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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
NEW YORK, NEW YORK

In the Matter of:	)	
[redacted]	)	File No: A# [redacted]
In removal proceedings	)	

BRIEF OF *AMICUS CURIAE* IMMIGRANT DEFENSE PROJECT IN SUPPORT OF RESPONDENT'S MOTION TO TERMINATE PROCEEDINGS

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STATEMENT OF INTEREST

Amicus curiae Immigrant Defense Project ("IDP") is a nonprofit legal resource and training center dedicated to promoting fundamental fairness for immigrants accused or convicted of crimes. A leading national expert on issues that arise from the interplay of immigration and criminal law, IDP has provided criminal defense, family defense, and immigration lawyers; criminal court, family court, and Immigration Court judges; and noncitizens with expert legal advice, training, and publications on such issues since 1997. IDP's publications include *Representing Immigrant Defendants in New York*, which was first published in 1998. IDP is also a partner organization in the Defending Immigrants Partnership, which provides materials, training and technical assistance to criminal defense lawyers and other actors in the criminal justice system in order to improve the quality of justice for immigrants accused or convicted of crimes. As such, IDP has a keen interest in this case and the fair and just administration of the nation's criminal and immigration laws.

Furthering its mission, IDP frequently appears as amicus curiae in cases involving both the immigration and criminal justice systems. It has filed briefs or other amicus submissions in many key cases involving important criminal, family, and immigration matters before the U.S. Supreme Court, the U.S. Court of Appeals, the Board of Immigration Appeals, and Immigration Court. *See, e.g.*, Brief for Americans for Immigrant Justice & IDP et al. Supporting Petitioner in *Jennings v. Rodriguez*, No. 15-1204 (U.S. argued Oct. 3, 2017); Brief for IDP et al. Supporting Petitioner in *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017); Brief of Amicus Curiae IDP Supporting Petitioner in *Obeya v. Sessions*, No. 16-3922 (2d Cir. argued Oct. 30, 2017); Brief of Amicus Curiae IDP et al. Supporting Petitioner in *Richards v. Sessions*, __ F. App'x __, 2017WL4607232 (2d Cir. 2017); Brief of Amicus Curiae IDP in *Alsol v. Mukasey*, 548 F.3d 207

(2d Cir. 2009); Brief of Amicus Curiae New York State Defenders Association (IDP) for Respondent in *Matter of Carachuri-Rosendo*, 24 I&N Dec. 382 (BIA 2007); Brief of Amicus Curiae New York State Defenders Association (IDP) et al. for Respondent in *Matter of Devison-Charles*, 22 I&N Dec. 1362 (BIA 2001); Brief of Amicus Curiae IDP in *In re. E-A-C-O-*, AXXXXXX123 (filed in Immigration Court Feb. 24, 2016); Brief of Amicus Curiae IDP in *In re. R-L-B-*, AXXXXXX463 (filed in Immigration Court Feb. 24, 2016).

Through daily conversations, exchanges, and interviews with criminal and family defense lawyers and directly-impacted immigrant community members throughout New York State, IDP has developed unique insight into the sharp spike in immigration arrests in New York State courthouses, and has documented the widespread violation of noncitizens' fundamental rights by ICE courthouse arrests. IDP has been widely cited about this trend of ICE enforcement, and has testified about this issue before the New York City Council. *See* Stephen Rex Brown, *ICE Courthouse Arrests of Immigrants up 900% Across N.Y. in 2017*, N.Y. Daily News (Nov. 15, 2017), attached as Exhibit A (Exhibit p. 1). *See also* Leon Neyfakh, *Secret Police: ICE agents dressed in plainclothes staked out a courthouse in Brooklyn and refused to identify themselves*, Slate (Sep. 15, 2017), attached as Exhibit B (Exhibit p. 3). *See also* Priscilla DeGregory, *New York authorities demand ICE stop hunting immigrants in courthouses*, N.Y. Post (Aug. 3, 2017), attached as Exhibit C (Exhibit p. 7). *See also* Liz Robbins, *A Game of Cat and Mouse With High Stakes: Deportation*, N.Y. Times (Aug. 3, 2017), attached as Exhibit D (Exhibit p. 9).

As an organization committed to fair treatment for immigrants involved in the criminal justice, family court, and child welfare systems, IDP is concerned that the fundamental right to access to the courts, whether as a victim, defendant, witness, supportive family member, or otherwise, is being impaired. This chilling effect on people's ability to participate in the court

system is, in turn, a serious threat to public safety and to the integrity of the New York State court system.

IDP respectfully submits this brief to assist the Court with resolving the important question of the remedial role of Immigration Courts in responding to ICE courthouse arrests.

BACKGROUND

I. The Impact of ICE Courthouse Arrests on Immigrant and Mixed Status Communities

The new nationwide trend of frequent ICE courthouse arrests is having devastating consequences on immigrant and mixed-status communities:

In Long Beach, CA, a woman who had been beaten for years by her husband was afraid to contact law enforcement to report the abuse, because she feared that making law enforcement contact would result in her being deported. Worried about her husband getting custody of her children if she were deported, the woman made the decision to send her children back to Mexico where they could live with relatives. James Queally, *Fearing deportation, many domestic violence victims are steering clear of police and courts*, Los Angeles Times (Oct 9, 2017), attached as Exhibit E (Exhibit p. 14).

Another woman reported to Human Trafficking Intervention Court in Queens, New York City in June of this year. The court is specifically designed to treat individuals arrested for prostitution offenses as "victims, not defendants," on the assumption that anyone arrested for these offenses is a victim of human trafficking. Nevertheless, ICE agents waited in the courtroom vestibule to arrest the woman. It was only because the judge realized that ICE was present, set bail for the woman, and took her into custody, not releasing her until after ICE agents had left, that the woman was not arrested by ICE. Melissa Gira Grant, *ICE Is Using Prostitution*

Diversion Courts to Stalk Immigrants, The Village Voice (July 18, 2017), attached as Exhibit F (Exhibit p. 18).

Sergio Perez, however, did not avoid arrest by ICE. Despite knowing the personal risk of deportation by going to family court to seek custody of his children, Mr. Perez went to court. He was worried about his children, living with his estranged wife, who had custody and had taken out a yearlong restraining order on her live-in boyfriend. Mr. Perez decided to go to court because he wanted to show his kids that "no matter how hard or difficult it might be, you have to do what you have to do, no matter what." ICE agents arrested Mr. Perez in court and deported him to Mexico City, where he is now far away from his children. Steve Coll, *When a day in court is a trap for immigrants*, The New Yorker (Nov 8, 2017), attached as Exhibit G (Exhibit p. 24).

The disturbing reality of ICE courthouse arrests have been captured on video, like an April 28, 2017 arrest in a Denver courthouse where plainclothes agents pinned the man they were arresting on the ground as he struggled against the arrest. Julie Gonzales, *04.28.2017 ICE Arrest in Denver Courthouse, 1 of 3*, YouTube (May 9, 2017), attached as Exhibit H (Exhibit p. 31). An incident in Oregon, where ICE agents racially profiled a Latino man leaving the Washington County Courthouse, who was actually a U.S. citizen and county employee for almost 20 years, was also captured on video. Everton Bailey Jr., *Oregon lawmakers demand investigation, apology over mistaken ICE stop*, The Oregonian (Sep. 20, 2017), attached as Exhibit I (Exhibit p. 32).

These individual incidents are not isolated but rather are part of an increasing nationwide trend in courthouse arrests, which is having palpable effects on the safety of immigrant and mixed-status communities. In Los Angeles, San Francisco, and San Diego, for example, reports

of domestic violence among Latino victims in the first half of 2017 dropped by 3.5%, 18%, and 13% respectively. See Exhibit E (Exhibit p. 14). In Houston, reports of sexual assault by Latino victims dropped by 42%. *Id.* Due to witnesses being too scared to come forward, prosecutors have also been unable to bring prosecutions and have expressed that all citizens are less safe when victims of crime do not press charges out of fear of ICE. James Queally, *ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court*, Los Angeles Times (Mar. 16, 2017), attached as Exhibit J (Exhibit p. 39); *see also* Exhibit E (Exhibit p. 14).

Out of concern for the chilling effects on access to justice as a result of this growing use of ICE courthouse arrests, IDP, as part of a coalition of legal services and community-based organizations, conducted and published the results of a survey on ICE courthouse arrests in June 2017. Immigrant Defense Project, *ICE in New York State Courts Survey*, attached as Exhibit K (Exhibit p. 42). Two hundred and twenty five (225) advocates and attorneys, practicing in criminal, family, and civil courts and spanning 31 counties across the state of New York, participated in the survey. The statistics from the survey show that immigrants are experiencing pervasive fear of going to court out of fear of encountering ICE: three of four legal service providers reported that clients have expressed fear of going to court because of ICE, 48% of providers reported clients have expressed fear of calling the police out of fear of ICE, and 29% of providers have worked with immigrants who have failed to appear in court due to fear of ICE. Of survey participants who work with survivors of violence, 67% have clients who decided not to seek help from the courts out of fear of ICE, and 46% reported clients have fear of serving as a complaining witness in court out of fear of ICE. Of survey participants who work with tenants in housing court, 56% reported clients have fear of filing a housing court complaint out of fear of

ICE. Victoria Bekiempis, *Immigrant Violence Victims Fear N.Y. Courts as ICE Lingers Nearby*, N.Y. Daily News (Jun. 29, 2017), attached as Exhibit L (Exhibit p. 44).

These media accounts and survey results are an accurate and consistent representation of the disturbing courthouse arrest trends that IDP has been monitoring for the past several months. Within the more than 110 courthouse arrests and attempted arrests that have taken place in New York State since January 2017 that IDP has documented—representing a 900% increase in courthouse arrests compared to 2016—there is a shocking representation of individuals who are survivors and victims of family violence and/or who suffer from significant mental health issues. *See* Exhibit A (Exhibit p. 1). There are young people appearing in youth parts of criminal courts, parents appearing in family court matters, and grotesque examples of racial profiling. Endemic to the courthouse arrest practice are violations of the Constitution and the regulations governing removal proceedings, as well as the targeting of vulnerable populations that have a heightened need to access the courts.

II. Widespread Reports of ICE Officer Misconduct During Courthouse Arrests

ICE courthouse arrests are rife with examples of officer misconduct, violating basic law enforcement norms and, in many instances, ICE's own internal regulations and policies. The squads of ICE agents who come to courthouses to effectuate arrests and conduct other surveillance often dress in plain clothes, refuse to identify themselves as immigration officers, refuse to present warrants, refuse to answer questions, and refuse to acknowledge when a non-citizen's criminal defense attorney invokes his or her rights.

Further, IDP has received reports of excessive force by ICE agents during courthouse arrests, including an incident where ICE agents pushed a man against the wall and would not allow him to attend his appearance in criminal court, an incident where ICE agents threw a man

to the ground, and an incident where ICE agents threw a pregnant young woman to the ground, causing her to bloody her knees. [1] These actions violate DHS's own regulations, and have become commonplace in the courthouse arrest practice. *See* 8 C.F.R. § 287.3(c) (requiring that, generally, an alien arrested without a warrant "be advised of the reasons for his or her arrest and the right to be represented at no expense to the Government"); 8 C.F.R. § 287.8(a)(1)(iii) (requiring that "a designated immigration officer shall always use the minimum non-deadly force necessary to accomplish the officer's mission"); 8 C.F.R. § 287.8(c)(2)(iii) (requiring that an immigration officer "identify himself or herself as an immigration officer who is authorized to execute an arrest" and "state that the person is under arrest and the reason for the arrest"); 8 C.F.R. § 287.8(c)(2)(vii) (stating that "the use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement is prohibited"); C.F.R. § 292.5(b) (requiring that "whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative").

III. ICE's Policy on Courthouse Arrests

The practice of ICE courthouse arrests results from an official and deliberate ICE policy encouraging agents to make arrests within state courthouses. On ICE's website, there is a section devoted to "Court House Arrests," making clear that its newfound reliance on courthouse arrests in recent years is an official policy of the department, not the work of individual officers striking out on their own. U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrests* (last visited Nov. 12, 2017), attached as Exhibit M (Exhibit p. 47); *see also* Lawyers' Committee for Civil Rights and Economic Justice, Immigration Enforcement at

[1] These trends are based on the facts of over 110 courthouse arrests and arrest attempts that have been reported to IDP in 2017. The specifics of the removal proceedings arising out of these arrests remain confidential at this time.

Massachusetts Courthouses: A Fact Sheet, attached as Exhibit N (Exhibit p. 50) ("Internal e-mails between ICE officials explicitly state that '[c]urrent ICE policy supports enforcement actions at courthouses.'").

DHS officials have explicitly noted that victims and witnesses are not exempt. Devlin Barrett, *DHS: Immigration agents may arrest crime victims, witnesses at courthouses*, The Washington Post (Apr. 4, 2017), attached as Exhibit O (Exhibit p. 54). The Secretary of Homeland Security and Attorney General have repeatedly made public statements that ICE intends as an agency to continue its practice of courthouse arrests. Letter from Jeff Sessions, Attorney General, and John F. Kelly, Sec'y of Homeland Sec. to Hon. Tani G. Cantil-Sakauye (Mar. 29, 2017), attached as Exhibit P (Exhibit p. 56). Linley Sanders; *Federal Immigration Officials Will Continue Nabbing Suspects at New York Courthouses to Subvert Sanctuary City Status*, Newsweek (Sep. 15, 2017), attached as Exhibit Q (Exhibit p. 58).

ICE says on its website that the policy is in response to a decrease in local law enforcement agencies honoring ICE detainer requests for jails to hold noncitizens pending ICE involvement. However, in New York State, ICE has made many courthouse arrests in jurisdictions that do still honor ICE detainer requests. *E.g.* Wendy Liberatore, *ICE Arrests Man Outside Saratoga City Court*, Times Union (Nov. 2, 2017), attached as Exhibit R (Exhibit p. 60); Kyle Hughes, *Local Authorities: We Will Honor Ice Warrants*, Saratogian News (Nov. 17, 2016), attached as Exhibit S (Exhibit p. 62).

For years prior to the enactment of this policy, ICE instituted deportation proceedings against noncitizens without arresting them within state courthouses. At its disposal, ICE has the power to mail Notices to Appears (NTAs) to the listed addresses of noncitizens. Further, ICE

also has the power to arrest noncitizens within the community. The escalating use of courthouse arrests is a departure from prior ICE policy.

SUMMARY OF THE ARGUMENT

Immigration Judges ("IJs") are authorized to "terminate proceedings when the DHS cannot sustain the charges [of removability] *or in other specific circumstances consistent with the law* and applicable regulations." *Matter of Sanchez-Herbert*, 26 I&N Dec. 43, 45 (BIA 2012) (emphasis added). In the Second Circuit, circumstances warranting termination of immigration court proceedings include where there has been a violation that constitutes "prejudice that may have affected the outcome of the proceeding, conscience-shocking conduct, or a deprivation of fundamental rights." *See Rajah v. Mukasey*, 544 F.3d 427, 447 (2d Cir. 2008); *see also Montilla v. INS*, 926 F.2d 162, 170 (2d Cir. 1991) (invalidating deportation proceedings where respondent's fundamental right to counsel was violated); *Waldron v. INS*, 17 F.3d 511, 518 (2d Cir. 1993) (noting that a violation of the respondent's fundamental rights derived from the Constitution invalidates a deportation proceeding). Following a similar analysis, in a recent case, the Ninth Circuit found that "removal proceedings *must* be terminated" where a respondent's Fourth Amendment rights were violated by an unlawful detention without reasonable suspicion. *Sanchez v. Sessions*, 870 F.3d 901, 913 (9th Cir. 2017) (emphasis added) (citing *Waldron*, 17 F.3d at 518). In deciding whether termination is the appropriate remedy, the Second Circuit emphasizes consideration of "societal benefits" and "deterrent effect" that would result from termination. *See Rajah*, 544 F.3d at 447.

ICE's deliberate policy of targeting individuals in state court for arrest shocks the conscience and violates fundamental rights. The fundamental right at stake here is the right to access court, a right deeply embedded in common law tradition and constitutional law. Courthouse arrests deny

this right both to the individual being arrested, as well as to the entire immigrant community which has been made fearful of attending court. They render state courts less able to effectively administer justice because necessary parties, witnesses, defendants, and victims are afraid to come to court. This, in turn, interferes with access to justice for all citizens who rely on the state court system. Terminating proceedings in cases of respondents arrested in courthouses is the only remedy which can protect the functioning of the state courts and deter ICE from this conscience-shocking policy which deprives immigrants of their fundamental rights.

ARGUMENT

I. An IJ is required to terminate removal proceedings where there has been a violation of fundamental rights, and where termination will deter deliberate misconduct by ICE.

a. Immigration Judges are empowered to terminate proceedings where ICE has engaged in conduct that is conscience shocking or deprives the respondent of fundamental rights.

IJs are authorized to determine removability, adjudicate applications for relief, order withholding of removal, and "[t]o take any other action consistent with applicable law and regulations as may be appropriate." 8 C.F.R. §1240.1(a)(iv). This includes authorization to "terminate proceedings when the DHS cannot sustain the charges [of removability] *or in other specific circumstances consistent with the law* and applicable regulations." *Matter of Sanchez-Herbert*, 26 I&N Dec. 43, 45 (BIA 2012) (emphasis added).

Through the text of the Immigration and Nationality Act ("INA"), Congress indicated its intent that Immigration Court be the principal avenue for determining all issues related to removal proceedings. INA § 242 limits the availability of class action and injunctive relief for respondents in removal proceedings, and provides that "[n]o court shall have jurisdiction to hear

any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." INA §§ 242 (e)–(g); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (holding INA § 242 deprived courts of jurisdiction over Attorney General's decision to commence proceedings). INA § 242(b)(9) affirmatively seeks to combine all issues into one proceeding before the Immigration Court.

Before these provisions were added to the INA through the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, immigrants were more able to seek injunction and class action relief in federal court. *E.g. INS v. Delgado,* 466 U.S. 210 (1984); *La Duke v. Nelson*, 762 F.2d 1318, 1326 (9th Cir. 1985); *Nicacio v. INS*, 797 F.2d 700, 70506 (9th Cir. 1986); *see also I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1045 (1984) ("The possibility of declaratory relief against the agency thus offers a means for challenging the validity of INS practices.") Now that the INA has been amended to discourage this avenue of relief, it is the norm for all issues that arise in the course of removal proceedings to be adjudicated in individual cases before IJs.

Given the Immigration Court's exclusive jurisdiction over removal proceedings and the limited role of federal court remedies for respondents in those proceedings, Immigration Court is the principal avenue for redressing misconduct by ICE in the course of making immigration arrests. This gives the IJ an important role in preventing systemic abuse by ICE. IJs can discourage misconduct by terminating proceedings where ICE has displayed a widespread pattern of acting in egregious violation of the law. That is why the *Rajah* court explicitly preserved the option of termination in cases where there has been conscience-shocking conduct or a deprivation of fundamental rights. *Rajah*, 544 F.3d at 447.

b. Deterrence of deliberate, conscience-shocking conduct by ICE is a reason to terminate proceedings.

Under Second Circuit law, a key issue in deciding whether to terminate proceedings is the "deterrent effect" of termination. *See Rajah*, 544 F.3d at 447. Minor, non-systemic violations may not be subject to systemic remedies. It is difficult to deter isolated incidents of individual officers breaking minor procedural rules, and the resulting burden on adjudication could be great. *Id.*; *see also I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (discussing the difficulty of deterring abuses by immigration enforcement officers). However, where ICE has engaged in a deliberate policy that shocks the conscience or violates fundamental rights, the weighing of the burden on the agency and the societal benefit shifts. In these types of extreme cases, termination is an appropriate remedy because it can deter a deliberate, agency-wide policy. If the agency knows that cases brought under its policy will be terminated by IJs, the agency can alter its policy to avoid this outcome, thereby effectively deterring its agents from engaging in the objectionable conduct.

II. ICE's deliberate policy of making arrests in courthouses is conscience-shocking and deprives respondents of fundamental rights.

ICE has chosen to enact a deliberate policy of arresting immigrants when they are attending state court on an unrelated matter. This new practice is conscience shocking and deprives noncitizens of their fundamental right to access courts. It is having a chilling effect, discouraging the entire immigrant community from attending court whether as a defendant, witness, or victim. *See supra* Background Section.

The fundamental right to access courts is deeply embedded in both common law and constitutional law. The right dates back to the common law privilege against civil arrests. Since

the early days of the United States, a federalist system has protected the independent functioning the state judiciary. The right to access courts has been upheld by the Supreme Court as inherent in the Constitution through the First and Fourteenth Amendments. By making civil immigration arrests in state courts, ICE is infringing on this fundamental right to access courts, which is guaranteed to all persons present in the United States, regardless of immigration status.

a. ICE's deliberate policy of courthouse arrests violates the common law tradition of providing protection from civil arrests in courthouses.

