CONTINUING LEGAL EDUCATION

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SEPTEMBER 28, 2017

IMMIGRATION: HOW TO PROTECT YOUR CLIENTS FROM ICE IN THE COURTS

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Sponsored by:

Appellate Division, First Department and the
Assigned Counsel Plan for the First Department

STATE OF NEW YORK OFFICE OF COURT ADMINISTRATION



MEMORANDUM

TO: All Chiefs and Majors

FROM: Chief Michael Magliano

DATE: April 26, 2017

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

Policy and Protocol Governing Activities in Courthouses by Law Enforcement Agencies

It continues to be the policy of the Unified Court System 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.

The following protocol shall apply to representatives of law enforcement agencies who enter a New York State courthouse to take a person 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 UCS uniformed personnel, and state their specific law enforcement purpose and the proposed enforcement action to be taken. The UCS officer shall immediately transmit this information to an appropriate supervisor.
- The 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.
- 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 uniformed 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.
- UCS uniformed 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.



DEFENSE ATTORNEYS, PROTECT IMMIGRANT CLIENTS FROM 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 arrested unsuspecting people in courtrooms, vestibules, hallways 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, ask them to wait inside the courtroom on court dates. Try to avoid calling their names aloud in the hallways. ICE may use this to identify and detain clients before they appear on the criminal case. Minimize the number of court dates and consider resolving the case off-calendar so ICE cannot anticipate when s/he is in court.
- 3. **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 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 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.



DEFENSE ATTORNEYS, PROTECT IMMIGRANT CLIENTS FROM ICE IN THE COURTS!

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 to prevent immediate ICE arrest, invoke your client's 6th Am. 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. (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.
- 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).

CONSIDER LOCAL POLICIES IF BAIL SET OR CLIENT INCARCERATED:

If ICE is planning to arrest your client in court but your local jail's policies make it unlikely that it will transfer your client to ICE (upon posting bail, dismissal or completion of sentence), then it may be in the client's interest to go into criminal custody via bail or a plea and avoid ICE arrest in court.

Some considerations include: likelihood of a detainer being honored; ability to pay bail if set; whether an immigration-safe plea is on the table; impact of incarceration on the criminal case; challenge of resolving criminal case if client in ICE custody; and whether client is eligible for relief in immigration court. Contact your immigration unit or IDP for more information. Speak to your client before any decision on this. To learn about the current policies in NYC, visit: bit.ly/2nMGD00.

WHAT TO DO AFTER A CLIENT IS ARRESTED BY ICE:

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

Additional resources:

- To learn how DAs and judges can request ICE produce a client for appearance in a criminal matter, visit: http://bit.ly/2nkIXZQ
- If your client is at risk of deportation, advise him/her to make an emergency plan and share Know Your Rights information on encounters with ICE at home and in public, available at: immdefense.org/raids.



Tracking New York courthouse arrests

For the past four years, IDP has been monitoring immigration enforcement activity in New York communities, including arrests in and around courts. Since early 2017, there has been an increase of ICE arrests and attempted arrests at courts throughout New York State, including in criminal and family courts.

If you know of an arrest or attempted arrest by immigration agents in a NY courthouse, please contact Genia Blaser (genia@immdefense.org) and Lee Wang (lee@immdefense.org). You can also fill out the form on the other side of this sheet and fax it to us at 1-800-391-5713.

Below are some suggested intake questions to help you fill out the form.

Basics

- Name of person reporting information
- Organization/18b panel
- Contact information (phone & email)

Description of incident

- Date of incident (if don't have the exact date, please provide approximate month and year)
- Name/type of Court where incident took place (e.g. Bronx Criminal, Kings Family Court, etc.)
- How many ICE officers were there? How were they dressed? How did they identify themselves?
- Did the ICE agents present a warrant or refuse to present a warrant?
- Where in the courthouse did the incident take place? (e.g. courtroom, vestibule, hallway, outside the courthouse)
- Was there anything else notable about the arrest or attempted arrest?

Court staff or District Attorney involvement in the arrest

- Did any court staff (officers, clerks, judges) play any role in the arrest or attempted arrest? If so, please describe.
- Did the district attorney play any role in the arrest or attempted arrest? If so, please describe.

Background of person arrested

- What criminal charges was the individual facing at the time of the arrest/attempted arrest?
- What was the immigration status of the individual at the time of the courthouse incident?
- If you can, please describe the individual's ties to the US (length of time in US, family here).
- If you can, please describe the individual's prior criminal history (if any).



