

**Immigration Issues in Minnesota Courts
Minnesota Annual Judges Conference
December 4, 2008**

The following is a summary of the issues raised at the educational sessions on Immigration Issues in Minnesota Courts. The three-hour session was presented twice, morning and afternoon, to a total of approximately 70 judges.

This session included both short presentations and question and answer sessions to address participants' questions and concerns. The format was open and flexible to meet the needs of the participants.

The presenters included representatives from the Center for Public Policy Studies (CPPS); Bureau of Immigration and Customs Enforcement (ICE), the Consulate of Mexico in St. Paul, and the Somali community.

The following topics were covered in the session.

- 1. Points of intersection of federal, state, and local law and policy regarding immigration that affect state courts, including: (1) who the immigrants are and the problems that they face in court; (2) an overview of the SJI initiative; (3) the impacts of immigration on the state courts; and (4) future strategies for addressing the most pressing problems faced by the state courts regarding immigration.**

CPPS discussed the scope of the SJI initiative and presented a summary of the areas in which immigration law and policy can affect state court operations and cases. The summary emphasized that there can be immigration effects across a wide range of case types, including criminal, family, juvenile, and civil, and that an individual litigant may face a variety of interrelated immigration issues at the same time.

The representative from the Consulate of Mexico discussed problems that Mexican immigrants have due to differences between the Mexican and U.S. legal systems, particularly in understanding plea bargaining. The Consulate representative showed an identity card, the *Matricula Consular*, that is available to all Mexican nationals in the U.S., whether here legally or illegally. Finally, the representative emphasized the availability of the consulate as a resource to help Mexican families deal with immigration problems, particularly in keeping families together.

The Somali representative discussed the difficulties that Somali refugees have in understanding their rights and using the U.S. court system.

2. Federal enforcement issues, including: (1) the role of ICE; (2) ICE interactions with the state courts; (3) ICE interactions with local law enforcement; (4) ICE interactions with local jails; (5) ICE holds.

The ICE representatives discussed a variety of ICE procedures, with particular attention to how they are implemented in Minnesota. Some of the key issues they raised include the following.

- ICE's interest is first to identify and detain potential terrorists, second to identify and remove illegal aliens, and third to identify aliens who may be subject to deportation for other reasons.
- On reporting suspected illegal aliens to ICE, the desire of ICE is to be notified of any foreign-born individual who gets involved with the state criminal courts. ICE can then interview the individual to determine if the individual is in the U.S. lawfully or not. ICE would like all justice system officials to report foreign-born individuals that come before them, but no justice official, including a judge, is under any legal obligation to report.
- Once ICE is notified, ICE will interview the individual. ICE may place an immigration detainer (ICE hold) on the person. If the individual is in state custody, ICE will typically wait to exercise the detainer until the individual is eligible for release from state custody. This includes completing the trial in state court and any sentence of incarceration resulting from the trial. A person who is released to probation is considered released from state custody and may be detained by ICE at that time.
- When the individual is eligible for release from state custody, ICE is to be notified. Under 8 CFR 287.7, ICE then has 48 hours, not including weekends and holidays, to take custody of the individual. If ICE does not take custody of the individual within that time frame, the state can release the individual.
- Once ICE takes custody of an individual, ICE can then determine whether to hold the person in custody, release on bail (cash only, no bonds), or release on own recognizance. The Field Office Director makes the release determination. In Minnesota, ICE contracts with three local jails for custody of individuals under ICE detainers. As the space available to ICE is limited, many aliens are released while awaiting their deportation hearing.
- When a person in ICE detention is still awaiting trial in state court, the court must issue a writ to ICE to have the individual brought back to the court for court hearings. ICE may elect not to return the person to the court, if the state trial will not affect removal of the individual from the country.
- If a person on probation is in ICE custody, it is up to the local probation department to check with ICE to determine the status of the individual. ICE does not automatically notify the local court or probation office when a person is held in detention or removed from the country.
- Only an immigration court can issue a deportation order against an individual. Many aliens, however, agree to leave the country voluntarily rather than go through a deportation hearing in immigration court.

- There have been instances where an individual has agreed to leave the country but then not actually leave. ICE may not know whether the person actually left or absconded.
- Once a person has been ordered removed from the country, ICE has 180 days to effect the removal. If ICE cannot effect removal in that time, the person will be released. This may happen if the person's home country will not permit the individual to enter and ICE cannot find a country to admit the person safely.
- ICE would like to be notified when a state court approves a name change for a non-citizen.
- The ICE representatives took the position that prosecutors and state court judges should not consider immigration consequences in determining criminal case convictions or sentences. However, they did acknowledge that immigration courts must accept the crime as charged and convicted, and the sentence as determined by the state court judge, even if the criminal charge or sentence was shaped in part to mitigate immigration consequences.
- The ICE representatives gave the judges their contact information and encouraged judges to call with any questions.

3. The potential immigration consequences of state criminal actions, including: (1) roles and responsibilities of the judges; (2) classes of immigrants; (3) what is considered a conviction and a sentence; (4) consequences of state criminal convictions and sentences for admissibility and deportation of different classes of immigrants.

CPPS discussed the potential immigration consequences of criminal convictions and sentences. Under federal immigration law, a wide range of criminal convictions and sentences can put lawful permanent residents at risk for deportation or for ineligibility for reentry if they leave the country. As part of this discussion, a draft model of a bench guide for state criminal court judges was presented.