ICE's deliberate policy of courthouse arrests violates the long-standing common law tradition rejecting civil arrests in courthouses so as to protect the effective administration of justice in the courts.

This common law tradition dates back to the common law of England, predating the 18th century, and was a right extended not only to case parties and witnesses but rather to all people "necessarily attending" the courts on business. 3 William Blackstone, *Commentaries on the Laws of England* 289 (1769) ("Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning") (emphasis added).

This rule against civil arrests in connection with court proceedings has remained a fundamental one within American jurisprudence. States and federal courts have upheld this tradition throughout American history, and the Supreme Court has even explicitly noted it in several cases. *Lamb v. Schmitt*, 283 U.S. 222, 225 (1932) (noting "the general rule that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit are

immune from service of process[2] in another"); *Long v. Ansell*, 293 U.S. 76, 83 (1934); *Williamson v. United States*, 207 U.S. 425, 443 (1908).

The case law shows that the primary concern of the rule against civil arrests is to encourage the attendance of necessary parties in court and to thereby ensure that courts are able to effectively administer justice. *See Person v. Grier*, 66 N.Y. 124, 125 (1876) ("This immunity is one of the necessities of the administration of justice, and courts would often be embarrassed if suitors or witnesses, while attending court, could be molested with process. Witnesses might be deterred, and parties prevented from attending, and delays might ensue or injustice be done").

The disruptions to the administration of justice can come in many forms, including preventing or delaying the progression of a case by making parties and witnesses fearful to attend court in the first place. Even civil service of process, where an individual is served with a summons, subpoena, or similar civil process, can create this same problem. In the event that parties and witnesses do still come to court, there are disruptions to operations of the court when actually serving process or executing a civil arrest.

Owing to the greater disruption to the courts and to the greater infringement upon an individual's rights inherent to civil arrest as opposed to mere civil service of process, courts have historically more aggressively asserted the privilege to grant individuals immunity from civil arrests as opposed to mere civil service of process. *Netograph Mfg. Co. v. Scrungham*, 197 N.Y. 377, 382 (1910) (denying, in this case, the privilege of a criminal defendant to be exempt from civil process but leaving open the possibility of the privilege against civil arrest); *Long*, 293 U.S. at 82 (declining to extend immunity from service of process to acting senators in noting that "history confirms the conclusion that the immunity is limited to arrest"); *Carl v. Ferrell*, 109

F.2d 351, 352 (D.C. Cir. 1940) (declining to extend immunity from service of process to military servicemen temporarily in D.C. on duty, but noting that they are statutorily protected from civil arrest). Understandably, "a court undoubtedly would protect a criminal defendant from any arrest which would incapacitate him, and not merely discourage him, from attendance at the first court at the due time and place." *U.S. v. Conley*, 80 F. Supp. 700, 703 (D. Mass. 1948).

Courts have also held that the common law tradition of the courts to grant this immunity from civil arrest and civil service of process can and has been used widely to protect many different individuals attending court, including notably criminal defendants who come to the court under the conditions of their bail. *Id.* at 702 ("With regard to defendants in criminal cases, the point which has been most frequently raised is whether a non-resident criminal defendant appearing voluntarily or involuntarily is subject to civil process …It is customarily said that, while there is a split of authority in the state courts, the federal practice is to accord immunity from civil process").

In *Kaufman v. Garner*, a defendant charged with murder, who appeared in court under the conditions of his bond and was served with civil summons in court, had the summons quashed by virtue of his privilege. *Kaufman v. Garner*, 173 F. 550, 552 (C.C.D. Ky. Nov. 1, 1909). The court in this case went out of its way to stress how the reasons of "public policy" and the "dignity and independence of the court" that underlie the existence of the privilege to grant immunity are actually even more compelling in the cases of criminal defendants as opposed to civil parties:

> If, as all the cases seem to agree, the proposition that parties and witnesses, while attending court in a civil action, should be exempt from the service of process in actions against themselves, is based upon considerations alike of public policy and the dignity and independence of the court first acquiring jurisdiction, as well as the idea that such attendance is under compulsion, we think the stress of the reason for such exemption is

> obviously stronger where the attendance is in a criminal case, in which the compulsion is more peremptory and pronounced than it is in a civil action. *Id.* at 554.

Further, in *Church v. Church*, the Court of Appeals for the D.C. Circuit found that a defendant who was out of custody but whose appearance in court was nevertheless involuntary was still privileged from civil service. *Church v. Church*, 280 F. 361, 362-63 (D.C. Cir. Jan. 3, 1921). The Court held that, in determining whether the defendant was privileged from civil service, it was "immaterial" whether the defendant appeared voluntarily or involuntarily. *Church*, 280 F. at 362 ("We think the circumstance is immaterial. The rule, as we find it, is the same, whether he came of his own volition or was coerced"). The Court also stressed that it could not find a reason for applying the common law tradition of immunity any differently between civil defendants and criminal defendants. *Id.* at 363. ("We are unable to perceive any reason for according the immunity to a civil litigant while denying it to one who comes to defend himself against a charge of crime. Unless he was before the court the criminal action could not proceed").

As deportation proceedings are civil actions, ICE's courthouse arrests of noncitizens, for the purpose of commencing deportation proceedings, are civil arrests. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country"). In carrying out its new deliberate policy of courthouse arrests, therefore, ICE has disregarded a long-standing common law tradition in the courts that "stands so like a faithful and venerable sentinel at the very portal of the temple of justice that every consideration of a sound public policy… forbids that it should be stricken down." *Hale v. Wharton*, 73 F. 739, 750 (C.C.D. MO. 1896).

Indeed, as IDP has extensively documented, the phenomenon of ICE courthouse arrests has caused widespread fear in the noncitizen community of attending court, thereby interfering with

the courts' functioning and the administration of justice. Further, ICE's civil arrests in courthouses not only disrupt the dignity of the courthouse when physically restraining individuals in court, but once those individuals are placed into immigration detention, also interferes with the ability of those individuals to attend future court dates. ICE's new deliberate policy of courthouse arrests is therefore creating the exact disturbances to the administration of justice that the long-standing tradition granting immunity from civil arrest is meant to protect against.

Nevertheless, despite the great danger that ICE poses to them, many immigrants are still attending their court dates, exhibiting a brave willingness to aid in the administration of justice, and as the Court of Appeals has said, "it is this willingness to appear and aid the advancement of justice which should be rewarded and encouraged by exemption." *Bunce v. Humphrey*, 214 N.Y. 21, 25 (1915).

b. ICE's deliberate policy of courthouse arrests violates the constitutional right to access the courts.

The Supreme Court has repeatedly held that the Constitution protects a fundamental right to access court. This right has been upheld across several decades of Supreme Court jurisprudence, drawing on multiple Amendments in the Bill of Rights.

As a matter of Fourteenth Amendment due process and equal protection, courts must be affirmatively accessible to everyone. On these grounds, Supreme Court jurisprudence requires equal access to court regardless of ability to pay. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956). ("[A]t all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations."); *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971) ("Due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial

process must be given a meaningful opportunity to be heard."). The case law acknowledges that even though filing fees are a condition, rather than a complete bar to access, they are impermissible where they "effectively foreclose[] access" to the courts. *Burns v. Ohio*, 360 U.S. 252, 257 (1959) (holding that indigent prisoners must be allowed to file appeals without payment of docket fees).

The right to access the court is so fundamental that prison officials are required to take affirmative steps to ensure that people in prison have meaningful access to the court system. *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (holding that the right of access to the courts requires prison authorities to assist inmates with the preparation and filing of meaningful legal papers by providing inmates with adequate law libraries or adequate assistance from persons trained in the law); *Lewis v. Casey*, 518 U.S. 343, 346 (1996) (explaining that the focus of *Bounds* is "the conferral of…the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts" and that to do so, accommodations should be made for illiterate or non-English speaking inmates). This line of cases requires not just literal availability of a day in court—it requires that "access to the courts is adequate, effective, and meaningful." *Bounds*, 430 U.S. at 822.

Access to court further implicates the First Amendment right to petition. *See California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition"); *Sure–Tan, Inc. v. NLRB*, 467 U.S. 883, 896–897 (1984) ("[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government."); *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011) ("This Court's precedents confirm that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of

legal disputes."). This right ensures that individuals cannot be singled out and denied access to court. *Huminski v. Corsones*, 396 F.3d 53, 84 (2d Cir. 2005) ("A person singled out for exclusion from the courtroom, who is thereby barred from first-hand knowledge of what is happening there…is placed at an extraordinary disadvantage[.]").

The right to access courts applies to both citizens and noncitizens, as the Supreme Court established long ago that the constitutional guarantee of due process and equal protection under the law is applicable to noncitizens present in the United States. *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886); *see also Graham v. Richardson*, 403 U.S. 365, 372 (applying a strict scrutiny equal protection analysis to distinctions based on alienage). The Supreme Court has also long held that noncitizens are guaranteed Fifth and Sixth Amendment rights. *Wong Wing v. United States,* 163 U.S. 228 (1896). The Court recently affirmed this principle in *Padilla v. Kentucky*, which recognized that noncitizens' Sixth Amendment rights include the right to be informed of immigration-related consequences of entering a guilty plea. 130 S. Ct. 1473 (2010). This holding makes clear that noncitizens are entitled to protections in the courtroom, and that lack of citizenship does not make the right to access court any less fundamental.

A systemic policy of depriving people of the fundamental right to access courts calls for the remedial termination of immigration proceedings, in order to restore constitutionally mandated universal access to the courts. Courthouse arrests interfere with the right to access courts both for individual respondents arrested in court, but also for the entire noncitizen population that feels intimidated from attending court. Immigrants are being denied a meaningful opportunity to be heard in court because they must risk arrest by ICE any time they come to, enter, and/or leave a courthouse. It is conscience-shocking for ICE to take systemic action that prevents a certain class of individuals from feeling safe entering a courthouse. Supreme Court

jurisprudence on courthouse fees and prison law libraries demonstrates that the right to access court is more than just the technical right to be legally allowed to enter a courthouse: Courts need to be affirmatively accessible to all, without barriers that disadvantage certain populations

c. ICE's deliberate policy of courthouse arrests constitutes undue federal interference in state courts in contravention of the Tenth Amendment.

Since the founding of the country, the United States has embraced a federalist judicial system that preserves the rights of states to independently operate their own courts. As the Supreme Court has stated, "The preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government." *Texas v. White*, 7 Wall. 700, 725 (1869). The federalist system requires that "the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger v. Harris*, 401 U.S. 37, 44–45 (1971).

ICE's deliberate policy of courthouse arrests disrupts this deeply entrenched national tradition of federalism. Federal immigration officers arresting individuals attending to matters in state court is a clear example of the federal government interfering with the administration of state courts, and goes against the central tenets of federalism on which this country was founded. As discussed *supra* in the Background Section, this practice is having a real effect on state courts' ability to administer justice, by deterring immigrants from attending court. Robbins *supra* at 2, Exhibit D (Exhibit p. 9) (describing a press conference where Eric Gonzales, Brooklyn District Attorney, and Eric T. Schneiderman, New York state attorney general, called for an end to courthouse arrests because they are "interfering with the criminal justice system,

making witnesses and defendants afraid to appear in court."); *see also* Letter from Hon. Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of California (Mar. 16, 2017), attached as Exhibit U (Exhibit p. 98) (expressing concerns about "the impact on public trust and confidence in our state court system" resulting from courthouse arrests); Letter from Hon. Thomas A. Balmer, Chief Justice, Or. Supreme Court (Apr. 6, 2017) ("ICE's increasingly visible practice of arresting or detaining individuals in or near courthouses…is developing into a strong deterrent for access to the court[.]"), attached as Exhibit U; Letter from Hon. Stuart Rabner, Chief Justice, Supreme Court of N.J. (Apr. 19, 2017), attached as Exhibit U ("To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum."). ICE's interference with the institution of the independent state court shocks the American conscience.

This policy also constitutes a deprivation of fundamental rights because individuals have the right to this system of federalism. *See Bond v. United States*, 564 U.S. 211, 222 (2011) ("By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. When government acts in excess of its lawful powers, that liberty is at stake."); *see also New York v. United States*, 505 U.S. 144, 181 (1992) ("[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power." (quoting *Coleman v. Thompson*, 501 U.S. 722, 758 (1991) (Blackmun, J., dissenting))). ICE's interference with the administration of state courts exceeds its lawful power, and in doing so, deprives individuals of their liberty. This right is fundamental in that it is at the core of the organization of the American government, and is enshrined in the constitution through the Tenth Amendment.

Furthermore, by transforming state courthouses into loci of federal immigration enforcement and involving courthouse staff in enforcement operations, ICE is commandeering

state resources in violation of the Tenth Amendment. *See New York*, 505 U.S. at 144. ("Congress may not commandeer the States' legislative processes by directly compelling them to enact and enforce a federal regulatory program[.]"). Federal immigration law does not authorize ICE to usurp state powers in this way. *See* I.N.A. § 287(g)(9) (acknowledging that federal law cannot compel the States or their political subdivisions to participate in immigration enforcement); § 287(g)(10) (describing States' and localities' decision-making power over communicating and cooperating with federal immigration enforcement). Federal immigration arrests in state courthouses are effectively compelling states to participate in immigration enforcement, in contradiction of the requirements of the Tenth Amendment and the text of the INA.

III. Termination of proceedings is necessary to deter ICE's deliberate misconduct.

When a respondent's rights are violated, there are two potential remedies available in Immigration Court: termination of proceedings and suppression of evidence. Second Circuit case law calls suppression of evidence where a violation is *either* widespread *or* egregious. *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 234 (2d Cir. 2006). But ICE's courthouse arrests are *both* widespread *and* egregious. *Supra* Background Section. *Rajah*, by emphasizing the deprivation of fundamental rights, as well as "societal benefit" and "deterrence" strongly suggests that where violations are both egregious and widespread, termination is an appropriate remedy. *Rajah*, 544 F.3d at 446. Given that ICE's courthouse arrests meet this heightened standard, suppression is insufficient and termination is necessary.

In many cases, suppression of evidence is no remedy at all. Any time there is independent evidence of alienage, suppression of evidence has no effect. For example, immigrants arrested by ICE in courthouses include legal permanent residents, asylees, and visa holders, so the question of evidence of alienage is irrelevant in those cases. Even if an IJ suppresses evidence obtained

through an unlawful ICE arrest, removal proceedings will often be able to continue uninterrupted on the basis of independent evidence of alienage. *See Lopez-Mendoza*, 468 U.S. at 1043 (explaining that suppression has limited deterrent effect because "deportation will still be possible when evidence not derived directly from the arrest is sufficient to support deportation"). Thus, offering suppression as the sole remedy fails to do anything to correct the conscience-shocking conduct that violates fundamental rights. If suppression were the only remedy, ICE would be able to continue its misconduct without any judicial check on its power.

Termination, however, is a much more effective remedy available to Immigration Judges in response to deliberate conscience-shocking conduct that deprives people of their rights. *Cf. Rajah*, 544 F.3d at 447 (declining to terminate where there would be no deterrent effect or societal benefit in the case of isolated, individualized incidents of abuse). It sends a clear and effective message that a particular course of conduct is impermissible, and that proceedings initiated with this kind of violation of rights will not be allowed to move forward. By terminating proceedings brought through courthouse arrests, IJs can set a clear, bright line rule that arresting individuals while they are attending to other matters in state court is not permissible. Unlike suppression, termination has the ability to protect fundamental rights by deterring ICE's objectionable conduct. In this case, termination will deter violations of the fundamental right to access court, which is protected by the common law and the First, Tenth, and Fourteenth Amendments.

In the criminal context, the Supreme Court has stated there are cases where "the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction[.]" *U.S. v. Russell*, 411 U.S. 423 (1973). A defendant can assert a selective prosecution defense if the prosecutor brought

charges in a way that violated the defendant's Fourteenth Amendment rights, thus tainting the entire case. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996). Deportation proceedings, like criminal proceedings, can be "tainted from their roots" so as to call for a "prophylactic remedy[.]" *Castaneda-Delgado v. INS*, 525 F.2d 1295, 1302 (7th Cir. 1975). Courthouse arrests are the type of outrageous conduct that taints the entire proceeding, and which should bar the government from invoking judicial processes to obtain removal.

ICE asserts that its practice of making courthouse arrests is necessary for safety and efficiency, *see* Exhibit M (Exhibit p. 47), but this reflects a short-sighted view. ICE fails to take into account the disastrous effect its policy has on the administration of justice in state courts. Where immigrants are afraid to show up at court, our communities are inherently less safe. Moreover, individual access to court is protected by deeply entrenched constitutional and common law that cannot be single-handedly upended by ICE for the sake of the convenience of ICE officers.

The Supreme Court has recognized that "the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy." *Cox v. State of Louisiana.*, 379 U.S. 559, 562 (1965). Termination of proceedings where ICE has made a courthouse arrest can effectively deter ICE's disruption of this sacred American institution.

CONCLUSION

Because this case was brought through a courthouse arrest in violation of constitutional and common law and against the public interest, respondent's motion to terminate should be granted. There is no other remedy available to deter ICE from this harmful practice that deprives immigrants of fundamental rights, and endangers the functioning of state courts to the detriment of the entire community.

Dated: [redacted]

Respectfully submitted,

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INDEX OF EXHIBITS IN SUPPORT OF BRIEF OF *AMICUS CURIAE* IMMIGRANT DEFENSE PROJECT

Exhibit A

EXCLUSIVE

ICE courthouse arrests of immigrants up 900% across N.Y. in 2017

BY **STEPHEN REX BROWN** + FOLLOW

NEW YORK DAILY NEWS Wednesday, November 15, 2017, 4:00 AM

In 2016, the Immigrant Defense Project documented 11 arrests or attempted arrests by Immigration and Customs Enforcement agents around the state. This year the number has spiked by 900%, with most in New York City. (JOHN MOORE/GETTY IMAGES)

Sightings of ICE agents at courthouses across the state have surged from 11 to 110, compared with last year, advocates say.

In 2016, the Immigrant Defense Project documented 11 arrests or attempted arrests by Immigration and Customs Enforcement agents around the state. This year the number has spiked by 900%, with most in New York City — including one arrest on Tuesday in Brooklyn Criminal Court.

"The exponential increase in ICE courthouse arrests reflects a dangerous new era in enforcement and immigrant rights

violations," Immigrant Defense Project attorney Lee Wang said. "Immigrants seeking justice in the criminal, family and civil courts should not have to fear for their freedom when doing so."

The group's analysis found 20% of the immigrants ICE arrested this year had no prior criminal convictions. Some were appearing in court for traffic violations before immigration agents grabbed them. At least 16% of the immigrants were in court for desk appearance tickets, meaning their offenses did not merit an arrest. Arrests have occurred in family court and in one notorious case — at Queens Human Trafficking Court.

Since President Trump took office, ICE has ramped up enforcement of immigration laws as part of a crackdown on illegal immigration.

The Office of Court Administration, which oversees state courts, had documented 86 ICE sightings. The discrepancy was likely due to some arrests occurring shortly after a suspect left the courthouse, officials and advocates said.

"We have conveyed on both a local and national level to ICE and other federal officials our 'serious concerns about ICE activity at certain locations, such as Family Court and Human Trafficking Court,' " OCA spokesman Lucian Chalfen said, citing a previous statement.

An ICE spokeswoman said the agency complied with state guidelines and typically entered courthouses only after exhausting other avenues.

But Tina Luongo, attorney-in-charge of the Criminal Defense Practice at the Legal Aid Society, said ICE's arrests in courthouses demanded a legislative solution from Albany.

"These arrests plague our clients in every borough and deter immigrants and others from seeking services offered by the court that should always be accessible," Luongo said.

Tags:

IMMIGRATION DONALD TRUMP

Send a Letter to the Editor

Exhibit B

SEPT. 15 2017 4:05 PM

Secret Police

ICE agents dressed in plainclothes staked out a courthouse in Brooklyn and refused to identify themselves.

By Leon Neyfakh

We can't expect all law enforcement officers in all situations to identify themselves when asked to do so. But those circumstances should be the exception, not the rule.

Gregory Bull/Associated Press

Cameron Mease, a senior staff attorney with Brooklyn Defender Services, was walking in downtown Brooklyn, New York, on Thursday morning when he saw a group of six or seven men shove someone against a fence, put him in handcuffs, and drag him into an unmarked van. The men were dressed in jeans and T-shirts. Given their behavior and attire, a passerby would've had good reason to think he'd just witnessed a kidnapping.

