

IMMIGRATION ENFORCEMENT AT COURTHOUSES

A Resource for Attorneys

Immigration and Customs Enforcement (“ICE”) agents have been arresting people who appear at local courthouses. While ICE agents have primarily targeted people in criminal proceedings, they have also arrested people who appear for civil matters or to access court services. This advisory provides guidance for attorneys whose clients may be affected by immigration enforcement at courthouses.

Minimize risks for vulnerable clients:

- **Determine whether your client is a target** for immigration enforcement. Individuals are more at risk if they have been previously deported, are subject to a final order of removal, or have some criminal history. If your client is unsure about their immigration history or status, **consult with a qualified immigration attorney.**
- For clients at risk who have a pending court case, attempt to **minimize their court appearances** by resolving issues out of court or seek to waive their appearance.
- For clients who appear in court, **ask them to wait in the courtroom** rather in the hallway or other public area. Generally **avoid calling your client’s name aloud**, which ICE agents can use to identify your client.
- **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 immigration agents appear on courthouse grounds, you can take the following steps to protect your clients:

Identify ICE agents

- ICE agents will sometimes wear uniforms that say “ICE.” However, they frequently wear nondescript black uniforms with the term “police” on the uniform or be in plainclothes. Local police generally wear unique uniforms that clearly identify their police agency.
- If you see someone that may be an ICE agent, **ask them to identify themselves.** You may ask for their name, agency and title and their badge or other form of identification. Ask them what they are doing in the courthouse.

If an ICE agent is in the courthouse

- You may **alert clients of immigration officers’ presence in the courthouse.**
- **Get on the record.** Explaining the situation may prevent a bench warrant and possibly help in immigration court. You should attempt to establish the following items on the court record:

Describe the ICE agents and how they arrested or how you know they are going to arrest your client;

Explain how you invoked your client’s rights to the agents and stated that your client is not to be questioned;

State if you think court staff or local prosecutor’s offices helped ICE (e.g. waiting to call the case until ICE arrives);

State if you witnessed ICE violate your client’s constitutional rights.

- Advise your client of the **right to remain silent** if questioned by the officer, that any statements made to the officer can and will be used against them, and that they are free to leave the premises, unless and until the officer informs them that they are being detained.
- If an ICE agent approaches your client, **you can tell the ICE agent you represent the person and instruct your client not to answer any questions.** You may also tell your clients that they can inform the officer that they are represented by counsel, and to refer the agent to you.
- If you are appearing in court, **advise the judge and/or the bailiff** of the presence of an ICE agent in the courthouse—it is important that they are made aware of any ICE presence in court buildings that may disrupt the administration of justice.

- **Observe the agent** to monitor what s/he does. Take detailed notes about the officer's conduct, including what basis, if any, the officer appeared to have to detain or arrest someone. If the agent arrests or questions anyone, document information about the people arrested and/or questioned, including contact information for affected individuals, witnesses or family members.
- Be careful to observe legal limits. Do not physically obstruct an officer, even if you have reason to believe that he has broken the law. Federal criminal harboring law also prohibits concealing, harboring, or shielding an undocumented immigrant from detection by the authorities, when done with knowledge or reckless regard of the immigrant's unlawful status.

If your client is in court on criminal charges

- Talk to your client about the impact that going into criminal custody instead of ICE custody would have on his/her interests. Consider requesting bail in the criminal case to prevent immediate ICE arrest if your local jail's policies do not allow individuals to be transferred to ICE custody. You should discuss the following factors with your client when making this decision:

your client's ability to pay bail if set;

your local jail's immigration detainer policy;

whether an immigration-safe plea is available;

the impact of incarceration on the criminal case; challenges to resolving the criminal case if client is in ICE custody;

the forms of relief available in your client's removal proceedings.

- If your client is arrested, go on the record and invoke your client's 6th Amendment 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.

If an ICE agent detains or arrests your client

- Explain to the agent that you are your client's legal representative and **request that the agent cease questioning your client**. Even if you do not represent your client on immigration matters, you may speak on your client's behalf to protect his or her interests.

- If the agent questions you about your client's identity or other matters, politely **decline to answer questions about your client**. You have no obligation to disclose information about your clients, unless you have reason to believe it would be in their interest. **Even providing your client's name to an ICE agent** may be sufficient to identify the person for purposes of arrest.
- **Ask the agent why he is detaining or arresting your client. Request to see any paperwork** that the agent believes justifies the arrest, such as a judicial warrant, administrative warrant for arrest (Form I-200) or administrative order of removal (Form I-205). See below for examples of these documents. Carefully review the paperwork and verify that the warrant/order in fact pertains to your client. Take detailed notes about the officer's statements and any errors in the documentation, which may support your client's immigration case.
- If the officer arrests your client, **instruct your client not to answer any questions and not to sign any papers** (including for voluntary departure or stipulated removal) until they have the opportunity to consult with an immigration attorney.

After your client is arrested

- **Immediately contact your client's family** to alert them of the arrest. Time is of the essence, as your client can be quickly deported in certain circumstances.
- For arrests in courthouses in Michigan, **immediately alert the Immigrant Justice Partnership (IJP)** at crisis@michiganimmigrant.org. IJP is documenting courthouse enforcement actions.
- **Try to Find out where your client is being taken** by asking ICE officers where s/he will be detained. ICE maintains an online detainee locator (<https://locator.ice.gov/odls/homePage.do>) where you can find your client's location, if you have certain identifying information. It typically takes at least a day until your client will appear in the system. You may also be able to find your client on www.vinelink.com.
- Speak with the judge or judge's clerk about ways to ensure your client's legal interests in proceeding before the court are not even more adversely affected. For example, if the child custody hearing was cut short because ICE detained your client, ask if the judge will permit your client to continue testimony telephonically from detention on a later date.



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www.michiganimmigrant.org

UNITED STATES DISTRICT COURT

for the

United States of America
v.

Case No.

Defendant

ARREST WARRANT

Judicial Warrant

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay (name of person to be arrested) who is accused of an offense or violation based on the following document filed with the court:

- Indictment, Superseding Indictment, Information, Superseding Information, Complaint, Probation Violation Petition, Supervised Release Violation Petition, Violation Notice, Order of the Court

This offense is briefly described as follows:

Date: Issuing officer's signature, City and state: Printed name and title

Signed by Judge

VS.

ICE Administrative Warrants

Return: This warrant was received on (date) and the person was arrested on (date) at (city and state). Date: Arresting officer's signature, Printed name and title

U.S. Department of Homeland Security Warrant for Arrest of Alien

WARRANT #:

File No., Warrant No., Date:

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(Full name of alien) an alien who entered the United States at or near (port) on (date) is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(Print name of Homeland Security Officer) (Title)

Certificate of Service

Served by me at on at I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(Signature of officer serving warrant) (Title of officer serving warrant)

Signed by ICE Agent

U.S. Department of Justice Immigration and Naturalization Service

Warrant of Removal/Deportation

File No., Date:

To any officer of the United States Immigration and Naturalization Service:

(Full name of alien) who entered the United States at (Place of entry) on (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an Immigration Judge in exclusion, deportation, or removal proceedings, a district director or a district director's designated official, the Board of Immigration Appeals, a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act: Section 241(a)(5) of the Immigration and Nationality Act(Ac), as amended.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of the appropriation. "Salaries and Expenses Immigration and Naturalization Service 2002," including the expense of an attendant if necessary.

(Signature of DHS officer) (Title of DHS officer) (Date and place (location))