



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

Immigration & Customs Enforcement (ICE) and Homeland Security Investigations (HSI) send agents to detain “removable” people in communities, including at courthouses. Their courthouse arrest practice undermines equal access to justice and can interfere with clients’ ability to resolve criminal matters.

WHERE DO ICE AGENTS MAKE ARRESTS IN THE COURTS?

In the past, ICE agents have made arrests in court parts, vestibules, hallways, and non-public areas. As of April 2019, ICE is not allowed to make arrests in NYS courthouses without judicial warrants. ICE agents, however, continue to come to court and follow individuals to execute arrests once they have left the building. Although ICE comes most frequently to criminal courts they have also been in family and housing courts. In addition, ICE sometimes arrests individuals at home the morning of a court appearance or when individuals are on the way to court.

ARE ICE AGENTS EASILY IDENTIFIABLE WHEN THEY COME TO COURT?

ICE agents are often in plainclothes, without visible badges, and come in groups of 2-4 (sometimes more). ICE agents often refuse to identify themselves or answer questions.

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. See IDP’s advisory on the January 2017 Executive Order priorities: bit.ly/2ohuSjn.

HOW DOES ICE PICK INDIVIDUALS TO ARREST?

ICE usually identifies a specific individual appearing for a court date. They initially identify people by using publicly available court docket information. In a handful of cases they have questioned and/or arrested family members or friends in court to support their loved one.

DOES ICE CARRY A WARRANT?

It is unlikely that ICE will have a judicial warrant. Where they have paperwork, it is usually an “administrative warrant”, signed by an ICE supervisor, not a judge. Under federal law, this allows the agents to detain the person upon confirmation that s/he is the individual named in the document. Always ask ICE if they have a warrant.



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WHAT IS THE OFFICE OF COURT ADMINISTRATION'S POLICY ON ICE ARRESTS?

- In April 2019, OCA issued [a new rule](#) for law enforcement agencies, including ICE, entering NYS courthouses. The rule specifically requires ICE agents to make themselves known to court staff and state why they are inside the building. If ICE plans to arrest an individual within the courthouse, they must have a judicial warrant or order. Court officers are required to notify the judge of ICE's presence. There is no requirement that judges notify parties of ICE's presence. Finally, court officers are to file an "unusual occurrence report" if there is an arrest.
- In May 2018, Justin Barry, Chief Clerk of the NYC Criminal Court communicated guidance that judges are NOT required to issue bench warrants when the Court is notified that an individual with an open criminal case has been taken into ICE custody. To date this guidance had not been formalized by OCA. The April 2019 OCA rule requiring warrants for arrests within courthouses does not address whether judges should issue bench warrants when an individual has been taken into ICE custody.

Here are some things **you** can do in your practice to protect non-U.S. citizen clients in the courthouse:

1. **Identify clients who are not U.S. citizens (USCs) and seek a *Padilla* consult as soon as possible.** 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 ICE enforcement**, advise them of their constitutional rights to be present to resolve criminal charges and to have the assistance of counsel. You might help your client appear by reducing the number of court appearances, resolving cases off-calendar, and ensuring their personal information like name and docket number is not 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. Learn about current NYC policies: bit.ly/2nMGD00.



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WHAT TO DO IF ICE ARRESTS YOUR CLIENT:

- As soon as you discover that your client is in ICE custody, **notify the ADA in writing and on the record**. Under CPL 580.30, the People have an obligation to issue a writ to return the client from ICE custody. The People will be charged for the time under §30.30 unless they exercise due diligence.
- **Document and report what happened**, including: where the arrest took place (e.g. in court vestibule, courthouse hallway, outside the courthouse); the number of ICE agents and how they were dressed and identified themselves; how they responded when you asked questions, including for a warrant; and whether any court staff seemed to be involved in the arrest or aware of ICE presence.
- **Object to any warrant being issued**. Make a record that your client's absence is because they are in ICE custody.
- Search the ICE online detainee locator to **locate your client**: locator.ice.gov
- Give your client information about deportation defense. Many New Yorkers may be eligible for FREE attorneys in immigration court. For more information see Make the Road New York's Deportation Defense Manual in [English](#) or [Spanish](#).
- **Continue to invoke your client's right to due process in criminal court**. For more information on representing a client in criminal proceedings who is detained by ICE, see: immdefense.org/crim-defense-ice.

