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Attorney General Guidance:

KNOW YOUR RIGHTS: ICE Enforcement

A Guide for Immigrants, Families, and Communities

Due to the recent surge in immigration enforcement activity across Massachusetts, the Attorney General's Office (AGO) has received a number of questions about the actions of U.S. Immigration and Customs Enforcement (ICE) agents, the role of local police in immigration enforcement, and the rights people have when they interact with federal immigration officers.

This guidance is meant to provide communities with information about their rights and the legal framework for ICE stops, arrests, and inquiries. **It is not, however, legal advice or a formal legal opinion of the Attorney General. The AGO does not supervise or control the activities of ICE or federal prosecutors. This guidance does not address all circumstances in which residents may come into contact with ICE and the AGO cannot guarantee that ICE agents will act in a manner consistent with this guidance in any given situation. Immigrants, their families, and community members should consult with legal counsel if they need advice or representation in specific cases or circumstances.**

The AGO is committed to protecting the civil rights of all residents, regardless of immigration status.

QUESTIONS & ANSWERS

1. What kind of immigration enforcement does ICE engage in?

ICE enforcement activity may target people the agency suspects are subject to removal from the country. This can include people whose parole, visa, deferred action, or other legal authorization has been revoked. It can also include people suspected of having violated federal immigration law, including:

- People who entered the U.S. without authorization;
- People who overstayed a visa;
- People who have been ordered removed in the past; and
- People accused of violating immigration conditions (like failing to check in with ICE).

These are typically civil, not criminal, violations. Although ICE may in some cases engage in criminal enforcement action, ICE does not need to show that a crime was committed to arrest and detain a person who is subject to removal.

ICE enforcement actions generally take one of two forms:

- Custodial enforcement, where ICE arrests a person who is already being held in custody by a federal, state, or local law enforcement agency. This frequently occurs after ICE is able to access arrest information through law enforcement databases like NCIC (National Crime Information Center) or CJIS (Criminal Justice Information Services). Because ICE can access information after fingerprints taken by police are entered into AFIS (Automated Fingerprint Identification System), even a minor encounter with local law enforcement may trigger ICE involvement—even if criminal charges are later dropped or never even filed.
- At-large or field enforcement, where ICE agents arrest people in the community—such as in homes, workplaces, or public spaces. During these operations, ICE may also make so-called “collateral” arrests of other individuals they encounter who are suspected of violating immigration laws, even if those individuals were not initially targeted for enforcement.

2. Does ICE need a judicial warrant to arrest someone?

No. Although ICE agents sometimes arrest people based upon criminal warrants—which are issued by federal courts based on probable cause that a person has committed a crime—this type of enforcement activity is relatively uncommon. Some ICE arrests are conducted using administrative warrants, which are issued by ICE officers.

Administrative warrants include forms such as:

- [Form I-205 \(“Warrant of Removal/Deportation”\)](#), which is issued after a person has received a final order of removal; and
- [Form I-200 \(“Warrant for Arrest of Alien”\)](#), which is used when ICE believes someone is removable from the United States.

In other cases, ICE agents do not need either a judicial or administrative warrant to carry out an arrest, including if they have probable cause to believe that: (1) a person is in violation of federal immigration laws; and (2) the person is likely to flee before a warrant can be obtained. *See* 8 U.S.C. § 1357(a)(2).

3. When can ICE enter people’s homes and other private spaces?

Under most circumstances, ICE agents cannot legally enter private spaces—such as homes, private offices, or the non-public areas of a workplace—without one of the following:

- [A judicial warrant](#) signed by a judge or magistrate; or
- Voluntary consent from someone who has actual or apparent authority over the property (e.g., someone who lives there).

Note that an ICE administrative warrant (Forms I-200 and I-205 described above) is not a judicial warrant and does not authorize entry into a home or other private space without consent. A judicial warrant is one that is signed by a judge.

NOT ALL WARRANTS ARE THE SAME

Judicial Warrant: Signed by a judge, allows ICE to enter a home.

ICE Administrative Warrant: Signed by ICE only, does not allow home entry.

If ICE does not have a warrant signed by a judge, you may refuse entry.

If ICE agents are seeking to enter a house, a person has the legal right to speak through the door to:

- Ask to see the warrant before opening the door;
- Check whether the warrant is signed by a judge; and
- Deny entry if it is not.

4. What rights do the person arrested/detained and bystanders have?

Both a person being arrested/detained by ICE and bystanders have certain rights under the U.S. Constitution and federal law. These rights protect against unlawful questioning, detention, and interference with freedom of expression.

