

What Should I Tell My NIJC *Pro Bono* Client About the Immigration Executive Orders?

The White House and Department of Homeland Security (DHS) have issued a series of documents describing a significant expansion of immigration enforcement and detention in the United States. On January 25, the president issued two executive orders outlining his plan to target immigrants apprehended at the border and those living in the country without documentation. On February 20, DHS Secretary John Kelly issued memos providing details on how DHS will enforce the president's orders.

Following the issuance of the executive orders and memos, many of NIJC clients have expressed fear about how these new policies will affect them and their families. NIJC recommends that pro bono attorneys affirmatively reach out to their clients to discuss these issues. There are many rumors circulating about new immigration enforcement actions and providing clients with guidance ahead of time may help prevent panicked clients from making hasty decisions regarding their immigration cases without first consulting with their attorneys. Please note that all NIJC clients have been carefully screened for eligibility and advised regarding the risks of seeking immigration relief before being referred to pro bono counsel. In most cases, NIJC would still encourage clients to seek immigration relief, notwithstanding the executive orders. Pro bono attorneys who have concerns about whether their client should still file an application for relief should contact their NIJC point of contact before discussing options with their client.

Below are some common questions NIJC has received and the way NIJC recommends that pro bono attorney respond. Please note that the information below is not legal advice. Every immigration case is different and NIJC pro bono attorneys who have specific questions about their clients should contact their NIJC point of contact.

Frequently Asked Questions

1. My client is an asylum seeker and is applying for asylum before the immigration court. He told me that he is afraid to leave his house because he might be stopped by immigration officers on the street. What can I tell him?

Although immigration officers are authorized to arrest any individual they encounter who is “removable” (meaning they are in the United States without authorization or have legal status but have committed a crime that can trigger deportation), individuals in removal proceedings – especially with pending application for relief – are unlikely to be detained unless DHS believes they have engaged in criminal behavior. Clients should avoid associating with individuals engaging in criminal activity so as not to be collaterally arrested should an enforcement action occur. Your client cannot be deported until there is a final decision on his application for relief; meaning all appeals have been exhausted. As long as your client has been complying with immigration court and Immigration and Customs Enforcement (ICE) requirements, NIJC believes ICE is unlikely to detain your client.

2. What should I tell my client to do if ICE comes to her home?

If ICE comes to your client's door, she is not required to open the door unless ICE has a warrant signed by a judge. (If your client has children, she should teach her children not to open the door.) She can ask the ICE officer to show her the warrant by sliding it under her door or holding it up against a window. Your client does not have to answer any questions or provide ICE with any information. Your client can also request to call her attorney (you!) and should not sign any documents unless you have reviewed them first.

3. What should I tell my client to do if ICE comes to her workplace?

ICE must have a warrant signed by a judge or permission from your client's employer to enter her workplace. Your client does not have to answer any questions but may wish to disclose that she is an asylum seeker or has another claim for relief pending if that is the case. It is important that your client not keep any false documents on her person and that your client not lie or claim to be a U.S. citizen if she is not one. Your client can also request to call her attorney (you!) and should not sign any documents unless you have reviewed them first.

4. What should I tell my client to do if she encounters ICE on the street or in a public place?

ICE does not need a warrant to search public places. If ICE stops your client on the street, she can ask if she is free to leave. If she is not under arrest, she can ask if she is free to go and should walk calmly away if the ICE officer says that she can leave. If the ICE officer indicates she is not allowed to leave, she should follow the instructions outlined above.

5. My client has a pending application for immigration relief (for example, a U visa application, an affirmative asylum application, a DACA application, etc.). If he encounters an immigration officer, should he stay silent or tell the officer about his pending application?

Regardless of your client's immigration status, he has the right to remain silent. If your client wants to provide his name and birthdate, that may help family members locate him if he is detained, but it is not required. If your client fears he will be harmed in his home country, stating so may prevent ICE from seeking the "expedited removal" of your client.¹ Telling the immigration officer about a pending application and/or providing documents to prove the pending application, may cause ICE to release your client more quickly. It is important that your client not lie or claim to be a U.S. citizen if he is not one. Your client can also request to call his attorney (you!) and should not sign any documents unless you have reviewed them first.