But Mease had seen such scenes unfold before, and he was pretty sure he knew what he'd just seen. He believed these were plainclothes agents from Immigration and Customs Enforcement and that they'd come to the Brooklyn courthouse to take someone into custody who they knew would be there for a court date. After witnessing the arrest, Mease asked one of the men to identify himself. He got no reply. "He kind of looked at me derisively, like he was annoyed, and sort of waved his hand at my face," the lawyer told me later.

Mease then watched as some of the men drove off with their apparent suspect while others stayed behind. "I heard them talking about how they had two more people to get," Mease said.

Mease's instinct was right. The men were ICE officers, and the agency confirmed that it made four arrests at the courthouse on Thursday, all of them involving undocumented immigrants suspected of participating in criminal gang activity. According to ***Gothamist***, the four arrestees had come to the courthouse Thursday morning to face misdemeanor charges stemming from a trespassing incident in July.

The presence of ICE agents at a New York courthouse was not, in and of itself, news. **A report** by the Immigrant Defense Project noted that the agency had arrested 53 people at courthouses across the state as of early last month. What made Thursday different was that Mease was able to brief his colleagues at Brooklyn Defender Services quickly enough for one of them, Scott Hechinger, to **blast it out over Twitter**. Hechinger asked journalists to come watch, and he urged "all noncitizens with court dates" to "stay away" from the courthouse and contact their lawyers.

When I arrived at 120 Schermerhorn St. around 11 a.m., some of the men Mease had seen a few hours earlier had moved inside and gone up to the eighth floor, where they stood in a public hallway. I recognized one of the men from a photo Brooklyn Defender Services had **posted on Twitter** and approached him. Dressed in a bright blue shirt, with an Apple Watch on his wrist, and tattoos peeking out from under his sleeves, he stood in a group with three others, including one older man in a suit whom I later identified as Michael Ryan, the bureau chief of the Kings County District Attorney's Office.

When I asked the men if they were ICE agents, they did not say yes; one of them, in fact, stated unequivocally that he was not. When I asked what they were doing at the courthouse, they declined to respond, and Ryan told me I should call the DA's office if I wanted more information.

Lawyers in the hallway all seemed certain these guys were with ICE, but I could see no identifying markers: Not only were they in plainclothes, but they wore no badges or nametags, and carried no walkie-talkies or other law enforcement equipment. Aside from their conspicuously self-assured and imposing manner, they were indistinguishable from the people standing around them. Quite literally, these men were secret police.

As far as I could tell, the men from ICE made no arrests during their visit to the eighth floor; after a few minutes of conversation with Ryan, they headed for the elevator bank. As they rode down to the first floor, two of them discussed plans to watch a boxing match together on Saturday night. In this video shot by *Mic*'s

Andrew Joyce, you can see them filing out of the courthouse one by one and getting into a pair of unmarked cars:

> Alleged ICE agent at Brooklyn court house refused to answer questions. Leaves black car with two others. pic.twitter.com/RqjI6IdyPQ
>
> — Andrew Joyce (@AndrewPaulJoyce) September 14, 2017

A source who declined to speak for attribution later told me that the hallway conversation between Ryan and the three men had been a confrontational one. Ryan had arrived after hearing reports of ICE agents in the courthouse and informed them that if they were planning to arrest anyone, he needed to know about it. According to the source, the ICE agents hadn't just been reticent with me because I was a reporter: They also refused to confirm they were with ICE when Ryan—a representative of the DA's office—asked them directly. Maybe that shouldn't be surprising. Acting Brooklyn DA Eric Gonzales has publicly condemned ICE for staking out courthouses, saying at a recent press conference that the practice makes witnesses and victims of crime feel it's unsafe to come to court. "ICE should treat courthouses as sensitive locations, like it does schools and houses of worship, to allow everyone free access to our justice system and stop the chilling effect felt by victims and witnesses," **Gonzales said**.

Lucian Chalfen, a spokesman for the State of New York Office of Court Administration, told me in an email that statewide protocol requires all law enforcement agents, including ICE officers, to inform courthouse personnel when they show up to make arrests. Chalfen said that didn't happen on Thursday—the agents did not check in or show any warrants before entering the courthouse.

The stonewalling Mease, Ryan, and I got from the men we encountered at the courthouse doesn't seem to be a consequence of strict departmental policy. When one of Mease's colleagues from Brooklyn Defender Services, Nathaniel Damren, asked one of them on Thursday morning if he was with ICE, the officer replied "yes, sir"—an exchange Damren captured on video and shared with me. Rachael Yong Yow, a spokeswoman for ICE's New York field office, said in an email that she was not certain what ICE's policy was about officers identifying themselves; this article will be updated if I receive any additional information.

We can't expect all law enforcement officers in all situations to identify themselves when asked to do so: In some cases, it could put them in danger or blow their cover. But those circumstances should be the exception, not the rule. In a free society, a law enforcement officer should state clearly that he or she represents the state and wields its power in all but a few exceptional circumstances. What I witnessed on Thursday did not come anywhere close to clearing that bar.

Top Comment

When is ICE going to camp out at that meat processing executive's house? How about at the golf resort Board of Directors houses? More...

After the agents left the scene, a group of journalists asked one of the lawyers from Brooklyn Defender Services what distinguished Thursday's events from the other times ICE agents had come to the courthouse.

"The fact that you guys were able to make it down here to document it is what makes it different," Theodore Hastings said. "Usually they just come, they snatch people up, and they're gone before anybody even knows."

Slate intern ***Aaron Mak*** *contributed reporting to this article.*

Exhibit C

New York authorities demand ICE stop hunting immigrants in courthouses

By Priscilla DeGregory and Linda Massarella

August 3, 2017 | 1:17pm | Updated

AP

State and local authorities Thursday accused ICE agents of scouring local court halls in undercover clothes hunting immigrants to toss out of the country and demanded that they stop.

"I am going to call on ICE to treat our courts like sensitive locations, like it does school and houses of worship," acting Brooklyn DA Eric Gonzalez said at a joint press conference with Attorney General Eric Scheiderman. "I'm going to ask that ICE refrain from arresting witnesses and victims."

Schneiderman said all New Yorkers are at risk if victims, including those here illegally, become too afraid to press charges because they fear deportation.

The pair said US Immigration and Customs Enforcement agents have even been lurking in Family Court and courts that help human-trafficking victims.

"ICE almost always comes into court in groups of two to four agents, and they are in plain clothes,"said Lee Wang, a staff lawyer at the Immigrant Defense Project which claims ICE has attempted to arrest 60 people so far this year in state courts, eight of which were in Brooklyn.

"They are in jeans and a sweatshirt, they are in khakis and polos, sometimes they have a visible badge, and sometimes they don't," he said. "I think what is very disturbing is that they will often not identify themselves even to defense attorneys. ... They won't even say who they are or show any kind of warrant. They are really acting as rogue operators in the courts."
Gonzalez said fear of deportation is "making us all less safe.

"We encounter more and more victims and eyewitnesses to crime who are fearful of moving forward because of immigration status," he said in a statement.

In May, Schneiderman denounced President Trump for giving ICE so much authority after he was elected.

"Local police departments should not and cannot be forced to shatter the trust and credibility they've built with their communities just to advance President Trump's radical deportation agenda," he said.

ICE, meanwhile, freely admits it finds roaming the courts is a perfect way to find illegal immigrants that aren't being turned over by sanctuary cities.

"Because courthouse visitors are typically screened upon entry to search for weapons and other contraband, the safety risks for the arresting officers and for the arrestee inside such a facility are substantially diminished," the agency said in a statement to The Post. "As such, ICE plans to continue arresting individuals in courthouse environments as necessary, based on operational circumstances."

FILED UNDER **COURTS, ICE, IMMIGRANTS, IMMIGRATION**

Exhibit D

The New York Times https://nyti.ms/2upaTP6

N.Y. / REGION

A Game of Cat and Mouse With High Stakes: Deportation

By LIZ ROBBINS AUG. 3, 2017

There's a new game afoot.

The federal government's current emphasis on deporting undocumented immigrants — even those facing low-level charges — has, in effect, turned courthouses in New York State into arenas where practitioners of criminal law face off against enforcers of immigration law.

In New York City, judges, defense lawyers and clients have been on high alert for months, watching to see if immigration enforcement officers, many in plain clothes, are in a courthouse. If a pair of people look suspicious, lawyers from the Bronx Defenders, Brooklyn Defender Services and the Legal Aid Society send an internal email alert. Defendants duck into bathrooms or race to another floor.

When officers for United States Immigration and Customs Enforcement, known as ICE, are thought to be in a courthouse, a sympathetic judge might reschedule a defendant's appearance, or, in a seemingly perverse move, set bail that could send a defendant to Rikers Island — keeping the person out of ICE's hands because the jail complex does not turn over undocumented immigrants to the agency.

"I don't want to be playing the cat and mouse game with federal authorities," Eric Gonzalez, the acting Brooklyn district attorney, said in an interview.

State policy prohibits ICE officers from making arrests inside courtrooms. They must do their work in a hallway or outside a building. But on Thursday, Mr. Gonzalez and Eric T. Schneiderman, the state attorney general, held a news conference to say that even that was too much and that ICE should treat courthouses as sensitive locations — like hospitals, houses of worship and schools — where it does not make arrests. They said immigration authorities were interfering with the criminal justice system, making witness and defendants afraid to appear in court.

"I am asking ICE to reconsider their policy and treat the courthouse with respect," Mr. Gonzalez said in the interview.

ICE has said that it goes to courthouses because it is safer than trying to detain someone at home or on the street. Sarah Rodriguez, the agency's spokeswoman, said that despite the demand by the New York officials, "ICE plans to continue arresting individuals in courthouse environments as necessary, based on operational circumstances."

Ms. Rodriguez said that those picked up by ICE "often have significant criminal histories."

ICE officers have made 53 arrests in or around courts in New York State since January, compared to 11 arrests in 2016 and 14 in 2015, according to the Immigrant Defense Project, an advocacy group. Thirty-five of the arrests were made in or around city courthouses, including one on Thursday in Brooklyn.

The state Office of Court Administration said there were 52 instances of ICE officials identifying themselves to court officers; they made 30 arrests, 25 of which occurred in the city. The office did not keep statistics in previous years.

The number of ICE arrests in the five boroughs is higher than other areas in the state because jails in most counties are allowed to hand over prisoners to ICE.

While there are no numbers that suggest either defendants or witnesses are staying away from court, and thus impeding trials, Mr. Gonzalez said his office's

ability to prosecute cases was nonetheless affected: "Witnesses are not willing to come forward and cooperate."

Mr. Gonzalez added that ICE's arrests had undermined the trust people have in the justice system.

The Immigrant Defense Project said that, based on reports from lawyers, some of those recently arrested were charged with offenses like driving without a license or disorderly conduct and that one young man facing "minor charges" in juvenile court in Suffolk County had been seized.

Under the Obama administration, undocumented immigrants with those types of arrests or convictions were not a priority for deportation, but President Trump has made clear that all people in the country illegally are targets.

Jessica M. Vaughan, director of policy studies for the Center for Immigration Studies, which favors more controls on immigration, said in an email that the issue was not that ICE is interfering with the criminal justice system, but that New York's so-called sanctuary policies "are interfering with ICE's ability to carry out its legitimate and important mission. They are the ones forcing ICE to resort to courtroom arrests."

The clash over authority was evident recently at the Queens Human Trafficking Intervention Court, where women charged with prostitution are supposed to face restorative, not punitive, justice. Those arrested can take part in counseling sessions in exchange for dismissal of their charges and the sealing of the records. Undocumented immigrants may be eligible for visas as victims.

On June 16, ICE officers went to the court looking for several individuals, including a 29-year-old woman from China who had been charged with unlicensed practice of massage and prostitution; she had overstayed her tourist visa.

Court officers, as per union policy, told Judge Toko Serita that ICE officers were in the hallway near the courtroom. She told the defense counsel and the assistant district attorney. Judge Serita set bail at $500 and the woman was held in the jail

behind the courtroom — with Rikers Island her ultimate destination — where she met with her lawyer.

Later that afternoon, Judge Serita released the defendant on her own recognizance. The ICE agents had left, apparently in search of another target.

Judge Serita said she had not set bail for the purpose of evading the law. "It's to give the individual an opportunity to discuss the matter with his or her lawyer," she said.

As it happened, ICE officers arrested another woman as she left the court and was walking toward the subway, her lawyer, Sheldon Glass, said. Rachael Yong Yow, a spokeswoman for the New York ICE field office, confirmed the arrest.

Following that action, Chief Judge Janet DiFiore met with federal immigration authorities and asked ICE to consider the trafficking court as a sensitive location.

The policy remains.

Not all judges are sympathetic. Tiffany Gordon, a Legal Aid lawyer in the Bronx, said that a case involving one of her clients had gone before four judges, and there had been different reactions to the suggestion that federal agents might be in the courthouse.

The man, a 38-year-old undocumented immigrant from Ecuador, was charged with driving while impaired and was afraid to show up to his first appearance because he thought ICE would be at the courthouse. Agents were, indeed, there.

Ms. Gordon said that the judge that day, Bahaati Pitt, asked for a reason to reschedule; Ms. Gordon offered that she was busy with other cases. The judge accepted that answer. The next appearance, however, was before Judge Beth Beller. Again, ICE agents were in the courthouse to arrest the man, but he was waiting them out at a nearby McDonald's.

Judge Beller issued a bench warrant, compelling him to appear, which he did not do that day.

"She wasn't going to assist us in navigating around it," Ms. Gordon said.

She got her client excused from his next two court dates, with two other judges.

Judge Beller declined to comment because the case is still active.

Lawyers cannot tell their clients not to show up. "We cannot ethically advise them not to go to court," Lee Wang, a lawyer with the Immigrant Defense Project, said. Instead, she added, lawyers look to be creative.

Asking a judge to set bail for a client to go to Rikers is an extreme measure, but according to Ms. Wang it happened six times since January when ICE was present. Two of those times, the judges refused.

"What does it mean that they will be safer in Rikers than being released?" Ms. Wang asked. "I think it means we're in an ugly place."

Correction: August 3, 2017

Because of an editing error, an earlier version of this article misstated the name of an advocacy group that provided statistics on immigration arrests in or around New York courts. As noted correctly elsewhere in the article, the group is called the Immigrant Defense Project, not the Immigration Defense Project.

Follow Liz Robbins on Twitter @nytlizrobbins

A version of this article appears in print on August 4, 2017, on Page A1 of the New York edition with the headline: In Courthouse Cat-and-Mouse, Stakes Are High: Deportation.

Exhibit E

Fearing deportation, many domestic violence victims are steering clear of police and courts

In the first six months of 2017, reports of domestic violence have declined among Latino residents in some of California's largest cities. Crisis professionals say immigrants without legal status fear that interacting with police or entering a courthouse could make them easy targets for deportation.

By James Queally

OCTOBER 9, 2017, 5:00 AM

The woman on the other end of the line said her husband had been beating her for years, even while she was pregnant.

She was in danger and wanted help, but was in the country illegally — and was convinced she would be deported if she called authorities. Fearful her husband would gain custody of her children, she wanted nothing to do with the legal system.

It is a story that Jocelyn Maya, program supervisor at the domestic violence shelter Su Casa in Long Beach, has heard often this year.

In the first six months of 2017, reports of domestic violence have declined among Latino residents in some of California's largest cities, a retreat that crisis professionals say is driven by a fear that interacting with police or entering a courthouse could make immigrants easy targets for deportation.

President Trump's aggressive stance on illegal immigration, executive orders greatly expanding the number of people who can be targeted for deportation and news reports of U.S. Customs and Immigration Enforcement agents making arrests at courthouses have contributed to the downturn, according to civil liberties and immigrant rights advocates.

In Los Angeles, Latinos reported 3.5% fewer instances of spousal abuse in the first six months of the year compared with 2016, while reporting among non-Latino victims was virtually unchanged, records show. That pattern extends beyond Los Angeles to cities such as San Francisco and San Diego, which recorded even steeper declines of 18% and 13%, respectively.

Domestic violence is traditionally an under-reported crime. Some police officials and advocates now say immigrants without legal status also may become targets for other crimes because of their reluctance to contact law enforcement.

The Long Beach abuse victim, fearing she had no other recourse, sent her oldest children back to Mexico to live with relatives.

"We're supposed to be that assurance that they don't have. That safety net," Maya said. "But it's getting harder for us to have a

go into a courtroom. You can call the police.' "

e addresses such apprehension frequently as he patrols the streets people about their immigration status.

"They're afraid of us. And the reason they're afraid of us is because they think we're going to deport them. They don't know that we don't deport them; we don't ask for their immigration status," he said. "They just gotta go based on what they see on social media and what they hear from other people."

On a warm afternoon, Gonzalez pulled his cruiser to a stop near a row of apartments in Cudahy, ahead of a community meeting in a predominantly Spanish-speaking neighborhood. There was a lone woman waiting for Gonzalez and a few other deputies, offering lemonade to passersby.

The mood in the city was tense. The night before, a pro-Trump demonstrator protesting the city's sanctuary status had been arrested on suspicion of brandishing a gun. Gonzalez and city officials went door-to-door, flashing smiles and speaking Spanish to residents, urging them to attend the meeting.

Gonzalez spoke calmly to the assembly of several dozen people sipping from Styrofoam cups.

"We're not here to ask you where you're from," he said in Spanish, drawing thankful nods.

Gonzalez, who came to the U.S. from Mexico as a child, said he knows why people are scared, but hopes face-to-face conversations will persuade more victims to come forward.

"The community here, they don't know, and they won't know, unless we reach out," he said.

> **"**
>
> **We're not here to ask you where you're from.**
>
> — Los Angeles County Sheriff's Department Deputy Marino Gonzalez

ICE officials also said they do not target crime victims for deportation and, in fact, often extend visas to those who report violent crime and sexual abuse.

Officials in the agency's Los Angeles office declined to be interviewed. ICE issued a statement dismissing links between immigration enforcement and a decline in crime reporting among immigrants as "speculative and irresponsible."

The drop in reporting could result from an overall decrease in domestic violence crimes, the agency said. But police statistics reviewed by The Times suggest that statement is inaccurate. The decline in domestic violence reports among Latinos in several cities is far steeper than overall declines in reporting of those crimes.

In Los Angeles and San Diego, reporting of domestic violence crimes remained unchanged among non-Latinos. The decline among Latinos in San Diego was more than double the overall citywide decrease, records show. In San Francisco, the reporting decline among Latinos was nearly triple the citywide decrease.

The pattern extends outside California.

In April, Houston police Chief Art Acevedo said the number of Latino victims reporting sexual assault had dropped 42% in his city. In Denver, at least nine women abandoned pursuit of restraining orders against their abusers after immigration enforcement agents were filmed making an arrest in a city courthouse earlier this year, according to City Atty. Kristi Bronson.

Claude Arnold, who oversaw ICE operations in Southern California from 2010 to 2015, said misconceptions about the agency may be driving the downswing. Crime victims are far more likely to receive a visa application than a removal order by reporting an attack, he said.

"ICE still has a policy that we don't pursue removal proceedings against victims or witnesses of crime, and I haven't seen any documented instances where that actually happened," he said. "To a great degree, we facilitate those people having legal status in the U.S."

Nationwide, the number of arrests made by ICE agents for violations of immigration law surged by 37% in the first half of 2017. In Southern California, those arrests increased by 4.5%.

Arnold said some immigrants' rights activists have helped facilitate a climate of fear by spreading inaccurate information about ICE sweeps that either didn't happen, or were in line with the Obama administration's policies.

But professionals who deal with domestic violence victims say the perception of hardcore enforcement tactics under Trump has led to widespread panic.

Adam Dodge, legal director at an Orange County domestic violence shelter called Laura's House, said that before February, nearly half of the center's client base were immigrants in the country illegally. That month, ICE agents in Texas entered a courthouse to arrest a woman without legal status who was seeking a restraining order against an abuser.

"We went from half our clients being undocumented, to zero undocumented clients," he said.

A video recording earlier this year of a father being arrested by ICE agents moments after dropping his daughter off at a Lincoln Heights school had a similar effect on abuse victims in neighboring Boyle Heights, said Rebeca Melendez, director of wellness programs for the East L.A. Women's Center.

"They instilled the ultimate fear into our community," she said. "They know they can trust us, but they are not trusting very many people past us."

Even when victims come forward, defense attorneys sometimes use the specter of ICE as a weapon against them, to the frustration of prosecutors.

In the Bay Area, a Daly City man was facing battery charges earlier this year after flashing a knife and striking the mother of his girlfriend, according to court records. The man's defense attorney raised the fact that the victim was in the country illegally

during pretrial hearings, although a judge eventually ruled that evidence was irrelevant and inadmissible at trial, records show.