Tracking New York courthouse arrests

COURTHOUSE ARREST INTAKE FORM

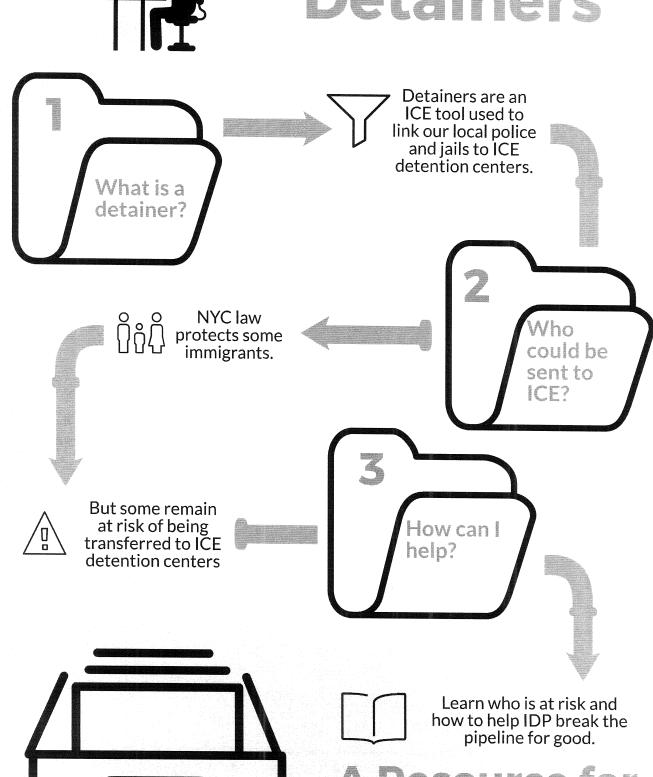
BASICS (Name of person reporting, organization, contact info)	
DESCRIPTION OF INCIDENT (Date of incident (at least month/yr); name/type of court; location of	•
arrest in courthouse; how ICE agents presented themselves; interaction with ICE agents; anything	,
notable)	
COURT STAFF OR DISTRICT ATTORNEY INVOLVEMENT IN ARREST	
BACKGROUND OF PERSON ARRESTED (pending charges, immigration status, criminal history, ties the U.S.)	s to
	112

Email to: Lee Wang (lee@immdefense.org) and Genia Blaser (genia@immdefense.org)

Fax to: 1-800-391-5713



Detainers



A Resource for Attorneys and Advocates in NYC

DEFENSE

Detainers (0)



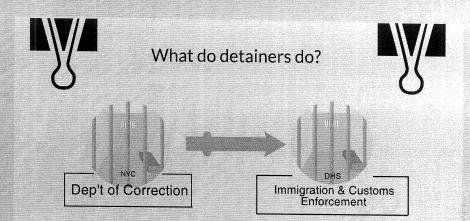
What is a detainer?



Detainers are forms that ICE issues to law enforcement agencies to ask that certain actions be taken with respect to people in local custody. Detainers are also called "ICE holds" or "immigration holds." ICE places detainers on people in local jails so that ICE agents can come to the local jail to arrest and detain immigrants at the point they are released on their local criminal case.

Who is subject to a detainer?

Anyone who ICE believes is removable from the U.S. This includes undocumented people, people with lawful status who have certain convictions, and people ICE believes have violated the terms of their immigration status.



When local jails and law enforcement cooperate with ICE detainers they make it easier for ICE to arrest people. When a city agency honors a detainer they agree to transfer an individual into ICE custody once their city custody period is over. This might be because the person paid bail, finished a sentence, or was ordered released from custody by a judge. If a detainer is honored, instead of being released, the person is transferred to ICE custody.



Does NYC have to comply with detainers?

No. Detainers are requests and actions taken in response to a detainer are voluntary. Across the country, including in NYC, judges have ruled that holding people in jail for extra time based solely on a detainer request violates the Constitution.



What happens to people transferred to ICE custody?

ICE takes custody of people they want to deport. Once ICE has an immigrant in custody they determine whether that person is entitled to see an Immigration Judge to try to remain in the U.S. or if the person can be deported without seeing a judge. ICE also determines whether they want to keep the person in an immigration jail or whether the person can be released to go home.