6. My client has a prior removal order. What should I advise my client?

Please call your NIJC point of contact to discuss your case. Previously, a person with a removal order from prior to 2014 was not an enforcement priority; however, the enforcement priorities have changed to

¹ As of the writing of this document, ICE is not seeking expedited removal of noncitizens apprehended in the interior of the country except at ports of entry. However, the ICE memos contemplate the expanded use of expedited removal and attorneys may wish to prepare their clients accordingly. Expedited removal is authorized by INA §235(b)(1)(A). To avoid expedited removal, noncitizens believed by and immigration office to be inadmissible must show more than two years of presence in the U.S. or demonstrate a fear of return to their country of origin.

include all prior removal orders, including those before 2014. Your NIJC point of contact will be able to discuss with you how to best advise your client.

7. Is there anything my client can do to decrease the risk of encountering immigration officers?

You should recommend that your client avoid driving without a license, driving after drinking, or getting in the car with someone else who is doing either of these things. Certain types of employment may also make your client more vulnerable to immigration enforcement. For example, large employment entities (factories, restaurants, construction sites, etc.) are more likely to be raided by immigration officers than smaller employment settings, like childcare, housecleaning, or handyman work.

8. My client has asked if there is anything he can do to prepare in case he or his family members are detained. What can I tell him?

NIJC encourages all undocumented individuals to prepare a safety plan in case of arrest or detention by ICE. To form a safety plan, your client should generally do the following:

- Identify your emergency contact and memorize their phone number
- Memorize the name and phone number of your attorney, if you have one
- Memorize your A Number, if you have one, and give this number to your emergency contact
- Provide your child's school or daycare with the emergency contact's name and phone number and provide authorization for the emergency contact to pick up your child
- Provide authorization for your emergency contact to make medical and legal decisions for your child. In Illinois, a simple letter stating that the emergency contact has this authority if the parent is arrested, detained, or deported is generally sufficient to establish "short-term guardianship." Attorneys should caution clients against paying hundreds of dollars to an attorney for a more formal guardianship order that may be unnecessary
- Keep your passport, identity documents, and important immigration documents, proof of two years of physical presence in the United States, childcare authorization, and financial information in a safe location. Make sure your emergency contact can access them.

NIJC cautions undocumented individuals against creating unnecessary power of attorney documents that may create risks for the undocumented individual by giving another individual authorization to make decisions regarding the undocumented individual's legal and financial matters. For many individuals, a power of attorney is unnecessary to manage her finances and other matters even if deportation occurs.

9. My client has regular check-in appointments with ICE and ISAP (a private entity subcontracted by ICE to manage post-detention monitoring). I heard in the news that ICE has arrested people at these check-in appointments. Should I be worried about my client? Should I go to the check-in appointment with him?

In the recent case of the widely publicized arrest and deportation of a woman at a routine ICE check-in appointment in Arizona, the woman had a final removal order that was several years old, but had not been effectuated. **If your client has a final removal order, please contact your NIJC point of contact as soon as possible to discuss how to proceed.** Unless a client has a final removal order, NIJC does not believe that there is an increased risk of apprehension at an ICE or ISAP appointment, unless the client has had a recent criminal arrest or some other, significant change in his situation. Nonetheless, NIJC recommends that attorneys attend at least one ICE check-in appointment with their clients, to make

the ICE officer aware that the client has an attorney and to file a G-28 appearance form demonstrating that she is the attorney of record. NIJC does not generally recommend that attorneys attend ISAP appointments because they do not involve meetings with ICE officers and attorneys are not allowed into the ISAP meeting. However, it is a good practice to know when your client is scheduled for these appointments and to instruct her to call you upon leaving the appointment so you can monitor any issues that arise.

10. I am representing an unaccompanied child who fled violence in her country and came to the United States to reunite with her mother. I am not representing her mother, but the mother has asked me if she might be in trouble for advising her child to come to the United States. What should I tell her? Is there anything I should do while representing my client (her child) that will lessen the risks for her?

