



To: KIND Pro Bono Attorneys  
From: KIND Legal Services Team  
Date: April 4, 2017, updated September 7, 2017

**Re: Advice and Preparation for Clients in Case of Possible ICE Enforcement Activities**

Dear KIND Pro Bono Attorneys:

In recent weeks, KIND clients and their families have reacted to reports of arrests, “raids,” and other enforcement actions conducted in a variety of locations by Immigration and Customs Enforcement (ICE), the Department of Homeland Security (DHS) agency charged with enforcement in the U.S. interior. This memorandum offers information that you, as a KIND pro bono attorney, may want to consider in providing legal advice to your KIND client, and general information to a non-client such as an adult caregiver, in addressing their concerns about possible contact with ICE.

Immigration enforcement policies are an unfamiliar topic for many of our pro bono partners, yet your clients and others may turn to you for information or help. In the family context, you will want to take care that a desire to be supportive does not lead you render legal advice to a non-client. At the same time, families may have heard misinformation or rumors within the community, and counteracting this with accurate information is invaluable.

The repercussions of immigration enforcement actions can extend beyond the four corners of a client’s immigration case, impacting his or her family life. Among other things, you and your client may be considering contingency plans in case your client becomes separated from a trusted caregiver. With this in mind, we thought it would be useful to provide an outline of KIND’s guidance on approaching conversations with both clients and non-clients such as caregivers, as well as a compendium of some useful resources. This memorandum is organized around several central questions:

I. Who is Targeted in Recent ICE Enforcement Efforts?	2
II. Where and How Can People Be Detained or Arrested by ICE?	2
III. What Messages Should I Emphasize to My Client?	3
IV. What Legal Advice Should I Give My Client in Case She Encounters ICE Enforcement Action?	4
V. What if My Client is Detained or Arrested by ICE?	5
VI. What if My Client’s Caregiver or Other Non-Client Family Members are Detained?	6
VII. What Materials Can I Give My Client, and What Should Clients Carry With Them?	7
VIII. General Information for Non-Clients and Local Resources for Know Your Rights Information	8

This memo can help you determine how to best to counsel your client, and the extent to which you can offer support for the client’s caregivers or family members. As always, we encourage you to contact your local KIND coordinator for case-specific guidance. Finally, if your client or the client’s caregiver has any contact with ICE or is taken into ICE custody, please contact your KIND coordinator immediately to discuss strategies and next steps.

## I. Who is Targeted in Recent ICE Enforcement Efforts?

A February 13, 2017 statement by DHS<sup>1</sup> described enforcement efforts intended to target individuals who have final removal orders, or are “public safety threats,” such as individuals with criminal convictions, and gang members. During the spring and summer of 2017, further enforcement activities known as “Operation Border Guardian” focused on adult “sponsors” to whom UAC were set to be released from Office of Refugee Resettlement Custody. More recently, plans for “Operation Mega,” a broader-based enforcement effort, were reported.

Your client or his caregiver may be concerned about the potential impact of home arrests or raids, in which ICE may arrest both the targeted individual and other persons who were not the target. It is possible that:

- Your client’s sponsor or caregiver, or others with whom they reside, may be direct **targets** of ICE enforcement. If your child client’s sponsor or caregivers are detained by ICE, your child client may be in precarious position as the child may no longer have a proper caregiver and may be subject to placement in state custody (e.g., foster care) as a minor.
- “**Collateral arrests**” are possible if other undocumented immigrants are in the same location as those who are planned targets.