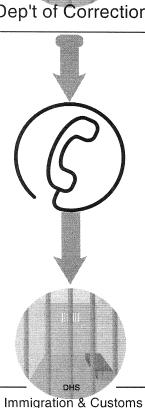
PRACTICE ALERT FOR DEFENSE ATTORNEYS

Advising Your Immigrant Client about the Risk of Being Transferred to Immigration Custody

Print this practice alert: bit.lv/DetainersAlert

IDP has received reports about clients transferred from NYC DOC custody to ICE custody. Defense attorneys should be vigilant about the risk their clients will be transferred to ICE custody.









Does NYC have a detainer law that limits city cooperation with ICE?

Yes! The NYC detainer law is still in effect. DOC and NYPD must comply with city laws about holding individuals for extra time and providing information about individuals in response to ICE requests.



Are immigrants in DOC custody at risk of being transferred to ICE?

Most of your clients will not be at risk of being transferred to ICE custody. But because DOC is communicating with ICE in some circumstances, clients with certain convictions in the last five years and clients who are on the terrorist watch list are at risk of being transferred to immigration custody.



Who is at risk of being transferred to ICE?

DOC practice is to provide information to ICE about clients convicted of one of the felonies listed in the detainer law and people on the terrorist watch list. The information that DOC provides is used to facilitate a transfer from DOC custody to ICE custody.



How should I change my practice to best protect and advise my immigrant clients?

Consult with an immigration specialist familiar with the NYC detainer law as soon as possible about your immigrant clients in DOC custody. Immigration status is sensitive and you should ensure your steps to investigate do not bring your client to the attention of immigration.



What information do I need to consult with an immigration specialist?

- Your client's complete criminal history, including out of state convictions.
- A copy of the any hold paperwork (like a detainer or "request for notification") if you or your client were provided with it.
- Information about your client's immigration history.



What should I advise my client while I'm investigating?

Because DOC is communicating with ICE, some people are at risk of being transferred to ICE custody if they pay bail, complete a sentence, or are ordered released from custody. You should explain the risk that your client may not get to go home as expected because DOC is facilitating the transfer of certain immigrants to immigration detention centers.

Enforcement

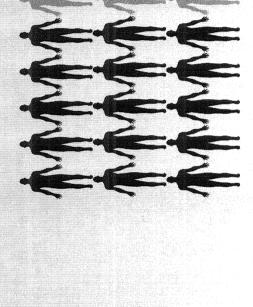
Who could be sent to ICE 公人と

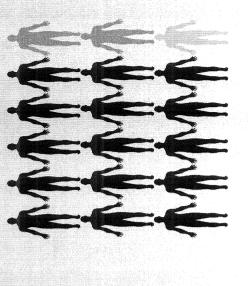
communicate with ICE or hold people beyond the time they would otherwise be released. But some people remain at risk. The NYC detainer law limits the circumstances under which DOC or NYPD can

CE will place detainers on lots of people they identify as removable from the U.S.

DOC will communicate with ICE about some clients (those at risk for transfer)

DOC may hold people for additional time only if the client is at risk of transfer and ICE has a warrant





Which clients are at risk under NYC's law?

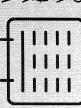
NYPD and DOC will not honor detainers or communicate with ICE about clients unless they are deemed a significant, current danger.



Clients with certain felony convictions deemed "violent or serious" within 5 years of the instant arrest



The NYC detainer law contains a list of felony convictions considered "violent or serious." This list is unique and does not match the list of violent offenses in the penal law.



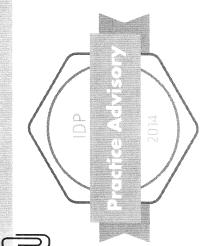
When calculating the five year time period, exclude time incarcerated based on violent or serious crime conviction.



Clients who are a possible match on the terrorist watch list



The terrorist watch list or "Terrorist Screening Database" is a secret list shared only with law enforcement. It includes, but is not limited to, people on the no-fly list



IDP's practice advisory provides more detail about these provisions, including the list of offenses deemed "violent or serious."

bit.ly/detaineradvisory

Clients at risk under NYC's law may be transferred to immigration detention based on communications between DOC and ICE

DOC currently shares information with ICE about individuals who have a felony conviction listed in the law within the last five years or who are a possible match in the terrorist watch list.

When DOC shares information, like a client's release date, ICE may choose to make an arrest. Your client could be arrested by ICE at the moment he or she is being released from DOC custody, effectively transferring clients from DOC custody to ICE custody.



