



CAPITAL AREA
Immigrants' Rights
COALITION

*Fighting for equal justice for all immigrants
at risk of detention and deportation*

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HELPING YOUR PRO BONO CLIENTS NAVIGATE THE IMMIGRATION SYSTEM UNDER THE NEW EXECUTIVE ORDERS INSTRUCTING HEIGHTENED ENFORCEMENT & DETENTION

On January 25 and 27, 2017, the President issued three executive orders focusing on immigration: the “Enhancing Public Safety in the Interior of the U.S.” (“Interior Enforcement Order”); the “Border Security and Immigration Enforcement Improvements” (“Border Security Order”); and, the “Protecting the Nation from Foreign Terrorists Entry into the United States” (“Protecting the Nation Order”).

Collectively, these orders direct several agencies under the executive branch, including the Department of Homeland Security (DHS) and its sub-agencies Immigration Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS), to prioritize certain classes of people for detention, removal from the United States, scrutiny, and revocation or pause of certain immigration benefits.

In order to help your pro bono efforts we have identified the following preventative steps to help avoid or reduce the effects of heightened enforcement and detention by these agencies:

STEP 1 – TOUCH BASE WITH YOUR CLIENTS NOW AND PROVIDE DUE WARNINGS

Many non-detained clients with pending immigration court or USCIS cases are scheduled for hearings or interviews far into the future. The drastic policy shifts at DHS will lead to increased apprehension and removal efforts of detained and non-detained clients. It’s therefore advisable to check-in with your clients *right now* to provide preventative warnings to avoid ICE enforcement situations that could change the balance of their cases. Clients should be warned to:

- **Avoid committing any crime or traffic infraction, regardless of how relatively minor the offense** (this includes getting into trouble as a juvenile as we have seen ICE detain people based on information derived from school or juvenile system records)
- **Avoid any use or possession of fraudulent documents**
- **If any law enforcement agency comes to their house, they should not open the door, and instead ask for a copy of the warrant to be slipped under the door.** United We Dream has a helpful short “Know Your Rights” guide that is translated in various languages and you should provide it to your clients. Click [here](#)
- **If they receive any notice from ICE, USCIS, or the Immigration Court they should contact you immediately and provide a copy** (this is because ICE is sending appointment notices and detaining people at certain check-in meetings).
- **If they are charged with a crime, they should tell their criminal defense attorney they are not a U.S. citizen and instruct their criminal attorney consult with an immigration attorney about their criminal matter.** CAIR Coalition provides consults to criminal attorneys to avoid serious immigration consequences of pleading to offenses. Criminal attorneys can email us at: vjpconsultations@caircoalition.org
- **If they are from any of the seven (7) banned countries, they should avoid all international travel outside the United States even if they are lawful permanent residents.**

STEP 2 – PERIODICALLY TRACK YOUR CASES USING THE COURT ELECTRONIC PHONE SYSTEM OR CASE STATUS USCIS LINK

During periods of increased enforcement, time is a commodity. Learning about a client's decision 1 to 2 days before you receive a copy in the mail can make the difference between your client being deported or not. For this reason, we advise that you periodically (e.g. once every two weeks or once per month):

- **Immigration Court Case:** Call the **1-800-898-7180**, the court's electronic phone system, often to check on your client's case status or determine if they have an upcoming hearing date.
- **USCIS Case:** Check the status of the case online [here](#). Also, periodically check the processing times to determine if adjudication is delayed by going [here](#).

STEP 3 – IDENTIFY WHETHER YOUR CLIENTS ARE NOW PRIORITIES FOR ENFORCEMENT & DETENTION

The Interior Enforcement Order established a long list of people deemed priorities for detention and removal. The classes of people identified below are not a complete list of priorities, but instead, are those we deem most at risk of upcoming detention enforcement efforts.

A. Priority → Clients who have final removal orders and are awaiting adjudication on pending applications for relief but who do not have a stay of removal.

Example: Client was ordered deported in 2007; you met him in 2015 and helped him apply for a stay of removal and a U visa at the same time. The stay of removal was granted in 2015 but has expired, may soon expire, or was never requested. Because he has a final removal order, he may be detained.

What to do:

- Determine if your client has a current unexpired and approved stay of removal from ICE
- Determine when your client is due for a check-in with the local ICE field office or if he has gotten a notice rescheduling her/him for a sooner date.
- Determine if any decision has been made on the client's application for relief and/or see if you can expedite adjudication of that application
- Determine if and when a motion for a stay of removal or motion to reopen should be filed by coordinating with your pro bono mentor to avoid detention and removal.
- Make sure the client has your contact information in written form and carries it at all times and knows to call you if detained.

B. Priority → Clients with criminal offenses (regardless of how minor) who are not detained with pending applications for relief.

What to do:

- Determine if any decision has been made on the client's application for relief and/or see if you can expedite adjudication of that application
- Determine if client has completed all sentencing requirements.
- Determine if your client has any upcoming parole/probation or criminal court hearings. If so, discuss with your pro bono mentor establishing a plan to accompany the client to the hearing/appointment to prevent ICE detention or discuss the possibility of preparing a bond motion as a preemptive precautionary measure to detention.
- Make sure the client has your contact information in written form and carries it at all times and knows to call you if detained.

C. Priority → Pending BIA appeal – and client’s case will likely be denied by the Board leading to a final order

Example: Your client is not detained and has a pending appeal before the BIA. After evaluating with your pro bono mentor the likelihood that you will prevail at this stage in appellate litigation, you believe the Board is likely to dismiss the appeal and issue a removal order. The Border Security Order directs DHS to "remove promptly" people once they have their claims "rejected," which means your client could be removed and detained very quickly after a negative decision is rendered.

What to do:

- While the case is pending, discuss with the firm, mentor and client the next steps for representation if a removal order is issued by the Board.
- If the firm decides that an appeal to the Circuit Court will be filed, prepare a motion for a stay of removal in advance so you are ready to file as soon as a decision is rendered. This is because we are seeing ICE deport people much faster following a removal order from the Board (within days), which is considered final and actionable.

D. Priority → Clients issued prosecutorial discretion who have a final order or have convictions

Example: You assisted your client apply for asylum in 2014 and he has an old assault conviction. Despite this conviction, in 2015, ICE agreed to administratively close his case as an exercise of discretion. Client’s case may now be re-calendared and a new immigration court hearing may be set, additionally ICE may detain him because he has a conviction.

What to do:

- If this is a current case you should contact your client immediately, apprise him of the possibility that his case may be recalendared and he may be detained, and determine with your pro bono mentor if any affirmative steps should be taken to prepare for an enforcement scenario.
- If it’s a past client, speak with your pro bono firm about the possibility of providing a warning to the client and referring them to a local immigration provider for further assistance or determine if you can get approval from the firm to represent the client again if detention or removal proceedings are renewed.

We hope this advisory assists you in representing your pro bono immigration clients. Should you need any further assistance or have any questions please contact us.