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WSSFC 2026

Substantive Track – Session 4

Immigration Enforcement

Presenters:
Davorin J. Odrcic
Odrcic Law Group LLC, Milwaukee

About the Presenter...

Davorin J. Odrcic is the principal attorney at Odrcic Law Group, LLC in Milwaukee, Wisconsin, and has focused exclusively on immigration law since 2006. Known for his litigation skills in deportation defense and post-conviction relief, he also advises defense counsel on the immigration impact of criminal charges. Davorin holds a Juris Doctor from Notre Dame Law School, a Master's from George Washington University, and a Bachelor's degree from Marquette University. He is licensed in both Wisconsin and Nevada and regularly appears in federal and immigration courts throughout the U.S.

THE LAW BEHIND ICE ARRESTS & DETENTION

WISCONSIN SOLO & SMALL FIRM CONFERENCE 2026

Presenter: Davorin J. Odrcic
davorin@djovisa.com

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THE KEY POINTS

1. The Immigration & Nationality Act provides ICE with extraordinary power to arrest and detain noncitizens
   - Illegal Immigration Reform And Immigrant Responsibility Act of 1996 ("IIRAIRA")
2. ICE's arrest and detention tactics in 2025 changed significantly compared to previous administrations
3. ICE's detention and operations budget increased dramatically in 2025
4. Immigration law is civil so the 4th Amendment does not apply the same way as criminal law
5. Immigration law is inherently political
   - Immigration Court System Falls Under The U.S. Department Justice

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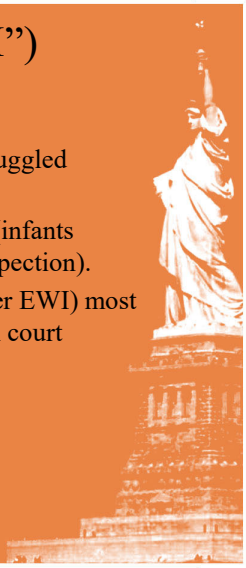
KEY IMMIGRATION TERM

- Entry Without Inspection ("EWI")
  - Correct legal term for entering "illegally" or "undocumented"
  - Crossing at an undesignated port of entry or smuggled without inspection;
  - No scienter of immigration violation is needed (infants violate immigration law by entering without inspection).
  - 8 U.S.C. § 1182(a)(6)(A)(i) (present in U.S. after EWI) most common ground of removability in immigration court



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Policy Rationale Behind ICE Arrests & Detention

- Effective immigration enforcement tool
  - No absconding
  - Discourages pursuing a defense in removal proceedings
  - Discourages appeals
  - Proceedings may only take a few months as opposed to years
- Public safety
- Incentive to "self-deport"

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Brad and Camila's Story: A Visa Overstay

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Camila's Detention

- U.S. citizen husband born in Wisconsin
- Camila overstayed her J-1 visa
- Camila detained at the Puerto Rico airport trying to return to Wisconsin from honeymoon
- Detained for six weeks in Louisiana
- Released on $3000 bond by immigration judge

https://www.fox6now.com/news/wisconsin-mans-wife-detained-by-ice-raising-funds-for-legal-fees

https://www.jsonline.com/story/news/local/wisconsin/2025/04/07/wisconsin-trump-voter-wife-freed-from-ice-custody-after-49-days/82982688007/

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The Law Behind Camila's Arrest & Release

8 U.S.C. § 1226(a)(1)

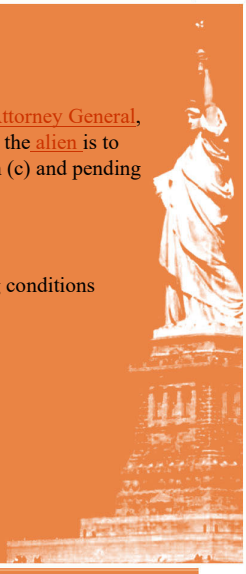
(a)ARREST, DETENTION, AND RELEASE On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

1) may continue to detain the arrested alien; and

(2)may release the alien on—

(A)bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole.