Rights of the Person Being Arrested or Detained

First, the person being arrested or detained has the right to remain silent. They do not have to answer questions about their immigration status, citizenship, where they were born, or how they entered the United States. The person can state, “I am exercising my right to remain silent,” and refuse to speak with ICE agents until they have spoken with an attorney.

Second, the person being arrested or detained has the right to hire and speak with a lawyer, but the government is not generally required to provide one in immigration proceedings.

Third, the person being arrested or detained has the right to refuse to sign documents. ICE may ask people to sign voluntary departure forms, waivers of rights, or other paperwork. The person being arrested or detained has a right to read and understand any document before signing it.

People being questioned, arrested, or detained by ICE should never give false information or fake documents, as doing so could result in criminal charges. *See* 18 U.S.C. § 1001.

Rights of Bystanders

First, bystanders to ICE enforcement actions have the right to observe ICE officers and record the encounter from a reasonable distance, so long as they do not interfere with the officers. *See Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011).

Second, although ICE may ask questions, bystanders have the right to remain silent. Bystanders are not required to answer questions about their own immigration status or the status of another person.

Third, bystanders have the right to refuse entry. If ICE agents approach a home where a bystander resides, the bystander can refuse entry without a judicial warrant.

Anyone alleged to have obstructed, impeded, or assaulted an ICE agent may be criminally prosecuted. *See* 18 U.S.C. § 111.¹

5. What questions can someone ask if they are being arrested/detained?

During an ICE enforcement action, it may be difficult to know what is happening or why. Calmly asking the right questions may be helpful. Though ICE may not be obligated to answer all of your questions, the person being targeted may choose to ask:

- Am I being detained?
- Am I under arrest?
- What is the reason?
- Do you have a warrant?
- Can I see it?
- Where are you taking me?
- What agency do you work for?
- What are your names and badge numbers?
- How can my family or lawyer contact you?

Prepare Before a Crisis

If you or a loved one are at risk of ICE enforcement, you may consider preparing contingency plans for immigration emergencies that may arise, such as family separation. A detailed emergency planning guide for families is available on the Attorney General's Office [website](#).

6. What, if anything, can bystanders do to assist someone being arrested/detained?

As long as they are not obstructing or impeding the enforcement action, bystanders may also help the person being targeted to ask the ICE agent questions (such as those listed above under #5) and document the enforcement action—either by taking notes or recording video. They can also ask a person being detained questions such as:

- Do you have an immigration lawyer I can call for you?
- Is there a family member you would like me to call?

7. What happens after an ICE arrest?

After individuals are arrested by ICE, they will most likely be taken to a local ICE office or processing center for booking. There, ICE will generally take their fingerprints, photo, and biographical information. ICE may also ask the person to sign documents that may involve the waiver of important rights or lead to deportation without a hearing. As noted above, the arrested individual has the right to remain silent and to refuse to sign documents they do not understand. In most cases, ICE will issue a Notice to Appear (NTA) in immigration court, which contains the

¹ State statutes also prohibit assault and battery on a police officer (G.L. 265, § 13D, par. 1) and resisting arrest (G.L. c. 268, § 32B); interfering with a police officer is a common law crime in Massachusetts.

alleged immigration violations, the date of their first court hearing, and formally begins removal proceedings.

Once arrested, a person can be detained anywhere in the United States. Although they may initially be detained somewhere near where they were arrested, they can quickly be transferred to another facility in a different state. Family members and advocates can use the [ICE Online Detainee Locator System](#) to try to find out where the arrested person is being held. (Note that it may take several hours for ICE to enter the person's information into the system.) ICE has information (including location and contact information) for the detention facilities it uses on its [website](#).

If detained, the person may—depending on their immigration and criminal history—request a bond hearing before an immigration judge. At this hearing, the immigration judge will decide if the person can be released while their immigration case proceeds. This is a discretionary process, and the individual must successfully demonstrate to the satisfaction of the immigration judge that they are not a flight risk and not a danger to the community. Depending on individual circumstances, the person may also seek relief from removal, such as asylum, parole, or cancellation of removal.

Although individuals in ICE detention may be represented by an attorney, they usually have no right to have an attorney appointed to them. Only licensed attorneys or accredited representatives authorized by the U.S. Department of Justice can legally represent someone in immigration court. Unfortunately, many people fall victim to scams by people who falsely claim to be able to help—often referred to as “notarios” or “immigration consultants.” More information about how to prevent and report notario fraud can be found on the Attorney General's Office [website](#).

Warning: Beware of Immigration Scams

Only licensed attorneys and DOJ-accredited representatives may provide immigration legal services. Many immigrants fall victim to scams by “notarios” or fake consultants. Verify credentials with the [state bar](#) or [DOJ EOIR list](#). A detailed guidance on avoiding immigration scams is available on the Attorney General's Office [website](#).

