

SECTION 8: TRAININGS & PRACTICE ADVISORIES FOR THOSE WORKING WITH IMMIGRANTS IN THE COURTS

BACKGROUND

IDP has worked in partnerships to train public defenders and civil legal service providers working with communities who are affected by ICE presence in the courts on what to expect when ICE shows up at court and how to best protect their clients' ability to continue to participate in their case. IDP has also adapted this curriculum for non-attorneys and delivered trainings to social workers and case managers who work with immigrant clients in alternative to incarceration programs administered through the courts.

RESOURCES

Practice Advisories: How to Advise Immigrant Clients on ICE in the Courts

- [For Criminal Defenders](#): this two-page advisory outlines basic strategies that criminal defense attorneys can use to protect their client's constitutional right to appear in court. It also provides tips on what to do after ICE arrests a client, including arguments to be made to avoid the issuance of bench warrants and production of clients from immigration custody.
- [For Family Court Attorneys](#): IDP produced a similar two-page advisory geared towards advising family court attorneys on how to protect clients who might be at risk of an ICE courthouse arrest.

Trainings. Defense attorneys and other advocates who are interested in trainings on courthouse arrests, please contact IDP.



DEFENSE ATTORNEYS: HOW TO ADVISE IMMIGRANT CLIENTS ON 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 made arrests in courtrooms, vestibules, hallways, private areas, 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**, advise them of their constitutional rights to be present to resolve criminal charges and to have the assistance of counsel. Discuss strategies for ensuring that you will be able to conduct the full course of representation and they will be able to resolve their cases without impermissible interruption. This may include lessening the number of court appearances, resolving cases off-calendar, and avoiding the need for personal information like name and docket number to be shared loudly in hallways or courtrooms.
3. **Prepare your clients for interactions with ICE.** Advise your clients that they have the right to remain silent when they encounter ICE agents and should say that they want to speak to a lawyer. Warn them about the dangers of answering questions about their immigration status, where they were born, or how they entered the U.S. Know Your Rights information is available in multiple languages at: immdefense.org/raids.
4. **Stay current on local detainer laws and law enforcement cooperation with ICE.** If you are in a jurisdiction that has limits on honoring detainers, setting bail might be the best way to protect your client’s ability to resolve a case. This requires individualized assessment. To learn about the current policies in NYC, visit: <http://bit.ly/2nMGD00>.



DEFENSE ATTORNEYS: HOW TO ADVISE IMMIGRANT CLIENTS ON ICE IN THE COURTS

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 the document ICE presents is 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.

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, invoke your client's 6th Am. right to appear in the case against them. Explain the purpose of bail is to ensure appearance. (*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. For more on how DAs can request production from ICE, see <http://bit.ly/2nkIXZQ>.
- 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).

WHAT TO DO AFTER A CLIENT IS ARRESTED BY ICE:

- **Document what happened**, including: where arrest took place (e.g. in court part vestibule, courthouse hallway, courthouse private area 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.



FAMILY ATTORNEYS, HOW TO ADVISE IMMIGRANT CLIENTS ON ICE IN THE COURTS

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ICE officers have arrested unsuspecting people in courtrooms, vestibules, waiting areas, hallways and just outside of courthouses. ICE has come more frequently to criminal courts but, since November 2016, ICE has also made arrests in family courts.

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TIPS ON PROTECTING IMMIGRANT CLIENTS IN THE COURTHOUSE

1. **Identify clients who are not U.S. citizens (USCs)** and have them call ActionNYC at 800-354-0365 for screening about their status and risk of deportation. **Assigned counsel in NYC:** contact IDP at immdefense.org/psc for a free consult. **Other NYS appointed counsel:** contact your Regional Immigration Assistance Center at on.ny.gov/2o162kA. Others: contact a local immigration expert.
2. **For clients at risk of deportation**, discuss strategies for ensuring that client’s can resolve their cases without interruption and that you can conduct the full course of representation. Talk with your clients about minimizing the number of court appearances. On court dates, arrange to have your client meet you away from the courtroom (e.g. on another floor or in your office) and avoid calling your client’s name aloud in the hallways.
3. **Prepare clients for interactions with ICE:** Advise your clients that they have the right to remain silent when they encounter ICE agents and should say that they want to speak to a lawyer. Warn clients about answering questions about their immigration status, where they were born, or how they entered the U.S. Know Your Rights information is available in multiple languages at: immdefense.org/raids.
4. **Warn clients about the risks of arrest and incarceration.** Arrest and incarceration, for any reason, can put your client on ICE’s radar. Warn clients who are deportable that contact with the criminal justice system can put them at risk of being picked up by ICE.
5. **Make an emergency plan.** If your client is at risk of deportation, help them to prepare their family for the possibility of separation by gathering emergency contacts and discussing who could care for their children. Find resources at: immdefense.org/emergency-preparedness.



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- **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.
- **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.

WHAT HAPPENS TO YOUR CLIENT AFTER THE ARREST?

- **ICE makes a custody determination.** ICE agents will decide whether to detain your client in an immigration jail or release your client under an order of supervision.
- **Some but not all clients are entitled to a hearing before an Immigration Judge** where they may argue against their deportation and apply for various waivers of deportation. It can take 1-2 months before they have their first court date and the case can last months to years depending on whether they remain detained. There is no right to assigned counsel in these proceedings. However, indigent immigrants who are detained may be eligible for a free attorney through the New York Immigrant Family Unity Project (NYIFUP).
- **Detained immigrants have the right to participate in their Family Court hearings.** Under ICE policy, immigration detention should NOT prevent parents or guardians from participating in Family Court proceedings or visiting with their kids. For more info, see: [ice.gov/parental-interest](https://www.ice.dhs.gov/parental-interest).

HOW TO HELP A CLIENT IN DETENTION

- **Locate your client** by using the ICE Detainee Locator at [locator.ice.gov](https://locator.ice.dhs.gov). You will need the full name, date of birth, and country of origin, or, your client's "alien" number, which appears on work permits and green cards. In NYC, most immigrants are detained in New Jersey or Orange County, NY.
- **Talk to the deportation officer.** Your client will be assigned a deportation officer who is responsible for managing your client's case. **Per ICE policy, the local field office is required to facilitate your client's participation in Family Court hearings and court-ordered visitation with children.** To locate the deportation officer in NYC, call (212) 264-4213 with your client's name, "alien" number (if available) and date of birth. Outside of NYC, see [ice.gov/contact/ero](https://www.ice.dhs.gov/contact/ero).
- **Help your client maintain contact with their family.** Maintaining contact with children and other family members is essential and could help your client's Family Court case. Ask the court to order the Child Protective Services agency to facilitate visitation with children at the detention facility.
- **Every detention facility permits visits from family and friends.** People who do not have lawful immigration status should consult an immigration attorney before going to a detention facility.