## II. Where and How Can People Be Detained or Arrested by ICE?

While you strive to provide information to your client, he or she may also be hearing unconfirmed rumors or word-of-mouth anecdotes about ICE enforcement actions that can lead to panic and fear. We recommend that you check in with your KIND coordinator to confirm information about local ICE enforcement actions before providing specific messages to your client and her caregiver. In general terms, the following are situations in which ICE enforcement actions often occur:

- In a **home arrest**, ICE comes to a specific address searching for an individual based on an outstanding removal order or warrant. Reportedly, in some instances, ICE agents have identified themselves as police, or made statements when arriving at a home in order to induce occupants to open the door on a pretext.
- **Raids/sweeps** are usually broader operations at work places, markets, bus stations and other locations.
- ICE and CBP have both issued policy memoranda stating that enforcement actions may be conducted in so-called “sensitive locations” or “community locations” with “prior approval” or in “exigent circumstances.”<sup>2</sup> Such “sensitive locations” include **schools, hospitals and other health**

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<sup>1</sup> Department of Homeland Security, “Statement by Secretary Kelly on Recent Ice Enforcement Actions,” February 13, 2017, available at <https://www.dhs.gov/news/2017/02/13/statement-secretary-kelly-recent-ice-enforcement-actions>.

<sup>2</sup> John Morton, “Memorandum: Enforcement Actions at or Focused on Sensitive Locations,” Department of Homeland Security, U.S. Immigration and Customs Enforcement, October 24, 2011, available at

**care facilities, places of worship, public religious or civil ceremonies** (e.g. weddings and funerals), and **public demonstrations**.<sup>3</sup> As explained by ICE, “ICE officers and agents may carry out an enforcement action at a sensitive location without prior approval from a supervisor in exigent circumstances related to national security, terrorism, or public safety, or where there is an imminent risk of destruction of evidence material to an ongoing criminal case. When proceeding with an enforcement action under exigent circumstances, officers and agents must conduct themselves as discreetly as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.”<sup>4</sup> In the past ICE has not typically gone into schools to arrest children. However, ICE has arrested parents and caregivers near or outside schools when parents pick up or drop off children. Where this has occurred, ICE has entered the school to discuss the need for alternate arrangements for that person’s child or minor ward.

- **Courthouses** are not considered “sensitive locations;”<sup>5</sup> however, you should work with your client to encourage his attendance at immigration court hearings to avoid an *in absentia* removal order. Consult with your KIND coordinator regarding recommendations on non-client adults’ attendance at court hearings in your specific case and locality. For example, some Immigration Judges may accept a letter from a sponsor or caregiver, in lieu of that person’s attendance at a child’s Master Calendar Hearing.

### III. What Messages Should I Emphasize to My Client?

- **Attend all court hearings and avoid *in absentia* orders:** Emphasize the importance of the child’s attending all court hearings in relation to his or her legal case. Children may be concerned about potential for removal at a Master Calendar Hearing (MCH) at Immigration Court, but to the contrary, it is important that they understand that *missing* an MCH will likely result in an *in absentia* removal order.
- **Go to school:** Children should continue attending school. To date KIND has not heard reports of enforcement activity against children inside schools, and school attendance is a high priority for children’s welfare.
- **Safety and emergencies:** The police, fire department, 911, or hospitals can and should be contacted in an emergency, regardless of the caller’s immigration status.

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<https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (hereinafter, “ICE Sensitive Locations Memo”); David V. Aguilar, “Memorandum: U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations,” Department of Homeland Security, U.S. Customs and Border Protection, Jan. 18, 2013, available at <https://foiarr.cbp.gov/streamingWord.asp?i=1251>.

<sup>3</sup>ICE Sensitive Locations Memo; Department of Homeland Security, Immigration and Customs Enforcement, “FAQ on Sensitive Locations and Courthouse Arrests,” last visited September 7, 2017, available at <https://www.ice.gov/ero/enforcement/sensitive-loc>. See also Customs and Border Protection, “Sensitive Locations FAQs,” <https://www.cbp.gov/border-security/sensitive-locations-faqs>.

<sup>4</sup> Department of Homeland Security, Immigration and Customs Enforcement, “FAQ on Sensitive Locations and Courthouse Arrests,” *supra* note 3.

<sup>5</sup> See note 2, *supra*.