The case ended in a hung jury. But when prosecutors sought a retrial, the victim said she would not cooperate, in part, because her immigration status was raised during the trial, said Max Szabo, a spokesman for the San Francisco district attorney's office.

San Francisco Dist. Atty. George Gascon said the case was one of several where his prosecutors felt defense attorneys sought to leverage heightened fears of deportation against victims. He believes that tactic, combined with ICE's expanded priorities and presence in courthouses, is driving down domestic violence reporting among immigrants in the city's sprawling Latino and Asian communities.

Gascon described the situation as a "replay" of the fear he saw in the immigrant community while he was the police chief in Mesa, Ariz., during notorious Maricopa County Sheriff Joe Arpaio's crusade against people without legal status, which led to accusations of racial profiling.

Stephanie Penrod, managing attorney for the Family Violence Law Center in Oakland, also said the number of immigrants without legal status willing to seek aid from law enforcement has dwindled.

Abusers frequently will threaten to call immigration enforcement agents on their victims, a threat Penrod believes has more teeth now given ICE's increased presence in courthouses.

"The biggest difference for us now is those threats are legitimate," she said. "Previously we used to advise them we couldn't prevent an abuser from calling ICE, but that it was unlikely ICE would do anything."

If the problem persists, Gascon fears the consequences could be deadly.

"The level of violence increases," he said. "It could, in some cases, lead to severe injury or homicide."

Times staff writer Kate Mather contributed to this report.

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ALSO

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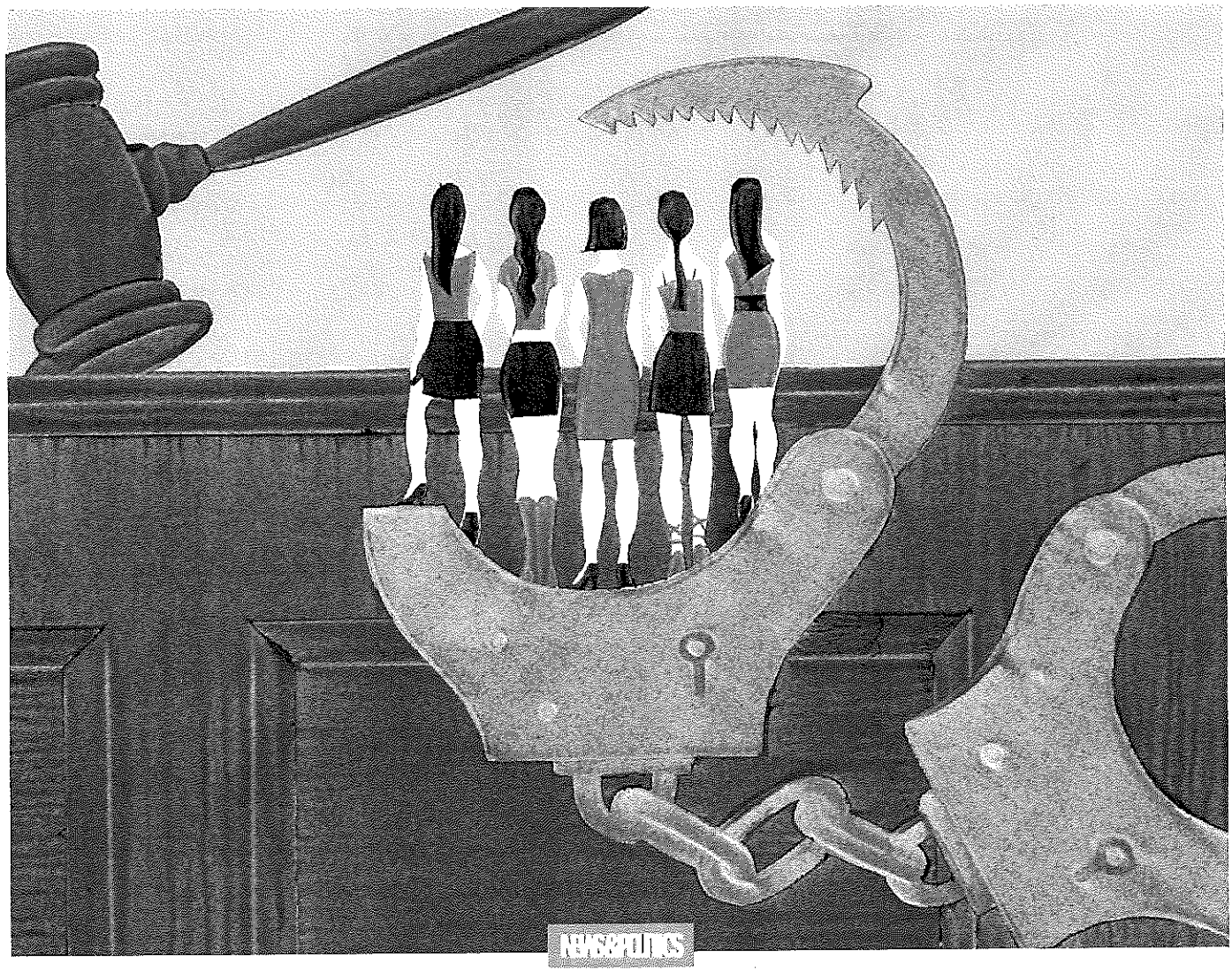
California becomes 'sanctuary state' in rebuke of Trump immigration policy

San Diego police to continue using gunshot detection system, despite some criticism

Exhibit F



ICE IS USING PROSTITUT TO STALK IMMIGRA

BY MELISSA GIRA GRANT

JULY 18, 2017

One Friday morning in June, two Immigration and Customs Enforcement agents tried to conceal themselves in a courtroom vestibule, where a "No standing" sign was taped to the wall. Hidden from the view of everyone in Queens Criminal Court room AP8, the agents could see and faintly hear who was being called before the judge's bench, including a 29-year-old Chinese woman who expected to have her case resolved that day. She had no idea ICE was there to arrest her.

The woman's Legal Aid Society attorney learned of ICE's plans from Queens Criminal Court Judge Toko Serita. The judge was under no obligation to share this information; Legal Aid Criminal Defense Practice attorney-in-charge Tina Luongo later said at a City Council hearing that by doing so, the judge "probably broke a rule." The woman's attorneys had to act quickly: After Judge Serita called her case, the woman would be fair game for ICE. The public defenders made the desperate decision to ask the judge to set bail in her case, and through a Mandarin interpreter they explained the situation. In the custody of a city court or in jail, it would be much harder for ICE to arrest her. Minutes later, the woman was taken into custody by court officers. Kate Mogulescu, the Criminal Defense Practice supervising attorney, who was there that day, later told the City Council, "This was terrifying for our client and her family."

The plainclothes immigration agents refused to produce identification, according to Mogulescu. She approached one of the agents, who she said told her his last name was Lee and that he was there for several women in AP8, though he would not say whom " nor did he produce warrants or any paperwork for those women. Later that day, Legal Aid staff said, they saw that the same ICE team had taken two other people into custody from outside the Queens courthouse. Once it appeared ICE was gone, they asked for the Chinese woman's case to be called again. She was then released from custody.

ICE's attempt to arrest this woman made local headlines, but the stories had few details about the agency's target. She had been arrested by the NYPD in February in Queens and charged with prostitution and practicing massage without a license, a common allegation after police raid massage parlors. This arrest is how she ended up in AP8, one of New York's human trafficking intervention courts, and how she came to be described in statements to the press as a victim of human trafficking " though she had made no statements of her own.

A human trafficking intervention court does not prosecute people for trafficking. The "intervention" in the name begins with vice officers, after they place someone accused of prostitution offenses in handcuffs. "By and large, we work under the assumption that *anyone* who's charged with this kind of crime is trafficked in some way," Judge Judy Harris Kluger, one of the court's prominent advocates, told the City Council in 2013. The courts, she has written, are meant to treat those arrested as "victims, not defendants."

Now ICE has signaled that it will use the trafficking courts as a way to stalk immigrants. As Legal Aid's client learned, ICE wields terrifying power in these courts: Agents will try to take people away from the defense attorneys standing at their sides, and without a warrant. People can then disappear into the immigration detention system, where they are not currently guaranteed the same rights to legal representation. As it stands, defendants risk being released from criminal court right into the custody of ICE. "This is an agency that zealously guards its ability to arrest anyone that it wants, wherever it wants to do it," Andrew Wachtenheim, supervising attorney at the Immigrant Defense Project, testified before City Council in June.

On a blistering-hot morning just six days after ICE showed up at the Queens trafficking court, dozens of community activists flanked members of the council, including Speaker Melissa Mark-Viverito, on the steps of City Hall. "To target a survivor of human trafficking as she benefits from a highly specialized court program to help survivors rebuild their lives is indefensible," Mark-Viverito said. "We will not allow this to stand."

Council Speaker Melissa Mark-Viverito on ICE's courthouse arrests: "We will not allow this to stand." WILLIAM ALATRISTE/NEW YORK CITY COUNCIL

But in addition to the outrage expressed at ICE arresting immigrants in this sanctuary city, there is a question worth asking: how and why those immigrants came to be in trafficking court in the first place. The vast majority — 91 percent — of Legal Aid clients charged with unlicensed massage are not U.S. citizens, Mogulescu told the City Council.

Immigrants, like the other defendants in trafficking court, got there the same way: through arrests. "While we share in all of the outrage and shock that this happened in the human trafficking intervention court, we really

can't be very surprised,I Mogulescu said. IThis is a question of arrest policy, and who is brought into criminal court as sitting ducks for ICE enforcement.I

On average, the NYPD arrests three people a day I 1,196 in 2015, according to data obtained by the Legal Aid Society from the New York State Division of Criminal Justice Services I for offenses related to selling sex, including prostitution, Iloitering for the purposeI of prostitution, and Iunauthorized practice of a professionI (the charge used in massage parlor raids).

The day after the City Hall press conference, Judge Serita would hear another thirty or so cases in her trafficking court. Waiting their turn on the wooden benches, the defendants sat solo and in pairs. It was not unusual to see one woman stick around until another's case was called; they'd watch each other's bags, exchange commentary between cases, and leave together. The defendants the week after ICE turned up were Asian, Latina, and black, which also wasn't unusual. Most of the defendants asked for an interpreter I Chinese, Korean, Spanish. One defendant almost missed her case when the court officer fumbled with her name. Another woman two rows back called out to her in time for her to rush up to the bench.

Judge Serita's demeanor throughout was warm but practiced. She offered variations of the same phrase: IIf you stay out of trouble and lead a law-abiding life, your case will be dismissed.I If you take at face value the court's mission to treat people as victims and not criminal defendants, it's a strange thing to say. Women engaged in prostitution, the court's advocates argue, don't have a choice when it comes to the offenses they stand accused of. How are they then supposed to choose to lead Ilaw-abiding livesI as the judge orders?

These defendants' victim status is conditional: not only on agreeing to Istay out of trouble,I but on attending multiple sessions with one of the agencies Serita assigns them to based on their case. Then they return to court, where the judge reads a report on their progress. The judge can decide if their case will be sealed or if she will mandate more sessions. On that day, the week after ICE targeted her court, Serita saw defendants she had mandated to six, eight, or even twelve sessions. If defendants fail to complete the sessions, or if they fail to appear again in court, a warrant could be issued for their arrest.

When the statewide rollout of the trafficking courts was announced in 2013, they were heralded as a new approach to addressing prostitution charges. This new approach has not been accompanied by a new approach to policing. Since 2013, some prostitution arrests have gone up, and dramatically in Asian immigrant communities, like charges for Iunauthorized practice of a profession,I the same offense the woman targeted by ICE faced. In 2012, there were just 31 such arrests of Asian-identified people in New York City, according to a 2017 report from the Urban Institute and the Legal Aid Society; in 2016, the NYPD arrested 631 Asian-identified people for this offense. Overall arrests of Asian-identified people in New York City charged with both unlicensed massage and prostitution increased by 2,700 percent between 2012 and 2016.

In trafficking court, judges don't get into the particulars of these arrests. II'm gonna *try* to stay out of trouble,I one of the Queens AP8 defendants was heard to say as she left court. IBut I can't promise.I No one in this

court could. The defendants walking out with their cases sealed have every reason to believe they could be arrested again, so long as the police treat any past prostitution arrest as a reason to lock them up. As the *Voice* has reported, this is all too common: A group of women are suing the city over what looks like the standard police practice of profiling women based on their race, gender, and past arrests, even those who have gone through trafficking court.

City council members and community activists line the steps of City Hall in June to protest ICE's actions. MELISSA GINA GRANT

Even before that suit, the City Council was aware of the problems with prostitution arrests. In 2015, at a special hearing on the trafficking courts, Jessica Peñaranda, special project coordinator at the Urban Justice Center's Sex Workers Project (SWP), testified, "While we support the basic tenets of the courts as a way to reduce the harm and risk of exploitation of sex workers and trafficking victims, our extensive experience informs a strong belief that arresting individuals is not the most effective way." Peñaranda added that one defendant had told SWP that, during a raid, an undercover officer had commented, "If it wasn't for us finding you, you would be dead."

At the same hearing, Audacia Ray, then the director of the Red Umbrella Project (RedUP) – a group led by

people in the sex trade, including those who have been arrested and sent to the courts I also testified. IThe assumption is embedded in the system right now that arresting folks is rescue and is a way to get people into services,I Ray told the council. IThere has been a lot of talk today about the violence of the sex industry and the trauma people faceI.For us, experiences in the courts and experience with the police I that is trauma and violence.I

Judges know, intimately, the risks that come with these courts. Though ICE's presence in the trafficking courts is a recent development, deportation is not a new threat faced by defendants. IYou understand that if this happens again,I Judge Serita told a defendant in 2013 when a reporter was present, Ithe offer that is being made now might not happen, and if there are immigration issues you can be deported.I At the press conference to protest ICE actions in the trafficking courts, Kluger I one of the architects of the courts I told reporters that the agency's actions were a Iviolation.I But then she was asked: If that's so, why does the NYPD continue to arrest victims of trafficking?

Kluger, who now heads Sanctuary for Families, which offers services to trafficking court defendants, tried to bat the question away: IWell,I she said, Ithat's a whole other issue.I Pressed, Kluger added that while she didn't think they should be arrested, IYou'd have to direct that to NYPD.I

A recent city criminal justice reform commission has, in fact, recommended that the state legislature remove prostitution laws from the books. At the time, Kluger responded to this announcement by claiming the human trafficking courts were Iin essence decriminalizing prostitution offenses.I But that's not the case: Without the NYPD's prostitution arrests, the trafficking courts would be empty; there would be no defendants in the courts for ICE to so easily target.

Exhibit G

THE NEW YORKER

DAILY COMMENT

WHEN A DAY IN COURT IS A TRAP FOR IMMIGRANTS

By Steve Coll November 8, 2017

The troubling and confusing inheritance of immigration policing has now been made worse by the Trump Administration's expansion of arrest operations in American courthouses.

Photograph by John Moore / Getty

On March 29th, in Pontiac, Michigan, Sergio Perez appeared in a county courtroom to seek sole custody of his son and two daughters, who were between eleven and seventeen years old. The children lived with Sergio's estranged wife, Rose, and, he told me recently, he was concerned about them. His wife had taken out a yearlong protective order against her boyfriend in 2015, but, as far as Sergio knew, they

now lived together. (Rose and the boyfriend could not be reached.) Perez paid the rent on the house where his children and Rose lived, he told me, although he had fallen thousands of dollars behind on child support. (He said that he spent other money on the children directly—for example, for their clothes.) Perez ran a small contracting business near Pontiac, installing carpets. He said that he wanted "to see my daughters do well, with modern lives." He was "never rich at all," but he was "working fourteen, sixteen hours a day," he told me. "I was working three customers a day."

Rose and the three children are all United States citizens, but Perez was undocumented. He had grown up in Guadalajara, Mexico, and crossed into the United States, without authorization, when he was nineteen. During the next twenty-one years, he and his attorney, Bethany McAllister, told me, he had moved back and forth to Mexico, and he had been deported several times before. But otherwise he had never been arrested or convicted of a crime, and had received only one ticket, for driving on an expired license. Amid the anti-immigrant fever created by the Trump Administration, he feared that pressing the custody case might lead to someone informing on him to Immigration and Customs Enforcement, or ICE, in order to have him arrested and deported to Mexico. Perez decided to go to family court anyway. He said that he wanted to show his children that "no matter how hard or difficult it might be, you have to do what you have to do, no matter what."

In the courtroom on March 29th, he heard his name called out, and entered a side room. There were men in plain clothes; one identified himself as Anthony. "I've been looking for you," he said, as Perez recalled. The man pulled out a badge. "We're with ICE." (The arresting agents were from Border Patrol, and they transferred Perez to ICE custody.*) The agents arrested Perez right there, transported him to a jail in Dearborn, and then later transferred him to a detention center in Louisiana. McAllister, Perez's attorney, urged the ICE field office in Michigan to reëxamine his case and to stay his deportation, in the interests of his children. Two attorneys from the Michigan chapter of the American Civil Liberties Union, Michael Steinberg and Juan Caballero, also wrote to ICE, noting, "This practice of obstructing non-citizens' access to courts endangers public safety and has a chilling effect on families seeking protections from the court." Their efforts didn't work. ICE deported Perez to Mexico City.

When I caught up with Perez recently by telephone, he was back in Guadalajara, where he was working as a waiter and a translator. He remained worried about his children, he said. He had promised McAllister that he would not cross the U.S. border again without authorization, so he was trying to find some legal way forward. "I want to go back and change my daughters' lives," and also his son's, he said.

One of the most disturbing aspects of "interior enforcement" of the immigration laws—meaning arrests and detentions carried out far from the American border, typically by ICE agents—is that the actions can pollute the administration of justice and undermine the rights that the Constitution affords all criminal defendants, whether they are U.S. citizens or not. Because immigration-removal proceedings are generally carried out under civil laws, they are exempt from many procedures mandated in criminal cases. For example, the warrants that ICE uses to arrest unauthorized immigrants like Perez aren't reviewed by a judge; they're just written up by ICE office supervisors. Immigrant detainees don't have a constitutional right to a lawyer. Fourth Amendment protections against unreasonable search and seizure don't always apply when ICE agents investigate a target for arrest, because the cases typically don't involve a criminal prosecution. This troubling and confusing inheritance of immigration policing has now been made worse by the Trump Administration's expansion of arrest operations in American courthouses.

The Immigrant Defense Project, an advocacy group based in New York City, said that it had received reports of eighty-four arrests and attempted arrests in courthouses in New York this year through September, more than six hundred per cent more reports than it had received last year, including fifty-one arrests in or around New York City courthouses. Most often, ICE agents target criminal defendants who may be deportable, but they have also arrested people in New York family court, juvenile court, and specialized courts devoted to the prevention of human trafficking.

According to an Immigrant Defense investigation, in April, in Suffolk County Family Court, ICE arrested a Pakistani-born father who had appeared on "a visitation matter." The father was the primary custodian of two children who were United States citizens. He himself had come to the United States as a five-year-old child, "when his family fled political persecution in Pakistan." In June, in Queens, ICE officers followed a woman who had appeared in Human Trafficking Intervention Court. The agents

arrested the woman as she walked to the subway. On September 27th, ICE agents arrested a victim of alleged domestic violence as he left Queens County Criminal Court.

Wendy Wayne, who directs the Immigration Impact Unit at the Massachusetts public defender's office, told me that the surge of courthouse immigration arrests across the country, including in Massachusetts, "has a tremendously negative impact," because "defendants are being arrested before they resolve their criminal cases and witnesses and victims are not coming to court." During the first six months of this year, Latinos in Los Angeles, San Diego, and San Francisco reported fewer cases of domestic violence than during the same period the year before. Advocates believe that the decline reflects less a drop in the crime rate than a rising fear among undocumented victims and witnesses that, if they seek justice, they will be deported.

Some courthouse administrators, judges, and even prosecutors, such as the acting Brooklyn District Attorney, Eric Gonzales, have tried to persuade ICE to back off. Earlier this year, Tani G. Cantil-Sakauye, the California Chief Justice, wrote in a letter to Attorney General Jeff Sessions and the former Homeland Security Secretary John Kelly, now the White House chief of staff, that "courthouses serve as a vital forum for ensuring access to justice and protecting public safety." She accused ICE of "stalking courthouses." Sessions and Kelly wrote in reply that, because sanctuary policies enacted by cities and jurisdictions in states such as California "prohibit or hinder" ICE from enforcing immigration laws, they had no choice but to carry out operations in courts. They reaffirmed their policy.

During the Obama Administration, ICE, through policies derived from executive orders, prevented agents from performing operations in "sensitive locations," including houses of worship, schools, and hospitals, except in extraordinary circumstances. The Trump Administration has continued that policy, to date. Courthouses weren't on the "sensitive locations" list, but arrests were very rare. That is what changed under Trump, Sessions, and Kelly.