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What is the bond standard in immigration court?

The noncitizen has the burden of proof to demonstrate:

1. Not a danger to the community; and
2. Not a flight risk.

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What if Camila Was Detained Now?

1. ICE is now routinely detaining visa overstays at airport

https://abc7news.com/story/federal-immigration-authorities-targeting-airports-arrests/19597198/

2. Tougher BIA decisions on "flight risk"
   - *Matter of A-L-S-*, 29 I. & N. Dec. 794 (BIA 2026)
     - "The fact that an alien has filed, or intends to file, an application for relief from removal does not meaningfully indicate that the alien will comply with a future order of removal"
     - "Speculative future eligibility for relief based on conjecture or hypothetical future events does not materially diminish flight risk"
     - "The mere ability of an alien to prolong immigration proceedings by filing applications for relief does not meaningfully demonstrate than an alien is not a flight risk"

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Elvira's Story: Prolonged Detention

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Elvira's Detention

- EWI-ed at the age of 15 so lived in the U.S. without status for 35 years
- 4 U.S. citizen children
- No arrest or conviction record
- July of 2025 took a wrong turn into Canada
- Originally detained without bond for 6 months
- Immigration judge grants 'cancellation of removal' and Elvira eventually released December of 2025
- DHS appeals grant of cancellation of removal
- Milwaukee ICE detains her a second time at a check-in March 2026
- Detained in Kentucky again, with a writ of habeas corpus having been granted

https://wisconsinexaminer.com/2026/03/19/family-of-milwaukee-woman-detained-by-ice-pleads-for-her-release/

https://wisconsinwatch.org/2026/06/wisconsin-milwaukee-immigration-sheboygan-falls-woman-benitez-suarez-freed-bond-returns-to-office-legal-limbo/

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What is 'cancellation of removal'?

- Main defense in immigration court for non-lawful permanent resident immigrants
- If granted, the applicant becomes a lawful permanent resident ("green card holder")
- The requirements

1. At least 10 years of continuous physical presence in the U.S.
2. No inadmissible or deportable criminal convictions
3. Demonstrate good moral character for at least 10 years
4. "Exceptional and extremely unusual hardship" to a qualifying family member, such as a U.S. citizen minor child

Source: 8 U.S.C. § 1229b(b)

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The Law Behind Elvira's Detention, Part 1

Laken Riley Act (passed January 29, 2025)

- Amended 8 U.S.C. § 1226(c) to require mandatory detention of EWI respondents who have **solely been arrested** of certain property offenses, such as retail theft.
  - **Strong argument that LRA is not retroactive for arrests, charges, or convictions prior to January 29, 2025**

Elvira Is Not Subject To Mandatory Detention

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The Law Behind Elvira's Detention, Part 2

Big Beautiful Bill ("BBB") (passed July 4, 2025)

- $45 billion in ICE detention over 4 years
  - 308% increase
- $30 billion for 10,000 new ICE officers over 4 years

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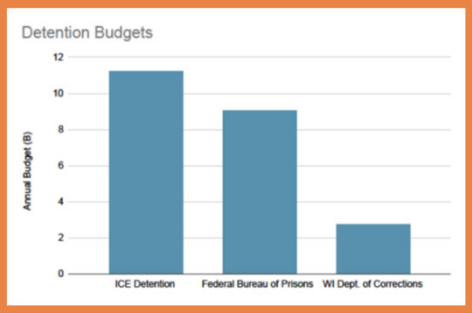
ICE Detention Budget Vs. Federal and Wisconsin Prison Budget



