



2925 Ingersoll Ste. 3, Des Moines, IA 50312

Phone: (515)-244-2469 Fax: (515) 868-0089

Visit us at: www.asistahelp.org E-mail: questions@asistahelp.org

March 14, 2014

Deborah Fleischaker
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, DC 20528

Re: ICE Courthouse Enforcement

Dear Ms. Fleischaker:

ASISTA Immigration Assistance is a national non-profit organization that provides technical assistance, training and liaison with U.S. Citizenship and Immigration Services for advocates and attorneys working with immigrant survivors of domestic violence and sexual assault. Advocates from across the country have recently reported troubling news regarding ICE enforcement actions at local courthouses and related venues. We are deeply concerned about these reports because of the impact these actions have on survivors of violence and their ability to seek protection and justice from the abuse committed against them.

We have included a few of these reports in this letter to illustrate how these ICE enforcement actions at courthouses are harming survivors and efforts to encourage them to access safety and justice. ICE is not only targeting criminal matters at local courthouses, but also protection order and child welfare hearings. These actions put vulnerable survivors at risk of detention when they go to the court seeking justice. They are also creating an enormous chilling effect on immigrant survivors generally, who will not seek protection from the courts because they fear deportation.

An advocate in New Mexico reports:

In 2011, ICE appeared at an order of protection hearing for an immigrant victim of domestic violence (potential U visa case) based on a call from the abuser. The victim also had felony charges pending against her in an incident related to the domestic violence.¹ ICE was not permitted to be a part of the protection order hearing since the hearing officer, who conferred with the presiding judge, determined it was not in the best interest of justice for ICE to be there. The client was terrified and shaking the whole time. The abuser, on the protection order documents filed

¹ If this individual filed for a U visa, then she could potentially be eligible for a waiver under INA 212(d)(14) depending on the circumstances.

with the court wrote “I need Immigration to be at the hearing to deport my wife/girlfriend.” The court granted the protection order against him. Subsequently, a meeting was held with representatives from community agencies and the head of the local ICE ERO unit (who is no longer with this ICE Office). The head of the ERO unit seemed somewhat apologetic, but ultimately said that they have the authority to enforce immigration laws, and could not make any promises that they would not conduct enforcement actions at courthouses. This incident is still remembered by the advocates and attorneys at the non-profit that was representing this victim, so they still cannot guarantee to survivors that ICE would not show up at their protection order hearings.

Many of my clients all over the state are fearful to access local court services, whether that means showing up for traffic court, filing for an order of protection, or going to a custody hearing, based on the belief that ICE could be there to pick them up.

A few years prior to that incident, I had a VAWA client (whose case hadn’t been filed yet) in another small town in New Mexico. Her abuser contacted ICE and they showed up at a protection order hearing. ICE took her away, detained her, and she was put in removal proceedings, so she was referred to another attorney. She had also previously crossed the border with someone else’s birth certificate and this is part of what the abuser told ICE. Shelter people in the area had arranged to meet with local federal Congress people as a result of the incident.

An advocate in Kentucky reports:

ICE is at our local courthouse every day. It is mostly one particular officer, who admits that he reads the court’s docket daily, but I have also heard of other plain-clothes ICE officers at the courthouse as well. The officer who is there every day approaches people and asks them if they have papers. We don’t know if he has some particularized suspicion for suspecting that a person is undocumented, or if he is just approaching anyone on the docket who has a Latino last name.

If the person is accompanied by someone who intervenes in any way, the ICE officer asks that individual for their papers as well. This happened recently to a local pastor who accompanied one of his parishioners to the courthouse to address a traffic citation. The pastor’s three-year old son was with him. Almost immediately, an ICE officer approached them and took the parishioner into another room to detain her for deportation. When the pastor questioned why a federal officer was involved with a case in a local traffic court, the ICE agent asked him for his papers. When the pastor inquired why this was necessary, the officer stated, “You know, if you don’t have documents, I can detain you and send your child to Child Protective Services.” To avoid traumatizing his son, the pastor showed the officer his permanent resident card.

Another attorney in our office is representing two boys who are seeking Special Immigrant Juvenile Status (SIJS). We are at the guardianship phase right now, so they had a hearing at the Family Court for the guardianship matter. The very next morning, ICE officers appeared at their front door right after the children left to catch the school bus. I later spoke with one of the officers involved, and he is the same officer who is at the courthouse every day. He told me they were looking for a particular person who had a felony conviction, and they “had information” that this person lived at that address. The adult family members at that home (who were all arrested) had lived there for over 10 years, and no one with that name had ever been there. The person they

claimed to be looking for had the same name as the father of one of the boys, which ICE likely got off the court papers, but a very different birth date. The father has never been in the US. The guardianship petition had this address on it, but also made it clear that the father was still in his home country and not living there.

I searched the Administrative Office of the Courts CourtNet database for anyone with that name who had a felony conviction, but there was nothing. One person in the system had that same name and year of birth, but did not have a felony conviction; his misdemeanor convictions were 8 and 9 years ago, and the closest he came to our area was 70 miles away. The children in the guardianship cases are in removal proceedings, but there was absolutely nothing on the guardianship petition that in any way indicated the immigration status of their guardians. The ONLY thing that the officer could have been going by would be the names. It's bad enough that they are targeting people attending hearings for criminal matters, but this was a child welfare proceeding!

Discussion

ICE has numerous policies in place that urge special consideration for victims of violence. The June 17, 2011 memo issued by then-Director John Morton entitled "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs" specifically list survivors of violent crimes as a factor to consider when exercising prosecutorial discretion and states that "absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime." In this memo, Director Morton acknowledges the all-too common problem of dual arrests in domestic violence cases and the potential for survivors to come to ICE's attention via Secure Communities or other ICE enforcement programs. The memo states that in these circumstances, "***Absent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or civil liberties.***"

As indicated in the example from New Mexico, it is particularly problematic if ICE is initiating enforcement actions against survivors at the behest of an abuser, as this would be a potential violation of 8 USC §1367 which prohibits DHS from using information solely from an abusive spouse or parent as the basis for arresting and charging a person with removability.² Similarly, 8 USC §1229(e) indicates that DHS must certify that the confidentiality provisions have been complied with when enforcement actions leading to a removal proceeding are taken at specified locations, such as domestic violence shelters, rape crisis centers, or **courthouses**, if the survivor is 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 individual is eligible for a T or U visa.

ASISTA believes that ICE enforcement actions at courthouses or any venue related to civil court matters infringe upon a survivor's rights to protect his or her civil rights and civil liberties, especially as ICE appears to target not only criminal proceedings but also protection order and child welfare hearings as well. We urge DHS to reevaluate ICE enforcement policies at

² See John P. Torres, Immigration and Customs Enforcement, "Interim Guidance Related to Officer Procedure Following Enactment of VAWA 2005", (January 22, 2007). Available at <http://bit.ly/1oUJQ1B>. See also Paul Virtue, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA 384." (May 5, 1997). Available at <http://bit.ly/1fx2HgX>.

courthouses and related venues so that survivors will not fear accessing protection and justice from the abuse committed against them.

For more information, please contact ASISTA Co-Director Gail Pendleton at gail@asistahelp.org or staff attorney Cecelia Friedman Levin at cecelia@asistahelp.org

Thank you for your consideration.

Sincerely,

Cecelia Friedman Levin
ASISTA Immigration Assistance