But in NYC, clients cannot be held in DOC custody beyond the time they should have been released based on a detainer alone, ICE must provide a judicial warrant



ICE may attach an administrative ICE warrant to detainer paperwork. This is not enough to satisfy the requirements under NYC law. Administrative warrants may be signed by a DHS employee. In order to satisfy the warrant requirement under NYC law, ICE must provide a warrant signed by an Article III or magistrate judge.

DOC may delay release to take a reasonable amount of time to check relevant databases if considering honoring a detainer



NYC law allows for a reasonable delay to check appropriate databases when releasing an individual for whom DOC is considering honoring a detainer.



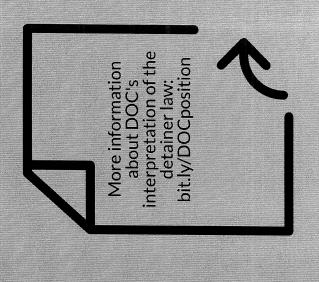
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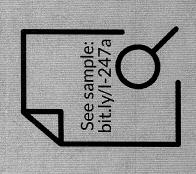
New York City's detainer law was created to protect immigrant New Yorkers from being transferred to ICE custody and stop the use of our city resources to fuel the mass deportation machine. However, DOC does have a theory for why they can communicate with ICE even without a warrant.

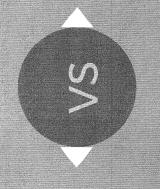
A request for notification is different than a civil immigration detainer

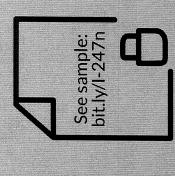
DOC employees may communicate with ICE about anyone "convicted of a violent of serious crime"

DOC may notify ICE about the date and time of release of anyone "convicted of a violent or serious crime" in response to a request for notification









ICE form I-247A is titled "Notice of Action - Immigration Detainer"

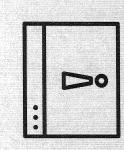
Notification of Release of Suspected Priority Alien"

CE form I-247N is titled "Request for Voluntary

The form requests that DOC call ICE in advance of releasing a person to let ICE know the date and time the person will be released. ICE can then come to the jail and arrest the immigrant at the time they are supposed to be being released.

The form requests that DOC call ICE in advance of releasing a person to let ICE know the date and time the person will be released. ICE also requests that DOC hold the individual for up to 48 hours beyond the time he or she should have been released, to give ICE time to get to the jail.

Monitor DOC Implementation: Share your stories



IDP is collecting your stories and information about how DOC is implementing the DOC law. You can fill out our online form to help break the pipeline between DOC and ICE.

bit.lw/NYCdetainer



Did you have a client with a detainer? What kind of detainer was issued? If your client had one of the convictions on the list, was he or she transferred to ICE or released?



Did your client suffer a long delay in being released from DOC custody as a result of having a detainer?



with you about their internal process for deciding if someone would be Did a DOC employee talk to you about the detainer law? Did they talk held for additional time on a detainer? Did they tell you about their communications with ICE?

HELPFUL RESOURCES



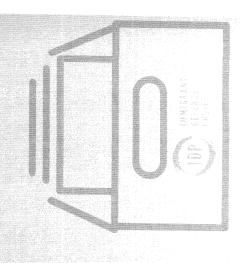


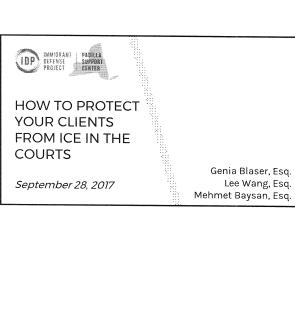
Full Text of the NYC Detainer Law as applied to DOC (Admin 9-131)

Sample form I-247N

Sample form I-247A

Form for reporting DOC implementation actions





WHO WE ARE IDP MMIGRANT SUPPORT CERTER IDP's Padilla Support Center is one of six Regional Immigration Assistance Centers funded by an innovative grant from the New York State Office of Indigent Legal Services through the New York City Mayor's Office of Criminal Justice.

WHAT WE DO IMMIGRANT PABLES SUPPORT PROJECT P

WHATI	CE	IS
DOING	N	Y
COURTS	S	

Under the new administration, state courthouses have become a locus of immigration enforcement.



ICE has arrested both documented and undocumented immigrants in	
every borough of New York City.	
ICE goes to problem solving courts, including human trafficking	
intervention courts.	
ICE has also made one arrest in a NYC family court.	
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DHS: blame "sanctuary" cities	
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DHS: Targeting immigrants in	
courts avoids "safety risks"	

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EXECUTIVE ORDER 13768

Enhancing Public Safety in the Interior of the U.S.

