

From: [Cain, Walt](#)
To: [OPLA HQ Personnel](#); [OPLA Field Personnel](#)
Subject: ICE Employee Testimony in Immigration Court
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Disseminated at the request of Riah Ramlogan...

To All OPLA Attorneys:

The testimony of ICE officers and agents can be an important tool in effectively litigating administrative cases before the Executive Office for Immigration Review (EOIR). However, as with all aspects of EOIR case preparation, attorneys should carefully assess the facts and circumstances to determine whether such testimony is necessary in order to achieve an appropriate resolution consistent with the mission and priorities of the agency. As you should be aware, DHS regulations bar agency employees from testifying without authorization from the Office of the General Counsel (OGC), 6 C.F.R. § 5.44, which authority has been delegated to OPLA. Accordingly, OPLA's role in assessing whether an ICE employee should testify in Immigration Court is both prudential and required by law. Furthermore, as prudent federal employees, we must serve as good stewards of agency resources when assessing the requirements for agent/officer testimony.

Since the rules of evidence and procedures in immigration court are sometimes fairly informal, attorneys should also strive to protect officers and agents from being exposed to unnecessary challenges to their statements by defense counsel which may lead to an adverse credibility finding by an immigration judge. As you are aware, such findings can jeopardize law enforcement officers' careers by minimizing the value of their testimony in any future criminal proceedings. *See Giglio v. United States*, 405 U.S. 150, 154 (1972) (requiring prosecution to disclose any material issues related to its witnesses' credibility).

Accordingly, I have decided to put the following process in place.

- As soon as an OPLA attorney determines that an ICE officer's or agent's testimony is essential to advancing the DHS position, the attorney must submit a written request outlining the proposed testimony and explaining its significance to the case to the immediate supervisor.
- If an OPLA Headquarters (HQ) Division is working with the local office, the HQ Division attorney must concur in the request before it is submitted to the Chief Counsel.
- If the Chief Counsel approves, he/she must submit, through the Field Legal Operations chain-of-command to the Deputy Principal Legal Advisor (DPLA) for a final decision.

This message should also serve as a reminder that if an ICE employee receives a subpoena, demand or request to provide oral or written testimony in any matter, including Immigration Court, based on information acquired in the scope of their official duties, the employee must obtain approval from the Chief Counsel (OCC) or his/her delegate prior to testifying. Chief Counsel should remind local ERO and HSI counterparts of this requirement and work cooperatively with them.

Finally, you should be as cognizant of the limited resources of CBP and USCIS in making decisions on whether or not to call their personnel as witnesses in immigration court proceedings. Even if not required at the local level, please be sure to notify the appropriate local Chief Counsel office when doing so.

I appreciate your cooperation.

Riah Ramlogan
Deputy Principal Legal Advisor
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U.S. Immigration and Customs Enforcement