- **Avoid misconduct:** It is prudent to advise and remind your client that misconduct can negatively impact her legal case. Your client should take care to avoid situations and persons that could result in a negative event. You should advise your client to contact you immediately in event of a police encounter – not for representation in the matter related to the misconduct, but for consultation on their immigration matter, and to ensure proper coordination with the attorney handling any criminal or delinquency matter. As always, if your client has any contact with law enforcement, please consult with your KIND coordinator promptly.
  
- **Make plans in case a caregiver is detained or unavailable:** Children and their caregivers should make plans with two different people, preferably including at least one who has lawful immigration status, whom the child can call should the caregiver be detained. In the event of arrest, the caregiver can ask the ICE agent to permit notice to an emergency contact to assume care of the child. You may want to speak separately with your child client to ensure that he or she feels comfortable with the emergency adult contact. Documentation authorizing this adult to care for the child may be helpful. Each jurisdiction may recognize different family preparedness documents. For further discussion and examples, see the discussion of **Family Preparedness Materials in Section VII**, below. You should also advise the client to carry your contact information with her at all times, and to contact you immediately if her caregiver is detained.
  
- **Evaluate local recommendations on adults’ attendance at children’s Master Calendar Hearings:** KIND suggests that each adult caregiver evaluate whether to attend court, in consultation with his/her own counsel as needed. You should check in with your KIND coordinator to see what the local trends and requirements are. Depending on the requirements or expectations of your Immigration Court, you may choose to do any of the following:
  - Inform the adult that his or her attendance at the hearing is unnecessary, particularly if the child is represented by counsel.
  - Consider whether another caregiver or trusted adult with immigration status may accompany the child to the hearing. This person should be prepared on what to expect at the MCH.
  - Ask the adult to accompany the child to the vicinity of the Immigration Court without entering. The adult could wait in another location nearby (e.g. a café, park, etc.) where the child or child’s counsel can reach the adult by phone if it is determined that the adult should come into the courtroom, if the adult is comfortable doing so.
  - Talk to the adult and child about information to be stated in court in the adult’s absence, e.g., if it is ok to state that the adult is nervous about attending, or if another reason is present such as inability to miss work.
  - Make the child and adult aware of possible outcomes of these choices: e.g., some immigration judges may issue a very short adjournment with a request for the adult to attend the next MCH.

#### **IV. What Legal Advice Should I Give My Client in Case She Encounters ICE Enforcement Action?**

Attorneys may wish to give their child clients Know Your Rights (KYR) cards<sup>6</sup> to reiterate general legal advice on immigration enforcement encounters, such as the following:

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<sup>6</sup> The American Civil Liberties Union (ACLU) offers a KYR card summarizing important rights; see English card, available at [https://www.aclu.org/sites/default/files/field\\_document/bustcard\\_eng\\_20100630.pdf](https://www.aclu.org/sites/default/files/field_document/bustcard_eng_20100630.pdf), and Spanish card, available at [https://www.aclu.org/sites/default/files/field\\_document/bustcard\\_spa\\_20100630.pdf](https://www.aclu.org/sites/default/files/field_document/bustcard_spa_20100630.pdf) The card

- Your client has the right to remain silent and need not answer any questions by police or immigration agents without his or her lawyer present. This includes questions about name, relationships, date and place of birth, immigration status, and how and when the client entered the United States.
- Your client should be able to contact you or your office readily in the event of an emergency. Clients should carry your business card, or name and telephone number, with them at all times. Consider providing alternative telephone numbers on the business card that your child client is carrying.
- Your client should not make any false statements, resist arrest, run away, or provide a false identity or false documents.
- Your client also should not sign any documents, including voluntary departure documents, before consulting his or her attorney.

