

*The Commonwealth of Massachusetts*  
*Committee for Public Counsel Services*  
*Immigration Impact Unit*  
*21 McGrath Highway, Somerville, MA 02143*

TEL: 617-623-0591  
FAX: 617-623-0936

ANTHONY J. BENEDETTI  
CHIEF COUNSEL

WENDY S. WAYNE  
DIRECTOR

**IMMIGRATION ENFORCEMENT DURING THE COVID-19 PANDEMIC:  
CONSIDERATIONS FOR NONCITIZEN CLIENTS  
BEING RELEASED FROM STATE CUSTODY**

**April 7, 2020**

Attorneys filing motions for release from state criminal custody in light of the Covid-19 pandemic should account for the special considerations facing noncitizens prior to filing, especially for noncitizens for whom ICE has lodged a detainer. The status of immigration enforcement, detention, and operation of the immigration courts is very fluid right now, so it may be difficult to definitively advise your noncitizens clients. The following practice advisory provides some guidance based on information presently available and offers specific guidance for clients with ICE detainees.

**We strongly recommend that attorneys continue to check in with the IIU for up-to-date advice for individual clients by emailing [iu@publiccounsel.net](mailto:iu@publiccounsel.net).**

**1. ICE Enforcement**

ICE has publicly stated that it will focus enforcement on “public-safety risks” and individuals subject to mandatory detention based on criminal grounds. Unfortunately, these priorities still cover a majority of individuals with state criminal convictions, including those with convictions for state misdemeanors and non-violent offenses. Attorneys should assume that clients with prior records or pending charges that could be considered a “public safety risk” will continue to be considered priorities for ICE enforcement.

For those individuals who do not fall into the above categories, ICE has stated that it will exercise discretion to delay enforcement actions until after the crisis or use alternatives to detention, as appropriate.

At this point, it is unclear whether ICE is actually taking individuals into custody when they are released from Massachusetts’s state criminal custody. Anecdotally, we know that the

local ICE field office is conducting some arrests but fewer than before. We also know that ICE has fewer staff available to make arrests. In practice, this means that whether a client is arrested upon or after release from state custody depends in part on the availability of ICE staff.

## **2. ICE Detention**

Clients who fall in the above listed priorities will be detained at an ICE detention facility upon an ICE arrest. There are currently five facilities holding detainees in New England: Bristol County HOC, Plymouth County Correctional Facility, Franklin County HOC, Strafford County HOC in New Hampshire, and the Donald W. Wyatt Detention Facility in Rhode Island. Conditions in these facilities are generally [worse](#) than those in state facilities because ICE is taking fewer health precautions and there is less oversight. Nationally, there have been [multiple confirmed cases of COVID-19 among ICE detainees, facility employees, and ICE officers.](#)

Locally, there is on-going litigation seeking release of ICE detainees but it appears any resolution will likely be piecemeal. In a [federal class action against Bristol County HOC](#), U.S. District Court Judge William Young has already released a limited number of detainees from Bristol HOC and plans to review 10 individual cases a day for release going forward. Judge Young has also required ICE to notify the Court before introducing a new detainee to Bristol HOC. Other efforts to release detainees from ICE detention have been brought as individual habeas petitions in federal court and have met with mixed success depending on the individual characteristics of the detainee.

## **3. Immigration Courts**

At this time, the Boston Immigration Court remains open for cases involving individuals detained by ICE. Detained individuals who are eligible for bond are being scheduled for bond hearings, and final deportation hearings are also being held. However, due to additional measures taken at detention facilities, access to counsel is even more restricted than usual.

All immigration court hearings scheduled through May 1, 2020 for noncitizens who have been released on personal recognizance or GPS have been postponed. Individuals should expect to receive a new hearing date by mail.

## **4. Deportations**

ICE has [publicly stated](#) that it is continuing physical removals of individuals after medically screening individuals for Covid-19. Anecdotally, we know that ICE is transferring fewer people for actual deportation, and countries may be delaying or refusing to accept flights of deportees at this time. There have however been [confirmed cases](#) of individuals testing positive for Covid-19 immediately after deportation.

If a client wishes to ascertain the specific risk of removal to their country, we recommend calling the consulate for the country where your client will be deported. If there is a consulate in Boston, call that number; if not, call the embassy in Washington. These numbers are online. You

may need to keep trying, since these offices, like all offices, are working on skeleton staffs. When you speak to a consular office, you can ask if their country is accepting people on removal orders and if not, when will they start accepting them again. If they say that they are accepting people, get details: how often are there flights? Are they likely to stop accepting them in the near future? Note that the situation on the ground in individual countries is very [fluid](#).

## 5. ICE Detainer Cases

In light of the above information, there are special considerations for certain noncitizens seeking release from state custody due to the Covid-19 pandemic. You do not want to obtain release of your client only to have them sit in indefinite ICE custody under more dangerous conditions than they would experience in state custody. Attorneys must clearly and openly communicate with their clients about the risks associated with advocating for release when the client faces a risk of ICE arrest. **If you are unsure whether your noncitizen client faces a risk of ICE detention, please contact the IIU for guidance.**

For those facing a risk of ICE arrest, we recommend that you take the following steps:

(1) It is first imperative to determine whether ICE has lodged a detainer. An ICE detainer travels with the mittimus and is held by both court officers and records departments at HOCs/jails/state prisons. Attorneys should call the records department and ask if there is anything other than bail or a sentence holding a client (do not ask specifically about an immigration detainer if you're not sure there is one, as that could trigger the officer contacting ICE). If there is a detainer, ask them to provide you with a copy. Sometimes the records department refuses the attorney, but at a minimum, the subject of the ICE detainer is entitled to a copy, so your client can request it themselves from the records department.

(2) **Only if you're sure that there is an ICE detainer lodged against your client**, you may wish to consider calling the local ICE field office (781-359-7500) to try to negotiate release to a GPS or personal recognizance in advance of any release from state custody. When you call, you will need to provide your client's A#, the number federal immigration authorities use to identify noncitizen immigrants. The A# will be on the detainer. When you call, you can type in 3# to be transferred directly to a duty officer or to someone else who can make the decision about whether ICE will pick your client up from state custody on the detainer. When you talk to the right person on the phone, explain that your client may be released to an ICE detainer and ask if they are planning to pick the client up when released from state custody and try to negotiate their release instead. There are risks to trying this, as you may prompt ICE to pick your client up by inquiring about the client's case and asking what they are planning on doing. Therefore, this should only be done after thoroughly advising the client and receiving their permission to do so.

Please email the CPCS Immigration Impact Unit (IIU) ([iiu@publiccounsel.net](mailto:iiu@publiccounsel.net)) to let us know what is happening with your noncitizen clients who are being released from state custody. The IIU is trying to monitor current ICE arrests and deportations during the pandemic, as this will allow us to better advise attorneys going forward.