceived by ICE agents to be present at a specific location.

This directive leaves in place ICE’s position that it can target any person it believes is removable without categorically prohibiting those arrests in courthouses. It does not, however, take into consideration that civil and criminal courthouses are housed in the same building. Additionally, it is widely acknowledged that courthouse arrests by ICE agents to begin deportation proceedings is not only bad policy, but unlawful.

Minimize Risks for Vulnerable Clients

➡ Determine whether your client is an ICE target. Your client may be at risk if they fall under one of the above-mentioned categories. If your client is unsure about their immigration history or status, consult with a reputable *immigration* attorney or Department of Justice Accredited Representative. Advise your client about their constitutional rights.

➡ For clients at risk who have a pending court case, attempt to minimize their court appearances by resolving issues out of court or seeking a waiver of their appearance when appropriate.

➡ For clients who appear in court, ask them to wait in the courtroom, not in hallways or public areas. Avoid calling your client's name aloud to prevent ICE agents from identifying them.

➡ Ask your client for emergency contact information, including that of a family member, close friend and immigration attorney, to notify in case of an emergency, and complete appropriate release forms.

➡ Make sure your client knows about his or her court dates and does not fail to appear. Failing to appear for a court hearing could result in your client being arrested, which could result in your client being detained by jail authorities for ICE, even if your client was only booked in on missing court.

If Immigration Agents Appear on Courthouse Grounds, You Can Take The Following Steps to Protect Your Clients:

Identify ICE Agents

ICE agents sometimes wear uniforms that say "ICE." However, they often wear plainclothes or nondescript black uniforms that are labeled with the term "POLICE" and come in groups of two to four, and sometimes more. In contrast, local law enforcement generally wear uniforms that clearly identify their agency.

If you see someone that may be an ICE agent, ask them to identify themselves. You may ask for their name, agency, title and their badge or other form of identification. Ask them what they are doing in the courthouse.

A FIRST-HAND ACCOUNT OF A COURTHOUSE ARREST

Yvonne Sosa is a public defender in Douglas County. On Sept. 21, 2017, she represented her client before the court on misdemeanor charges. Although her client was Diversion eligible, her client pled guilty and was charged fines. As Ms. Sosa and her client walked to the window to pay the fines, they noticed ICE agents roaming the hallways. Ms. Sosa and her client decided they needed to speak confidentially in her office, but an ICE agent then began questioning her client. She advised her client to remain silent if approached by agents.

After speaking with her client in her office, Ms. Sosa escorted her client out of the courthouse and ICE agents arrested her client just as he stepped foot outside. Ms. Sosa demanded to see the judicial warrant, and the ICE agent responded that his partner had the warrant. The agents told her to stop intervening with their arrest. She continued to ask the ICE agents for a judicial warrant, but also asked where they planned to house her client, and asked the agents to identify themselves. The agents aggressively told her that they did not need a warrant and would seek to have her indicted for absconding. Ms. Sosa was never shown a warrant.

If an ICE Agent is in the Courthouse

You may alert your client of immigration agents' presence in the courthouse.

➡ **Advise your client: Under Nebraska law, individuals must identify themselves by their name if questioned by an agent, otherwise they have the right to remain silent; any statements made to the agent can and will be used against them. They are free to leave the premises, unless and until the agent informs them that they are being detained.**

➡ If an ICE agent approaches your client, you can tell the ICE agent you represent the individual and instruct your client not to answer any questions, except if they are asked to identify themselves. You may also tell clients that they can inform the agent that they are represented by counsel and to refer the agent to you.

➡ Observe the agents and monitor what they do. Take detailed notes about the agent's conduct, including what basis, if any, the agent appeared to have to detain or arrest someone. If the agent arrests or questions anyone, you may document information about the individuals arrested and/or questioned, including contact information for affected individuals, witnesses or family members.

➡ Do not physically obstruct an agent, even if you have reason to believe that the law has been broken. Federal criminal harboring law also prohibits concealing, harboring or shielding an undocumented immigrant from detection by the authorities when done with knowledge or reckless regard of the immigrant's unlawful status.

Note: S. 845/H.R. 1815 Protecting Sensitive Locations Act is pending in Congress

The bill would prohibit ICE and CBP from arresting, interviewing, searching or surveilling anyone for the purpose of immigration enforcement within 1,000 ft. of a courthouse or other sensitive location.

COURTROOM PROCEDURE

Advise the judge and/or the bailiff of the presence of an ICE agent in the courthouse. It is important that they are made aware of any ICE presence in court buildings that may disrupt the administration of justice.