Your client’s ability to assert his or her constitutional rights is strongest at home. Attorneys may advise their child clients that if DHS/ICE comes to the **home of your client**:

- Your client should not open the door if officers appear, and should remain silent and tell the people with whom he or she is living with to do the same, unless the officers have a judicial search warrant.
- Your client does not have to open the door to their home unless an officer presents a judicial search warrant. Immigration officers often present an administrative arrest warrant, which is not sufficient for entering a home without consent. Exhibits 1 and 2 are examples of these warrants.
- If an immigration officer does have a judicial search warrant, the officer may enter the home regardless of the expressed wishes of the owner. Your client can ask the officer to slide a copy of the judicial warrant under the door or hold it against the glass of a window.
- If officers enter the home without a judicial warrant, your client does not need to identify himself or herself.

If your client is present during a **raid/sweep** on the street, in a public place, at a workplace, or in a car:

- Your client should not try to run or provide false information. If possible, the client should calmly walk away from the raided area.
- If your client is not permitted to leave, your client need not provide any information or answer any questions. Your client should ask to contact you as his lawyer.

## **V. What if My Client is Detained or Arrested by ICE?**

KIND recommends that you prepare your client in advance on what to do in the event of an arrest, by reminding your client to remain silent, to insist on speaking with his or her lawyer, and to refuse to sign any papers without speaking to his or her lawyer first.

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is designed to be folded to fit in a wallet. Other cards (often called “red cards”) are designed to be presented to immigration enforcement officers, in the exercise of the right to remain silent; see, e.g., National Immigration Law Center, <https://www.nilc.org/get-involved/community-education-resources/know-your-rights>; Immigrant Legal Resource Center, <http://www.ilrc.org/for-immigrants-para-inmigrantes/red-cards>.

In the event your client is detained, please **contact your KIND coordinator** immediately. In addition:

- As appropriate, **inform the child’s caregiver** that your client has been detained.
- **Find out where your client is being detained.** Use ICE’s online detainee locator at <https://locator.ice.gov/odls/homePage.do> to find a person who is in ICE custody. If you cannot find the person with this locator, you may call the local ICE office.<sup>7</sup> By statute, “unaccompanied alien children” must be transferred from DHS custody to ORR custody within 72 hours.<sup>8</sup> For information on children in ORR custody, call 800-203-7001. If possible, the client and caregiver should memorize their own “A-numbers,” and keep one another’s A-numbers written down in a secure location to help obtain documents and locate an individual if he or she is detained.
- **Be aware of the detainee’s right to be released after 48 hours.** In most cases, if DHS takes someone into custody, DHS has 48 hours to determine whether the person should remain in custody or be released on bond. If DHS detains an individual beyond 48 hours, DHS must issue a “Notice to Appear” to the person within 72 hours of the arrest. If the individual remains silent and does not give DHS any information, absent other proof that the individual is in the country without authorization or other reason to deport, DHS may be required to release the individual.
- **Be aware of the right to a hearing before an immigration judge.** In many circumstances, DHS cannot deport someone without giving the individual an opportunity to appear before an immigration judge. You should consult your KIND coordinator immediately if your client is arrested.
- **Be aware of the right to request bond.** In many cases, a person can be released on bond while waiting for an immigration removal hearing before an immigration judge. If your client is detained, talk to your KIND coordinator for guidance on requesting a bond hearing and advocating for your client’s release. Individuals without immigration status should not go to Immigration Court or to ICE to pay bond or pick up released individuals.
- **Advise and remind your client to notify ICE and the Immigration Court of any change of address, and to appear for all scheduled court hearings.** This will prevent an *in absentia* removal order, which itself may cause DHS to prioritize your client for enforcement. Remind your client that removal proceedings are a process, and that attending court preserves the right to present his case.
- As a reminder, you should avoid providing legal advice to non-clients.

#### **VI. What if My Client’s Caregiver or Other Non-Client Family Members are Detained?**

- **If you are the attorney of the child client only, and not of the adult caregiver or other family members, be clear about your role, and about what you can and cannot do to assist in the situation.** If the person who is detained or arrested is not your client, it may be best to allow the

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<sup>7</sup> Department of Homeland Security, “Enforcement and Removal Field Operations Offices,” available at <https://www.ice.gov/contact/ero>.