- Expanded "priorities" for enforcement
- Proposed to triple ICE agents
- Threatened to withhold funding from "sanctuary" jurisdictions

https://www.whilehouse.gov/ihe-press-office/2017/01/25/presidential-executive-order-enhancing-public-eafely-interior-united

EXPANDED "PRIORITIES"

The law allows the federal gov't to deport certain immigrants including:

Anyone without lawful immigration status

People with status who have certain criminal criminal convictions

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EXPANDED "PRIORITIES" The Trump Administration focuses on people who: Have pending criminal cases Have prior criminal convictions Have final orders of removal Have committed fraud or misrepresentation in gov't applicatio Believed to pose a threat to public safety or national security	n

NEW ENFORCEMENT TRENDS

- Targeting people at a much earlier stage in criminal case
 Arresting undocumented people with no prior criminal history
 Targeting young people based on alleged gang affiliation
 Immigrants "victims" are not exempt



\supset Who is at Risk

- Anyone who is undocumented
- People with status (e.g. green card holder, TPS, asylee) with certain criminal convictions



🖒 Practice Tip

FOR EVERY CLIENT:

- Where were were you born?
- What is your immigration status?
- Do you have prior criminal convictions?



Client Advice

If your client is at risk:

- Explain risks of coming to court
- Do NOT advise that they miss an appearance
- Identify strategies to mitigate risks



Free consultation



212-725-6422

www.immdefense.org/psc

3.HOW ICE IS ARRESTING PEOPLE IN COURT

Information Sharing Makes it Easy At booking, fingerprints are automatically checked against the FBI and DHS databases.





Information Sharing Makes it Easy ICE is notified if there is a "hit" (i.e. databases find someone who is believed to be removable)



NYC Detainer Law Dept' of Corrections will not honor detainer unless: 1) Judicial warrant (Art. III judge) AND 2) Conviction for "violent and serious" felony within last 5 years NO RELEASE TO ICE IDP ADVISORY (includes DOC and NYPD policies): http://bit.ly/detainer/aw

NYC Detainer Law Dept' of Corrections Exception: If individual has conviction for "violent and serious" felony, DOC will NOTIFY ICE of release. "Violent and Serious" Felony IDP ADVISORY: http://bit.ly/detainerlaw/suplementation



WHAT IS AN ICE ARREST?

- Individuals are arrested for CIVIL violations of federal immigration law
 By law, ICE must show an administrative warrant (signed by another ICE officer)
 Can make warrantless arrest if reason to believe person violated immigration law AND flight risk

WHAT WILL ICE AGENTS LOOK LIKE?



WHAT WILL ICE AGENTS **LOOK LIKE?**

- 2-6 plainclothes ICE agents
 May not have visible badges
 Agents refuse to answer questions or identify themselves
 Will not have judicial warrant
 May have ICE administrative warrant

HOW WILL ARREST HAPPEN?		
HOW WILL A ► ICE usually ta ► ICE depends ► May wait f	RREST HAPPEN? rgets individuals on court to ID individuals or case to be called in in courtroom vestibules and hallways t and make arrest outside	
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OFFICE OF COURT ADMINISTRATION PROTOCOL Issued April 26, 2017 ICE agents identify themselves to court officers at entrance Court officers notify supervisor, and supervisor notifies judge NO requirement to notify attorneys ICE cannot make arrest INSIDE courtroom OCA keeps track of "unusual incident reports"	
4. WHAT TO DO IF ICE SHOWS UP IN COURT	
BEFORE THE NEXT COURT DATE Contact IDP for a consultation for all noncitizen clients Inform your client of the risk of ICE arrest Share IDP's Know Your Rights materials: immdefense.org/raids (available in 16 languages)	

BEFORE THE NEXT COURT DATE Ask to waive your client's next appearance Advance the case off calendar Often possible only when case is on for resolution Make a plan ahead of time for your client to meet you in the court part (as opposed to hallway)	
ENTERING THE COURTROOM ➤ Look around the courtroom before signing up the case ► Talk with an OCA officer ➤ Notice any unusual activity regarding calling of case ► Ex: unexplainable rush or delay ► OCA officers talking to the Judge	
IF ICE IS IN THE COURTROOM ► Ask to Approach the Bench ► Inform the Judge and ADA that ICE agents are in the courtroom ► Consider discussing how to go forward on the case ► Be careful how much is shared about your client's immigration history/status ► Discuss possible case resolutions	