Secretary Kelly states that DHS may bring criminal charges and/or deportation proceedings against anyone who “directly or indirectly ... facilitates the illegal smuggling or trafficking of a ... child into the United States.” We are hopeful that ICE will not interpret this as license to attack the families of children who came to the United States alone, but do not yet know what it will mean in practice. If a *pro bono* attorney is only representing the children, and not the parents or siblings, in an undocumented family, the attorney should encourage the other undocumented family members to obtain an immigration consultation as soon as possible to review their options. *Pro bono* attorneys are welcome to provide NIJC’s contact information (312.660.1370 or immigrantlegaldefense@heartlandalliance.org) to request a consultation. NIJC cannot advise other family members or support *pro bono* attorneys in representing other family members who have first not had a consultation with NIJC.

In light of the renewed focus on the parents and family members of unaccompanied children (and others), NIJC strongly encourages *pro bono* attorneys to carefully prepare affidavits and testimony to avoid exposing family members to possible liability. In most instances, these facts are not central to the asylum claim and do not increase the likelihood of approval.

NIJC *pro bono* attorneys should contact their NIJC point of contact if they have questions about addressing this issue in their client’s case.

11. My client entered the United States as an unaccompanied child and reunited with her father here. Recently, she received a notice telling her and her father to come to the ICE office so that ICE can re-serve her Notice to Appear (NTA). Her father is undocumented and afraid to go with her to the appointment. What should they do?

ICE regularly requests that the parents of unaccompanied children come to an ICE appointment so that ICE can re-serve the child’s NTA on the parent. NIJC has not yet seen a Chicago ICE officer arrest a parent in this situation, but believes greater caution is now needed due to the executive orders and related memos. NIJC recommends the following, depending on the age of the child:

- If a child is under 14 years old, ICE will usually demand that the NTA be served on the parent. Nevertheless, if the parent is undocumented, NIJC recommends that the attorney go to the ICE appointment with the child and attempt to take service of the NTA in place of the parent, as the attorney of record.² Often, however, ICE will refuse to serve the NTA on the child through her attorney. If that occurs, the parent will need to decide how to proceed. If the parent attends the

² INA § 239(a)(1) allows for the NTA to be served on the non-citizen’s counsel of record if personal service on the non-citizen is not practicable.

ICE appointment with her child, it is possible that ICE may arrest the parent, although NIJC has not yet seen this happen. However, if the parent does not attend the ICE appointment, it is also possible that ICE will attempt to serve the NTA at the child's home, which could create a greater risk of arrest and/or detention for the family.

- If the child is 14 years old or older, the child is authorized to sign the NTA herself. NIJC still recommends that the attorney accompany the child to the appointment to ensure the ICE officer does not seek information that could put other members of the family at risk.

12. My client has asked if she should go to Canada and seek asylum there instead of the United States. What should I tell her?

It is very difficult for someone to seek asylum in Canada if she first entered the United States. The United States and Canada have an agreement that requires an individual to request asylum in whichever of the two countries she enters first. There are limited exceptions, but in most cases, if an individual enters the United States and then attempts to request asylum at the Canadian border, Canadian immigration authorities would return the individual to the U.S. The individual would then encounter procedural and legal obstacles in seeking permission to apply for asylum in the United States. The individual would also likely be detained and could remain detained for the duration of her proceedings. If the individual had a pending asylum application in the United States before attempting to enter Canada, that application might be deemed abandoned. NIJC encourages *pro bono* attorneys to explain these consequences to asylum clients and, in most cases, would strongly discourage clients from departing the United States while their asylum applications are pending here. Please contact your NIJC point of contact if you have additional questions about migrating to Canada.

13. I previously represented a young woman in her application for DACA. I am not representing her anymore, but she has contacted me about the recent executive orders because she heard that some DACA recipients have been arrested by ICE. She wants to know if the memos affect DACA recipients like her and whether she should apply to renew DACA. What should I tell her?

Although there have recently been several publicized arrests of DACA recipients, the memos specifically state that the DACA program has not been rescinded. At present, DACA recipients are still able to renew their DACA status, but NIJC strongly recommends that individuals speak with qualified legal counsel, like NIJC, about the potential risks before deciding whether to file a renewal application. If your client would like to make an appointment with NIJC to discuss the possibility of filing a renewal application, she can contact NIJC at 312.660.1370 or immigrantlegaldefense@heartlandalliance.org or register for the next renewal clinic at www.immigrantjustice.org.