Khaalid H. Walls, an ICE spokesperson, acknowledged in a statement to me that the agency continues to make arrests at courthouses, but that these generally take place "only after investigating officers have exhausted other options." He said that many of the targeted people "have prior criminal convictions, pending charges," and/or pose

"threats to public safety." He added that "every effort is made to take the person into custody in a secure area, out of public view, but that is not always possible." (Last August, the American Bar Association passed a resolution urging Congress to pass a law expanding the "sensitive location" policy to include courts. There are bills pending, but their chances are doubtful.)

Yet ICE's defense of its policy on public-safety grounds cannot account for the arrests in venues like family court. And the public defenders and other defense lawyers I spoke with said that they saw the courthouse arrests as largely arbitrary. They weren't certain how ICE identified targets for arrest from court dockets, especially nonpublic dockets, such as those in juvenile or family court. ICE has access to many national-security and federal databases, and it may be running software to identify matches between names on court dockets and deportable individuals in its own databases. Or ICE field officers may be doing that work by hand. (Walls declined to comment.) From the actual arrests, it is hard to discern a pattern. "I think, in my most cynical moments, that maybe that's the point—that it is random, to cultivate this widespread fear that nobody is safe," Casey Dalporto, a staff attorney at the Legal Aid Society in the Bronx, who specializes in immigration law, said.

With a colleague of Dalporto's, William Woods, I walked around the Bronx criminal courthouse on a recent weekday morning, looking for indications that ICE agents were present. The courthouse is a glass-fronted behemoth just down East 161st Street from Yankee Stadium. Woods said that one difficulty in protecting clients from the surge is that ICE officers often pop up in a courtroom suddenly, dressed in plain clothes, and act before defense attorneys can reach the scene to advise their clients or advocate for alternatives to immediate arrest. Legal Aid and other public defenders are working on developing a rapid-response communications system that would allow lawyers to quickly sort out false ICE sightings in courthouses, which are becoming more commonplace amid the spreading fear, and to zero in on accurate sightings, in order to more quickly mobilize lawyers.

Before he became a supervising attorney a few years ago, Woods, a lanky man who grew up in Mount Vernon, handled as many as a hundred and thirty criminal cases at a time in the Bronx system. In the course of more than six years, he recalled, ICE turned up at the courthouse to detain one of his clients perhaps twice. Now his lawyers are

regularly distracted by the appearance of ICE officers. In August, Woods was called to a courtroom where a Legal Aid client was "looking at ICE custody and probably deportation." The lawyers asked the judge to set bail at a thousand dollars, which they advised their client not to post. The judge agreed—he was upset with ICE, too. "Talk about up is down and down is up—you have defense attorneys asking to have their clients put into jail," for their own protection, Woods told me.

"Even victims of crime are not going to turn up because of ICE's presence," he said. "Court is already a scary place, especially if it's your first time in the system. You add onto that 'I might not go back to my family tonight' . . . It injects something into the criminal-justice system" that was not previously a factor.

In New York City, some of the defense lawyers I spoke with expressed frustration with the state's Office of Court Administration, which is directed on a day-to-day basis by Chief Administrative Judge Lawrence K. Marks. They argued that Marks has not been forceful enough with ICE, and that agents have violated courthouse rules, such as requirements that they identify themselves to administrators.

Lucian Chalfen, a spokesman for Marks, told me that the number of arrests or attempted arrests that ICE has carried out in city courthouses this year, numbering in the dozens, was a tiny fraction of the more than a million and a half total appearances in criminal courts so far. The court administrator is meant to be a neutral party, responsive to law enforcement and also to judges and defense lawyers. In private, Marks has conveyed to ICE and other federal officials "serious concerns about ICE activity at certain locations, such as Family Court and Human Trafficking Court."

It seems unsatisfying to draw fine distinctions about access to justice. The ideas behind rights and the rule of law presume universality. Yet if ICE's courthouse operations spared fathers seeking custody and visibly prioritized, say, convicted felons who could not otherwise be apprehended safely, the agency might not have called so much attention to itself. The reality seems to be that ICE is operating in courthouses in an unrestrained way because it is internalizing a sense of impunity, its expansive policies encouraged by Sessions and Kelly, and viscerally backed by Donald Trump's nativist rhetoric and policies.

I asked Sergio Perez how he processed, from Guadalajara, what had happened to him and his children. He emphasized his own responsibility. He and his estranged wife had applied for legal status a decade ago, but the paperwork never advanced. He said he was "one hundred per cent sure" that ICE was going to arrest him when he went to court, but he went anyway, to try to get the kids out of the home they were in. "I don't hate the system," he told me. "I don't think there are racist people in your country, to be honest. I was working all the time with customers. Everyone treated me with respect. The American people, the white people, whatever you want to call them, they looked at me as a hardworking person." He added, "I believe in God, you know. I believe that to win something, you have to lose something."

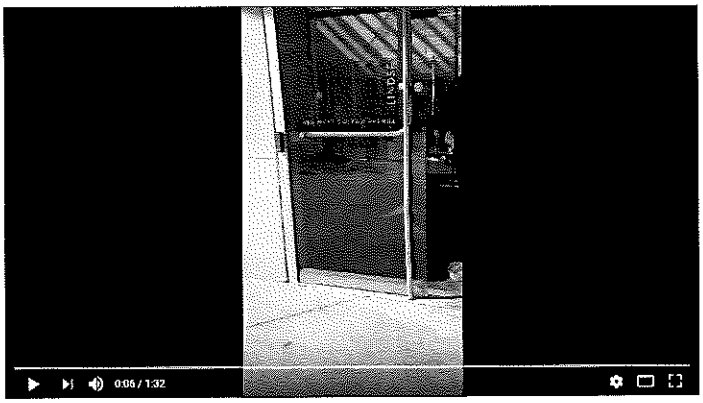
**A previous version of this piece misstated that ICE agents arrested Sergio Perez.*

Alejandra Ibarra Chaoul, a postgraduate researcher at Columbia University's Graduate School of Journalism, contributed reporting for this story.

Steve Coll, a staff writer, is the dean of the Graduate School of Journalism at Columbia University, and reports on issues of intelligence and national security in the United States and abroad. He is the author of "Private Empire: ExxonMobil and American Power." Read more »

Video

Exhibit H



04.28.2017 ICE Arrest in Denver Courthouse, 1 of 3

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04.28.2017 ICE Arrest in Denver Courthouse, 2 of 3

ICE Enforcement in Action (2017) - Dallas & New York City

04.28.2017 ICE Arre... Exhibits 2017 11 15 Exhibit L...

ENG 4:36 PM 11/15/2017

Exhibit I

HILLSBORO NEWS

Oregon lawmakers demand investigation, apology over mistaken ICE stop

Updated Sep 21;
Posted Sep 20

By Everton Bailey Jr., ebailey@oregonian.com
The Oregonian/OregonLive

Two Oregon lawmakers are calling for a federal investigation into the conduct of immigration agents who mistakenly approached a Latino man, demanded his name without identifying themselves and claimed he was in the country illegally.

U.S. Reps. Suzanne Bonamici and Earl Blumenauer said they were "greatly disturbed" by Isidro Andrade-Tafolla's account of what happened after he and his wife left the

Washington County Courthouse on Monday morning. Andrade-Tafolla is a U.S. citizen who has worked for the county for almost 20 years in road maintenance.

The Democrats sent a letter to Elizabeth Godfrey, a regional supervisor for ICE Enforcement and Removal Operations based in Portland, saying they hope the agency apologizes to Andrade-Tafolla.

They also asked questions about ICE tactics, including how agents concealing their identity during stops improves public safety.

"As Oregon officials have repeatedly made clear, targeting immigration enforcement in areas near courthouses deters individuals from accessing our justice system and is contrary to the fair administration of law in Oregon," the letter said. "More seriously, targeting U.S. citizens on the basis of race is a clear violation of their constitutional rights."

Read the letter

According to video of the scene and an interview with Andrade-Tafolla, two agents in plain clothes approached him as a nearby demonstration against arrests of undocumented immigrants ended at the courthouse.

Andrade-Tafolla, 46, of Forest Grove said he and his wife were heading to their truck from the courthouse at the time. The officers never identified themselves as they asked Andrade-Tafolla for his name, he said. One of the agents showed Andrade-Tafolla and his wife a picture of another Latino man and claimed it was Andrade-Tafolla. He and his wife adamantly denied the resemblance. The agents left after another agent who drove up to the scene said Andrade-Tafolla wasn't the man in the photo.

On Wednesday, Andrade-Tafolla said he met with his bosses in the county's Land Use and Transportation Department and that they expressed sympathy. A county spokesman said the county offered "support and condolences for what was undoubtedly an upsetting experience."

Andrade-Tafolla said he's grateful for the backing from his bosses and is glad he spoke out. "I think it's important to show people that this could happen to anyone," he said.

Andrade-Tafolla said he came to the U.S. from Mexico in 1981 when he was 10, lived in California and moved to Oregon in 1984. He became a citizen 1996 when he was 25.

Virginia Kice, an ICE spokeswoman, declined to comment on the letter from the lawmakers, but said the officers who contacted Andrade-Tafolla followed procedure.

"In this instance, our officers went to a specific location seeking a particular individual and interacted with someone whom they believed resembled our arrest target," she said in an email. "It turned out the man was not the target and no further action was taken.

Kice earlier said that ICE officers are required to identify themselves to people if they're interacting with them as part of their official duties, but that sometimes they don't in potentially dangerous situations.

The American Civil Liberties Union Foundation of Oregon released footage of the encounter taken by one of its legal observers. The group said it also plans to address the "clear case of racial profiling" with the immigration agency.

"ICE can't just go around stopping anyone who looks Latino and asking them to show their papers," Oregon ACLU said in a statement. "This is America."

The group has cited a letter written in April by Oregon Chief Justice Thomas Balmer to Attorney General Jeff Sessions and then-Homeland Security Secretary John F. Kelly urging ICE to stop making arrests in and around Oregon's courthouses. Oregon ACLU said its legal observers have seen at least 10 people arrested by ICE officers at the Washington County Courthouse since April.

Washington County Sheriff Pat Garrett said he agrees with the chief justice.

Latino community members have legitimate fear that they and their loved ones face random profiling, Garrett said, and that fear could erode trust in law enforcement and the legal system.

A 2014 court order in a Clackamas County immigration case has led sheriffs to no longer recognize ICE "civil detainers" to hold people. He needs an arrest warrant signed by a judge, Garrett said.

"We continue to communicate with our federal partners, including ICE, and we recognize each of us have difficult jobs and these are difficult times, but the conflict between federal law and state law makes that work really challenging," Garrett said.

Washington County Chief Deputy District Attorney Kevin Barton said the courthouse must remain "a safe place for every witness and every victim whether they are or not a citizen, to ensure full access to justice without fear."

Barton said he personally hasn't seen ICE officers at the Washington County Courthouse and isn't aware of any colleagues who have either.

"But just because I haven't seen it, doesn't mean it's not happening," he said.

-- Everton Bailey Jr.

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Exhibit J

ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court

Critics argue it could deter others in the U.S. illegally from appearing in court to testify as witnesses or answer warrants. (March 15, 2017) Sign up for our free video newsletter here http://bit.ly/2n6VKPR

By James Queally

MARCH 16, 2017, 10:40 AM

Octavio Chaidez was walking out of a Pasadena courtroom with a client last month when four men jumped up from a hallway bench and rushed toward them.

The men asked his client's name. Then they pulled out badges.

"They say, 'You're Mr. So and So?' and he says, 'Yes,' " Chaidez said. "They show him a badge, and they say, 'We're from Immigration and Customs,' and they took him in."

Chaidez, who has worked as a defense attorney in Los Angeles County for nearly 15 years, said he had never seen federal Immigration and Customs Enforcement agents make an arrest inside the confines of a courthouse.

But in the past few weeks, attorneys and prosecutors in California, Arizona, Texas and Colorado have all reported teams of ICE agents — some in uniform, some not — sweeping into courtrooms or lurking outside court complexes, waiting to arrest immigrants who are in the country illegally.

On Thursday, the California chief justice asked the Trump administration to stop immigration agents from "stalking" the state's courthouses to make arrests.

"Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws," Tani Cantil-Sakauye wrote in a letter to Atty. Gen. Jeff Sessions and Homeland Security Secretary John F. Kelly. "Enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair."

ICE officials have defended the tactic, saying they make arrests in courthouses only when all other options have been exhausted. But activists, attorneys and prosecutors fear ICE's increased presence in courthouses could deter other immigrants without legal status from appearing in court to testify as witnesses or answer warrants,

San Francisco Dist. Atty. George Gascon called ICE's forays into courthouses "very shortsighted" because some immigrants here illegally will simply avoid court for fear of being arrested.

"The chilling impact that has on an entire community is devastating," he said.

ICE directs its agents to avoid making arrests in "sensitive locations," including schools, places of worship and hospitals, whenever possible, according to Virginia Kice, an agency spokeswoman.

That policy does not cover courthouses, Kice said, although agents normally will try to detain people at other locations before entering a courtroom. ICE's recent action in courthouses has been, in part, driven by an increase in the number of local law enforcement agencies that refuse to comply with ICE requests to detain suspects in county jails, she said.

"In years past, most of these individuals would have been turned over to ICE by local authorities upon their release from jail based on ICE detainers," Kice said "Now that many law enforcement agencies no longer honor ICE detainers, these individuals, who often have significant criminal histories, are released onto the street, presenting a potential public safety threat."

ICE has made arrests in courthouses before, but the tactic drew strong rebukes in California after a series of raids led to the capture of women seeking restraining orders, people paying parking tickets and even one couple getting married inside a Kern County courthouse in 2013, according to the American Civil Liberties Union.

ICE eventually stopped the practice, but activists fear the recent courthouse arrests signal the more aggressive stance taken by ICE and other immigration enforcement agents in the wake of President Trump's election after a campaign that focused largely on illegal immigration.

There are tactical advantages for agents with courthouse arrests, Kice said.

Suspects have to pass through metal detectors before entering courthouses, meaning they are unlikely to be armed. In recent months, ICE has arrested several suspects in courthouses in Portland, Ore., and Southern California who had prior convictions for sex crimes, drug trafficking and drunken driving, she said. The suspect who was arrested in the Pasadena courthouse last month was a Mexican national with a prior drug conviction, according to Kice.

While some of the courthouse arrests may allow ICE to capture people with violent pasts, others have focused on different segments of the immigrant population. On Feb. 9, a woman who had accused her husband of abuse was arrested while seeking a restraining order in an El Paso courthouse, according to Lucila Flores Camarena, an assistant county attorney in El Paso who oversees the agency's protective order unit. An undercover ICE agent was seated behind the woman, according to Flores Camarena, who said other women seeking protective orders also were in the courtroom.

Agents ultimately arrested the woman, Irvin Gonzalez Torres, outside the courtroom. But Flores Camarena said she was concerned that the presence of ICE agents in courthouses might cause some women to stay with their abusers, rather than risk going to court to seek a protective order for fear of deportation. In the weeks that followed, several other women revoked their requests to seek protective orders. Two of them specifically cited Torres' arrest, she said.

"It's a really horrific position to find yourself in," Flores Camarena said. "I can't feel safe in seeking help from the justice system because I now have this very real threat that I might be deported."

Last week, Denver City Atty. Kristi Bronson also told several media outlets that she had to dismiss prosecutions against four separate domestic violence suspects because the complaining witnesses, all of whom are in the country illegally, were afraid ICE might either learn their location through a court docket or send agents to the courthouse when they appeared to testify. Bronson's comments came weeks after a video surfaced showing ICE agents waiting to arrest someone outside a Denver courtroom.

A 24-year-old who was awaiting retrial on a felony assault case also was arrested by ICE agents inside a Phoenix courthouse last month, according to his attorney, Philippe Martinet. He had been accepted into the Deferred Action for Childhood Arrivals program, an Obama administration initiative aimed at protecting the children of immigrants in the country illegally from deportation.

Given this, Martinet said the arrest left many puzzled as to why ICE agents would go into a courthouse to arrest someone accepted into the DACA program.

ICE did not immediately respond to requests for comment on the arrest in Phoenix, but court records show Martinet's client, Erik Tovar-Andrade, was convicted of assault and unlawful flight from police in 2015. Prosecutors contended the charges stemmed from an incident that involved Tovar-Andrade violating a restraining order, but Martinet said his client was trying to escape from a group of people who had attacked him.

Some law enforcement leaders in California and throughout the country have repeatedly expressed concern that Trump's promise to dramatically expand immigration enforcement will erode trust between minority communities and local police departments, a bond already weakened by years of scrutiny over officers' use of force throughout the country. ICE also faced renewed scrutiny last month after the agency released a video showing immigration agents identifying themselves as police, a tactic decried by activists as unethical and police leaders as detrimental to local law enforcement's relationship with immigrant communities.

Mary Hearn, a spokeswoman for Los Angeles County Superior Court, said she had not received reports of ICE making arrests in area courthouses aside from the incident in Pasadena last month. But ICE's recent activities have sparked concerns among some judges, according to a court official who spoke to The Times on condition of anonymity. In late February, three separate judges called meetings with their staff and asked to be alerted if anyone noticed ICE agents inside their courtrooms, according to the official, who requested anonymity in order to speak candidly about the situation.

Still, court officials have no authority to interfere with ICE investigations, even when they set foot in county courthouses, Hearn said in a statement.

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Follow @JamesQueallyLAT for crime and police news in California.

Times staff writer Maura Dolan contributed to this report.

ALSO

Tensions flared among audience members as state Senate Committee took up bill on police and immigration enforcement

Here's why law enforcement groups are divided on legislation to turn California into a 'sanctuary state'

'Dreamer' targeted for deportation for speaking out on immigration, attorneys say

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UPDATES:

March 16, 10:40 a.m.: This article was updated with comment from the California chief justice.

3 p.m.: This article was updated with additional details from court records.

This article was originally published March 14

For The Record

MAR. 17, 2017, 2:40 PM

An earlier version of this article said that a 24-year-old man arrested by ICE agents in a Phoenix courthouse was awaiting retrial on a misdemeanor assault case. It was a felony case.

This article is related to: Assault, Crime, Immigration

Exhibit K

Key Findings

ICE in NYS Courts

Legal Service and Advocates Survey

Since the election, Immigration and Customs Enforcement (ICE) has substantially increased the number of immigrants it targets in New York State Courts. In the first six months of 2017, advocates have reported three times as many arrests or attempted arrests than were reported for all of 2016.

As a result, many advocates are hearing from immigrants that they have a profound fear of going to court. This includes immigrants who need access to the courts for orders of protection, to defend against criminal charges, and to vindicate their rights as tenants.

To better understand these concerns, a coalition of legal services and community based organizations sent out a survey to the field from June 12 - June 23. Two hundred twenty five (225) advocates and attorneys from 31 counties across New York State participated. The participants practice in criminal, family, and civil courts. View more results at **www.immdefense.org/ice-courts-survey**

1/3

have seen ICE agents or vehicles in and around the courts

IMMIGRANTS SCARED TO GO TO COURT

3 OUT OF 4

legal service providers report that clients have expressed fear of going to court because of ICE

29%

have worked with immigrants who have failed to appear in court due to fear of ICE

WHEN I TOLD MY CLIENT ICE WAS PRESENT TO ARREST HIM...TEARS STREAMED DOWN HIS FACE AND HIS HANDS SHOOK WITH FEAR. HE SAID, "MY CHILDREN, WHAT WILL THEY DO WITHOUT ME?"

I EXPLAINED TO [MY CLIENT] THAT ICE WAS THERE. SHE BEGAN CRYING AND TREMBLING AND HAD TO BE CALMED BY A FRIEND... AN INDIVIDUAL SEATED BEHIND US SAID SHE WOULD TELL HER FRIENDS TO NOT COME TO COURT BECAUSE THEY WOULD BE DEPORTED.

IDP Immigrant Defense Project

The Legal Aid Society — Making the Case for Humanity

Latino Justice PRLDEF

Bronx Legal Services

Legal Services NYC

HER Justice Shift the Power

Sanctuary for Families

Make the Road New York

CHILLING EFFECT ON SURVIVORS OF VIOLENCE

A third of the survey participants work with survivors of violence

67% have had clients who **decided not to seek help from the courts** due to fear of ICE

37% have worked with immigrants who have **failed to pursue an order of protection** due to fear of ICE

"[MY CLIENT] IS AFRAID TO GO TO COURT TO SEEK AN ORDER OF PROTECTION AGAINST HER HUSBAND, WHO ABUSED HER FOR MANY YEARS AND KIDNAPPED THEIR 8 YEAR OLD SON... SHE IS TERRIFIED THAT BEING IN COURT PUTS HER AND HER FAMILY AT GREATER RISK OF BEING DEPORTED."

