



## 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](http://immdefense.org/psc) for a free immigration consult. Other NYS appointed counsel: contact your Regional Immigration Assistance Center at [on.ny.gov/2o162kA](http://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](http://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>.



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### 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 6<sup>th</sup> 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.