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.
- **Get info from ICE**. Ask for agents' names and contact info. Ask for the basis of the arrest. Ask to see a warrant. Note if the document ICE presents is signed by a judge or an ICE supervisor. Ask where they are taking your client.
- **Get on the record**. Request to call or recall the criminal case while your client is present to avoid the issuance of a bench warrant. Explaining the situation may prevent a bench warrant, will put the ADA on notice to produce your client at the next court date, and may help in immigration court.
- **Report the arrest** to advocates pushing back against this practice. In NYC, contact IDP at 212-725-6422 if you see ICE in or around a courthouse.



**State of New York
Unified Court System
Office of the Chief Administrative Judge**

D I R E C T I V E

To: All Uniformed Personnel	Number: 1-2019 (Rev. from Memo issued 04/03/2019)
Subject: Protocol Governing Activities in Courthouses by Law Enforcement Agencies	Effective Date: April 17, 2019

1. It continues to be the policy of the Unified Court System (UCS) to permit law enforcement agencies to act in the pursuit of their official legal duties in New York State courthouses, provided that the conduct in no way disrupts or delays court operations or compromises public safety or court decorum.
2. The following protocol shall apply to representatives of law enforcement agencies who, while acting in their official capacity, enter a New York State courthouse to observe an individual or take an individual into custody but do not have a warrant issued by a judge of the Unified Court System authorizing them to do so:
 - Upon entry to a courthouse, law enforcement officials covered by this protocol shall identify themselves to uniformed UCS uniformed personnel and state their specific law enforcement purpose and the proposed enforcement action to be taken. Uniformed UCS personnel shall immediately transmit this information to an appropriate supervisor.
 - The uniformed supervisor shall inform the judge if a law enforcement agent covered by this protocol is present in the courthouse with the intent of arresting or otherwise taking into custody a party or other participant in a case before the judge. Email notification to the Department of Public Safety should be made as soon as possible.
 - Arrests by agents of U.S. Immigration and Customs Enforcement may be executed inside a New York State courthouse only pursuant to a judicial warrant or judicial order authorizing the arrest. A "judicial warrant" or "judicial order" is a warrant or order issued by a federal judge or federal magistrate judge. A UCS judge or court attorney shall review the warrant or order to confirm compliance with this requirement prior to any such arrest.
 - Absent leave of the court under extraordinary circumstances (e.g., extradition orders), no law enforcement action may be taken by a law enforcement agency in a courtroom.
 - UCS court security personnel shall file an Unusual Occurrence Report for each law enforcement action taken in a New York State courthouse by a law enforcement agency covered by this protocol. For purposes of this protocol, "law enforcement action" shall include observation of court proceedings by law enforcement agents acting in their official capacity.
 - UCS court security personnel remain responsible for ensuring public safety and decorum in the courthouse at all times. This policy and protocol is subject to modification based on changed circumstances.

A handwritten signature in cursive script, reading "Michael Magliano".

Michael Magliano, Chief of Department

Revised 04/17/2019

From: Justin Barry [mailto:jbarry@nycourts.gov]

Sent: Monday, May 07, 2018 10:36 AM

Good Morning Tina:

Per Judge Marks' and Judge Amaker's instructions I sent an advisory to Criminal Court judges and non-judicial staff related to certain aspects of the Court's interaction with ICE. FYI, I have excerpted relevant parts of the email below.

"In the wake of a number of recent ICE actions and our conversations with defense providers, Hon. Tamiko Amaker has asked that I update our judges and non-judicial supervisors (particularly uniformed supervisors) on some items that have arisen and the Court's response:

1. ICE Judicial Warrants

Uniformed supervisors should direct uniformed staff to take the following action when ICE officials identify themselves pursuant to our written procedure and state their purpose for entering the courthouse. The court officer should inquire whether the ICE official has a warrant and, if so, whether that warrant was issued by a judge. If possible, uniformed staff should scan a copy of the warrant (either administrative or judicial) and attach it to the required notifications. Uniformed staff will also inform the judge, who will be hearing the defendant's case, if the ICE official has a judicial warrant. In the Unusual Occurrence Report, uniformed staff should indicate if a warrant was presented and, if so, the type of warrant.

Should the judge decide to inform the parties before the court appearance of ICE presence in the courtroom (see attached email), the judge should also make it clear if we have been informed that the ICE officials have a judicial warrant.

Some defense providers have said that it would be helpful if they knew that the ICE official have a judicial warrant.

2. Bench Warrants

When the Court is made aware that ICE has taken a defendant with an active, open case into custody, judges need not issue a bench warrant. In lieu of a warrant, we have been able to effectuate the defendant's appearance where the judge has directed the prosecutor to issue a writ to produce the defendant on his/her next court appearance."

As always, let me know if you have any questions.

Justin