



# Ensuring Equal Access to Justice for All

Guidance to Assist New Mexico's Trial Courts in Responding  
to Immigration Issues

# ENSURING EQUAL ACCESS TO JUSTICE FOR ALL

## Guidance to Assist New Mexico's Trial Courts in Responding to Immigration Issues

### Introduction

New Mexico's court system serves all state residents regardless of immigration status. Immigration enforcement actions at or near the state's court facilities could result in a chilling effect on immigrant residents who need access to New Mexico's courts, whether as litigants, witnesses, or victims of crime. New Mexico cannot control the actions of federal immigration enforcement agencies, but the state has a constitutional responsibility, to the extent permitted by state and federal law, to provide safe and secure access to court facilities to all residents regardless of immigration status and to mitigate disruptions to court operations from immigration enforcement. Court administrators are encouraged to consult with counsel about the issues contained in this Guidance. This Guidance is not intended to provide legal advice.

### GOVERNING LAW

#### The Fourth Amendment and Immigration Regulations

Immigration agents, like law enforcement officers, must comply with the Fourth Amendment. In a public place, like the public spaces of a courthouse, the Fourth Amendment allows to approach an individual and ask questions without any level of suspicion as long as the officer does not act in a manner that would cause a reasonable person to believe they are not free to leave.<sup>1</sup> This includes immigration officers asking questions about a person's citizenship or immigration status.<sup>2</sup> Officers may not detain an individual in the absence of reasonable suspicion.<sup>3</sup> Law enforcement officers may make a warrantless arrest in a public place based on probable cause without violating the Fourth Amendment even in the absence of exigent circumstances.<sup>4</sup> Immigration officers are permitted to make a warrantless arrest if they witness a person entering or trying to enter the United States unlawfully or if they have reason to believe the individual has committed a federal felony. Otherwise, they may only arrest someone without court order if they have

---

<sup>1</sup> *State v. Williams*, 2006-NMCA-062, ¶ 11, 139 N.M. 578.

<sup>2</sup> *INS v. Delgado*, 466 U.S. 210, 220-21 (1984).

<sup>3</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>4</sup> See *Payton v. New York*, 445 U.S. 573, 590-91 (1980). The New Mexico Constitution provides greater protection and requires probable cause and either exigent circumstances or a warrant to make a public arrest, *Campos v. State*, 1994-NMSC-012, ¶ 14, 117 N.M. 155, and the New Mexico Constitution applies to the actions of federal officers for purposes of determining whether evidence is admissible in a state court proceeding. See *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 18, 130 N.M. 386. These heightened constitutional protections, however, do not restrict the ability of federal agents to follow and enforce federal law. *Id.* ¶ 19.

reason to believe a person entered the country unlawfully and “is likely to escape before a warrant can be obtained.”<sup>5</sup>

### **Federal Immigration Enforcement Policy at Courthouses**

Under previous presidential administrations, both Republican and Democrat, federal immigration policies limited civil immigration enforcement actions at protected locations, such as schools, churches, public demonstrations, and hospitals.<sup>6</sup> In a memorandum, the Department of Homeland Security (DHS) recognized that “[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals’ access to courthouses and, as a result, impair the fair administration of justice.”<sup>7</sup> The memorandum provided “guidance as to when and how civil immigration enforcement actions can be executed at or near a courthouse so as not to unnecessarily impinge upon the core principle of preserving access to justice.”<sup>8</sup> A civil immigration enforcement action was allowable for national security threats, imminent risk of death or violence, hot pursuit, and an imminent risk of the destruction of evidence.<sup>9</sup> These policies were designed to minimize a chilling effect on access to the courts and frustrating the courts’ role in administering justice.

## **CONSIDERATIONS FOR JUDICIAL POLICIES**

### **Judicial Authority to Establish Order in the Court**

Federal immigration policies are subject to change. The current administration has announced a focus on extensive civil immigration enforcement and mass deportation. Separate from federal policies, state court judges have inherent authority to regulate individuals’ conduct in the courtroom to ensure the proper and orderly administration of justice.<sup>10</sup> Chief judges and court administrators may develop policies to prevent unauthorized access to secure areas of court facilities. In addition, judges presiding over individual matters may exercise inherent authority necessary to prevent courtroom disruption and to perform the court’s essential functions. Any nonpublic areas of a court facility should be clearly marked and should be accessible only to persons with proper

---

<sup>5</sup> 8 C.F.R. § 287.8(c).

