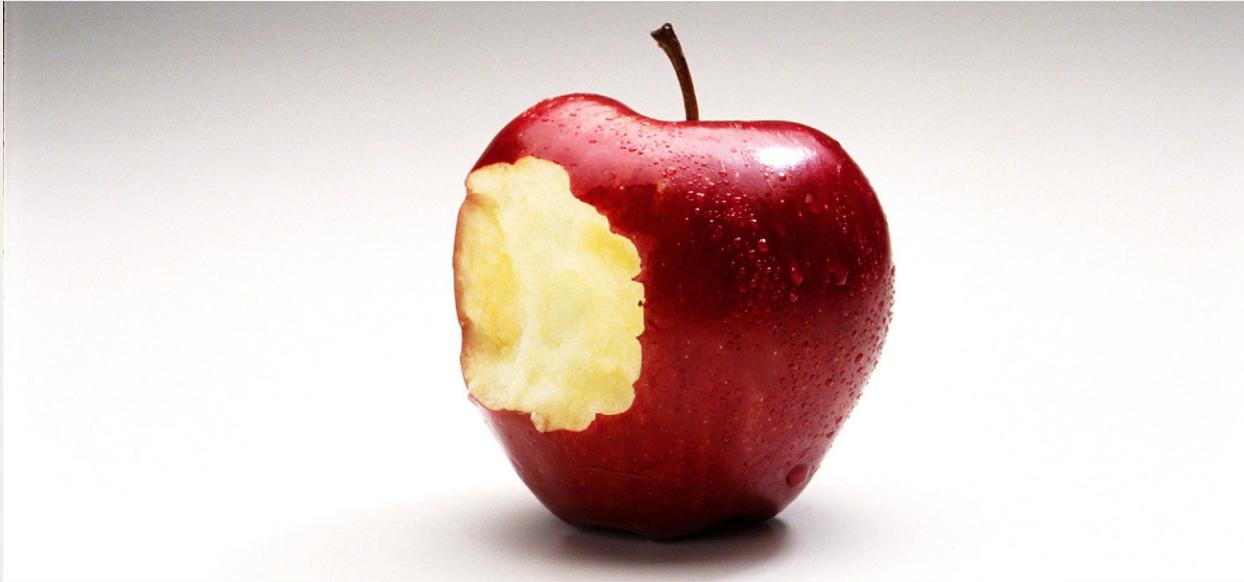




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## Final Orders, Enforcement Priorities, and Moving to Evade Arrest

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**My client has a final order of removal and has been reporting for ICE supervision every 6 months for the last 3 years. He was recently arrested for Driving under the Influence. I know that this combination of final order plus recent arrest makes him a priority for ICE enforcement and removal. How should I advise him?**

First you need to break this down into the series of questions your client is going to ask you. It is your obligation to fully answer his questions, including letting him know what the legal ramifications of his actions may be. Let's break down the questions.

**Q. ICE knows my client's address. Should I counsel him to move?**

Ethically, you cannot counsel him to move since his moving for the purpose of evading immigration law is a crime. INA §243(a)(1)(C) imposes criminal penalties on an individual against whom a final order is outstanding if the person "connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such [order.]" The potential penalty is 4 years' imprisonment or 10 years depending on the basis for removal.

Likewise, INA §274(a)(1)(A)(iii) authorizes criminal penalties against anyone, including a lawyer, who, "knowing or in reckless disregard of the fact that



an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.”

INA §274(a)(1)(A)(v)(II) extends this provision to “anyone who aids or abets the commission of any of the preceding acts,” and INA §274 (B)(ii) provides for fines, imprisonment of “not more than 5 years” or both. If there is a finding of commercial gain based on the actions, the prison sentence can increase to ten years under §274(B)(i).

### **Q. Can I advise a client of the legal consequences of moving or remaining at the same address?**

You can advise him of the potential legal consequences of remaining at the known address and of moving. ABA Model Rule 1.2(d) says, “ A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.” This rule prohibits a lawyer from counseling or assisting a client to commit a crime or fraud, but it does not preclude the lawyer from giving an opinion about the actual consequences likely to result from the client’s conduct. “There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.” ABA Model Rule 1.2, Comment 9.

### **Q. What can I tell my client about the consequences of moving without filing an AR-11 change of address form?**

By moving without providing notice of his new address, he will also violate INA §265 which requires most non-citizens to file a change of address form within 10 days of moving. INA §266(b) makes failure to file a change of address

form a misdemeanor which carries a penalty of 30 days imprisonment and/or a \$200 fine.

### **Q. What advice can I give about the client’s rights in his home?**

If he remains, he should know that there is an increased possibility that ICE officers may come to his home and arrest him. You should explain his rights. Specifically, ICE officers can only enter a home with a judicial warrant (not an ICE warrant) or with the permission of the resident. So, he has a constitutional right to not open the door. However, nothing prevents ICE from waiting outside his home and arresting him on the street.

### **Q. Can I offer resources to plan for his future in case he is detained or removed?**

You should also assist him, or refer him to another lawyer who can assist him, with future planning. Specifically, if he has children and needs to make arrangements for their care, or has assets and needs to execute a power of attorney, you should discuss and assist your client with these matters.

### **Q. What other warnings can I give the client?**

On a practical level, you should also let him know that under current administration policy, ICE officers are arresting “collaterals,” meaning that if there are other individuals at the address on file with ICE, they could be arrested as well if ICE seeks to arrest your client.

### **Q. My client has a check-in scheduled with ICE next month and he wants to know whether he should attend. What can I tell him?**

Again, you can only explain to him his legal obligations and the possible ramifications if he does not comply with the law.

As with the analysis above concerning moving, if your client attends his check-in, he will be complying with the law, but he is at increased risk



of being detained. You can and should discuss that risk with him, including any realistic possibility of obtaining a stay, and whether it is likely that ICE will be able to obtain travel documents to his country of citizenship.

You should also advise him about the consequences of not reporting. These consequences will likely include ICE searching for your client at his last known address. His failure to report may also limit any future applications for relief he might be able to make because of the Fugitive Disentitlement Doctrine. (See American Immigration Council, [\*"The Fugitive Disentitlement Doctrine: FOIA and Petitions for Review,"\*](#) updated April 29, 2013).

**Q. My client was released on bail from criminal court, and has to return next week. I have read about immigrant arrests in courthouses. What should I tell him about his criminal court date?**

You should let your client know the risks of appearing in criminal court. You can let him know that you have read about ICE arrests in criminal court. You could speak with criminal defense attorneys to help ascertain the risk of this happening in your jurisdiction.

Again, you are obligated to counsel your client about the consequences of not attending court. A state criminal warrant will issue for his arrest, if he does not appear. On the other hand, if he goes to court, an ICE agent may be there to arrest him.

**Q. It sounds nice on paper to say, "explain but don't advise," but how do you answer when your client asks "what do you think I should do?"**

This is one of the most difficult aspects of being an attorney. We want to advise people. Imagine going to the doctor and having her spell out the possible risks and benefits of surgery versus medication but then not telling you which course of treatment she thinks is better. Unfortunately, in this delicate ethical area, the fact that a final order of removal has been issued creates additional challenges that constrain the advice we are able to give. We are obligated to give information about the consequences of a client's conduct, but we cannot advise clients to break the law. This type of advice may also lead to criminal prosecution of the lawyer. Always remember that as much as you want to do everything you possibly can for each client, if you lose your law license, you will not be able to represent anybody in the future.

