

PRACTICE ADVISORY | 4/3/2020
NONCITIZENS & COVID-19 UPDATE

Given the heightened vulnerability for contracting COVID-19 for noncitizens in immigration detention, it is imperative that defense counsel take all possible steps to reduce the risks that a noncitizen client will end up in immigration detention. It is more important than ever to seek advice from WDA's Immigration Project (WDAIP) to assist in resolving criminal charges.

Case consultation information and advisories referenced below are available at the Immigration Project Resources section of WDA's website: <https://defensenet.org/resource-category/immigration-resources/>.

ICE ENFORCEMENT PRACTICES

- ❖ **ICE will continue arresting and detaining people in jails and convicted or charged with criminal offenses.** Specifically, ICE will “continue daily enforcement operations to make criminal and civil arrests, [and] will focus . . . on public-safety risks and individuals subject to mandatory detention based on criminal grounds.”
- ❖ For those individuals who do not fall into these categories, “ICE will exercise discretion to delay enforcement actions until after the crisis or use alternatives to detention, as appropriate.”¹
- ❖ Pursuant to RCW 10.93.160 (codification of 2019's Keep Washington Working Act), law enforcement and jails are prohibited from collaborating in ICE enforcement. These prohibitions include: **NOT** inquiring about immigration or citizenship status or place of birth; **NOT** permitting ICE access to interview anyone without informed, written consent; **NOT** sharing non-public personal information; **NOT** sending release dates to ICE or holding anyone on a civil warrant or ICE detainer/hold request. Some counties are in violation of RCW 10.93.160's prohibitions.

Defense Counsel Best Practices

- ✓ Contact WDA's Immigration Project to ensure all steps are taken to resolve criminal charges to reduce the risk of ICE apprehension that lands your client in ICE detention.
- ✓ Advise clients that if they are undocumented or have convictions that trigger deportation, they continue to be at risk of being apprehended by ICE.
- ✓ Provide ALL noncitizen clients with our “[Advisory for Noncitizens Facing Removal](#)” and, where relevant, “[Advisory For Noncitizen Defendants In Custody](#)” (available in English & Spanish).
- ✓ Find out if your jail is complying with RCW 10.93.160's prohibitions on ICE collaboration. Contact WDA's Immigration Project to report violations or get assistance on advocating for compliance.

IMMIGRATION DETENTION AND REMOVAL PROCEEDINGS

- ❖ ICE Guidance says detainees “are being tested for COVID-19 in line with CDC guidance” and claims some people are being tested in detention. Their main approach is to “isolate detainees with fever and/or respiratory symptoms who meet CDC criteria and observe them for specified periods.”²

¹ ICE COVID 19 Guidance as of 3/18/20, available at <https://www.aila.org/infonet/ice-issues-guidance-on-covid-19>

² Id.

- ❖ According to the **Northwest Immigrant Rights Project (NWIRP)**, upon entry into the ICE detention center³, people are put in isolation for 14 days as a precaution. Detainees report they are unable to follow CDC guidelines for hygiene and social distancing and are still living and sleeping in pods of 50 people, where they are sharing bunk beds spaced two-feet apart.⁴
- ❖ ICE says it is not releasing sick or vulnerable detainees unless they “must.”⁵ NWIRP and ACLU-WA filed suit in federal court seeking release of medically-vulnerable detainees. A TRO was denied (with options for reconsideration upon a confirmed COVID-19 case). The suit remains pending.
- ❖ ICE deports detainees without testing them. Those brought to the plane will have a prior ICE “medical clearance” or a “visual screening.” Those suspected of having a contagious illness will be “denied boarding and referred to an ICE approved facility for screening.” Those with temperatures of 100.4 degrees or higher will be immediately referred for “evaluation and observation.” ICE medical clearance does not seem to require actual testing.⁶
- ❖ The Seattle Immigration Court has suspended non-detained hearings. Detainee hearings continue by video conference.
- ❖ Legal visits at to the ICE detention center are now conducted through family visitation windows, in a mostly non-confidential setting.
- ❖ There is no right to appointed counsel in removal proceedings. NWIRP is the primary provider of legal assistance to low-income noncitizens in the ICE detention center. NWIRP’s legal orientation presentations and in-person screenings have been suspended, but remote services continue. See below for information on how your client can contact NWIRP from the ICE detention Center.

Defense Counsel Best Practices

- ✓ If your client may end up in ICE detention and they are ill or medically vulnerable, provide client with a brief letter from you highlighting their vulnerabilities to COVID-19. Advise client to provide the letter or otherwise **alert ICE about their health concerns immediately upon contact with ICE.**
- ✓ Options to locate someone in ICE detention: 1. ICE’s online detainee locator: <https://locator.ice.gov/odls/#/index>. 2. Leave a message for a detainee to call his or her attorney, by calling (253) 396-1611, pressing 6, and asking to be transferred to the front desk. *Do not ask if the person is there*; assume they are and ask to leave a message for the person to call their attorney. No other message is permitted. 3. If you know the person is there, call the ICE detention center’s number (253) 779-6000 and leave a message indicating you are trying to contact a client. See <https://www.ice.gov/detention-facility/tacoma-northwest-detention-center>
- ✓ **ADVISE CLIENT TO CONTACT NWIRP FOR LEGAL ASSISTANCE ONCE DETAINED.** NWIRP’s Tacoma office is dedicated to providing legal representation and pro se assistance to people in the ICE detention center. Advise your client to contact NWIRP by calling 253-383-0519 *or* 877-814-6444. NWIRP advocates staff these lines daily M-F from 9-12 and 1-3:30 pm. Advise client to keep calling until they make contact. This is now the only way for NWIRP to provide legal assistance and screen people for legal representation.
- ✓ Refer client to the Washington Immigrant Solidarity Network (WAISN). WAISN is the largest immigrant-led coalition in the Washington, and they are mobilizing resources to support immigrants during the pandemic. Clients many contact their hotline for support: **1-844-724-3737**. See www.waisn.org/covid.

Feel free to contact WDA’s Immigration Project for additional information on issues regarding the ICE detention center, removal or other immigration proceedings, or other immigration-related COVID-19 issues.

³ The Tacoma ICE detention facility is now called the NW ICE Processing Center (formerly the NW Detention Center). It is a private detention facility operated by GEO Corporation. It is usually filled to its 1,575-bed capacity.

⁴ See <https://www.kuow.org/stories/caravan-protest-of-ice-detention-center-in-tacoma-hunger-strike-ongoing>

⁵ ICE implies that it will only release someone under court order. See <https://www.ice.gov/coronavirus> (accessed 4/3/20).

⁶ See <https://www.ice.gov/coronavirus>