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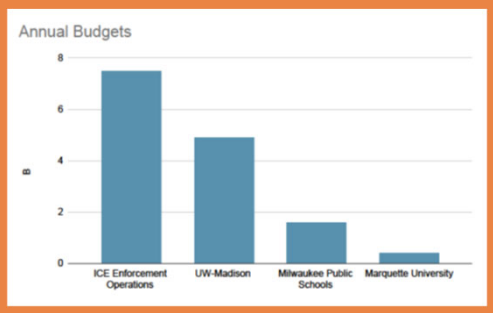
ICE Operation Budget Vs. Educational Budgets



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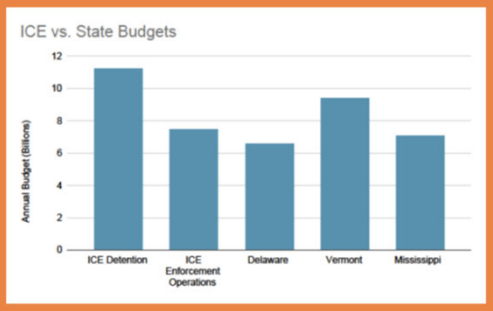
ICE Budgets Versus State Budgets



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The Law Behind Elvira's Detention, Part 3

- DHS Internal Memorandum Instructing Their ICE Attorneys In Immigration Court To Argue That All People Who EWI-ed Are Ineligible For A Bond As 'Applicants For Admission' Under 8 U.S.C. § 1225 (**July 8, 2025**)

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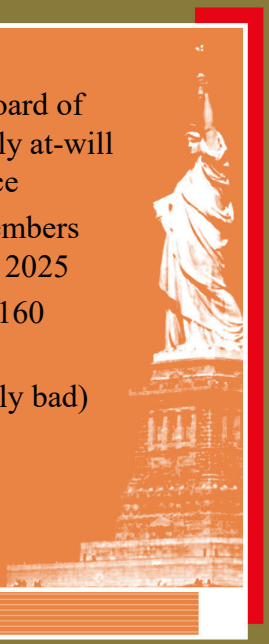
Who Runs The Immigration Court System?

- U.S Attorney General
- Immigration Judges and members of the Board of Immigration Appeals ("BIA") are essentially at-will employees of the U.S. Department of Justice
- Numerous immigration judges and BIA members have either been fired or quit since January 2025
- Since January of 2025, the BIA has issued 160 published decisions. All really bad.
- In 2024, the BIA issued 14 decisions (mostly bad)



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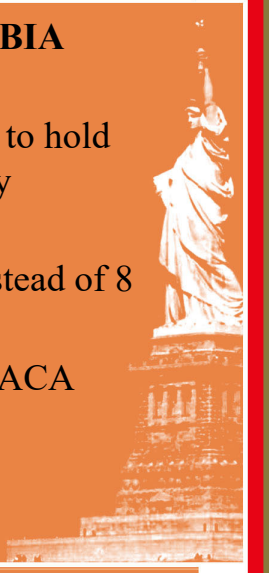
The Law Behind Elvira's Detention, Part 4

***Matter of Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025)**

- Overturned decades of jurisprudence to hold anyone who is EWI is jurisdictionally ineligible for an immigration bond
- 8 U.S.C. § 1225 detention applies instead of 8 U.S.C. § 1226
- Applies to anyone EWI (including DACA recipients)



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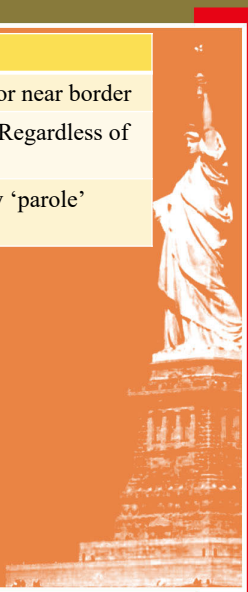
1226 v. 1225 Detention

1226 Detention	1225 Detention
Apprehended Within Interior Of US	Apprehended at POE or near border
Mandatory Detention For Criminal Offenses	Mandatory Detention Regardless of Criminal Record
Bond possibility	No bond, but ICE may 'parole' person into the U.S.