"[ONE] CLIENT'S HUSBAND THREATENED TO CALL IMMIGRATION OFFICIALS SO THAT THEY WOULD "TAKE HER AWAY' ON THE DATE OF HER NEXT COURT APPEARANCE AND HAVE HER DEPORTED... NOT APPEARING FOR THE NEXT COURT DATE WOULD RESULT IN HER ABUSIVE HUSBAND GAINING CUSTODY OF HER CHILDREN."

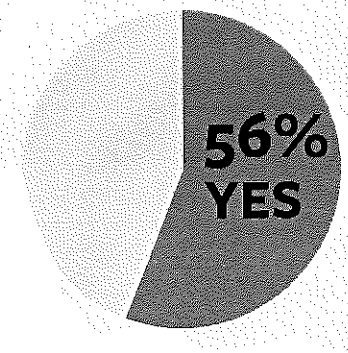
48% have worked with immigrants who have **failed to seek custody or visitation** due to fear of ICE

46% have worked with immigrants who have expressed **fear of serving as a complaining witness**

TENANTS AFRAID TO GO TO HOUSING COURT

A sixth of the respondents work with tenants in Housing Court

Have clients expressed fear of filing a housing court complaint due to fear of ICE?



"TENANTS REGARDLESS OF STATUS ARE TYPICALLY EXTREMELY SCARED AND SKEPTICAL ABOUT FIGHTING FOR THEIR RIGHTS IN COURT PROCEEDINGS. THIS FEAR HAS TRANSFORMED INTO CRIPPLING PARALYSIS IN THE WAKE OF ICE ACTIVITY IN NEW YORK STATE COURTS."

225 Respondents participated in this survey conducted June 12 - June 23, 2017. They include attorneys and advocates who work with immigrants and family members. The respondents work in criminal, family, housing, employment, education, and immigration law, and practice in criminal, family, and civil courts in New York State. They work in 31 counties from across New York State including all five counties of NYC; Long Island; Westchester; the Capitol Region; Western and Central New York.

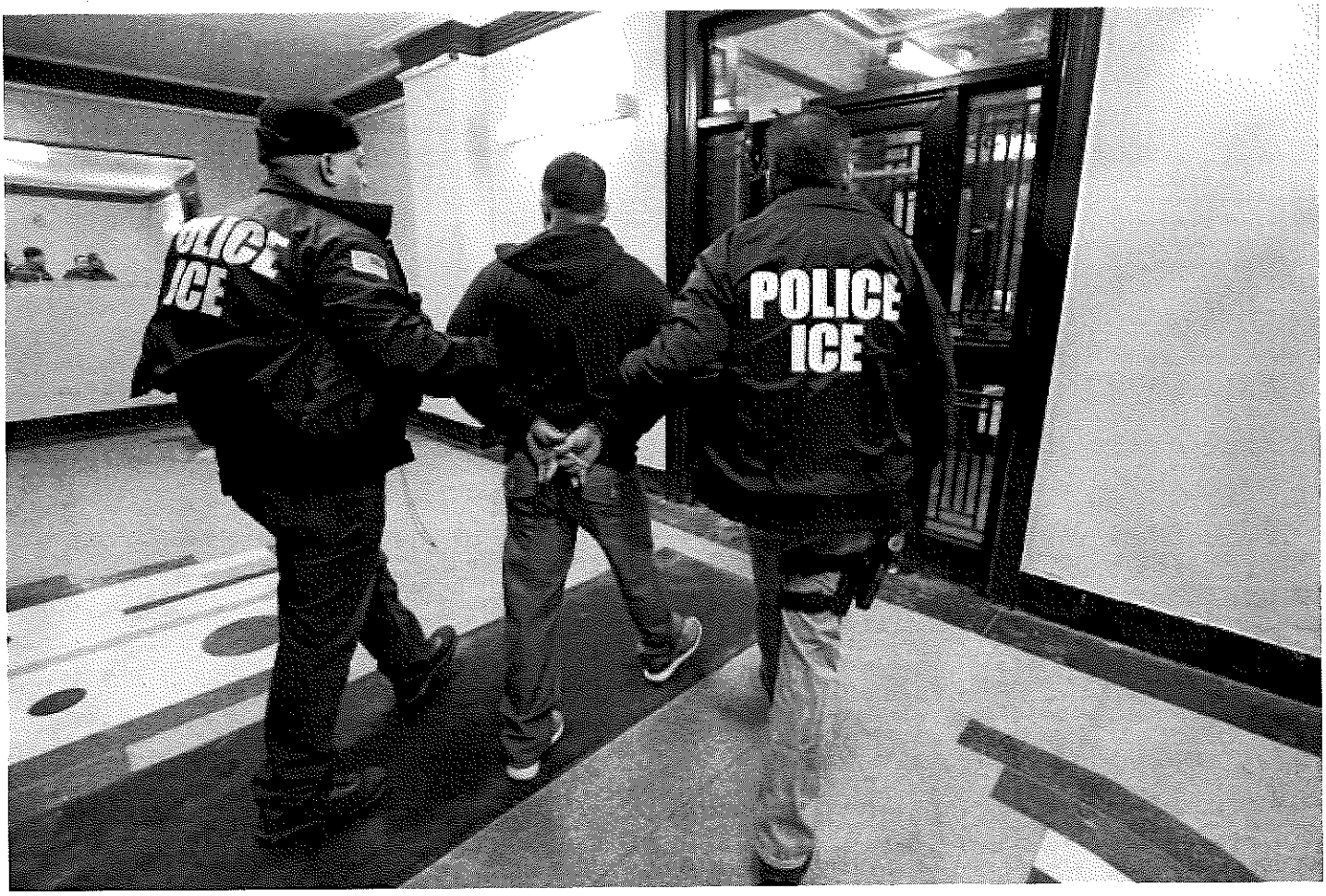
For more information contact Lee Wang at lee@immdefense.org or go to www.immdefense.org/ice-courts-survey

Exhibit L

EXCLUSIVE

Immigrant violence victims fear N.Y. courts as ICE lingers nearby

BY VICTORIA BEKIEMPIS
NEW YORK DAILY NEWS Thursday, June 29, 2017, 4:00 AM



Forty-four of those surveyed said they had clients who ICE arrested in state courts, the Immigrant Defense Project data claims. (RICHARD DREW/AP)

U.S. Immigration and Customs Enforcement's increasing presence in state courts has had a "chilling effect" on immigrant survivors of violence, advocates claim in a forthcoming survey the Daily News obtained.

The Immigrant Defense Project conducted a statewide survey, including all five New York City boroughs, of 225 advocates and lawyers from 31 counties over three weeks in June.

Those surveyed work in criminal, family and civil courts.

One-third of the participants said they had spotted ICE officers, as well as agency vehicles, around state courts.

including in the five city boroughs.

And 44 of those surveyed said they had clients who ICE arrested in state courts, the Immigrant Defense Project data claims.

One-third of respondents, or 75, specifically work with immigrants victimized by violent crime.

Another 13% specifically work with immigrants in housing court.

Of those advocates working with immigrant violence victims, 70% have had clients who are now too scared to get help in court because of ICE's increased presence there, according to the soon-to-be-released report.

Immigrant violence victims fear N.Y. courts as ICE lingers nearby

Without certification proving they were victims of violent crime, they can't access a special visa program for victims of violent crime, said an Immigrant Defense Project staff attorney who led the project. (JAMES KEIVOM/NEW YORK DAILY NEWS)

More than half of that group, 37%, said they had clients who didn't seek orders of protection because they fear ICE.

The same percentage of those advocates said they had clients who didn't seek a certification proving they were victims

of violent crime.

Without the certification, they can't access a special visa program for victims of violent crime, said Lee Wang, the Immigrant Defense Project staff attorney who led the project.

This has had a "chilling effect on survivors of violence," the Immigrant Defense Project contends.

Of those surveyed who work specifically with victims, 48% claim to have worked with immigrants who didn't pursue custody or visitation rights because of ICE concerns.

And 50% of the advocates said they had clients who feared going to court because their abusive partners cruelly threatened ICE would be present.

Tags:

DAILY NEWS EXCLUSIVES IMMIGRATION HOMELAND SECURITY

Send a Letter to the Editor

JOIN THE CONVERSATION:

Exhibit M

FAQ on Sensitive Locations and Courthouse Arrests

ERO

These frequently asked questions address ICE's sensitive locations policy and courthouse arrests.

Senstive Locations

Expand All Collapse All

Does ICE's policy sensitive locations policy remain in effect?

Yes. ICE has previously issued and implemented a policy concerning enforcement actions at sensitive locations. These FAQs are intended to clarify what types of locations are covered by those policies.

How does ICE decide where a specific enforcement action will take place? What factors are considered when making such a decision?

Determinations regarding the manner and location of arrests are made on a case-by-case basis, taking into consideration all aspects of the situation, including the target's criminal history, safety considerations, the viability of the leads on the individual's whereabouts, and the nature of the prospective arrest location.

What does ICE policy require for enforcement actions to be carried out at sensitive locations?

Pursuant to ICE policy, enforcement actions are not to occur at or be focused on sensitive locations such as schools, places of worship, unless;

1. exigent circumstances exist;
2. other law enforcement actions have led officers to a sensitive location, or
3. prior approval is obtained from a designated supervisory official.

The policy is intended to guide ICE officers and agents' actions when enforcing federal law at or focused on sensitive locations, to enhance the public understanding and trust, and to ensure that people seeking to participate in activities or utilize services provided at any sensitive location are free to do so, without fear or hesitation.

What does ICE mean by the term "sensitive location"?

Locations treated as sensitive locations under ICE policy would include, but are not be limited to:

- Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;
- Medical treatment and health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;
- Places of worship, such as churches, synagogues, mosques, and temples;
- Religious or civil ceremonies or observances, such as funerals and weddings; and
- During a public demonstration, such as a march, rally, or parade.

What is considered an enforcement action as it relates to sensitive locations?

Enforcement actions covered by this policy are apprehensions, arrests, interviews, or searches, and for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include activities such as obtaining records, documents, and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, guarding or securing detainees, or participating in official functions or community meetings.

Are sensitive locations located along the international border also protected?

The sensitive locations policy does not apply to operations that are conducted within the immediate vicinity of the international border, including the functional equivalent of the border. However, when situations arise that call for enforcement actions at or near a sensitive location within the immediate vicinity of the international border, including its functional equivalent, agents and officers are expected to exercise sound judgment and common sense while taking appropriate action, consistent with the goals of this policy.

Examples of operations within the immediate vicinity of the border are, but are not limited to, searches at ports of entry, activities undertaken where there is reasonable certainty that an individual just crossed the border, circumstances where ICE has maintained surveillance of a subject since crossing the border, and circumstances where ICE is operating in a location that is geographically further from the border but separated from the border by rugged and remote terrain.

Will enforcement actions ever occur at sensitive locations?

Enforcement actions may occur at sensitive locations in limited circumstances, but will generally be avoided. ICE officers and agents may conduct an enforcement action at a sensitive location if there are exigent circumstances, if other law enforcement actions have led officers to a sensitive location, or with prior approval from an appropriate supervisory official.

When may an enforcement action be carried out at a sensitive location without prior approval?

ICE officers and agents may carry out an enforcement action at a sensitive location without prior approval from a supervisor in exigent circumstances related to national security, terrorism, or public safety, or where there is an imminent risk of destruction of evidence material to an ongoing criminal case. When proceeding with an enforcement action under exigent circumstances, officers and agents must conduct themselves as discreetly as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

Are court houses considered a sensitive location and covered by the sensitive locations policy?

No. ICE does not view courthouses as a sensitive location.

Where should I report an ICE enforcement action that I believe may be inconsistent with these policies?

There are a number of locations where an individual may lodge a complaint about a particular ICE enforcement action that may have taken place in violation of the sensitive locations policy. You may find information about these locations, and information about how to file a complaint, on the DHS or ICE websites. You may contact ICE Enforcement and Removal Operations (ERO) through the Detention Reporting and Information Line at (888) 351-4024 or through the ERO information email address at ERO.INFO@ice.dhs.gov, also available at https://www.ice.gov/webform/ero-contact-form. The Civil Liberties Division of the ICE Office of Diversity and Civil Rights may be contacted at (202) 732-0092 or ICE.Civil.Liberties@ice.dhs.gov.

Court House Arrests

Expand All Collapse All

Is it legal to arrest suspected immigration violators at a courthouse?

Yes, the arrest of persons in a public place based upon probable cause is legally permissible. ICE officers and agents are expressly authorized by statute to make arrests of aliens where probable cause

exists to believe that such aliens are in violation of immigration laws.

Why does ICE make arrests at courthouses? Are these planned ahead of time?

ICE, like other federal, state, and local law enforcement agencies, makes arrests at courthouses to ensure the laws within the agency's jurisdiction are enforced in a safe and efficient manner. ICE arrests at courthouses are the result of targeted enforcement actions against specific individuals. As with all planned enforcement actions, ICE officers exercise judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. Consistent with officer and public safety, ICE officers also make every effort to limit the time spent at the planned place of arrest.

Why do courthouse arrests seem to be occurring more frequently?

In years past, most individuals arrested at a courthouse would have been turned over to ICE by local authorities upon their release from jail based on ICE detainers. When criminal custody transfers occur inside the secure confines of a jail or prison, it's far safer for everyone involved, including officers and the person being arrested. Now that some law enforcement agencies no longer honor ICE detainers, these individuals, who often have criminal histories, are released onto the street, presenting a potential public safety threat. Because courthouse visitors are typically screened upon entry to search for weapons and other contraband, the safety risks for the arresting officers, the arrestee, and members of the community are substantially diminished. In such instances where ICE officers and agents seek to conduct an arrest at a courthouse, every effort is made to take the person into custody in a secure area, out of public view, but this is not always possible.

Are there other advantages to arresting fugitives at a courthouse?

Yes, when ICE officers and agents have to go out into the community to proactively locate these criminal aliens, regardless of the precautions taken, it puts personnel and potentially innocent bystanders at risk. Moreover, tracking down priority fugitives is highly resource-intensive. It is not uncommon for criminal alien targets to utilize multiple aliases and provide authorities with false addresses. Many do not have a stable place of employment. Absent a viable address for a residence or place of employment, a courthouse may afford the most likely opportunity to locate a target and take him or her into custody.

Last Reviewed/Updated: 06/13/2017

Exhibit N

LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND ECONOMIC JUSTICE

Serving Greater Boston Since 1968

Immigration Enforcement At Massachusetts Courthouses: A Fact Sheet

Background

Federal immigration authorities have traditionally avoided immigration enforcement at courthouses. This has been done in recognition of the fact that we as a nation are stronger if immigrant families are not deterred from participating in court proceedings. If individuals fear that going to court will subject them or their families to immigration enforcement, then they become reluctant to report crimes or serve as witnesses in legal proceedings. Battered women are chilled from seeking restraining orders against their abusers, and in general the public's sense of security in accessing justice is undermined.

Following the election of President Trump in November 2016, however, immigrant rights advocates began hearing anecdotally about an unprecedented increase in immigration enforcement activities at courthouses. Subsequently, Massachusetts' Supreme Judicial Court issued a ruling in July 2017 (*Commonwealth v. Lunn*), prohibiting state officials from detaining individuals based solely on federal civil immigration detainers.

Information Uncovered Through Public Records Requests

The Lawyers' Committee responded to these events by filing public records requests with both Immigration and Customs Enforcement (ICE) and the Massachusetts Trial Courts, to uncover the depth of the problem of ICE enforcement activities in Massachusetts courthouses from 2016-2017.

Key information uncovered includes:

- **Targeting courthouses is a new and intentional policy of the Trump Administration.**
  - Internal e-mails between ICE officials explicitly state that "[c]urrent ICE policy supports enforcement actions at courthouses"[1]
  - ICE officials include enforcement activity at and around courthouses as one of several "new tactics with regard to locating alien."[2]
- **Targeting courthouses is a new federal tactic employed in direct response to Massachusetts court decisions that ICE deemed to be unfavorable.**

[1] "ICE internal email Subject RE: Arrest at federal dist ct today?", June 23, 2017 at 2.
[2] "ICE internal email Subject: RE: Arrest at federal dist ct today?", June 23, 2017 at 1.

- Even before the *Lunn* decision, ICE officials were critical of guidance that Massachusetts court officials gave to court personnel about the limits of permissible cooperation with ICE ("The recent SJC guidance…has had an immediate and overwhelming impact on our field enforcement operation….the current framework is desperately lacking in efficiency").[3]
- According to ICE officials: "Massachusetts courts blatantly, and willfully disregard ICE's requests to detain aliens on a daily basis and cannot be relied on to honor our requests."[4]

- **ICE enforcement at courthouses is not limited to targeting people accused of violent crimes.**
  - Recent courthouse detentions have targeted people accused of motor vehicle violations such as driving with a suspended license or operating under the influence[5]
  - Increased enforcement against people accused of low-level offenses is consistent with administration statements that they are going to newly target a broader range of individual eliminating important enforcement priorities established in the Obama Administration for national security and public safety threats.[6]
- **Judges are expressing significant concerns about the effect that these targeting schemes will have on the ability of victims and witnesses to effectively use the courts.**
  - On February 23, 2017, Chief Justice of the Trial Court Paula Carey sent a letter to the Special Agent in Charge for ICE in Massachusetts. The letter expressed deep concern that victims seeking abuse prevention orders and witnesses going to court would be chilled from accessing the court system and requested that immigration officials respect this important interest. Justice Carey wrote:

    "It is essential that [victims of domestic violence and civil litigants] be free to seek relief from the Court without fear that their presence in Court will be the cause of an immigration enforcement action. If not, the unfortunate result will be that public safety will decrease, communities will become less safe and perpetrators of domestic violence will feel empowered to abuse their victim with impunity. Further, individuals who currently come to our Courts to help themselves or a loved one in obtaining civil commitment for detox or treatment will be reluctant to come forward if the fear immigration consequences. Any increased immigration enforcement in these civil matters would mean fewer applications, more withdrawn cases, and more defaults, resulting inevitably in violence, injustice, and threats to public safety. In my

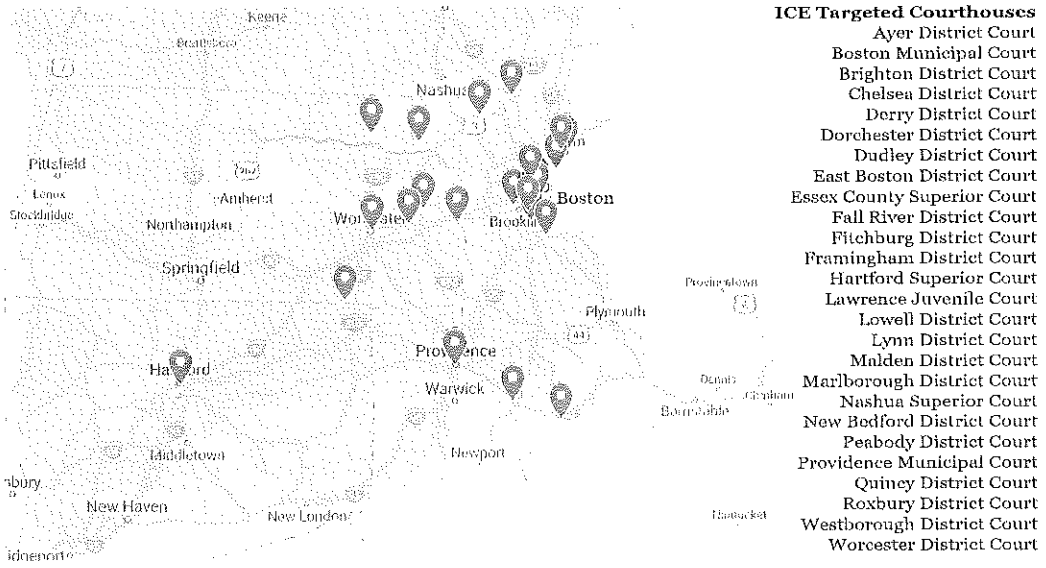
[3] "ICE internal email Subject: Read this and add whatever you think is needed", May 5, 2017 at 1.
[4] "ICE internal email Subject: RE: Arrest at federal dist ct today?", June 23, 2017 at 1.
[5] *See* Collected Massachusetts Trial Courts Security Department Incident Reports.
[6] *See Executive Order: Enhancing Public Safety in the Interior of the United States*, Office of the White House Press Secretary (Jan. 25, 2017), *available at* https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.

view, it would ultimately affect the Court's ability to carry out its mission to provide the protections guaranteed by the law of this Commonwealth."[7]

This letter, detailing the dangers of ICE enforcement at courthouses, was part of a national call by many judges across jurisdictions who sought to curtail this type of ICE action.[8]

- Judge Indira Talwani of the U.S. District Court for the District of Massachusetts is reported to have told an immigration enforcement attorney that "she considers [an ICE arrest of an individual entering a courthouse] a violation of a court order and obstructing justice...she thinks that ICE should not be arresting anyone entering a state or federal courthouse."[9]

- **ICE detentions are occurring in and around numerous different courthouses in Massachusetts.** A map of the courthouses recently targeted for enforcement action by ICE:



[7] "Letter from Chief Justice Paula M. Carey to Special Agent in Charge Matthew Etre" dated February 23, 2017.
[8] Top court officials in other States have similarly called upon ICE to curtail immigration enforcement activities at and around their States' courthouses. *See Open Letter*, Tani Cantil-Sakauye, *available at* http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses (California); *NJ Top Judge Asks ICE To Stop Arresting Immigrants* (Apr. 20, 2017), *available at* http://www.nj.com/politics/index.ssf/2017/04/nj_top_judge_asks_ice_to_stop_arresting_immigrants.html (New Jersey); *Oregon Chief Justice Urges Feds To Keep Immigration Agents Out Of Courthouses* (Apr. 7, 2017), *available at* http://www.oregonlive.com/portland/index.ssf/2017/04/oregons_chief_justice_urges_fe.html (Oregon); *State Supreme Court Chief Justice To Feds: Keep Immigration Agents Away From Courthouses* (Mar. 22, 2017), *available at* http://q13fox.com/2017/03/22/state-supreme-court-chief-justice-to-feds-keep-immigration-agents-away-from-courthouses/ (Washington).
[9] "ICE internal email Subject: Arrest at federal dist ct today?", June 22, 2017 at 1.