<sup>8</sup> 8 USC § 1232(b)(3).

individual to secure a separate attorney, and to consider carefully if you should give legal advice. In any event, please inform your KIND coordinator if a member of your client's family is questioned or detained.

- **Without providing legal advice, you may want to consider assisting in identifying immigration legal help for the adult caregiver, which may indirectly serve your child client's interests.** Ask your KIND coordinator if you need help identifying local immigration attorneys and agencies that assist adults. The Immigration Courts also have lists of attorneys and organizations that provide free or low-cost legal services at <http://www.justice.gov/eoir/list-pro-bono-legal-service-providers-map>. Nonprofit organizations that provide low-cost assistance can also be found at <http://www.immigrationlawhelp.org>.
- **Make sure you maintain contact information for, and the means to communicate with, the client.** If your child client is taken into the care of another adult, ascertain if the child seems comfortable under that adult's care, and confirm that the adult is aware of the child's court hearings, appointments with you, and other dates.

## **VII. What Materials Can I Give My Client, and What Should Clients Carry With Them?**

You may wish to provide certain written materials to a child whom you are representing. Because many clients and families are not fully literate, or speak Spanish as a second language, it will be helpful for you to explain the materials to your client and his or her caregiver.

- Your **business card** with your name and telephone number to allow the child to show ICE that he is represented, and to contact you in an emergency.
- The attached **"Tips-if You Encounter ICE"** flyer prepared by KIND.
- The **ACLU and National Immigration Law Center Know Your Rights cards** in English and Spanish, attached, which may be presented to immigration or other officers.<sup>9</sup>
- **Family Preparedness Materials.** While no one wants to consider the potential for a trusted caregiver to be detained or possibly even deported, a contingency plan may be prudent, and may help to alleviate anxieties all around. Depending on the needs of your client, you may wish to review the following resources and speak to your client and her caregiver about their contents. You are also free to seek KIND's input on using other local resources.
  - **"KIND Family Preparedness Plan,"** attached, is for use by your KIND client and her caregiver. This document can be used in conjunction with the attached **"Information Sheet"** and **"Checklist of Documents,"** which can be completed by the adult caregiver to ensure that emergency contacts, basic biographical information, and important documents are maintained in one place.
  - The **Immigrant Legal Resource Center (ILRC)'s handouts on family preparedness,** attached, are available in English and in Spanish ("Plan de Protección Familiar: Tranquilos, Informados,

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<sup>9</sup> See footnote 6, supra, for links to these and other Know Your Rights Cards and Red Cards.

Preparados, y Seguros—TIPS”). Note that some aspects of these ILRC materials, including the Caregiver’s Authorization Affidavit, are California-specific, but the general information may be useful in other locations as well.<sup>10</sup>

- You may wish to ensure that your client has **copies of important immigration documents**, and recommend that your client carry those copies at all times. Examples are:
  - As proof of your representation, a copy of Form G-28, your notice of appearance, completed and signed by both client and lawyer, and/or your signed Form EOIR-28 notice of appearance;
  - Copies (not originals) of approval notices or filing receipts for any immigration relief applications;
  - Copies of any Immigration Court orders terminating or administratively closing removal proceedings;
  - If applicable, documents showing that the person has been present in the US for over two years (taking them out of the ambit of expedited removal);
  - One or more of the KYR cards as discussed above;
  - Your business card and alternative phone numbers.

#### **VIII. General Information for Non-Clients and Local Resources for Know Your Rights Information**

If non-client caregivers and family members ask you for information, you should first carefully consider whether counseling those non-clients may create a conflict of interest or otherwise interfere with your duty to serve your child client. If you would like refrain from giving legal advice, but would like to provide some general information, that may include:

- The attached KIND handout, “Tips-If You Encounter ICE” in Spanish or English;
- A KYR card with similar information from the ACLU, NILC, or ILRC;
- Similar information in oral form;
- Referral lists of pro bono and low-cost legal services, and community KYR programs (ask your KIND coordinator if you need suggestions).