<sup>6</sup> Guidelines for Enforcement Actions in or Near Protected Areas (Oct. 27, 2021), available at [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-innear-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-innear-protected-areas.pdf) (last accessed Jan. 5, 2025).

<sup>7</sup> Civil Immigration Enforcements Actions in or Near Courthouses (April 27, 2021) available at <https://www.ice.gov/document/civil-immigration-enforcement-actions-or-near-courthouses-directive> (last accessed Jan. 16, 2025).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., *Harrison v. Bd. of Regents of Univ. of New Mexico*, 2013-NMCA-105, ¶ 2, 311 P.3d 1236 (noting that district courts have the inherent authority to “impose a variety of sanctions on both litigants and attorneys in order to regulate their docket [and] promote judicial efficiency”); *State ex rel. N.M. State Highway & Transp. Dep’t v. Baca*, 1995–NMSC–033, ¶ 11, 120 N.M. 1 (same).

authorization or to law enforcement officers possessing a judicial warrant or acting on exigent circumstances.

Courts can also implement policies to protect the right of access to the courts. For example, courts can permit litigants or witnesses to use pseudonyms in court filings or proceedings under appropriate circumstances. Notably, federal law restricts the release of personal or personally identifying information regarding victims of crime.<sup>11</sup> In addition, courthouse policies can include minimizing non-essential in-person appearances in court by litigants, victims, and witnesses consistent with state rules of procedure.<sup>12</sup> Courts can also sanction the use of remote audio and video services for case hearings and case management meetings where appropriate and when permitted by law.

The development of these policies may be informed by the common law privilege against civil arrests in courthouses. Courts are divided on whether federal immigration law incorporated this common law doctrine.<sup>13</sup>

### **Policies for Reporting Immigration Enforcement Activities**

It would be advisable for the judiciary to keep records of any immigration enforcement action at court facilities, including the date and time of occurrence, the identity of officers engaged in immigration enforcement, and the location of the enforcement action in the courthouse, as well as any apparent disruption the arrest caused to the proper administration of justice and access to the courts. This information would be valuable in assessing the effectiveness of any court policies and also provide an evidentiary background for any future litigation about the scope of federal arrest authority in courthouses for civil immigration enforcement.

### **Protections for Victims of Crime**

Access to the courts is of particular importance for victims of crime, including victims of domestic violence, and court remedies available to these individuals may include emergency restraining orders or orders of protection from imminent violence. In 2006, the immigration committee of the Major Cities Chiefs Association (MCCA), a professional association that includes many of the largest law enforcement agencies in the United States, concluded that “[i]mmigration enforcement by local police would likely negatively affect and undermine the level of trust and cooperation between local police and immigrant

---

<sup>11</sup> 34 U.S.C. § 12291(b)(2).

<sup>12</sup> See, e.g., Rule 5-303 NMRA (authorizing district courts to allow a defendant to appear at arraignment through a two-way audio-visual communication); Rule 6-110A NMRA (authorizing magistrate courts to “permit a defendant or attorneys to appear through the use of a simultaneous audio or audio-visual communication when it will legitimately serve justice . . .”).

<sup>13</sup> Compare *Ryan v. ICE*, 974 F.3d 9, 24-25 (1<sup>st</sup> Cir. 2020), with *New York v. ICE*, 431 F. Supp. 3d 377, 390-93 (S.D.N.Y. 2019).

communities.”<sup>14</sup> This impact, they concluded, “would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”<sup>15</sup>

Recognizing the vulnerable position of those in the United States without lawful status, Congress provided special protections for undocumented immigrants who have been subjected to domestic violence in the Violence Against Women Act (VAWA) of 1994.<sup>16</sup> This act also restricts the disclosure of victim information.<sup>17</sup> If an immigration enforcement action leads to a removal proceeding, federal law and DHS policies require that DHS issue a Notice to Appear (NTA) including a specific certification that the agency complied with the statutory restrictions on the disclosure of information. Protected individuals include those who are subjected to an enforcement action at a courthouse while “appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15).”<sup>18</sup>

### **Juvenile Matters**

New Mexico’s juvenile court proceedings are typically closed to the public, including immigration authorities, in order to serve the rehabilitative goal of these proceedings and to protect the confidentiality of private or sensitive information.

