



U. S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2543
Falls Church, Virginia 22041

September 30, 1996

MEMORANDUM

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

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policy and Procedures Memorandum No. 96-6:
Arrests by INS Officers In or Near Immigration Court Facilities

Pursuant to the concerns raised by several Immigration Judges, I have been negotiating with the General Counsel for the Immigration and Naturalization Service (INS) concerning the presence of INS officers in our courtrooms during non-detained hearings. There have been several recent instances where the presence of INS officers in the courtroom has produced a "chilling" effect on the conduct of the hearing. In addition, the INS's newly-instituted policy of arresting individuals denied relief at the conclusion of the individual calendar hearing, a policy fully supported by the Attorney General, necessitated an agreement between the two agencies.

Attached hereto and incorporated herein is a Memorandum of Understanding (MOU) between the INS and the Immigration Courts concerning the presence of INS officers in non-detained hearings. Fundamental to this MOU is paragraph 1 -- that INS recognizes the authority of Immigration Judges to control their courtrooms. That authority includes excluding any person, including an INS officer, on a case-by-case basis that the judges feels is detrimental to the conduct of the proceeding. There will be no arrests in the courtroom, absent exigent circumstances. See MOU, paragraph 3.

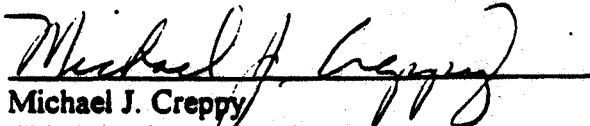
Nevertheless, we must be mindful that the INS has an obligation to remove from the United States aliens against whom final orders of exclusion or deportation are entered. This may require arresting such aliens in close proximity to our courtrooms. The MOU includes specific safeguards to ensure the safety of court personnel and to minimize disruption to the court process.

I expect full compliance with the reporting requirements in cases where INS officers are

removed. The judge should report an incident, in writing, to his or her Assistant Chief Immigration Judge within twenty-four (24) hours. See MOU paragraph 2. This may be accomplished by facsimile or via e-mail. Similarly, the Court Administrator should use the same procedure to report violent incidents. See MOU, paragraph 7.

It is the primary responsibility of the INS, and not the Immigration Court, to inform friends and family of the arrested person what is occurring. The notice referred to in paragraph 5 of the MOU will be developed in the near future and will be made available for distribution, where necessary, in each courtroom.

I am confident that adherence to this OPJM and MOU will resolve any future conflicts relating to this issue. If you have any questions, please contact your supervisor.


Michael J. Creppy
Chief Immigration Judge

Attachment

MEMORANDUM OF UNDERSTANDING

I. Preamble

This memorandum of understanding between the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) sets forth guidelines relating to the exercise of arrest authority by INS officers in or near EOIR court facilities.

II. Terms

1. INS recognizes the authority of the immigration judge to control his or her courtroom. The immigration judge has the authority to take action he or she deems necessary in order to conduct a fair hearing. This includes the authority to remove anyone from the courtroom who is out of order or disrespectful to the court, or whose presence may be detrimental to the conduct of a fair hearing.
2. EOIR recognizes the authority and responsibility of INS officers to enforce the immigration laws, including, where appropriate, taking custody of individuals believed to be unlawfully in the United States. Accordingly, there will be no prohibition against the presence of INS officers in the courtroom during part or all of the immigration judge hearing unless the judge specifically determines, on a case-by-case basis, that the presence of the officer is having a chilling effect on the respondent's ability to present his or her case. Any removal of an INS officer from a courtroom will be documented and forwarded by the immigration judge to the Office of the Chief Immigration Judge within 24 hours. The INS attorney at the hearing will also report the removal promptly to the Office of the General Counsel.
3. There will be no arrests in the courtroom, except in exigent circumstances. INS will make its best efforts to inform the court administrator when an officer will be present for the possible purpose of making an arrest outside the courtroom.
4. Duly trained and certified INS officers may be armed while in the courtroom in their official capacities, but may not unnecessarily display their weapons.
5. INS and EOIR will jointly develop a written statement that can be given to friends and family members concerning what to do if an alien they are accompanying is arrested by the INS after an immigration hearing. The statement, in English and Spanish, will make it clear that all questions with regard to an arrest should be raised to the INS and not to the immigration judge or immigration court. It will also provide an INS telephone number which friends and family may call for information concerning an arrested alien. Small handbill sized versions of this statement will be carried by INS officers and by officials or employees of the court, and where feasible will be provided to friends and family at the time of arrest if immediate questions arise.

6. If an arrest near the courtroom gives rise to immediate risks to the safety of the immigration judge or court staff, the INS officers involved will provide security assistance to the immigration court when requested.

7. Any violent incidents that occur as a result of an INS arrest at the court shall be reported by the court administrator to the Office of the Chief Immigration Judge, and by the INS attorney to the Office of the General Counsel, within 24 hours of the incident.

8. The INS General Counsel and the Chief Immigration Judge will meet and evaluate this agreement in 90 days to determine whether modification is necessary.

David A. Martin

David A. Martin
General Counsel
Immigration and Naturalization Service

Date: Sept. 19, 1996

Michael J. Creppy

Michael J. Creppy
Chief Immigration Judge
Executive Office for Immigration Review

Date: Sept. 24, 1996