



DEFENSE ATTORNEYS, PROTECT IMMIGRANT CLIENTS FROM ICE IN THE COURTS!

Immigration & Customs Enforcement (ICE) and Homeland Security Investigations (HSI) are federal agencies that send officers to detain and deport “removable” people in the community, including at courthouses. This practice of arresting immigrants in courthouses undermines equal access to justice and can interfere with clients’ ability to resolve criminal matters.

WHERE DO ICE AGENTS MAKE ARRESTS IN THE COURTS?

ICE officers have arrested unsuspecting people in courtrooms, vestibules, hallways and just outside of courthouses. ICE has come more frequently to criminal courts but has also been in family courts.

ARE ICE AGENTS EASILY IDENTIFIABLE WHEN THEY COME TO COURT?

ICE agents are often in plainclothes and come in groups of 2-4 (sometimes more).

DOES ICE USUALLY TARGET SPECIFIC INDIVIDUALS TO ARREST?

ICE usually identifies a specific individual appearing for a court date and has an “administrative warrant” signed by a supervisor, not a judge. This allows the agents to detain the person upon confirmation that s/he is the individual named in the document.

WHO IS AT RISK OF BEING TARGETED AND ARRESTED BY ICE?

People who are undocumented and people with lawful status with certain criminal convictions may be at risk of being detained and deported. For more details see IDP’s advisory on the January 2017 Executive Order priorities: <http://bit.ly/2ohuSjn>.

Here are some things **you** can do in your practice to protect immigrant clients in the courthouse:

1. Identify clients who are not U.S. citizens (USCs) and **seek a *Padilla* consult as soon as possible after assignment**. Assigned counsel in NYC: contact IDP at immdefense.org/psc for a free immigration consult. Other NYS appointed counsel: contact your Regional Immigration Assistance Center at on.ny.gov/2o162kA. Others: contact a local criminal-immigration expert.
2. For clients at risk of deportation, **ask them to wait inside the courtroom** on court dates. Try to **avoid calling their names aloud** in the hallways. ICE may use this to identify and detain clients before they appear on the criminal case. Minimize the number of court dates and **consider resolving the case off-calendar** so ICE cannot anticipate when s/he is in court.
3. **Stay current on local law enforcement cooperation with ICE**. If ICE is in court, you may need to advise your client on the impact of immediately going into criminal custody vs. ICE custody.

IF YOU WITNESS ICE AGENTS ARRESTING YOUR CLIENT:

- **Invoke your client’s rights**. Identify yourself as the person’s lawyer. Tell ICE not to question your client. Tell your client not to sign anything and to exercise his/her right to remain silent. Answering questions will only help ICE deport him/her. **Request to call or recall the criminal case while your client is present to avoid the issuance of a warrant**.
- **Get info from ICE**. Ask for agents’ names and contact info. Ask for the basis of the arrest and to see a warrant (note if signed by a judge vs. ICE supervisor). Ask where they are taking your client.
- **Get on the record**. Explaining the situation may prevent a bench warrant and possibly help in immigration court. If possible, talk to your client about the impact that going into *criminal* custody via bail or a plea instead of ICE custody would have on his/her interests.



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WHAT TO SAY ON THE RECORD *BEFORE* ICE DETAINS YOUR CLIENT:

- Describe the ICE agents and how you know they are going to arrest your client.
- State if they are present in the courtroom as you speak.
- Explain how you have invoked your client's rights to the agents and stated s/he is not to be questioned.
- State if you think court staff or a DA has helped ICE (e.g. waiting to call the case until ICE arrives).
- If you are asking for criminal bail to prevent immediate ICE arrest, invoke your client's 6th Am. right to appear in the case against them. Explain the purpose of bail is to ensure appearance, which will not happen if ICE detains your client. (*see below for considerations*)

WHAT TO SAY ON THE RECORD IF ICE HAS ALREADY DETAINED YOUR CLIENT:

- Ask for a bench warrant stay. Put the DA on notice of the need to produce your client from ICE custody.
- Describe the ICE agents and how they arrested your client. State when/where they did this in the court. Explain how you invoked your client's rights to the agents and stated s/he is not to be questioned.
- State if ICE agents denied your request to call or recall the criminal case. Explain that ICE's practice interferes with individual cases and access to justice in the courts.
- State if you think court staff or a DA assisted with arrest (e.g. blocking exit, calling case late).
- State if you witnessed ICE violate your client's constitutional rights (e.g. searching your client's pockets without consent).

CONSIDER LOCAL POLICIES IF BAIL SET OR CLIENT INCARCERATED:

If ICE is planning to arrest your client in court but your local jail's policies make it unlikely that it will transfer your client to ICE (upon posting bail, dismissal or completion of sentence), then it may be in the client's interest to go into criminal custody via bail or a plea and avoid ICE arrest in court.

Some considerations include: likelihood of a detainer being honored; ability to pay bail if set; whether an immigration-safe plea is on the table; impact of incarceration on the criminal case; challenge of resolving criminal case if client in ICE custody; and whether client is eligible for relief in immigration court. Contact your immigration unit or IDP for more information. Speak to your client before any decision on this. To learn about the current policies in NYC, visit: bit.ly/2nMGD00.

WHAT TO DO AFTER A CLIENT IS ARRESTED BY ICE:

- **Document what happened**, including: where arrest took place (e.g. in vestibule at court part, hallway, outside the courthouse); # of ICE agents, how they were dressed & identified themselves; how they responded when you asked questions, incl. for a warrant; and whether any court staff were involved in the arrest or aware of ICE presence.
- **Report it** to advocates pushing back against this practice. In NYC, contact IDP at 212-725-6422 if you see ICE in or around a courthouse.
- Search ICE Online Detainee Locator to **locate your client** and then **figure out how to resolve the criminal matter** with client in ICE custody. Contact an immigration lawyer for more information.

Additional resources:

- To learn how DAs and judges can request ICE produce a client for appearance in a criminal matter, visit: <http://bit.ly/2nkIXZQ>
- If your client is at risk of deportation, advise him/her to make an emergency plan and share Know Your Rights information on encounters with ICE at home and in public, available at: immdefense.org/raids.