



U.S. Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge

MEMORANDUM

TO: All Assistant Chief Immigration Judges
All Immigration Judges
All Court Administrators
All Court Personnel

FROM: Sheila McNulty SHEILA MCNULTY Digitally signed by SHEILA
MCNULTY
Date: 2023.12.11 16:16:58 -0600'
Chief Immigration Judge

DATE: December 11, 2023

RECISSION: Operating Policies and Procedures Memorandum 96-6, *Arrests by INS Officers In or Near Immigration Court Facilities* (September 30, 1996)

SUBJECT: Operating Policies and Procedures Memorandum 23-01: Enforcement Actions in or Near OCIJ Space

I. Introduction

This Operating Policies and Procedures Memorandum (“OPPM”) is intended to provide updated guidance regarding enforcement actions by the Department of Homeland Security (“DHS”) in or near Office of the Chief Immigration Judge (“OCIJ”) space. This OPPM supersedes and rescinds OPPM 96-6, *Arrests by INS Officers in or Near Immigration Court Facilities*, dated September 30, 1996.

II. Definitions

For the purposes of this memorandum, the term “OCIJ space” refers to OCIJ offices, conference rooms, pro bono rooms, courtrooms, hallways, waiting areas, restrooms, elevator banks, or any other space on any floor of a federal or commercial building where OCIJ conducts business. “Near” OCIJ space means in the close vicinity of OCIJ space, including the entrance and exit of the building in which OCIJ conducts business, as well as adjoining or related areas such as adjacent parking lots or transportation points (e.g., a bus stop directly outside of the building). “Near” OCIJ space does not include adjacent buildings or structures that are not part of OCIJ space or otherwise are not used for court-related business.

The term “enforcement action” refers to law enforcement activities carried out by DHS personnel, including personnel from Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”). Examples of enforcement actions include civil apprehensions, service of subpoenas, searches, seizures, interviews, and surveillance. The term “enforcement action” also includes attendance at immigration court hearings for the purpose of carrying out one of the actions described above. The term “enforcement action” does not include actions such as appearing on behalf of DHS before an immigration court, appearing as a witness before the court, or collecting or requesting records from court offices pursuant to established policies.

III. Prohibition on Enforcement Actions in or Near OCIJ Space

At the outset, OCIJ recognizes DHS’s authority and responsibility to enforce the immigration laws of the United States, including, where appropriate, taking custody of noncitizens who have been ordered removed from the United States. In April 2021, ICE and CBP jointly issued a memorandum providing updated guidance regarding civil enforcement actions in or near courthouses, including immigration courts (“DHS Memorandum”).¹ Pursuant to the DHS Memorandum, civil immigration enforcement actions may not be taken in or near an immigration court except in several limited circumstances described in Section IV, below.

For the following reasons, OCIJ concurs with the policies outlined in the DHS Memorandum prohibiting DHS officials from carrying out enforcement actions in or near OCIJ space. First, permitting enforcement actions in or near OCIJ space would inevitably produce a “chilling effect” on noncitizens who appear before our immigration courts. *See* DHS Memorandum (“Executing 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.”). Second, permitting enforcement actions in or near OCIJ space would disincentivize noncitizens from appearing for their hearings, which in turn would create inefficiencies for all parties involved and hinder the ability of OCIJ to carry out the mission of the agency. Third, allowing enforcement actions to take place in or near OCIJ space may create safety risks for those who may be present during such enforcement actions, including children and adults appearing for hearings, OCIJ employees, and other building or facilities personnel. Lastly, prohibiting enforcement actions from occurring in or near OCIJ space helps to reinforce the separate and distinct roles of DHS and the Executive Office for Immigration Review (“EOIR”) in the eyes of the public.

IV. Exceptions

The guidance outlined in this memorandum does not apply to detained immigration court settings. Additionally, OCIJ recognizes that DHS may be required to effectuate enforcement actions in or near OCIJ space under limited exigent circumstances. Such exigent circumstances include situations involving: (1) a threat to national security; (2) imminent risk of death, violence, or physical harm to any person; (3) hot pursuit of an individual who poses a public safety threat; (4) imminent risk that evidence material to a criminal case will be destroyed; and (5) instances in

¹ Joint Memorandum by Tae Johnson, Acting Director, ICE, and Troy Miller, Acting Commissioner, CBP, *Civil Immigration Enforcement Actions in or near Courthouses* (April 27, 2021), available at <https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/Enforcement-Actions-in-Courthouses-04-26-21.pdf>.

which a safe alternative location for the enforcement action does not exist. When possible, DHS should communicate with OCIJ prior to effectuating such enforcement actions in or near OCIJ space and should provide security assistance as needed. Additionally, to the fullest extent possible, enforcement actions taken in or near OCIJ space under these exigent circumstances should be conducted: (1) in a nonpublic area of OCIJ space, outside of public view; (2) in collaboration with court security personnel; (3) utilizing the court's non-public entrances and exits; and (4) at the conclusion of the judicial proceeding that brought the individual to the court.

V. Reporting of Enforcement Actions

OCIJ employees who observe enforcement actions being carried out in or near OCIJ space should inform the Assistant Chief Immigration Judge and Court Administrator at their respective court or adjudication center within twenty-four (24) hours of the incident.