Recent Developments

Massachusetts Trial Courts have responded to the decision in *Commonwealth v. Lunn* with further guidance for how trial court personnel should interact with immigration enforcement. The guidance tracks the holding in *Lunn* and states:

> Trial Court employees shall not hold any individual who would otherwise be entitled to release based solely on a civil immigration detainer or civil immigration warrant. Trial Court employees do not have authority to detain an individual based solely on a civil immigration detainer. Nor do Trial Court employees have the authority to comply with a civil warrant issued by a DHS official for the arrest of an individual based solely on a civil immigration violation. Trial Court employees shall not serve civil immigration detainers or civil immigration warrants. Individuals subject to civil immigration detainers or warrants shall be processed and handled in the same manner as all other individuals coming before the court. No person shall be held in custody for any shorter or longer period than the person would otherwise be held based solely on a civil immigration detainer or civil immigration warrant. [10]

The targeting of courthouses for immigration enforcement activities appears likely to intensify in the future. In September 2017, the Trump Administration announced immigration enforcement actions specifically targeted at Massachusetts and other jurisdictions that the Administration deemed to be "sanctuary jurisdictions."[11]

If you believe your rights have been violated, please contact the Lawyers' Committee for Civil Rights and Economic Justice at (617) 482-1145 or submit an intake online at http://www.lawyerscom.org/

[10] Executive Office Transmittal 17-13, Chief Justice Paula M. Carey (Nov. 10, 2017).
[11] *See State Democrats Blast ICE Raid Targeting Sanctuary Cities* (Sept. 29, 2017), *available at* https://www.bostonglobe.com/metro/2017/09/29/families-immigrants-arrested-ice-raid-calling-advocates-for-help/ukvgXI9g5FTqF8DCSpULIK/story.html.

Exhibit O

The Washington Post

National Security

DHS: Immigration agents may arrest crime victims, witnesses at courthouses

By Devlin Barrett April 4

Immigration agents may arrest crime victims and witnesses at courthouses, a homeland security official said Tuesday, highlighting a growing dispute between the Trump administration and some state court officials who fear the practice will hinder law enforcement work in their jurisdictions.

"Just because they're a victim in a certain case does not mean there's not something in their background that could cause them to be a removable alien," David Lapan, a Department of Homeland Security spokesman, said in a briefing to reporters. "Just because they're a witness doesn't mean they might not pose a security threat for other reasons."

DHS Secretary John F. Kelly and Attorney General Jeff Sessions are in a public disagreement with court officials who have complained that Immigration and Customs Enforcement agents going to local courthouses could scare some victims and witnesses away from reporting or providing evidence of crimes.

Last month, California Chief Justice Tani G. Cantil-Sakauye sent a letter to Kelly and Sessions decrying the practice, saying courthouses "serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws."

In response, Kelly and Sessions wrote a letter to Cantil-Sakauye saying ICE has a long-standing policy of making arrests at courthouses because it is often the safest place to apprehend criminal suspects, after they have passed through courthouse security screening for weapons. They added that some jurisdictions actively hinder ICE from enforcing immigration laws by "denying requests by ICE officers and agents to enter prisons and jails to make arrests." Such policies, they wrote, made it more necessary to arrest undocumented immigrants at courthouses.

Lapan, the DHS official, made clear in Tuesday's comments that courthouse arrests by ICE agents are not limited to people who would otherwise be apprehended in a jail or a prison.

"I can't give a blanket statement that says every witness and victim is somehow untouchable, because they may have circumstances in their own case that would make them again subject to arrest," he said, adding that the factors that could lead ICE agents to arrest a victim or a witness "could be any number of things — again, the categories that we've talked about that make them subject to arrest or potential removal still apply to somebody who might him or herself be a victim."

While it may be a stated policy to arrest crime victims in some cases, in practice, it seems to happen only rarely.

Critics point to a recent case in Texas as particularly egregious because the woman detained by ICE had gone to court to file a protective order against an alleged abuser, although she herself reportedly had a criminal record and had been previously deported.

Immigration officials offer a special visa program to allow victims of domestic violence, sexual assault and human trafficking to stay in the country. If someone is the immediate victim or witness to a major crime, ICE agents consider that fact when making individual determinations.

Read more:

5 things about immigration that haven't changed under President Trump

Devlin Barrett writes about national security and law enforcement for The Post. He has previously worked at the Wall Street Journal, The Associated Press, and the New York Post, where he started as a copy boy.
Follow @DevlinBarrett

Exhibit P

March 29, 2017

The Honorable Tani G. Cantil-Sakauye
Chief Justice
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Dear Chief Justice Cantil-Sakauye:

Thank you for your March 16, 2017 letter regarding concern about reports from some California trial courts that suggest law enforcement officers, engaged in the performance of their duties with U.S. Immigration and Customs Enforcement (ICE), are "stalking" individuals at courthouses to make arrests.

As the chief judicial officer of the State of California, your characterization of federal law enforcement officers is particularly troubling. As you are aware, stalking has a specific legal meaning in American law, which describes criminal activity involving repetitive following or harassment of the victim with the intent to produce fear of harm. The arrest of persons in a public place based upon probable cause has long been held by the United States Supreme Court as constitutionally permissible. *See U.S. v. Watson*, 432 U.S. 411 (1976). Further, ICE officers and agents are authorized by federal statute to make arrests of aliens where probable cause exists to believe that such aliens are in violation of immigration laws. *See* 8 U.S.C. § 1357.

To be clear, the arrest of individuals by ICE officers and agents is predicated on investigation and targeting of specific persons who have been identified by ICE and other law enforcement agencies as subject to arrest for violations of federal law. ICE does not engage in "sweeps" or other indiscriminate arrest practices.

Some jurisdictions, including the State of California and many of its largest counties and cities, have enacted statutes and ordinances designed to specifically prohibit or hinder ICE from enforcing immigration law by prohibiting communication with ICE, and denying requests by ICE officers and agents to enter prisons and jails to make arrests. Such policies threaten public safety, rather than enhance it. As a result, ICE officers and agents are required to locate and arrest these aliens in public places, rather than in secure jail facilities where the risk of injury to the public, the alien, and the officer is significantly increased because the alien can more readily access a weapon, resist arrest, or flee. Because courthouse visitors are typically screened upon entry to search for weapons and other contraband, the safety risks for the arresting officers and persons being arrested are substantially decreased.

We agree with you that the enforcement of our country's immigration laws is necessary, and that we should strive to ensure public safety and the efficient administration of justice. Therefore, we would encourage you to express your concerns to the Governor of California and local officials who have enacted policies that occasionally necessitate ICE officers and agents to make arrests at courthouses and other public places.

The men and women of federal law enforcement perform their duties with the highest degree of professionalism and public service. As ICE undertakes the necessary enforcement of our country's immigration laws, its officers and agents will continually improve their operations to meet the challenges to effective enforcement, including state and local policies that hinder their efforts. While these law enforcement personnel will remain mindful of concerns by the public and governmental stakeholders regarding enforcement activities, they will continue to take prudent and reasonable actions within their lawful authority to achieve their mission.

Sincerely,

Jefferson B. Sessions III
Attorney General

John F. Kelly
Secretary of Homeland Security

Exhibit Q

FEDERAL IMMIGRATION OFFICIALS WILL CONTINUE NABBING SUSPECTS AT NEW YORK COURTHOUSES TO SUBVERT SANCTUARY CITY STATUS

BY [illegible] SANDERS ON 9/15/17 AT 2:09 PM

[illegible]

IMMIGRATION

NYPD

NEW YORK

NEW YORK CITY

BROOKLYN

Federal immigration officers in New York doubled-down on arresting undocumented immigrants as they make appearances at courthouses this week—a decision that the local district attorney says is an "outrageous" tactic that "sends a chilling effect" and "undermines public safety."

Defying New York's status as a "sanctuary city" for undocumented immigrants, Immigration and Customs Enforcement (ICE), officers aggressively snatched four men outside a criminal court building in Brooklyn on Thursday.

"This was the most visible they've ever been," Scott Hechinger, an attorney with the Brooklyn Defender Service, which provides legal representation to individuals who cannot afford a lawyer, told *Newsweek*. "It's the most brazen that we've seen them be."

Hechinger said all four arrested men came to court that day to face misdemeanor trespass charges for being on a roof. Only one of the men was previously convicted of a non-immigration crime.

Brooklyn's Acting District Attorney Eric Gonzalez said the ICE presence deters victims and innocent people from coming to court, citing a much-covered case of William Siguencia Hurtado, an undocumented immigrant who testified in two court cases and helped put five murderers in prison only to be detained by ICE during his annual check-in, the *New York Daily News* reported.

"It is outrageous that ICE is using courts to round up immigrants, a tactic that sends a chilling effect, undermines public safety and subverts due process," Gonzalez said, calling courthouses "sensitive" areas, much like schools, hospitals and churches, where ICE does not operate.

But an ICE spokeswoman, Rachael Yong Yow, defended the practice of arresting people at courthouses.

"If that's the only place we can find them, why wouldn't we?" she said. "We will continue to make those arrests."

The latest arrests by ICE are part of an ongoing battle between federal immigration officials and the New York City government. In January, Mayor Bill de Blasio reminded the NYPD to not comply with ICE requests to detain undocumented immigrants. Since then, the NYPD has refused 724 requests this year, a number that increased 300 percent since April, the department told *Newsweek*.

For ICE agents, those limitations provide a logistical problem. Since the NYPD refuses to detain immigrants until ICE can arrest them for their illegal status, courthouses are an alternative because everyone inside the building has already been screened "for weapons and other contraband," Yong Yow

said.

"As such, ICE plans to continue arresting individuals in courthouse environments."

Hechinger, the public defender, believes that the court system should be sanctuaries where people can fulfill their court obligations without fear of deportation, noting that it deters witnesses, victims and family members from seeking justice or legal rights.

"The fact that ICE has a presence there, you can feel and see a difference in our immigrant clients," he said.

Outside the courthouse this week, ICE agents identified themselves to court officials, said Cameron Mease, a staff attorney for Brooklyn Defenders who witnessed one of the arrests.

"It caught my eye," Mease said. "It was a number of plainclothes agents pretty aggressively throwing this guy against a fence, wrenching his arms behind his back and arresting him."

Immigration agents outside the Brooklyn Criminal Court at 120 Schermerhorn arrested a man who appeared at court over a misdemeanor trial for trespassing.

CAMERON MEASE, BROOKLYN DEFENDER SERVICES

ICE says the four detained men are affiliated with the Niños Malos gang, making them a public safety threat and subject to deportation. An immigration judge will now decide if they are to be deported.

It is unclear if the men are gang members.

Exhibit R

timesunion http://www.timesunion.com/news/article/ICE-arrests-Mexican-man-outside-Saratoga-city-12327064.php

ICE arrests Mexican man outside Saratoga city court

Saratoga Springs City Court Judge Jeffrey Wait (submitted photo)

SARATOGA SPRINGS - Immigration and Customs Enforcement was back in the city on Thursday, arresting an undocumented 21-year-old Mexican man who was in court for an arraignment on a DWI charge.

Daniel Reyes-Ramirez, who has lived in the U.S. since he was 16 years old, was taken away by ICE only moments after he stepped out of the courtroom where his charge was reduced to a traffic violation.

His attorney Mark Kokosa was stunned.

"My client has no criminal history, no warrants for his arrest," Kokosa said. "He had a BAC of .09, which generally is reduced to a traffic infraction. That's what happened. Daniel is just a kid with a petty charge."

Related Stories

Residents seek answers on ICE raids

Residents concerned about local ICE raids

ICE returns to Saratoga, arresting 8 from Mexico

Raids by ICE back in Spa City

Concern grows on state's farms

Kokosa, who works from an office in Latham, said the incident occurred while city Judge Jeffrey Wait was presiding. Kokosa said that Wait would not let ICE inside the courtroom.

"The judge said to the bailiff, so everyone in the courtroom heard, 'you don't work for them, you work for me,'" Kokosa said.

While ICE waited outside near security, Wait then reduced Reyes-Ramirez's charge to a traffic infraction. After some back and forth in the judge's chamber, the judge also told Reyes-Ramirez to call his family because the Office of Court Administration had ordered him not to provide Reyes-Ramirez sanctuary in the courtroom.

60

"The judge allowed him to go to a corner of the courtroom so he could tell his family to not look for him tonight," Kokosa said. "The courtroom is a place for justice, for fairness. I don't want it to become a feeding ground. We don't want the court to become a political circus."

Judge Wait declined to comment on the matter.

OCA policy states that the state court system "permits law enforcement agencies to act in pursuit of their official legal duties in the New York State courthouses, provided that the conduct in no way disrupts or delays court operations or compromises public safety or court decorum."

Lucien Chalfen, spokesman for OCA, said that only about 50 people have been arrested by ICE outside of New York courthouses this year. Most of those arrests occurred in New York City.

ICE spokesman Khaalid Walls said that ICE only goes to a courthouse after all other options are exhausted. He pointed to the agency's website which indicates that courthouse arrests are likely to be more common.

"Now that some law enforcement agencies no longer honor ICE detainers, these individuals, who often have criminal histories, are released onto the street, presenting a potential public safety threat. Because courthouse visitors are typically screened upon entry to search for weapons and other contraband, the safety risks for the arresting officers, the arrestee, and members of the community are substantially diminished," ICE's website reads. "In such instances where ICE officers and agents seek to conduct an arrest at a courthouse, every effort is made to take the person into custody in a secure area, out of public view, but this is not always possible."

This wasn't possible in Saratoga Springs because the courtroom leads to a public hallway where Reyes-Ramirez was arrested in front of court security and City Hall employees.

Kokosa says he was told that Reyes-Ramirez will go to Albany County jail and then be transported to Batavia before being deported. His uncle, who was with him and has permanent resident status, immediately called an immigration lawyer.

"I've worked with undocumented clients before," Kokosa said. "What am I going to tell them? I'm going to have to tell them if you go to court for a minor charge, you might walk out in shackles and be sent back to another country where you haven't been for years. It's going to scare the bejesus out of people."

Mayor Joanne Yepsen was also surprised by ICE's action.

"This is another very unfortunate situation," Yepsen said. "The arrest by ICE today in the city's courthouse is another example of the significant change we've seen in how the federal agents are exercising their authority. After having pled guilty to a traffic infraction, he was taken into custody. "

Kokosa applauds Wait's efforts to protect Reyes-Ramirez.

"He tried to keep the wolves at bay," Kokosa said of Wait. "I have the utmost praise for the judge."

Walls said that Reyes-Ramirez will remain in ICE custody pending his removal proceedings.

Exhibit S

The Saratogian (http://www.saratogian.com)

Local authorities: We will honor ICE warrants

By Kyle Hughes, NYSNYS News

Thursday, November 17, 2016

ALBANY >> With one big exception, there are no legal barriers to authorities in New York cooperating with President-elect Donald Trump's plans to step up the deportation of illegal immigrants after he takes office in January.

The glaring exception is NYC, the only place in New York that appears to have a "Sanctuary City" law that mandates non-cooperation with immigration officials in routine non-criminal cases, though measures have been talked about in the past in Albany, Ithaca and other communities.

Immigration groups that have identified Rensselaer, Saratoga and other counties around the state as sanctuary localities are putting out incorrect information about whether they will honor federal Immigration and Customs Enforcement (ICE) detainee orders, officials said this week.

"If the detainer is legitimate and the person is here illegally, we will detain that person until such time as ICE removes them," Rensselaer County Undersheriff Edward Bly said Thursday. "Somehow they took that in a context that we weren't going to honor ICE detainers. That's absolutely not true."

The Saratoga County Sheriff's Office also said it honors ICE warrants.

"We are aware that we are listed as a sanctuary county which is not true," a spokesman for Saratoga County Sheriff Michael Zurlo said this week. "We are in the process of taking steps to get removed from that list."

Others counties identified as "non-cooperative" with ICE by the Center for Immigration Studies include Franklin, St. Lawrence, Wayne, Onondaga, Nassau and Suffolk counties. The Washington, D.C., think tank describes itself as "low-immigration, pro-immigrant."

A spokesperson for the group was not immediately available for comment Thursday. Both Saratoga and Rensselaer counties have told the group to remove the incorrect information from their website.

The NYS Sheriffs' Association said Thursday some confusion may have arisen a result of federal court rulings that said detainees cannot be held because of their immigration status without a legal warrant.

"It's my understanding that sheriffs and all other law enforcement are still in close cooperation with ICE, so that now they ... give ICE advance warning when they are about to release someone ICE may have an interested in if they are aware of that knowledge," said Alex Wilson, associate counsel with the Sheriffs' Association. "They won't need to detain anybody. ICE will just be there to pick someone up if they have an outstanding immigration problem once they are released from a jail or (state) prison."

In 2014, NYC Mayor Bill de Blasio and the city council enacted a law to prohibit the transfer of custody to ICE unless the prisoner is named in a warrant, is on a terrorist watch list, or has a violent criminal record.

The new law replaced an old system where city jailers alerted ICE as soon as an immigrant was in police custody. The federal agents determined whether to begin deportation proceedings.

The issue of immigration helped propel Trump to victory on November 8. Since then, Gov. Andrew Cuomo and de Blasio have sounded warnings about any efforts to curtail immigration or deport people who are here.

Two days after the election, Cuomo suggested he would take steps to stymie Trump's deportation push.

"If any immigrant feels that they are under attack, I want them to know that the state of New York – the state that has the Statue of Liberty in its harbor – is their refuge... We won't allow a federal government that attacks immigrants in our state," Cuomo said during a stop in Syracuse. "We are a state of immigrants."

Trump says he wants to deport 2-3 million immigrants nationally who have criminal backgrounds. It is not clear how many of those reside in New York, where 22 percent of the population is foreign born.

More than a third of NYC residents are foreign born and one estimate says that about 10 percent of the city's workforce are undocumented immigrants.

Immigrants have also moved into upstate cities and communities as the region emptied out jobs and population over the past 20 years.

In March, the region of upstate from Syracuse to Buffalo was selected as one of 20 communities around the nation to be funded by Gateways for Growth Challenge, a program to encourage foreign immigration to the region. The program is part of the Partnership for a New American Economy Action Fund, a pro-immigration group formed in 2010 by Rupert Murdoch and former NYC Mayor Michael Bloomberg.

The group's goals include permitting undocumented immigrants now here become legal residents or citizens.

Exhibit T

THE YALE LAW JOURNAL FORUM

OCTOBER 24, 2017

A Common-Law Privilege To Protect State and Local Courts During the Crimmigration Crisis

Christopher N. Lasch

ABSTRACT. Under the Trump presidency, Immigration and Customs Enforcement (ICE) officers have been making immigration arrests in state and local courthouses. This practice has sparked controversy. Officials around the country, including the highest judges of five states, have asked ICE to stop the arrests. ICE's refusal to do so raises the question: can anything more be done to stop these courthouse immigration arrests?