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Initial Responses To *Matter of Hurtado*

1. **Individual Habeas Petitions In Federal Court (majority successful)**
2. **Successful Class Action Suit**
   - ***Maldonado-Bautista* presently stayed by Ninth Circuit**

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Circuit Court Decisions Affirmding *Matter of Hurtado*

1.*Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026)

2. *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026)

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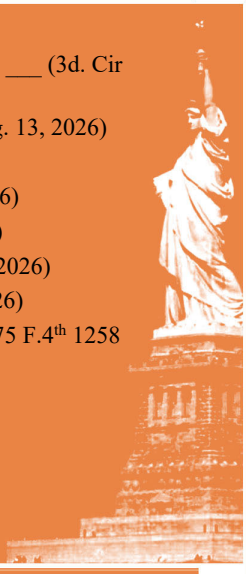
Circuit Court Decisions Rejecting *Matter of Hurtado*

1. *Lopez v. Guadian*, __ F.4th __ (4th Cir. Sept. 10, 2026)
2. *Buele Morocho v. Warden Philadelphia FDC*, ___ F.4th ___ (3d. Cir Aug. 28, 2026)
3. *Guerrero Orellana v. Moniz*, ___ F.4th ___ (1st Cir. Aug. 13, 2026)
4. *Cirrus Rojas v. Olson*, 183 F.4th 909 (7th Cir. 2026)
5. *Barbosa de Cunha v. Freden*, 175 F.4th 61 (2d. Cir. 2026)
6. *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026)
7. *Rodriguez-Vazquez v. Bostock*, 183 F.4th 1160 (9th Cir. 2026)
8. *Santillan Quiroz v. Mullin*, 180 F.4th 1226 (10th Cir. 2026)
9. *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258 (11th Cir. 2026)



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Immigration Is Civil

- In general there is no "exclusionary rule" in immigration court proceedings (thus evidence taken in violation of 4th Amendment will not be surpressed)
- No *Miranda* rights
- Judicial warrant is not required for an immigration-violation-only arrest unless for alleged criminal offense

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Liam's Arrest and Detention

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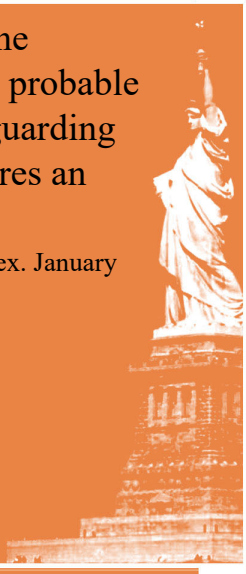
Judicial Frustration In Liam's Case

- "Administrative warrants issued by the executive branch to itself do not pass probable cause muster. That is called the fox guarding the henhouse. The Constitution requires an independent judicial officer."

Arias v. Noem, __ F.3d __, 2026 WL 255706, (W.D. Tex. January 31, 2026)



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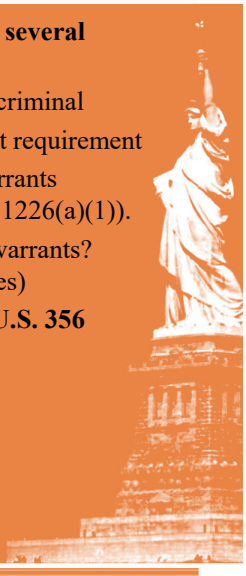
Judicial Warrants Not Required

- **Arguing that judicial warrants are required face several hurdles**:
  - Immigration arrests and detention are civil, not criminal
  - SCOTUS rulings do not support judicial warrant requirement
  - The statute authorizing administrative arrest warrants appears clear and unambiguous (*See* 8 U.S.C. § 1226(a)(1)).
  - Which judge is supposed to sign these judicial warrants? (federal district court judges? Immigration judges)
- **Extending reasoning in *Padilla v. Kentucky*, 559 U.S. 356 (2010) may be a potential argument?**



