SUPREME COURT OF NEW JERSEY

STUART RABNER
CHIEF JUSTICE

RICHARD J. HUGHES JUSTICE COMPLEX
PO BOX 023
TRENTON, NEW JERSEY 08625-0023

TO: **Assignment Judges**
Municipal Court Presiding Judges
Trial Court Administrators

Directive #07-19
[Supersedes Directive #11-07]

FROM: **Chief Justice Stuart Rabner** SSR

RE: **Immigration-Related Policies: Revisions to Judiciary Forms; Updated Attorney General Guidance; Court Involvement with ICE Activities**

DATE: **May 23, 2019**

This directive modifies the Judiciary's policies on the collection of immigration-related data and the protocol for responding to Immigration and Customs Enforcement (ICE) activities at courthouses. These changes are consistent with the Attorney General's revised policy on assistance to ICE officials.

Revisions to Judiciary Forms; Collection of Immigration Information

Courts generally gather and retain needed information about litigants. In some instances, the Judiciary has requested and recorded information about an individual's immigration status. Effective today, the Judiciary will request and retain information about immigration status only when needed to fulfill a legitimate court purpose. Courts will no longer collect immigration-related data for demographic or other non-specific purposes.

To that end, electronic and paper forms used by the Judiciary, including complaint forms (E-CDR and CDR2), will be revised to capture only information needed for court purposes. Administrative Directive #11-07, issued in response to the Attorney General's Law Enforcement Directive No. 2007-03, is accordingly superseded.

By way of example, the Judiciary will continue to receive information about immigration status to resolve criminal matters, make findings related to Special Immigrant Juvenile Status, and process child adoptions. More generally, immigration status may be pertinent to particular court proceedings or decisions. In such cases, attorneys – not judges – are responsible to raise relevant issues. Judges retain discretionary authority to ask about immigration status.

The AOC will provide guidance and training to Judiciary staff to ensure compliance with these revised practices.

ICE Activities at Courthouses

This directive also clarifies the Judiciary's protocol on how court staff should respond to ICE activities at courthouses.

To ensure the effectiveness of the justice system, courthouses must be viewed by the public, all parties, victims, and witnesses as a neutral and safe forum to resolve disputes. With that in mind, I wrote to then-Homeland Security Secretary John F. Kelly in April 2017 and asked that federal authorities designate courthouses as "sensitive locations" -- the same designation given to schools, hospitals, and places of worship. Under its own policy, ICE does not conduct arrests at those sensitive locations, except for emergencies.

A number of other State Supreme Court Chief Justices made the same request, but the Department of Homeland Security declined to make the change. Instead, it issued revised regulations on January 10, 2018. See ICE Directive No. 11072.1.

ICE's Directive states that "ICE officers and agents should generally avoid enforcement actions in courthouses, or areas within courthouses that are dedicated to non-criminal (e.g., family court, small claims court) proceedings"; that enforcement actions should be conducted "discreetly to minimize their impact on court proceedings" and should "take place in non-public areas"; that "officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions"; and that enforcement actions should "be conducted in collaboration with court security staff." The ICE Directive, thus, seeks to limit enforcement activities at courthouses.

On November 29, 2018, Attorney General Gurbir S. Grewal issued Law

Enforcement Directive No. 2018-6, which clarified the role and limits of state and local law enforcement officers in their enforcement of state criminal law and assistance to federal immigration authorities. The Attorney General also rescinded the prior Directive on this subject, No. 2007-3.

The Judiciary continues to believe that civil immigration enforcement activities should not take place in courthouses. In light of the above directives, we anticipate that enforcement efforts by ICE will occur in courthouses only in rare situations. In a recent meeting, ICE's Field Office Director for Newark, John Tsoukaris, confirmed that ICE will minimize arrests in courthouses.

On the rare occasion when ICE seeks to carry out a civil enforcement action at or near a courthouse, the following practices should be followed:

- ICE officials should identify themselves to courthouse security personnel -- sheriff's officers at a county courthouse and local police officers at a municipal court -- and state the purpose of their visit. Notifying court security in advance will help avoid risks to the public, court staff, and law enforcement.

- Courthouse security personnel should ask ICE agents to display a copy of the warrant that authorizes an arrest.

- Courthouse security personnel should notify their respective Assignment Judge, Trial Court Administrator, Municipal Court Judge, Municipal Court Director, or designee, of the presence of ICE officials in the courthouse.

- Absent an emergency, ICE agents should conduct an arrest only after the conclusion of the relevant court event, in a non-public area.

Federal law provides a backdrop to the above measures. As a reminder, federal law does not allow judges and court staff to shield undocumented persons from immigration enforcement activities. Judges and court staff may not forcibly resist, impede, or interfere with a law enforcement officer's performance of official duties. That extends to the arrest of an individual based on a judicial warrant.

In the event the above practices are not followed, please advise the Administrative Director at once.

* * * * *

The above issues pose concerns on a number of levels. Thank you for your professionalism in responding to sensitive situations and complying with applicable laws.

cc: Glenn A. Grant, J.A.D., Acting Administrative Director
Attorney General Gurbir S. Grewal