

Employee Guidance Upon Immigration and Customs Enforcement Arrest on Courthouse property

Authored by: Christine Lamont

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Executive Office Transmittal 19-13 regarding the recent U.S. District Court preliminary injunction order enjoining ICE from arresting persons attending Massachusetts courthouses on official business.

To: Department Chiefs, Judges, Clerk of Courts, Clerk Magistrates, Registers, Commissioners, Directors, Chief Probation Officers, Chief Housing Specialists, and All Court Staff

Executive Office Transmittal 19-13

From: Chief Justice of the Trial Court Paula M. Carey and Court Administrator Jonathan S. Williams

June 24, 2019

On June 20, 2019, a judge of the United States District Court ordered a preliminary injunction enjoining the United States Immigration and Customs Enforcement (“ICE”) from “civilly arresting parties, witnesses, and others attending Massachusetts courthouses on official business while they are going to, attending, or leaving the courthouse.” *Ryan et al v. U.S. Immigration and Customs Enforcement et al*, No. 19-11003-IT, at 3 (June 20, 2019) (Talwani, J.) (“Judge Talwani’s order”). “The court’s order [however] does not limit ICE’s criminal arrests of such individuals or its civil arrests of individuals who are brought to Massachusetts courthouses while in state or federal custody.” *Id.* Judge Talwani’s order applies only to persons who are on the courthouse property but not in custody. [A copy of the order can be viewed by clicking here.](#)

Judge Talwani’s order does not affect the Trial Court “[Policy and Procedures Regarding Courthouse Interactions With the Department of Homeland Security](#)” (“the Policy”), which remains in effect and should be followed by all court personnel ([Executive Office transmittal 17-13, Policy and Procedures Regarding Interactions with the Department of Homeland Security](#)). Pursuant to Section III.B. of the Policy, Trial Court employees

shall continue to “neither impede DHS officials from [civilly arresting a person] nor assist in the physical act of taking that individual into custody.”

However, in light of Judge Talwani’s order, the following additional interim guidance shall apply should a Trial Court employee witness an ICE official arrest a person who is going to, attending, or leaving a Massachusetts Courthouse.

If a court officer observes an ICE official arrest an individual on courthouse property, he or she shall immediately notify his or her commanding officer and, in addition to the documentation requirements set forth in Section IV of the Policy, document the fact of the arrest in an incident report. If the court officer learns whether the ICE arrest is criminal or civil, that information should be included within the incident report, but court officers should not investigate to determine whether the witnessed ICE arrest was criminal or civil in nature. Once completed, the incident report shall be provided promptly to that Court’s chief court officer or assistant chief court officer. The chief court officer or assistant chief court officer shall notify the first justice or regional administrative justice of the Trial Court department in which the individual arrested had business and forward the report through the security administrative chain of command so as to reach the Director of Security, who shall review the report and forward it to an attorney designated by [Dan Sullivan](#), General Counsel of the Trial Court, within twenty-four hours of receipt.

If a Trial Court employee other than a court officer witnesses an ICE official arrest an individual on courthouse property, he or she should notify that court’s chief court officer or assistant chief court officer, who shall gather all necessary information from the employee and draft an incident report, which shall be treated as any other incident report.

As noted, Judge Talwani’s order “does not limit ICE’s criminal arrests of such individuals or its civil arrests of individuals who are brought to Massachusetts courthouses while in state or federal custody.” Consistent with this provision of the order, should an ICE official seek to arrest an individual who, having been brought to the courthouse while in State or Federal authority, was released after his or her hearing but is being processed out of lock-up, court officers should continue to follow Section III.A. of the Policy. However, once an individual who was brought into the courthouse while in State or Federal custody has been released from custody and has been processed out of lock-up and is present in any of the public areas of the courthouse property, the interim guidance provisions for documenting and reporting an ICE arrest as set forth above shall be followed.

Nothing in this interim guidance should be construed as limiting a court officer’s duty to take appropriate actions as necessary to maintain safety and decorum in the courthouse, as set forth in Section III.B. of the Policy.