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ICE ARRESTS

- **Administrative Warrant**
  - On Form I-200
  - Must either be accompanied by a Notice to Appear to initiate removal proceedings before the immigration court or issued after proceedings commenced.
- **Warrantless Arrest**

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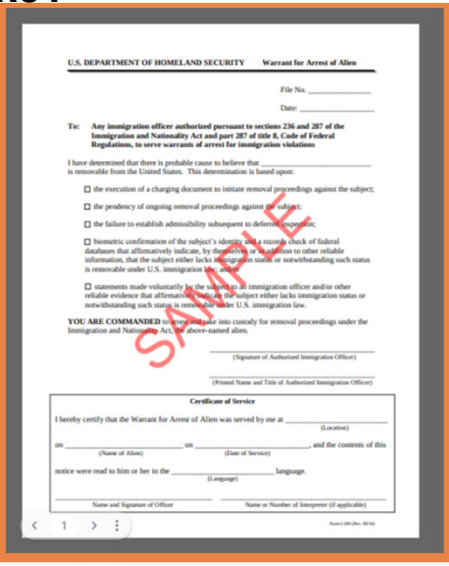
What Does An Administrative Warrant Look Like?



U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: **Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations**

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

☐ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☐ the failure to establish admissibility subsequent to deferred inspection;

☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to serve and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

SAMPLE

_____
(Signature of Authorized Immigration Officer)

_____
(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)

on _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ (Language) language.

_____ Name and Signature of Officer

_____ Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

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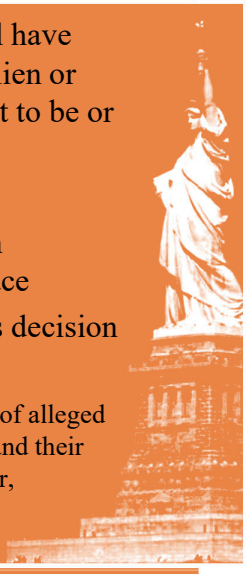
Can ICE Engage In An Investigatory Stop?

- Yes. *See* 8 U.S.C. § 1357(a)(1) (ICE "shall have power without warrant to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.").
- ***Noem v. Vasquez Perdomo* Litigation**
  - Federal district court enjoined ICE from investigatory stops based on apparent race
  - SCOTUS granted stay of district court's decision
  - Kavanaugh Concurrence
    - "Common sense" stops given large number of alleged undocumented immigrants in Los Angeles and their prevalence in certain employment (day labor, landscaping, agriculture, and construction)



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Warrantless Arrests

- "Reason to believe" that noncitizen arrested is in violation of immigration law; **AND**
- Reasonable belief that noncitizen "is likely to escape before a warrant can be obtained" for arrest

8 U.S.C. § 1357(a)(2)

8 C.F.R. § 287.8(c)(2)(ii)

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The 'Castanon Settlement'

- Required ICE to comply with immigration law governing warrantless arrests (i.e. probable case *and* reasonable belief that person likely to escape)
- Required ICE to document warrantless arrests
- ICE officer training
- Compliance and monthly reporting
- Effective May 12, 2022 to May 12, 2025*
- Applies entire Chicago ICE area of responsibility, including Wisconsin.

Nava v. Dept. of Homeland Security, 435 F. Supp.3d 880 (N.D. Ill. 2020)

* See next slide

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CASTANON SETTLEMENT VIOLATED

- **Motion To Enforce Filed Prior To May 12, 2025 Expiration**
- **Federal Court Granted Motion, Finding:**

1. Violation of law governing warrantless arrests on both lack of probable cause and reasonable belief of escape
2. Failing to properly document warrantless arrests
3. Willful attempts to go around settlement by providing ICE officers in the field with blank I-200 administrative warrants to be completed immediately after illegal warrantless arrest.

