



NEW YORK PRACTICE ADVISORY WHEN DOES FINGERPRINTING PUT YOUR CLIENT AT RISK WITH ICE?

Last updated July 27, 2017

The Immigrant Defense Project and the New York Civil Liberties Union have issued this advisory to help practitioners understand when a submission of fingerprints to the New York State Division of Criminal Justice Services (DCJS) can put their noncitizen clients at increased risk of arrest and deportation by U.S. Immigration and Customs Enforcement (ICE). In January of this year, ICE agents arrested a father at his home after his fingerprints were submitted to DCJS in connection with a guardianship application in Suffolk County Family Court. Upon processing the fingerprints, DCJS contacted ICE and provided the father's home address, which enabled ICE to target the man for arrest.

Because it is important for practitioners and the public at large to understand how and under what circumstances New York agencies such as DCJS facilitate immigration enforcement activity, following this incident we inquired with DCJS about its policies and practices. This advisory summarizes what we have learned to date.

What types of fingerprint requests can trigger a call to ICE?

Any fingerprint request made to DCJS for the purpose of generating a RAP sheet may trigger a call to ICE. This includes, for example, fingerprints taken in connection with Family Court proceedings, applications to become a foster care parent (including kinship care), new arrests, personal record reviews, and job or professional license applications.

When does DCJS contact ICE about an individual who has been fingerprinted?

DCJS adds a "deported alien" banner to an individual's RAP sheet whenever ICE notifies it that the individual has been deported. At any later time, if DCJS generates a RAP sheet for an individual who has a "deported alien" banner, a DCJS employee will contact ICE. This may include noncitizens who:

- 1) have been previously deported (not merely ordered removed) **AND**
- 2) have previously been convicted of any New York offense for which they were *fingerprinted* when arrested (which can include cases that resolved in violations and YO adjudications).

Under New York Criminal Procedure Law section 160.10, individuals are fingerprinted at arrest if they are charged with 1) a felony, 2) a misdemeanor defined in the New York penal law, 3) a misdemeanor defined outside the penal law that would constitute a felony if the person was previously convicted of a crime, or 4) loitering for the purpose of engaging in a prostitution offense. Note that a banner may not be created in every instance where a person with a New York criminal history has been deported; DCJS policies depend on ICE affirmatively notifying DCJS of the removal, which does not happen in every case.

What information does DCJS provide to ICE?

When the “deported alien” banner appears on a RAP sheet, DCJS calls or e-mails ICE to confirm that the person had been previously deported, using FBI #, A#, name and date of birth. If ICE confirms that the person has previously been deported, DCJS assists ICE in locating the individual by providing identifying information, including home addresses.

How is this different from the “deported felon” category on a RAP sheet?

The “deported alien” banner on a New York RAP sheet is different from the “deported felon” banner which may appear in the federal section of a RAP sheet. Whereas DCJS adds the “deported alien” banner upon receiving notice from ICE that an individual has been deported, the “deported felon” label is generated by the FBI’s National Crime Information Center (NCIC) and indicates that a person is believed to have been convicted and deported for certain felony offenses.

As of the date of this advisory, despite repeated requests, DCJS has not provided a redacted example of a RAP sheet with the “deported alien” banner.

In what other circumstances does DCJS assist ICE?

According to DCJS, in cases where there is no “deported alien” notification banner, absent a court order or subpoena, DCJS does not comply with ICE requests to help identify targets for arrest. DCJS has not said how frequently ICE makes such requests or how frequently the agency complies with them. DCJS also has not responded to requests for information regarding the categories of information it transmits to the federal government upon receiving the fingerprints of an arrestee.

What can you do to protect your noncitizen clients?

Before requesting fingerprints for clients, talk to your client about their immigration and criminal history so that you can assess whether they might be considered a “deported alien.” If they do fall into this category, warn your clients of the risks of submitting fingerprints to DCJS. Whenever possible, argue for alternatives to fingerprinting such as testimony, affidavits, and other evidence. One useful resource for guardianship proceedings is to refer to the Office of Court Administration’s Advisory Council on Immigration Issues in Family Court Memorandum #1, which makes clear that neither the Family Court Act nor the Surrogates Court Procedure Act requires the fingerprinting of potential guardians or other individuals in guardianship-of-the-person cases. The memo is available at <https://www.immigrantdefenseproject.org/wp-content/uploads/AdvCouncil-guardianshi-fingerprintSIJmemo-Final-142017.pdf>.

If your client has not been previously removed, requesting a “Personal Record Review”—which gives a complete picture of New York criminal history on file with DCJS—should not lead DCJS to contact ICE. The agency does not transmit any information to federal agencies when it compiles RAP sheets for Personal Record Reviews.

For more information, contact Lee Wang of IDP at lee@immdefense.org, or Jordan Wells of the NYCLU at jwells@nyclu.org.