

KNOWING WHEN AND HOW TO SEEK ICE ASSISTANCE

It is not uncommon for immigration enforcement to interfere with obligations imposed on a noncitizen client in criminal and/or family court proceedings. There are, however, a limited number of resources that can assist a defense attorney in securing the necessary immigration enforcement information to address compliance issues and help to alleviate any unintended consequences that may result from immigration enforcement measures. This advisory provides an overview of the tools currently available to assist defense attorneys in accessing limited immigration enforcement information pertaining to a noncitizen client.

HELPFUL GOVERNMENT SOURCES OF INFORMATION

ICE Verification & Certification Form: ICE has recently introduced a verification process that will provide defense attorneys with the opportunity to request relevant and reliable information from ICE that can be used to verify that immigration enforcement is the cause for a client's failure to meet a criminal court or family court obligation. To access this information, defense attorneys must submit a "Request for Certification of Alien Custody, Removal, or Departure for Use In Criminal Legal Proceedings" form (ICE Request form) to ICE authorities. ICE will subsequently issue a Certification Form in response to the attorney's Request. If issued, a Certification Form can be used to verify that lack of client compliance is involuntary and caused by actions of immigration enforcement. *A copy of the ICE Request form and ICE Instruction Sheet are provided.*

ICE Form I-247, Notice of Detainer: The DHS relies heavily on the voluntary participation of all local and state law enforcement entities to ascertain the alienage of all individuals with whom they come into contact. As a result, most local and state police agencies, jails, prisons, probation and parole officers, and even some courts and prosecutors, will voluntarily take steps to identify and to refer all non-U.S. citizens to ICE. Upon receipt of these referrals, ICE will issue a Form I-247, Notice of Detainer (immigration detainer or "ICE hold") requesting that the referring law enforcement agency or individual contact ICE prior to completion of a court proceeding and/or any release of the noncitizen client from custody.

The immigration detainer contains helpful information that can be used by defense attorneys in understanding the basis for the ICE hold. For instance, the immigration detainer will provide an ICE alien registration file number (also referred to as the "A number") that can be used to locate a noncitizen client in immigration detention (i.e., see ICE Online Detainee Locator below) or to access immigration court information pertaining to a client's current or past immigration proceedings (i.e., see EOIR hotline below). The immigration detainer also provides the ICE office contact information necessary to negotiate immigration prosecutorial discretion (i.e., see ICE Prosecutorial Discretion Policies below) on behalf of a deserving client.

NOTE: Currently, ICE mandates that all local jails, state and federal prisons provide noncitizens with a copy of the Form I-247, Notice of Detainer issued to them by ICE authorities. Please notify your local facility of this obligation and contact our office if this obligation continues to be unmet.

ICE Online Detainee Locator: This ICE online locator system is available to assist in locating a noncitizen client that may be currently held by ICE in civil immigration detention. The system will provide facility contact and location information as well as information for facility visitation. The ICE Online Detainee Locator can be accessed at <https://locator.ice.gov>.

ICE Humanitarian Discretionary Policies: Despite a noncitizen client's immigration status, he/she may still be deserving of ICE prosecutorial discretion based on substantial equities or other humanitarian considerations which would allow ICE authorities to consider options such as temporarily lifting a previously issued immigration detainer, suspending or terminating a pending removal proceeding or arranging for local immigration detention pending a child welfare proceeding.

- **ICE Prosecutorial Discretionary Policy:** ICE allows for the exercise of prosecutorial discretion in an unlimited number of circumstances which may include, but not be limited to a client's law enforcement cooperation, victimization (i.e., domestic violence, trafficking), longtime lawful permanent resident status, age, health, military background, caregiver obligations and other humanitarian concerns. Defense counsel is encouraged to consider contacting ICE (i.e., as provided on the immigration detainer) to advocate for humanitarian discretion on a deserving client's behalf. For more information on ICE's policy on "prosecutorial discretion," see the ICE Director, John Morton's June 17, 2011 memorandum, "*Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*" published and available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.
- **New Family Preservation Discretionary Policy:** Most recently, ICE released a discretionary policy focused on family preservation. ICE's August 23, 2013 memoranda, "Facilitating Parental Interests in the Court of Civil Immigration Enforcement Activities" outlines policy designed to preserve a detained noncitizen parent's right to participate in child welfare court proceedings and parent-child visitation. The new policy also provides for ICE coordination of parental deportation with actions to promote their children's safe and legally secure placements, and to help facilitate arrangements to assist a deported parent to temporarily return to the U.S. in order to participate in child welfare court proceedings. To ensure such collaboration, ICE will assign designated officers as the "Point of Contact for Parental Rights" in each ICE field office across the country. For more information on the ICE family preservation policy, visit http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf.

Executive Office for Immigration Review (EOIR) Hotline: In addition to available ICE resources, the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) (i.e., which oversees the removal hearing process) has provided an automated hotline accessible at **1-800-898-7180** to provide automated information as to any prior or pending removal proceeding involving a noncitizen client. A client's alien registration file number (see Detainer information above) will be necessary to access the automated database information.

CAUTION! The basis, manner and circumstances in which defense counsel may seek to contact ICE about an individual client should be approached strategically and in a way that helps to ensure a positive outcome for your client. Any such contact should be pursued only after an attorney has clear indication of possible immigration enforcement action by ICE.

For help on determining when to seek ICE assistance, please contact the New York State Defenders Association at 518-465-3524 or the Immigrant Defense Project hotline at 212-725-6422.