Castanon Nava v. DHS, 2025 WL 2842146, ___ F.Supp.3d ___ (N.D. Ill. Oct. 7, 2025).

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NEW & OLD DEVELOPMENT: ICE IN WISCONSIN COURTHOUSES

- Prior to 2017 ICE regularly appeared at Wisconsin circuit courthouses often on days where there was a Spanish-speaking docket.
- Cessation during Biden Administration

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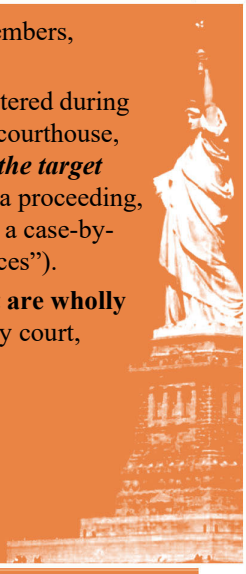
ICE 2025 MEMORANDUM ON COURTHOUSE ARRESTS

- **Targeting bad actors** (conviction records, gang members, previously ordered removed, etc.)
- **But may target 'collaterals'** ("Other aliens encountered during a civil immigration enforcement action in or near a courthouse, ***such as family members or friends accompanying the target alien*** to court appearances or ***serves as a witness*** in a proceeding, may be subject to civil immigration enforcement on a case-by-case basis considering the totality of the circumstances").
- **ICE should avoid "areas within courthouses that are wholly dedicated to non-criminal proceedings** (e.g. family court, small claims court).



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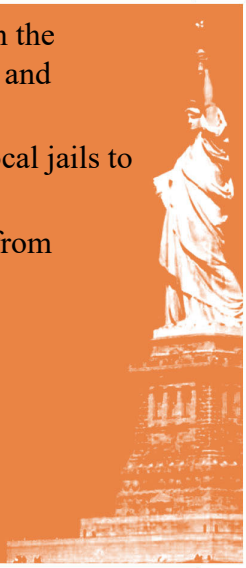
Future Developments

- Supreme Court of Wisconsin will decide on the legality of ICE detainers in Wisconsin jails and prisons
- ICE may be contracting more space with local jails to hold people in immigration court
- ICE will continue to transport noncitizens from Wisconsin to other parts of the country.



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THE LAW BEHIND ICE ARRESTS & DETENTION
OCTOBER 22, 2026
WISCONSIN SOLO & SMALL FIRM CONFERENCE 2026
(Presenter: Davorin J. Odrcic)

Materials	**Page No.**
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May 27, 2025 ICE Memorandum On Courthouse Arrests	3-5
Arias v. Noem (The "fox guarding the henhouse")	6-7

U.S. DEPARTMENT OF HOMELAND SECURITY **Warrant for Arrest of Alien**

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

☐ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☐ the failure to establish admissibility subsequent to deferred inspection;

☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

SAMPLE

_____
(Signature of Authorized Immigration Officer)

_____
(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)

on _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ (Language) language.

_____ Name and Signature of Officer

_____ Name or Number of Interpreter (if applicable)

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: FINS:

File No:_____

DOB: Event No:

In the Matter of:

Respondent: _____ currently residing at:

_____

(Number, street, city and ZIP code) (Area code and phone number)

SAMPLE

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

_____

(Complete Address of Immigration Court, including Room Number, if any)

on _____ at _____ to show why you should not be removed from the United States based on the

(Date) *(Time)*

charge(s) set forth above.

