



The Commonwealth of Massachusetts

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An Overview of Immigration Enforcement Programs¹

Immigration and Customs Enforcement (ICE) has repeatedly announced that its highest priority is arresting and deporting noncitizens with criminal records. In fiscal year 2012, it is scheduled to receive ten percent of the entire Homeland Security budget. Notably, this is double the budget of U.S. Citizenship and Immigration Services, which is the benefits arm of Homeland Security, and goes above and beyond border protection, which is covered by Customs and Border Protection, another Homeland Security agency. During fiscal year 2010, ICE conducted more than 392,000 deportations, with half of those deportations (over 195,000) involving noncitizens with criminal records. It has proudly announced that deportations of “criminal aliens” have increased by seventy percent from deportations occurring during the Bush administration.

Therefore, any noncitizen defendant with a criminal record is at increased risk for arrest, detention, and deportation from the U.S. This includes defendants who have been lawful permanent residents for decades (green card holders). Practitioners should be aware of ICE’s practices, to understand how a particular client may come into contact with ICE. Following is a summary of ICE’s current enforcement initiatives.

Criminal Alien Program

Under this program, ICE agents monitor state and federal detention facilities to find inmates with immigration violations, either due to criminal records or lack of lawful immigration status. In Massachusetts, ICE agents are assigned to all detention facilities (jails, houses of correction and prisons) across the state for this purpose.

Upon finding an inmate with an immigration violation, the ICE agent will lodge a detainer against the inmate. ICE detainers insure that when a noncitizen is released from state custody, he will be transferred into ICE custody. Upon transfer into ICE custody, ICE initiates removal proceedings against him by issuing a Notice to Appear, a charging document.

Secure Communities

This initiative constitutes a technology enhancement for routine FBI criminal records checks. When a person is arrested and the local police send his information to the FBI for a routine criminal history, that information is also checked against immigration databases. If the databases reveal that the arrestee has an

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immigration violation, ICE is notified. Presumably, this would only apply to noncitizens who have been in prior contact with Homeland Security (undocumented immigrants who have never had contact with Homeland Security would be unlikely to appear in the immigration database). Once ICE is notified, it decides, based on the type of immigration violation and the seriousness of the immigrant's criminal history, whether to issue a detainer or warrant for his arrest.

Secure Communities has garnered much controversy throughout the U.S., with complaints that it causes racial profiling and interferes with community policing efforts by discouraging immigrants from working with local police, despite assurances by ICE that it is merely a data sharing program between two federal agencies. At present, only the Boston Police Department participates in Secure Communities, although Mayor Menino recently informed ICE that it wishes to withdraw from the program. Governor Patrick indicated at the end of last year that he would sign an agreement with ICE to implement Secure Communities throughout Massachusetts, but then withdrew his support for the program after holding public hearings around the state. However, ICE now maintains that it is a mandatory program which will be in operation nationwide by 2013, despite its earlier requests for states and local communities to voluntarily join the program.

287(g) Agreements

In what are known as "287(g) agreements," ICE delegates its authority to enforce the immigration laws to state and local law enforcement agencies, as allowed under 8 U.S.C. §1357(g) or INA §287(g). It enters into memorandums of agreements with these agencies, which set out the parameters of this delegated authority. In Massachusetts, only the Department of Corrections has entered into a 287(g) agreement with ICE, although the terms of that agreement are still in negotiation. The Framingham Police Department and Bristol County Sheriff's Department had 287(g) agreements with ICE for several years, but both have withdrawn from the program.

Fugitive Operations

This initiative specifically targets those noncitizens who have already been ordered deported, but remain in the U.S. It is common for a Fugitive Operations team to conduct a search of a house or workplace for one noncitizen, and in the process arrest several other undocumented noncitizens who are not fugitives and who do not have any criminal record at all.

Operation Community Shield

This program seeks to identify and investigate violent, transnational street gangs, and arrest those noncitizens whom it believes are involved in these gangs. The program participates in prosecutions of gang members and also initiates removal proceedings against them. Since the inception of the program in 2005, Operation Community Shield reports that it has arrested more than 15,000 alleged gang members and associates.

Rapid REPAT

While most noncitizens are required to serve their complete state sentences before being deported, this relatively new initiative allows certain noncitizens serving time for non-violent offenses to be deported before finishing their sentences. In exchange for being released early from a criminal sentence, the noncitizen is required to accept a deportation order, waive all appeal rights, and agree not to return to the

U.S. If he returns to the U.S. in the future, he is required to finish serving his criminal sentence and can be prosecuted federally for illegal reentry, which carries a maximum sentence of twenty years in prison.

Expanding immigration enforcement programs have made it much more likely in recent years that a noncitizen client with a criminal record will be identified by ICE and placed in removal proceedings. Congress has given ICE increased resources to do so, and noncitizens with criminal records are ICE's number one enforcement priority.

For further reading:

DHS Budget-in-Brief, FY 2012: <http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf>

John Morton Memo, March 2, 2011: "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens."

<http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>

ICE Fact Sheets: <http://www.ice.gov/news/library/factsheets/>

Secure Communities: http://www.ice.gov/secure_communities/

In Massachusetts: http://articles.boston.com/2011-07-11/news/29761772_1_immigrants-fight-crime-mayor-thomas-m-menino

http://articles.boston.com/2011-06-07/news/29630407_1_immigrant-advocates-illegal-immigrants-federal-immigration