



FOR IMMEDIATE RELEASE

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CHBA's Response to Colorado Court Administrator Office's Memo re: Probation Immigration/Residency Status Policy

On January 5, 2018, the Colorado Court Administrator's Office issued a memorandum entitled "Immigration/Residency Status," which was provided to the Chief Judge in each Judicial District. The memorandum advises Probation Departments on how/what to communicate with ICE regarding an offender's citizenship and immigration status. The memorandum instructs Probation Officers on what to write in a Pre-Sentence Investigation regarding recommendations to the Court for probation when an offender is not a U.S. citizen. Additionally, the memorandum instructs Probation Officers to issue warrants when an offender has been deported and, thus, cannot comply with probation. Probation Departments are applying this memorandum as a directive.

CHBA opposes the language and practices mandated in the January 5, 2018, memorandum because it dictates that Probation Officers provide personal information about an offender—including places of employment and location of Alcoholics Anonymous (AA) meetings—to ICE, which directly leads to the offender's detention by ICE prior to probation's completion. On February 6, 2018, members of CHBA's leadership met with Colorado's Court Administrator and Colorado's Director of Probation Services to express the CHBA's concerns regarding this memorandum and the effects it has on our community.

CHBA members have been reporting, since 2017, that their non-U.S. citizen clients in criminal proceedings are not only detained by ICE in courthouses,¹ but are also detained during stages of successful probation compliance, including: probation appointments, AA meetings, urinalysis appointments, and workplaces. Probation Departments' unsolicited information sharing with ICE has resulted in ICE's detention of probation-compliant individuals and thwarted their successful completion of probation. Because ICE detention and deportation renders probationers non-compliant with their probation conditions, warrants are issued. The active warrants prohibit the probationer's lawful return to the U.S.

Pursuant to 8 U.S.C. § 1373(a), "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or

¹ Many Chief Judges have prohibited ICE officials from detaining individuals in courtrooms. ICE, however, continues detain individuals outside courtrooms.



immigration status, lawful or unlawful, of any individual.” 8 U.S.C. § 1373 only pertains to information regarding a person’s **citizenship** or **immigration status**. Federal law does not mandate that Probation Departments provide ICE with: names, dates of birth, addresses, place of employment, address of employment, dates of probation appointments, dates of AA meetings, court dates, *etc.* Federal law only mandates that **when requested**, a probation officer must provide to ICE the **citizenship or immigration status** of a named individual.

CHBA strongly opposes the unsolicited information sharing with ICE, which the Colorado Court Administrator Office’s June 5, 2018, memorandum facilitates. CHBA has provided proposed language to the Colorado Court Administrator’s Office urging strict compliance with 8 U.S.C. § 1373, and amendment of the January 5, 2018 memorandum.

Courts should retain their broad discretion in sentencing because that discretion serves to protect the public, punish and rehabilitate offenders, and deter future offenses. Sentencing determinations, however, should not be based on an individual’s race, national origin, or foreign citizenship. Individuals granted the benefit of probation should remain unhindered in their ability to successfully comply with probation’s terms. CHBA does not endorse the practices of unsolicited information sharing, sharing of information beyond what the law requires, or sentencing foreign citizens to incarceration as a means of avoiding non-compliance with probation. Those practices unnecessarily interfere with an individual’s ability to benefit from the rehabilitative and restorative aspects probation.

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