When providing general information:

- Do specifically state that you are giving “general information” and not “legal advice.”
- Do encourage non-clients with further concerns to get a consultation with a lawyer, and not a *notario* or other non-lawyer consultant, to avoid being misinformed or defrauded.
- If a non-client begins to disclose personal facts, we recommend that you ask her to stop, and encourage her to seek a consultation with her own lawyer.
- Encourage non-clients to attend Know Your Rights sessions and family preparedness sessions provided by trusted local organizations.

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<sup>10</sup> Available at <https://www.ilrc.org/family-preparedness-plan> and <https://www.ilrc.org/plan-de-proteccion-familiar>.

KIND thanks you for your time and for your commitment to protecting the rights of unaccompanied children. We will continue to work diligently to provide you with updated information as it develops. Please do not hesitate to reach out to your local KIND contact with any questions and to share ideas and information.

# EXHIBIT 1: ADMINISTRATIVE ARREST WARRANT

U.S. Department of Homeland Security

## Warrant for Arrest of Alien

File No. [REDACTED]  
Event No. [REDACTED]  
Date: [REDACTED]  
FINS #: [REDACTED]

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

[REDACTED]  
(Full name of alien)

an alien who entered the United States at or near [REDACTED] on [REDACTED] (Port)  
[REDACTED] (Date) is within the country in violation of the immigration laws and is

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

[REDACTED]  
[REDACTED] (Print name of Designated Immigration Officer)  
SDDD  
(Title)

### Certificate of Service

Served by me at SAN FRANCISCO, CALIFORNIA on [REDACTED] at [REDACTED]  
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

[REDACTED]  
(Signature of officer serving warrant)  
[REDACTED]  
(Title of officer serving warrant)

Form I-209 (Rev. 09/01/07)

4

# EXHIBIT 2: JUDICIAL SEARCH WARRANT

AO 93 (Rev. 6/05) Search Warrant

## United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

In the Matter of the Search of  
(Name, address or brief description of the person or property to be searched)

[REDACTED], San Francisco, California, More Particularly Described in Attachment A, and Closed Items and Containers Contained Therein

### SEARCH WARRANT

CASE NUMBER: [REDACTED]

MEJ

TO: Special Agent Christopher J. [REDACTED] and any Authorized Officer of the United States

Affidavit(s) having been made before me by Christopher J. [REDACTED] who has reason to  
Affiant

believe that  on the person of or  on the premises known as (name, description and/or location)

See Attachment A.

In the Northern District of California there is now  
concealed a certain person or property, namely (describe the person or property)

See Attachment B.

which constitutes evidence and instrumentalities of a criminal offense

(state one or more bases for search and seizure set forth under Rule 41(c) of the Federal Rule of Criminal Procedure)

of a criminal violation(s) of Title 18, United States Code, Section(s) 1962(d) and 1959  
I am satisfied that the affidavit(s) and any record testimony establish probable cause to believe that the person or property  
so described is now concealed on the person or premises above-described and establish grounds for the issuance of this  
warrant.

YOU ARE HEREBY COMMANDED to search on or before August 1, 2000 Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and  
making the search (in the daytime--8:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause  
has been established), and if the person or property be found there to seize same, leaving a copy of this warrant and  
receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly  
return this warrant to Duty U.S. Magistrate Judge as required by law.

U.S. Judge or Magistrate Judge

July 29, 2000, at 4:00 pm at San Francisco, California  
Date and Time Issued City and State

HON. MARIA ELENA JAMES, U.S.M.J.  
Name and Title of Judicial Officer

[Signature]  
Signature of Judicial Officer

3