### **Warrants and Subpoenas**

Warrants and subpoenas issued by an officer engaged in immigration enforcement are not the same as judicial warrants, judicial subpoenas, and court orders issued by a federal court. It is advisable for courts to have internal protocols that inform court staff how to address immigration-related warrants both to ensure compliance with the law and to prevent the unnecessary disruption of court operations.

---

<sup>14</sup> Major Cities Chiefs, M.C.C. *Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies* (June 2016), available at [https://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Immigration/2008%20local%20immigration%20enforcement%20appendix%20a-d.pdf](https://www.policeforum.org/assets/docs/Free_Online_Documents/Immigration/2008%20local%20immigration%20enforcement%20appendix%20a-d.pdf) (last accessed Jan. 5, 2025).

<sup>15</sup> *Ibid.*

<sup>16</sup> See 8 U.S.C. § 1154(a).

<sup>17</sup> 8 U.S.C. § 1367(b)(2).

<sup>18</sup> 8 U.S.C. § 1229(e)(2)(B).

### ***ICE Administrative Warrant***

Immigration officers frequently rely on ICE administrative warrants. These documents authorize an immigration enforcement officer in a public place to arrest a person suspected of violating immigration laws and may be issued by an authorized immigration enforcement official. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment, such as a judicial arrest warrant, because it is not issued by a neutral magistrate and is not based on probable cause that an individual committed a criminal offense.

ICE warrants do not authorize access to nonpublic areas of a court facility or allow an immigration enforcement officer to search court records. Although court personnel should not interfere with an immigration officer's enforcement duties, court personnel are not required to assist with the apprehension of a person identified in an ICE administrative warrant and cannot be commandeered into federal service.<sup>19</sup>

### ***Federal Court Warrant***

A judicial warrant issued by a federal district or magistrate judge based on a finding of probable cause satisfies the Fourth Amendment for purposes of authorizing the search or seizure of property, the entry into a nonpublic place to arrest a person named in an arrest warrant known to be in that place, and the arrest of a named person. Court personnel should promptly comply with a federal court warrant, and court policies may instruct court personnel to alert the chief judge or court administrator when a warrant is executed.

### ***Administrative Subpoena***

An administrative subpoena is a request for production of documents or other evidence. In the immigration context, it is typically issued by an immigration enforcement officer.

As with most subpoenas, including those issued by a federal court or federal grand jury, immediate compliance with an administrative subpoena is not typically required because subpoenas can be challenged in court. It would be advisable to instruct court personnel to alert the court administrator about any administrative subpoena served on the court.

### ***Notice to Appear***

A Notice to Appear (NTA) is a charging document issued by ICE, Customs and Border Patrol (CBP), or the United States Citizenship and Immigration Service (USCIS) seeking to

---

<sup>19</sup> See *Printz v. United States*, 521 U.S. 898 (1997).

commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations made about a particular person's immigration status. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual's arrest by immigration enforcement authorities or local law enforcement authorities.<sup>20</sup> An NTA does not require court staff to take any action or grant an officer engaged in immigration enforcement any special power to compel the court to cooperate with the officer. An NTA does not authorize access to nonpublic areas of the court facility or authorize a search of court records.

### **Information Requests**

Court records are generally open and accessible to the public under state law.<sup>21</sup> Federal law provides that a person or agency shall not prohibit a state or local entity or official from sharing immigration information with the Immigration and Naturalization Service (INS).<sup>22</sup> However, federal and state law do not impose an affirmative duty on state or local government entities to collect information about an individual's citizenship or immigration status. In addition, there are special confidentiality protections for victim information and juvenile records.<sup>23</sup>

---

<sup>20</sup> *Arizona v. United States*, 567 U.S. 387, 407 (2012).

<sup>21</sup> NMSA 1978, § 14-2-1 (2023).

<sup>22</sup> 8 U.S.C. § 1373(b). A number of federal courts have determined that this statute violates the Tenth Amendment. See, e.g., *Cnty. of Ocean v. Grewal*, 475 F. Supp. 3d 355, 377-378 (D.N.J. 2020) (collecting cases).

<sup>23</sup> See NMSA 1978, § 32A-2-32(A) (2009).