_____

(Signature and Title of Issuing Officer)

Date: _____

_____

(City and State)

See reverse for important information

2 ODRCIC

Form I-862 (Rev. 08/01/07)

Policy Number: 11072.4

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

May 27, 2025

MEMORANDUM FOR: All ICE Employees

FROM: Todd M. Lyons
Acting Director

SUBJECT: Civil Immigration Enforcement Actions In or Near Courthouses

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Purpose

This memorandum provides guidance governing U.S. Immigration and Customs Enforcement (ICE) civil immigration enforcement actions in or near courthouses. The January 21, 2025, *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses* memorandum from Acting ICE Director Caleb Vitello is superseded by this guidance.

This guidance is effective immediately and remains in effect until superseded.

Background

Federal, state, and local law enforcement agencies routinely engage in enforcement activities in or near courthouses because many individuals appear in courthouses for unrelated criminal or civil violations. Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, when ICE engages in civil immigration enforcement actions in or near courthouses it can reduce safety risks to the public, targeted alien(s), and ICE officers and agents. Finally, enforcement activities in or near courthouses are often required when jurisdictions refuse to cooperate with ICE, including when such jurisdictions refuse to honor immigration detainers and transfer aliens directly to ICE custody.

Implementation

For purposes of this guidance, a civil immigration enforcement action is any action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with

enforcement of administrative immigration violations. This policy does not apply to criminal immigration enforcement actions inside courthouses.

Aliens Subject to Enforcement Actions

Generally, ICE's civil immigration enforcement actions in or near courthouses include actions against targeted aliens, including but not limited to:

- National security or public safety threats;
- Specific aliens with criminal convictions;
- Gang members;
- Aliens who have been ordered removed from the United States but have failed to depart; and/or
- Aliens who have re-entered the country illegally after being removed.

Other aliens encountered during a civil immigration enforcement action in or near a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, may be subject to civil immigration enforcement action on a case-by-case basis considering the totality of the circumstances.[1]

Procedures

ICE officers or agents may conduct civil immigration enforcement actions in or near courthouses when they have credible information that leads them to believe the targeted alien(s) is or will be present at a specific location.

Additionally, civil immigration enforcement actions in or near courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits. When practicable, ICE officers and agents will conduct civil immigration enforcement actions against targeted aliens discreetly to minimize their impact on court proceedings.

Non-Criminal or Specialized Courts

ICE officers and agents should generally avoid enforcement actions in or near courthouses, or areas within courthouses that are wholly dedicated to non-criminal proceedings (e.g., family court, small claims court). When an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required prior to conducting the enforcement action.

[1] ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security and ICE policy.

Responsibilities

Each FOD or SAC, in consultation with OPLA, must ensure that all employees under their supervision comply with this policy by providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions in or near courthouses within their area of responsibility. This includes ensuring all civil immigration enforcement actions in or near courthouses are properly documented[2] and recorded in the applicable ICE system of record, which can be searched and validated.

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public or disrupting court operations. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions.

No Private Right

This memorandum provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

[2] ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse.

818 F.Supp.3d 864
United States District Court, W.D. Texas, San Antonio Division.

Adrian Conejo ARIAS, and L.C.R., a Minor Child by and through His Parent and Guardian Adrian Conejo Arias, Petitioners,

v.

Kristi NOEM, in Her Official Capacity as Secretary of the United States Department of Homeland Security; Pamela Bondi, in Her Official Capacity as Attorney General of the United States; Todd Lyons, in His Official Capacity as Acting Director, United States Immigration and Customs Enforcement; Daren Margolin, in His Official Capacity as Acting Director of the Executive Office of Immigration Review; and John Doe, in His Official Capacity as the Warden of the Dilley Immigration Processing Center in Dilley, Texas, Respondents.

CIVIL CASE NO. SA-26-CV-415-FB

Signed January 31, 2026

Synopsis

Background: Immigration detainees, an asylum applicant and his five-year-old son, filed a petition for writ of habeas corpus seeking release from detention.

[Holding:] The District Court, Fred Biery, J., held that administrative warrant issued by the executive branch was insufficient to justify detention of asylum applicant and his five-year-old son.

Petition granted.