Get on the court record. Explaining that your client faces imminent arrest or has already been detained by ICE may prevent a bench warrant and may help in immigration court. Try to establish the following items on the record:

1. Describe the ICE agents and how they arrested your client or how you know they are going to arrest your client.
2. State when and where they questioned/arrested your client in the courthouse and if they are present in the courtroom.
3. Explain how you invoked your client's rights to the agents and told the agent that they are not to be questioned.
4. State if you think court staff or the local prosecutor's office assisted ICE. (e.g., waiting to call the case until ICE arrived, denying request to call the criminal case).
5. State if you witnessed ICE violate your client's constitutional rights.

If an ICE Agent Detains or Arrests your Client

➡ **Explain to the agent that you are your client's legal representative and request that the agent cease questioning your client.** Even if you do not represent your client on immigration matters, you may speak on your client's behalf to protect his or her interests.

➡ **If the agent questions you about your client's identity or other matters, politely decline to answer questions about your client.** You have no obligation to disclose information about your clients, unless you have reason to believe it would be in their interest. However, under Nebraska law, your client must identify themselves **if asked**. Advise your client to provide their name to the ICE agent if asked and then remain silent.

➡ **Ask the agent why they are detaining or arresting your client.** Request to see any paperwork that the agent believes justifies the arrest, such as a judicial warrant, administrative warrant for arrest (Form I-200) or administrative order of removal (Form I-205). Carefully review the paperwork and verify that the warrant/order in fact pertains to your client, including name, address, and USCIS# or A#. Take detailed notes about the agent's statements and any errors in the documentation, which may support your client's immigration case.

➡ **If the agent arrests your client, instruct your client not to answer *any* questions and not to sign *any* papers** (including for voluntary departure or removal) until they have the opportunity to consult with an immigration attorney.

If your Client is in Court on Criminal Charges

➡ **If your client is an immigrant, contact a local attorney that specializes in the intersection of criminal and immigration law.**

➡ **Talk to your client about how going into criminal custody could affect their interests and how requesting bail in the criminal case can be threatened with immediate ICE arrest.**

➡ **Provide emergency planning resources to your client to prepare for possible ICE arrest.** Find more information on safety planning at wehaverights.us or nilah.org.

DISCUSS THE FOLLOWING FACTORS WITH YOUR CLIENT

- your client's ability to pay bail if set;
- your local jail's policies, including treatment of requests from ICE for access to detention facilities;
- whether an immigration safe plea is available;
- the impact of incarceration on the criminal and immigration cases;
- challenges to resolving the criminal case if your client is in ICE custody; and
- the forms of relief available in your client's removal proceedings.

After Your Client is Arrested

➡ Immediately contact your client's family to alert them of the arrest. Time is of the essence, as your client can be quickly deported in certain circumstances, (e.g., if they have a prior removal).

➡ You can also notify the consulate of the country of your client's nationality that your client has been arrested by ICE.

➡ Find out where your client is being taken by asking ICE agents where the client will be detained. With certain information (USCIS A#, country of birth, name, date of birth), you may be able to identify your client's location on ICE's online detainee locator (locator.ice.gov/odls) if the client consented to being placed on the database. It typically takes at least a day until your client will appear in the system. You may also be able to find your client on www.vinelink.com.

➡ Document what happened, including where the arrest took place, (e.g., hallway, outside the courthouse); the number of ICE agents, agents' attire and how they identified themselves; how they responded when you asked questions, including for a warrant; and whether any court staff were involved in the arrest or aware of ICE presence.

➡ Speak with the judge or judge's clerk about ways to ensure your client's legal interests in proceeding before the court are not even more adversely affected. For example, if a child custody hearing was cut short because ICE detained your client, ask if the judge will permit your client to continue testimony telephonically from detention on a later date.

➡ For arrests at courthouses in Nebraska, immediately alert the American Civil Liberties Union of Nebraska (ACLU) at (402) 476-8091 or gethelp@aclunebraska.org. You may also contact the Nebraska State Court Administrator, Corey Steel, at corey.steel@nebraska.gov.

➡ For immigration attorney referrals, contact the Nebraska Immigration Legal Assistance Hotline (NILAH) at 1(855) 307-6730, available Mondays and Wednesdays from 9:00-11:00 a.m. and 12:30-3:30 p.m., Tuesdays and Thursdays from 9:00 a.m.-12:00 p.m. and 1:30-3:30 p.m., and Fridays 9:00 a.m.-12:00 p.m., or visit nilah.org.

IF YOUR CLIENT HAS ALREADY BEEN ARRESTED:

- ask for a bench warrant stay;
- put the prosecution on notice of the need to produce your client from ICE custody; and
- invoke your client's Sixth Amendment right to appear in the case against them. Explain that the purpose of bail is to ensure appearance, which will not happen if ICE detains your client.