

ER 413 IMMIGRATION STATUS

(a) Criminal Cases; Evidence Generally Inadmissible. In any criminal matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to ER 607. The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

(1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.

(2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.

(4) The court may admit evidence of immigration status to show bias or prejudice if it finds that the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.

(5) Nothing in this section shall be construed to exclude evidence that would result in the violation of a defendant's constitutional rights.

(b) Civil Cases; Evidence Generally Inadmissible. Except as provided in subsection (b)(1), evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of a party's cause of action.

(1) Post trial Proceedings. Evidence of immigration status may be submitted to the court through a post trial motion:

(A) where a party who is subject to a final order of removal in immigration proceedings was awarded damages for future lost earnings; or

(B) where a party was awarded reinstatement to employment.

(2) Procedure to review evidence. Whenever a party seeks to use or introduce

immigration status evidence, the court shall conduct an in camera review of such evidence. The motion, related papers, and record of such review may be sealed pursuant to GR 15, and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

The Supreme Court
State of Washington

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March 22, 2017

The Honorable John F. Kelly
U.S. Department of Homeland Security
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Kelly,

As Chief Justice of the Washington State Supreme Court and co-chair of the Board for Judicial Administration, I write to express concern regarding immigration agents being in and around our local courthouses. Lawyers and judges working in our courts have advised me that agents from the Immigration and Customs Enforcement agency of the Department of Homeland Security are being present with increased frequency. These developments are deeply troubling because they impede the fundamental mission of our courts, which is to ensure due process and access to justice for everyone, regardless of their immigration status.

In many locations around our state, a courthouse is the only place where individuals are ensured of a trusted public forum where they will be treated with dignity, respect, and fairness. This includes victims in need of protection from domestic violence, criminal defendants being held accountable for their actions, witnesses summoned to testify, and families who may be in crisis.

We have worked diligently to earn and maintain the trust of communities throughout Washington State to ensure that courthouses are that public forum. The fear of apprehension by immigration officials deters individuals from accessing our courthouses and erodes this trust, even for those with lawful immigration status.

When people are afraid to access our courts, it undermines our fundamental mission. I am concerned at the reports that the fear now present in our immigrant communities is impeding their access to justice. These developments risk making our communities less safe.

Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice. When people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access

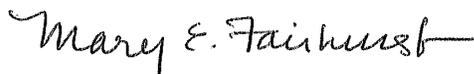
justice is compromised. Their absence curtails the capacity of our judges, clerks and court personnel to function effectively.

In light of the above, I ask that you consider taking the necessary and appropriate steps to address these concerns. For example, I encourage you to designate courthouses as “sensitive locations” as described in your Policy 10029.2. Such a designation will assist us in maintaining the trust that is required for the court to be a safe and neutral public forum. It will assure our residents that they can and should appear for court hearings without fear of apprehension for civil immigration violations.

We understand that the mission of your agency is to enforce federal laws. However, we request that the manner in which these obligations and duties are carried out aligns with, and does not impede, the mission, obligations, and duties of our courts.

My request is offered with all due respect to your commitment to serve the United States, your office, and its functions. I welcome the opportunity to meet with you or your staff to explore possible resolutions.

Very truly yours,



MARY E. FAIRHURST
Chief Justice

cc: Thomas D. Homan, Acting Director, Immigration & Customs Enforcement
Nathalie R. Asher, ICE Field Office Director, Seattle Washington
Bryan S. Wilcox, Acting Field Office Director

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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses

Issue Date: January 10, 2018

Effective Date: January 10, 2018

Superseded: None

Federal Enterprise Architecture Number: 306-112-002b

- 1. Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding civil immigration enforcement actions inside federal, state, and local courthouses. Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents. When practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.

Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country because many individuals appearing in courthouses for one matter are wanted for unrelated criminal or civil violations. ICE's enforcement activities in these same courthouses are wholly consistent with longstanding law enforcement practices, nationwide. And, courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.

- 2. Policy.** ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed, when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location.

Aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE's enforcement actions.¹

¹ ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security (DHS) policy. See Memorandum from John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017); Memorandum from John Kelly, Secretary of Homeland Security, *Implementing the President's Border Security and Immigration Enforcement Improvements Policies* (Feb. 20, 2017).