West Headnotes (2)

[1] **Aliens, Immigration, and Citizenship** 🔑 Arrest warrants

Aliens, Immigration, and Citizenship 🔑 Detention in general

Habeas Corpus 🔑 Aliens

Habeas Corpus 🔑 Particular Persons or Proceedings

Administrative warrant issued by the executive branch was insufficient to justify detention of asylum applicant and his five-year-old son, and thus, habeas relief in the form of release from immigration detention was warranted; the Fourth Amendment required that an independent judicial officer make a probable cause determination, the case had its genesis in the ill-conceived and incompetently-implemented government pursuit of daily deportation quotas, and, while applicant and his son might return to their home country involuntarily or by self-deportation, such result should occur through a more orderly and humane policy. U.S. Const. Amend. 4.

3 Cases that cite this headnote

[2] **Aliens, Immigration, and Citizenship** 🔑 Arrest warrants

Administrative warrants issued by the executive branch to itself in the immigration context do not pass probable cause muster; the Constitution requires an independent judicial officer. U.S. Const. Amend. 4.

Attorneys and Law Firms

Jennifer Scarborough, Law Firm of Jennifer Scarborough, Minneapolis, MN, for Petitioners.

Lacy L. McAndrew, Mary F. Kruger, Anne Marie Cordova, DOJ-United States Attorney's Office, San Antonio, TX, for Respondent Kristi Noem.

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Anne Marie Cordova, DOJ-United States Attorney's Office, San Antonio, TX, for Respondents Todd Lyons, Pamela Bondi, Daren K. Margolin.

OPINION AND ORDER OF THE COURT

FRED BIERY, UNITED STATES DISTRICT JUDGE

***865** Before the Court is the petition of asylum seeker Adrian Conejo Arias and his five-year-old son for protection of the Great Writ[1] of habeas corpus. They seek nothing more than some modicum of due process and the rule of law. The government has responded.

[1] The case has its genesis in the ill-conceived and incompetently-implemented government pursuit of daily deportation quotas, apparently even if it requires traumatizing children. This Court and others regularly send undocumented people to prison and orders them deported but do so by proper legal procedures.

Apparent also is the government's ignorance of an American historical document called the Declaration of Independence. Thirty-three-year-old Thomas Jefferson enumerated grievances against a would-be authoritarian king over our nascent nation. Among others were:

1. "He has sent hither Swarms of Officers to harass our People."
2. "He has excited domestic Insurrection among us."
3. "For quartering large Bodies of Armed Troops among us."
4. "He has kept among us, in Times of Peace, Standing Armies without the consent of our Legislatures."

***866** "We the people" are hearing echos of that history.

And then there is that pesky inconvenience called the Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

U.S. Const. amend. IV.

[2] Civics lesson to the government: Administrative warrants issued by the executive branch to itself do not pass probable cause muster. That is called the fox guarding the henhouse. The Constitution requires an independent judicial officer.

Accordingly, the Court finds that the Constitution of these United States trumps this administration's detention of petitioner Adrian Conejo Arias and his minor son, L.C.R. The Great Writ and release from detention are GRANTED pursuant to the attached Judgment.

Observing human behavior confirms that for some among us, the perfidious lust for unbridled power and the imposition of cruelty in its quest know no bounds and are bereft of human decency. And the rule of law be damned.

Ultimately, Petitioners may, because of the arcane United States immigration system, return to their home country, involuntarily or by self-deportation. But that result should occur through a more orderly and humane policy than currently in place.

Philadelphia, September 17, 1787: "Well, Dr. Franklin, what do we have?" "A republic, if you can keep it."

With a judicial finger in the constitutional dike,

It is so ORDERED.

All Citations

818 F.Supp.3d 864

Footnotes

1 *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 2 L.Ed. 554 (1807); Sir William W. Blackstone, Commentaries on the Laws of England (1765-1769); *see also* Magna Carta, Article 39.

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