

CRIMMIGRATION COMMUNICATION



DHS Announces New Guidance Regarding Civil Immigration Enforcement Actions in or Near Courthouses

Dear colleagues,

On April 27, 2021, DHS released a new policy memorandum placing limits on civil immigration enforcement actions in or near courthouses. This memorandum supersedes and revokes an ICE directive issued under the Trump administration in 2018, but it authorizes courthouse arrests in a variety of circumstances.

Civil Immigration Enforcement, including civil apprehensions, service of subpoenas, searches, seizures, interviews, and surveillance, may be taken in or near a courthouse in limited circumstances, such as:

- A **national security threat**,
- **Imminent risk** of death, violence, or physical harm to any person,
- **Hot pursuit** of an individual who poses a **threat to public safety**,
- **Imminent risk** of destruction of evidence, and
- Civil immigration enforcement is permitted against individuals who are **public safety threats** in the **absence of a safe alternative** to achieve the enforcement action at that location and the action **has been approved** in advance by a Field Office Director, Special Agent in Charge.

New York State already has three important rules legally prohibiting ICE from conducting civil immigration enforcement in courthouses:

- NYS Office of Court Administration (OCA) implemented rules prohibiting ICE from arresting individuals inside state courthouses without judicial warrants.
- State of New York, et al. v. U.S. Immigration and Customs Enforcement, et al, a Federal District Court enjoined ICE from conducting courthouse arrests against people coming to, attending, and returning from court in NY.
- The Protect Our Courts Act (POCA) prohibits civil arrests, including ICE arrests, of people and their companions going to, attending, and returning from court.

Keep in mind that the new courthouse policy does not apply to arrests occurring in jails connected to courthouses where the individual arrested is released from the custody of state, local, or federal law enforcement at the conclusion of a criminal sentence. As such, your incarcerated noncitizen clients can still be detained by ICE at the end of their jail sentences. Attorneys should continue advising noncitizen clients of the possibility of ICE arrests outside of the jail or should present the option of having clients bailing out late at night or on the weekends when ICE tends to be less active.

Please contact the LIRIAC regarding your noncitizen clients so that we can discuss strategies to minimize ICE detention risk or to assess the risk of ICE detention at the end of a jail sentence.

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