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ICE officers and agents should generally avoid enforcement actions in courthouses, or areas within courthouses that are dedicated to non-criminal (e.g., family court, small claims court) proceedings. In those instances in which an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

Civil immigration enforcement actions inside courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits.

Planned civil immigration enforcement actions inside courthouses will be documented and approved consistent with current operational plans and field operations worksheet procedures. Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) may issue additional procedural guidance on reporting and documentation requirements; such reporting and documentation shall not impose unduly restrictive requirements that operate to hamper or frustrate enforcement efforts.

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions.

This policy does not apply to criminal immigration enforcement actions inside courthouses, nor does it prohibit civil immigration enforcement actions inside courthouses.

3. Definition The following definitions apply for the purposes of this Directive only.

3.1. Civil immigration enforcement action. Action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations.

4. Responsibilities.

4.1. The **Executive Associate Directors** for **ERO** and **HSI** are responsible for ensuring compliance with the provisions of this Directive within his or her program office.

4.2. ERO FODs and HSI SACs are responsible for:

- 1) Providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions at courthouses in their area of responsibility beyond those outlined in this Directive; and
- 2) Ensuring civil immigration enforcement actions at courthouses are properly documented and reported, as prescribed in Section 5.1 of this Directive.

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- 4.3. ICE Officers and Agents** are responsible for complying with the provisions of this Directive and properly documenting and reporting civil immigration enforcement actions at courthouses, as prescribed in Section 5.1 of this Directive.²
- 5. Procedures/Requirements.**
- 5.1. Reporting Requirements.**
- 1) ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse.³
 - 2) Unless otherwise directed by leadership, there will be no additional reporting requirements in effect for this Directive.
- 6. Recordkeeping.** ICE maintains records generated pursuant to this policy, specifically the Field Operations Worksheets (FOW) and Enforcement Operation Plan (EOP). ERO will maintain the FOW in accordance with the Fugitive Operations schedule DAA-0567-2015-0016. HSI will maintain EOPs in accordance with the Comprehensive Records Schedule N1-36-86-1/161.3. The EOPs will be maintained within the Investigative Case Files.
- 7. Authorities/References.**
- 7.1.** DHS Directive 034-06, *Department Reporting Requirements*, October 23, 2015.
 - 7.2.** DHS Instruction 034-06-001, Rev. 1, *Department Reporting Requirements*, March 28, 2017.
- 8. Attachments.** None.
- 9. No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

² See also ICE Directive No. 10036.1, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007), for additional requirements regarding civil immigration enforcement actions against certain victims and witnesses conducted at courthouses.

³ ERO will use the Field Operations Worksheet and HSI will use the Enforcement Operation Plan.

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Thomas D. Homan
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

Civil Immigration Enforcement Actions Inside Courthouses

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KEY FINDINGS

2017 Advocate and Legal Service Survey Regarding Immigrant Survivors

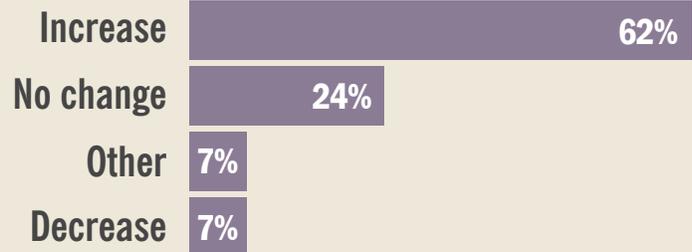
Congress created important protections for immigrant survivors of domestic violence, sexual assault, and human trafficking in the Violence Against Women Act (VAWA) and Trafficking Victims Prevention Act (TVPA) in the express recognition that abusers often exploit a victim's lack of immigration status as a tactic of abuse. Current immigration enforcement policies, including executive orders that cast a much wider net for who is considered a priority for deportation and call for increased entanglement of local and state law enforcement in federal immigration enforcement efforts, have had a significant impact on immigrant survivors of domestic violence and sexual assault.

Many advocates are hearing from immigrant survivors that they have increased fear and concerns about reaching out for help. In some places, advocates are reporting a decrease in immigrant survivors contacting their agencies for assistance. Attorneys and advocates who work with survivors have reported that they are uncertain how to advise immigrant survivors about what will happen if they call the police or go to court.