To challenge the legality of detention by ICE outside of the removal proceeding, the detained individual would generally need to bring a habeas corpus petition in the federal judicial district in which they are detained. In many instances, petitions must be filed promptly so that a challenge can be heard before the detainee is transferred to a different facility and judicial district.

8. What limits are there on local police cooperation with ICE?

Local law enforcement agencies cannot be compelled by the federal government to carry out federal civil immigration enforcement. Any voluntary cooperation with ICE by local law enforcement must comply with state and local legal limitations, including:

- *Lunn v. Commonwealth*, 477 Mass. 517 (2017): The Supreme Judicial Court ruled that state and local law enforcement officers have no legal authority to arrest, detain, or hold an individual based solely on a federal civil immigration detainer. A civil detainer is a request from ICE to keep a person in custody until ICE agents can arrest them. Similar to an administrative warrant, a civil detainer is issued by ICE—not a judge. *Lunn* does not limit state and local law enforcement from acting in accordance with state law to protect

public safety; it simply makes clear that federal civil detainees are not themselves legal grounds for detention.

- Massachusetts Constitution: Guarantees equal protection of the laws to all people, regardless of nationality, citizenship, or immigration status.
- Massachusetts Civil Rights Act (MCRA): Guarantees every person “the right to bias-free professional policing,” which means that law enforcement “shall not consider a person’s race, ethnicity, ... [or] immigration status” in police decision-making. The MCRA also prohibits interference with another person’s rights through threats, intimidation, or coercion.
- Anti-Profiling Laws: State laws prohibit law enforcement from profiling on the basis of actual or perceived race, color, ethnicity, national origin, immigration or citizenship status. *See* G.L. c. 90, § 63(h).
- Local Municipal Ordinances and Resolutions: Many cities and towns in Massachusetts—including Boston, Amherst, Cambridge, Chelsea, Concord, Newton, Northampton, and Somerville—have passed local laws that limit police departments’ involvement in federal civil immigration enforcement. These ordinances often permit cooperation with federal authorities on criminal matters and other public safety issues, but do not allow participation in routine civil immigration enforcement.
- Police Department Policies: Many law enforcement agencies have adopted departmental rules, regulations, and policies that limit involvement in immigration enforcement. These policies aim to ensure that all residents, regardless of immigration status, feel safe reporting crimes or cooperating with the police.

9. Can bystanders get in trouble for watching or recording?

No, bystanders generally cannot get in trouble just for watching or recording ICE agents—so long as they do not interfere with ICE’s actions.

Bystanders Have the Right to Record

As stated above, bystanders have a right to observe and film ICE agents from a reasonable distance in public places. *See Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011). This right is protected by the First Amendment and does not violate the Massachusetts Wiretap Act. *See Project Veritas Action Fund v. Rollins*, 982 F.3d 813 (1st Cir. 2020) (secret recordings do not violate the First Amendment); *Curtatone v. Barstool Sports, Inc.*, 487 Mass. 655 (2021) (openly recording does not violate the Massachusetts Wiretap Act).

If any law enforcement officer seizes a bystander’s phone, they need a judicial warrant to gain access to the device or the recording.

But Not to Interfere

Although bystanders are allowed to watch or record, they are required to stay at a safe distance so as not to interfere with an ICE operation. Interfering might include the following actions, which could result in criminal charges:

- Pushing or otherwise physically touching an officer;

- Blocking officers; or
- Hiding the person ICE is trying to arrest.

Bottom Line: Bystanders can watch. Bystanders can record. But bystanders legally cannot obstruct, impede, or assault an ICE agent.

RESOURCES AND LEGAL HELP

There are numerous resources for individuals seeking an attorney to represent themselves or a loved one in immigration proceedings:

- The American Immigration Lawyers Association’s [online directory](#);
- The National Immigration Project of the National Lawyers Guild’s [“Find an Attorney” website](#);
- The Department of Justice’s [list of pro bono legal service providers by state](#); and
- Immigration Law Help’s [directory of nonprofit legal](#) help by zip code and detention facility.

A person detained by ICE can be found through ICE’s [Online Detainee Locator System](#).

Any complaints to the AGO can be made to its [Civil Rights Division](#) by visiting www.mass.gov/how-to/file-a-civil-rights-complaint, emailing civilrights@mass.gov, or calling (617) 963-2917.

The AGO maintains a website of [additional resources](#) for various stakeholders for immigrants and institutions that serve them. These include guidance for [service providers](#), [health care providers](#), [K-12 schools](#), [institutions of higher education](#), and more.