IF ICE IS IN THE COURTROOM Make a Record □ "ICE is present in the courtroom." □ "I want to make a record that ICE agents are here to arrest my client" □ But avoid discussing your client's immigration history/status □ Regardless if bail is set, invoke your client's 6th amendment right to appear in the case against them	
IF ICE IS IN THE COURTROOM ► Consider whether bail would help ► Be prepared to explain why bail is appropriate ► Talk with client about pros/cons of being stepped in ► Consult with IDP about risks ► A small group of non-citizens are NOT protected by the New York City Detainer Law and COULD BE handed over to ICE. See IDP advisory: bit.ly/detainers	
IF YOU WITNESS ICE ARRESTING YOUR CLIENT Don't just step aside. Ask questions. Can I see ID? Do you have a warrant? Can I see it? Why and where are you taking my client?	

IF YOU WITNESS ICE ARRESTING YOUR CLIENT ► Invoke your client's rights ► Don't physically interfere ► Make sure your client has your card ► Get contact information for your client's loved ones	
IF ICE ARRESTS YOUR CLIENT BEFORE THEIR APPEARANCE Ask ICE to allow you to call the case before taking your client Make a record My client was in court but ICE arrested him/her before the case was called." Describe how and where ICE made the arrest; Make note if: ICE refused to wait for the case to be called; Court staff or a DA assisted in the arrest; ICE violated your client's rights.	
IF ICE ARRESTS YOUR CLIENT BEFORE THEIR APPEARANCE • Ask for bench warrant to be stayed • Put the DA on notice that they need to produce the client at the next court date	

IF ICE ARRESTS YOUR CLIENT **AFTER THEIR APPEARANCE**

- Ask for the case to be second called
 - Make a record
 - How and where ICE agents arrested your client
 - Explain how you invoked your client's rights
 - Ask the DA to produce your client for the next court date
 - Make sure to do this on the record
 - Schedule the next court date around feasible production time

WHAT TO DOCUMENT

WHAT TO DOCUMENT

- Where the arrest took place
 Eg. hallway, vestibule, outside courthouse entrance
 Number of ICE agents, how they were dressed, and identified themselves
- How they responded to questions
 - Did they refuse to answer? Did they say they had a warrant? Did they show you anything?
- Whether any court staff was involved
 If you did not witness the arrest, how you learned about it



Report ICE Activity in Courts

- Advocates are working to push back against ICE arrests in courts
- Contact IDP if ICE is at or around a courthouse:
 - > Fill out intake form: bit.ly/ICEinCourt

7.WHAT
HAPPENS IF
ICE ARRESTS

MY CLIENT

AFTER ARREST, ICE MAKES CUSTODY DETERMINATION.



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Most detainees who are picked up in NYC are detained in New Jersey or upstate in Orange County.



IN SOME CASES, ICE INITIATES **REMOVAL PROCEEDINGS**

- Client is served with "notice to appear" which lists charges of removability They are given a first court date, usually 6-8 weeks after detained Some non-citizens can pay bond to get out of detention



No right to counsel in immigration proceedings

- ► This means no lawyer automatically assigned
- ► **BUT**in NYC, most detainees are entitled to FREE representation through the New York Immigrant Family Unity Program (NYIFUP).
 - Won't be assigned a NYIFUP attorney until their first court date
 - If they have private representation, they won't be eligible for NYIFUP

WRITS:

How to resolve an open criminal matter when your client is in ICE custody





WRIT OF HABEAS CORPUS

- Put DA on notice to file a writ to produce

 - Wit of Habeas Corpus Ad Prosequendum, CPL \$580.30

 Must be filed approx 2 weeks before court date ICE produces client to 201 Varick Street; DA arranges for DA detectives or DOC officers to bring client to criminal court

 After appearance, client returned to ICE
 Coordinate with immigration attorney
- around strategy for resolving the case

30.30 CONSIDERATIONS

- Due-diligence requirement: DA expected to use available procedures to secure attendance

 If doesn't do this, speedy-trial clock
- continues to run
- But where bench warrant, time doesn't run
- Coordinate strategy with immigration attorney



HOW CAN WE HELP?

WHEN TO CALL US

- √ You are representing a defendant in a NYC criminal proceeding.
- \checkmark Defendant is NOT a U.S. citizen.
- \checkmark Questions about whether defendant is at risk of an ICE arrest in court.
- \checkmark Concerns that criminal court case will negatively impact immigration status.