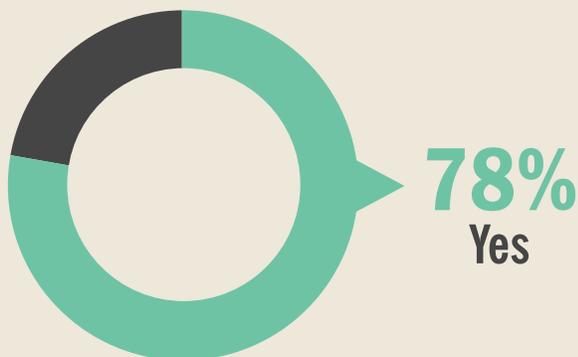
To better understand these concerns, a coalition of national organizations sent out a survey to the field on April 12 – 25, 2017 asking for their feedback. In total, 715 advocates and attorneys from 46 states and the District of Columbia completed the survey.

Is your agency observing a change in the number of immigration-related questions from survivors?

“SURVIVORS HAVE A LOT OF QUESTIONS ABOUT HOW THEY CAN SAFETY PLAN UNDER THE NEW ADMINISTRATION. . . . **SOME CLIENTS EVEN QUESTION WHETHER OR NOT THEY SHOULD SUBMIT THEIR PETITIONS TO IMMIGRATION.**”



Are immigrant survivors sharing with your agency that they have concerns about contacting police?

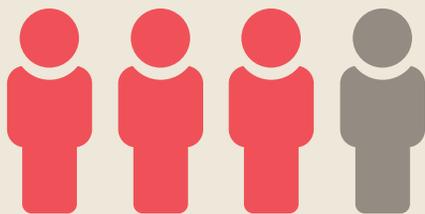


“SURVIVORS ARE CONCERNED THAT THEY WILL BE DETAINED IF THEY MAKE A POLICE REPORT OR CALL 911. **A 16-YEAR-OLD SURVIVOR ATTEMPTED SUICIDE** BECAUSE SHE WAS CONCERNED THAT HER OFFENDER WOULD REPORT HER AND HER FAMILY TO ICE.”

“CLIENTS ARE AFRAID OF CALLING THE POLICE BECAUSE THEY BELIEVE THAT THEY WILL BE DEPORTED IF THEY DO, **ESPECIALLY IF THEIR ABUSER IS A U.S. CITIZEN.** THEY THINK LAW ENFORCEMENT WILL LISTEN TO SOMEONE WHO IS A CITIZEN OF THIS COUNTRY MORE THAN TO AN UNDOCUMENTED PERSON.”

Survivors' Fear of Seeking Legal Remedies

3 OUT OF 4 ADVOCATES



report that immigrant survivors have concerns about going to court for a matter related to the abuser/offender.

“NEWS REPORTS OF VICTIMS BEING ARRESTED WHEN THEY SHOW UP FOR COURT DATES ARE CREATING VERY HIGH ANXIETY.”

“AFTER THE NEWS BROKE THAT A WOMAN WHO WAS FILING FOR AN ORDER OF PROTECTION AGAINST HER ABUSER WAS DEPORTED, **MANY OF MY CLIENTS BECAME CONCERNED THAT SOMETHING SIMILAR WOULD HAPPEN TO THEM.**”

“A RESIDENT OF THE SHELTER WAS NOT COMFORTABLE APPLYING FOR A TRO [TEMPORARY RESTRAINING ORDER] AGAINST HER ABUSER BECAUSE SHE WAS AFRAID HE WOULD CALL IMMIGRATION ON HER. **THIS IS REAL, AND NOW LEGITIMATE FEAR.**”

Human traffickers, perpetrators of sexual assault, including sexual abuse in the workplace, and domestic abusers prey on vulnerable immigrants, and often tell their victims that seeking assistance from the police or courts will result in survivors' deportation. Congress understood the importance of ensuring that immigrant victims know that they can reach out for help and that there are protections in place to help them access safety and justice. It is important to strengthen this commitment and ensure that policies do not drive victims and witnesses into the shadows and undermine their safety.

43%

of advocates worked with immigrant survivors who dropped civil or criminal cases because they were fearful to continue with their cases



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