A common-law doctrine, the "privilege from arrest," provides an affirmative answer. After locating courthouse immigration arrests as the latest front in a decades-long federalism battle born of the entanglement of federal immigration enforcement with local criminal systems, this Essay examines treatises and judicial decisions addressing the privilege from arrest as it existed from the fifteenth to the early twentieth century. This examination reveals that the privilege had two distinct strands, one protecting persons coming to and from their business with the courts, and the other protecting the place of the court and its immediate vicinity.

Although the privilege is firmly entrenched in both English and American jurisprudence, the privilege receded from the body of modern law as the practice of commencing civil litigation with an arrest fell by the wayside. However, the recent courthouse arrests make this privilege newly relevant. Indeed, there are several compelling reasons to apply the common-law privilege from arrest to immigration courthouse arrests. First, immigration arrests are civil in nature, and civil arrests were the chief focus of the privilege. Second, the policy rationales underlying the common-law privilege—facilitating administration of justice and safeguarding the dignity and authority of the court—are equally applicable to immigration courthouse arrests. Third, the federal courts have a shared interest with state and local courts in enforcing the privilege to advance those policy rationales.

This deeply entrenched common-law privilege demonstrates that local courts have legal authority to regulate courthouse immigration arrests and would be standing on firmly recognized policy grounds if they did so.

INTRODUCTION

Since the Trump Administration promised to "take the shackles off" immigration enforcement officers,[1] arrests in state and local courthouses around the country have sparked controversy. In February 2017, the Meyer Law Office, an immigration law firm, released a video filmed in a Denver courthouse that depicted Immigration and Customs Enforcement (ICE) officers admitting they were in the courthouse to make an immigration arrest.[2] The video, viewed over 17,000 times on YouTube,[3] increased awareness of the issue of courthouse arrests and reportedly surprised local officials who were unaware of ICE's practice.[4]

In April 2017, top Denver officials including the Mayor, City Attorney, and all members of the City Council, sent a letter to the local ICE office.[5] Citing the "recent media accounts" of courthouse arrests,[6] the letter asked ICE to "consider courthouses sensitive locations" and "follow [its] directive . . . that par-

1. THE WHITE HOUSE, OFFICE OF THE PRESS SECRETARY, PRESS BRIEFING BY PRESS SECRETARY SEAN SPICER (Feb. 21, 2017), http://www.whitehouse.gov/the-press-office/2017/02/21/press-briefing-press-secretary-sean-spicer-2212017-13 [http://perma.cc/G89C-GJFF].

2. Erica Meltzer, *A video Shows ICE Agents Waiting in a Denver Courthouse Hallway. Here's Why That's Controversial,* DENVERITE (Feb. 23, 2017), http://www.denverite.com/ice-agents-denver-courthouse-hallway-video-30231 [http://perma.cc/3SGW-UCH4]; Chris Walker, *ICE Agents Are Infiltrating Denver's Courts, and There's a Video to Prove It,* WESTWORD (Feb. 24, 2017), http://www.westword.com/news/ice-agents-are-infiltrating-denvers-courts-and-theres-a-video-to-prove-it-8826897 [http://perma.cc/BVM3-86U6].

3. *ICE in Court,* YOUTUBE (February 23, 2017), http://www.youtube.com/watch?v=35YUQbq5uBo (reporting 17,521 views on October 9, 2017).

4. Meltzer, *supra* note 2 (noting that the issue of courthouse arrests had come up at a February forum, where the City Attorney reported she "suspect[ed] there might be some instances" of courthouse arrests but that she was unable to confirm the practice, and reported that the presiding county judge was also unaware of the practice); Walker, *supra* note 2 (reporting earlier February forum at which a Deputy City Attorney responded affirmatively when asked if it was "safe to enter courthouses without risking a run-in with ICE"). The day after the video was publicized, the Denver City Attorney reported that four domestic violence cases would be "dropped as victims fear ICE officers will arrest and deport them." Mark Belcher, *Denver Prosecutor: ICE Agents in Courthouses Compromising Integrity of Domestic Violence Cases,* DENVER CHANNEL (Feb. 24, 2017), http://www.thedenverchannel.com/news/local-news/denver-prosecutor-ice-agents-in-courthouses-compromising-integrity-of-domestic-violence-cases [http://perma.cc/B2LL-WDTQ].

5. Letter from Michael Hancock, Mayor of Denver, to Jeffrey D. Lynch, Acting Field Office Director, U.S. Immigration and Customs Enf't (Apr. 6, 2017), http://www.denverpost.com/2017/04/06/denver-ice-agents-courthouse-school-raids [http://perma.cc/WB2C-FT2V].

6. *Id.* at 1. The letter also "acknowledged" that ICE previously used Denver courthouses "as staging areas for enforcement activities"—a fact that went unmentioned in either of the community forums at which courthouse arrests were publicly discussed. *Id.* at 2.

ticular care should be given to organizations assisting victims of crime."[7] For over six weeks, ICE did not respond while continuing courthouse arrests,[8] two of which were captured on video.[9]

In late May 2017, ICE finally responded to the Denver officials' letter, assuring the Mayor that ICE would "continue to be respectful of, and work closely with, the courts."[10] But following shortly on these assurances was the suggestion that ICE's courthouse arrests might be retaliation for Denver's policy of not detaining suspected immigration violators at ICE's request[11]—ICE's letter described "state and local policies that hinder [ICE's] efforts" as among the "challenges to effective enforcement" causing ICE to "continually improve [its] operations."[12] Taken in its entirety, the letter made clear there would be no actual change to ICE's practice of courthouse arrests.[13]

Similar stories have unfolded around the country.[14] By June 2017, the chief justices of the highest courts of California,[15] Washington,[16] Oregon,[17] New Jer-

7. *Id.* at 2. The references to "sensitive locations" and the "directive" was to the Department of Homeland Security's (DHS) "sensitive locations policy," which generally precludes ICE enforcement at schools, hospitals, "institutions of worship," "public religious ceremon[ies]" and public marches. Courthouses are not specifically mentioned in the policy, though the list is non-exhaustive. Memorandum from John Morton, Director, Dep't of Homeland Sec., "Enforcement Actions at or Focused on Sensitive Locations" (Oct. 24, 2011), http://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf [http://perma.cc/G5KH-7R25] [hereinafter DHS Sensitive Locations Policy].

8. *See* Chris Walker, *ICE Courthouse Busts Ten Times Higher Than City Knew,* WESTWORD (Sept. 19, 2017), http://www.westword.com/news/immigration-agents-breaking-protocol-during-courthouse-arrests-in-denver-9499512 [http://perma.cc/7LZL-LUK8] (releasing records documenting six arrests at the Denver County Court from April 20 through May 8, 2017).

9. Erica Meltzer, *New Videos Show ICE Arresting Immigrants at Denver Courthouse, despite local leaders' requests,* DENVERITE (May 9, 2017), http://www.denverite.com/new-videos-show-ice-arresting-immigrants-denver-county-court-something-local-officials-asked-not-35314 [http://perma.cc/3RNN-E5GL].

10. Letter from Matthew T. Albence, Exec. Assoc. Dir., Immigration and Customs Enf't, to Michael B. Hancock, Mayor, City of Denver (May 25, 2017) [hereinafter Albence Letter], *available at* http://www.denverpost.com/2017/06/08/ice-denver-courthouse-arrests-will-continue [http://perma.cc/H43L-PRUJ]; *but see* Meltzer, *supra* note 2 (reporting that the presiding judge was unaware of courthouse arrests by ICE officers).

11. *See* Memorandum from Gary Wilson, Sheriff, Denver City and County, "48-Hour ICE Holds" (Apr. 29, 2014), http://www.ilrc.org/sites/default/files/resources/denver_county.pdf. [http://perma.cc/7G72-V5X2]; *see also infra* notes 41-43 and accompanying text (describing immigration "detainers").

12. Albence Letter, *supra* note 10, at 2.

13. *Id.*

14. *See, e.g.,* Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors,* BOS. GLOBE (June 16, 2017), http://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around

sey,[18] and Connecticut[19] had asked the federal government to stop ICE's courthouse arrests.[20] Meanwhile, Democrats in Congress introduced bills to include courthouses as "sensitive locations"[21] to prevent ICE enforcement actions.[22] Nevertheless, federal officials showed no sign of stopping the courthouse ar-

-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQaoNMi8gI/story.html [http://perma.cc/NK9P-9BSJ]; Aaron Holmes, *House Democrats Seek Answers After ICE Agents Arrest Possible Victim of Human Trafficking*, N.Y. DAILY NEWS (July 14, 2017), http://www.nydailynews.com/news/politics/dems-seek-answers-ice-arrests-human-trafficking-victim-article-1.3326930 [http:/perma.cc/L3DJ-XAHC].

15. Letter from Tani G. Cantil-Sakauye, Chief Justice, Cal. Supreme Court, to Jeff Sessions, U.S. Attorney Gen. (Mar. 16, 2017) [hereinafter Cantil-Sakauye Letter], http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses [http://perma.cc/6YXM-PLRT].

16. Letter from Mary E. Fairhurst, Chief Justice, Wash. Supreme Court, to John F. Kelly, Secretary, Dep't of Homeland Sec. (Mar. 22, 2017) [hereinafter Fairhurst Letter], http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf [http://perma.cc/2Y7Q-BP9E].

17. Letter from Thomas A. Balmer, Chief Justice., Or. Supreme Court, to Jeff Sessions, Att'y Gen., & John F. Kelly, Sec'y, Dep't of Homeland Sec. (Apr. 6, 2017) [hereinafter Balmer Letter], http://media.oregonlive.com/portland_impact/other/CJ%20ltr%20to%20AG%20Sessions-Secy%20Kelly%20re%20ICE.pdf [http://perma.cc/7EE6-JTB2].

18. Letter from Stuart Rabner, Chief Justice, Supreme Court of N.J., to John F. Kelly, Sec'y, Dep't of Homeland Sec., (Apr. 19, 2017), http://assets.documentcloud.org/documents/3673664/Letter-from-Chief-Justice-Rabner-to-Homeland.pdf [http://perma.cc/ZLT5-DPDM] [hereinafter Rabner Letter].

19. Letter from Chase T. Rogers, Chief Justice., Conn. Supreme Court, to Jeff Sessions, Att'y Gen., & John F. Kelly, Sec'y, Dep't of Homeland Sec. (May 15, 2017) (on file with author) [hereinafter Rogers Letter].

20. Advocates in other states urged their courts to take action to stop ICE's courthouse arrests. *E.g.*, Matthew Chayes, *Ban ICE Arrests of Immigrants at New York Courthouses, Advocates Say*, NEWSDAY (June 22, 2017, 8:46 PM), http://www.newsday.com/news/new-york/advocates-ban-ice-arrests-of-immigrants-at-new-york-courthouses-1.13757452 [http://perma.cc/Y8UX-9RAZ]; Letter from Ivan Espinoza-Madrigal, Exec. Dir., Lawyers' Comm. for Civil Rights and Econ. Justice, to Ralph D. Gants, Chief Justice, Mass. Supreme Judicial Court, et al. (June 16, 2017), http://lawyerscom.org/wp-content/uploads/2017/06/Letter-Regarding-ICE-in-Courthouses.pdf [http://perma.cc/4Y5H-AY8P].

21. *See* DHS Sensitive Locations Policy, *supra* note 7.

22. Protecting Sensitive Locations Act, S. 845 § 2, 115th Cong. (2017) (modifying 8 U.S.C. § 1357(i)(1)(E) by defining "sensitive location" to include the area within one thousand feet of "any Federal, State, or local courthouse, including the office of an individual's legal counsel or representative, and a probation, parole, or supervised release office"); Protecting Sensitive Locations Act, H.R. 1815 (2017) (defining "sensitive location" to include the area within one thousand feet of any "Federal, State, or local courthouse, including the office of an individual's legal counsel or representative, and a probation office").

rests.[23] On October 17, 2017, Acting ICE Director Thomas Hohman defended ICE's courthouse arrests, stating, "I won't apologize for arresting people in courthouses. We're going to continue to do that."[24]

This Essay examines the current impasse over courthouse immigration arrests. Part I briefly describes the decades-long "crimmigration" crisis. Part II contextualizes courthouse arrests as the latest front in the federalism battle fueled by federal efforts to co-opt local criminal justice systems to serve the immigration enforcement mission. Part III examines a longstanding common-law doctrine establishing a privilege against courthouse arrests, and discerns two strands of this privilege. The first strand protects persons coming to and from the courts, while the second protects the place of a court and its environs. Part IV contends that this common-law privilege empowers states and localities to break the current impasse for three main reasons. First, courthouse immigration arrests fall within the privilege's core concern with civil arrests. Second, they raise many of the same policy concerns—facilitating administration of justice and safeguarding the dignity and authority of the court—underlying the rationale for the privilege. And finally, case law indicates that federal courts will likely respect the privilege of state and local courts even in a federalism contest triggered by federal arrests.

I. THE CRIMMIGRATION CRISIS AND THE FEDERALISM BATTLE IT CREATED

In 2006, Juliet Stumpf described a "crimmigration crisis" in which the merger of criminal law and immigration law "brings to bear only the harshest elements of each area of law," resulting in "an ever-expanding population of the

23. *See, e.g.*, Letter from Jefferson B. Sessions III, Att'y Gen., & John F. Kelly, Sec'y, Dep't of Homeland Sec., to Tani G. Cantil-Sakauye, Chief Justice, Cal. Supreme Court (Mar. 29, 2017), http://assets.documentcloud.org/documents/3533530/Attorney-General-and-Homeland-Security-Secretary.pdf [http://perma.cc/JN7H-7NLE] [hereinafter Sessions Letter]; Matt Katz, *Defying N.J.'s Top Judge, ICE Continues Courthouse Arrests*, NJ.COM (May 5, 2017, 4:36 PM), http://www.nj.com/news/index.ssf/2017/05/defying_njs_top_judge_ice_continues_courthouse_arr.html [http://perma.cc/3PMY-EHQ6]. After the Attorney General and DHS Secretary wrote to the California Chief Justice indicating they would not change their practice, California prosecutors wrote in support of the Chief Justice, asking General Sessions and DHS Secretary Kelly to reconsider. Letter from Mike Feuer, L.A. City Att'y, et al., to Jeffrey Sessions, Att'y Gen., & John Kelly, Sec'y, Dep't of Homeland Sec. (Apr. 4, 2017), http://freepdfhosting.com/b3da7bbbf5.pdf [http://perma.cc/J9FM-9TNM].

24. Thomas Homan, Acting Dir., Immigration & Customs Enf't, Keynote Address at the Heritage Foundation: Enforcing U.S. Immigration Laws: A Top Priority for the Trump Administration, at 1:10:05 (Oct. 17, 2017), http://www.c-span.org/video/?435827-1/acting-ice-director-discusses-immigration-enforcement [http://perma.cc/94QE-SRZ7].

excluded and alienated."[25] The crisis has intensified since the 1980s, making the record deportation numbers Stumpf cited[26] seem modest in comparison with the 2.7 million deportations under the Obama Administration[27]—more than all twentieth-century administrations combined.[28] And Donald Trump, in his presidential campaign, promised even more intense enforcement.[29]

One dimension of the "crimmigration" regime has been an enduring federalism battle resulting from increasing downward pressure from the federal government on state and local criminal justice systems to cooperate with and participate in immigration enforcement. Courthouse immigration arrests are some of the more recent fault lines broken open by this downward pressure.

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25. Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 378 (2006). Stumpf saw a convergence in the substance, enforcement mechanisms, and procedural regimes of criminal and immigration law. *See id.* at 379-92; *see also* Jennifer M. Chacón, *Managing Migration Through Crime*, 109 COLUM. L. REV. SIDEBAR 135, 137 (2009) (describing the regulation of migration through criminal proceedings and the subsequent "importation of the relaxed procedural norms of civil immigration proceedings into the criminal realm"); César Cuauhtémoc García Hernández, *Creating Crimmigration*, 2013 B.Y.U. L. REV. 1457, 1459 (arguing that "[c]rimmigration law . . . developed in the closing decades of the twentieth century due to a shift in the perception of criminal law's proper place in society combined with a reinvigorated fear of noncitizens that occurred in the aftermath of the civil rights movement"); Yolanda Vázquez, *Constructing Crimmigration: Latino Subordination in a "Post-Racial" World*, 76 OHIO ST. L.J. 599, 599 (2015) (analyzing "the way in which crimmigration restructures the relationship between Latinos and dominant society to ensure their marginalized status").

26. Stumpf, *supra* note 25, at 372 (noting almost 200,000 deportations in 2004).

27. César Cuauhtémoc García Hernández, *Removals & Returns, 1892-2015*, CRIMMIGRATION (Feb. 16, 2017, 4:00 AM), http://crimmigration.com/2017/02/16/removals-returns-1892-2015 [http://perma.cc/RXP5-FRJB]. Every year the Obama Administration posted between 135% and 180% of the 2004 number of removals. *Id.*

28. Serena Marshall, *Obama Has Deported More People Than Any Other President*, ABC NEWS (Aug. 29, 2016, 2:05 PM), http://abcnews.go.com/Politics/obamas-deportation-policy-numbers/story?id=41715661 [http://perma.cc/U2PH-5D9S]; *see also* Jennifer M. Chacón, *Immigration and the Bully Pulpit*, 130 HARV. L. REV. F. 243, 247 (2017) ("By every measure, immigration enforcement reached its historic peak in the Obama years.").

29. Trump promised on his campaign to deport all undocumented immigrants. Alexandra Jaffe, *Donald Trump: Undocumented Immigrants 'Have to Go,'* MSNBC (Aug. 15, 2015, 10:23 PM), http://www.msnbc.com/msnbc/donald-trump-undocumented-immigrants-have-go [http://perma.cc/SJ2M-X5HL]. In his "immigration" speech in Phoenix in August 2016, Trump promised to deport "at least 2 million . . . criminal aliens" as well as "gang members, security threats, visa overstays, public charges—that is, those relying on public welfare or straining the safety net, along with millions of recent illegal arrivals and overstays who've come here under the current administration." Donald Trump, *Speech on Immigration* (Aug. 31, 2016), *in* Domenico Montanaro et al., *Fact Check: Donald Trump's Speech on Immigration*, NPR (Aug. 31, 2016, 9:44 PM ET), http://www.npr.org/2016/08/31/492096565/fact-check-donald-trumps-speech-on-immigration [http://perma.cc/68P6-YQEW].

There have been no reports of immigration arrests in *federal* courthouses (and no outcry from federal judges), for the simple reason that federal immigration officials can count on the cooperation and support of federal criminal justice agencies like the U.S. Marshals Service and the Bureau of Prisons.[30] The absence of such cooperation on the state and local level was explicitly cited by ICE as a reason for sending officers to make arrests in state and local courthouses.[31]

Historically, the federal government increased pressure on local governments slowly at first. In 1996, Congress passed legislation that simply *invited* local criminal justice agencies to enter into "287(g) agreements" that would allow local officers to enforce immigration law.[32] After 9/11, however, the federal government opined that local law enforcement had "inherent authority" to enforce immigration laws[33] and encouraged the activation of this dormant authority.[34] The ever-increasing identification of noncitizens with criminals observed by Stumpf and others[35] worked to transform immigration into a

30. ICE can count on these agencies to provide notification of the upcoming release of suspected immigration violators, for example, and to detain suspected immigration violators for transfer to ICE when the law permits it. *See, e.g.*, Letter from Peter J. Kadzik, Asst. Att'y Gen. to Rep. John A. Culberson, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations (Feb. 23, 2016), http://culberson.house.gov/uploadedfiles/doj_february_23_letter.pdf [http://perma.cc/S9TA-2QX6] (describing new procedures giving ICE the "right of first refusal" over inmates being released from Bureau of Prisons custody).

31. Albence Letter, *supra* note 10, at 2 (suggesting courthouse arrests were response to local policies that "hinder" immigration enforcement); Sessions Letter, *supra* note 18, at 2 (same).

32. 287(g) agreements are named after Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g) (2012), enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 133, 110 Stat. 3009, 563. Section 287(g) allows states or localities to enter into written agreements whereby local officers can perform immigration enforcement functions. *Id.*

33. Memorandum from Jay S. Bybee, Assistant Att'y Gen., to the Att'y Gen. (Apr. 3, 2002), http://perma-archives.org/warc/AXV3-V8FV/http://www.aclu.org/sites/default/files/field_document/ACF27DA.pdf [http://perma.cc/4DF6-PVDH].

34. *See* Michael J. Wishnie, *State and Local Police Enforcement of Immigration Laws*, 6 U. PA. J. CONST. L. 1084, 1084-88 (2004) (describing the "federal effort to enlist, or even conscript, state and local police in routine immigration enforcement").

35. *See* Stumpf, *supra* note 25, at 419 (2006) (noting that "aliens become synonymous with criminals"); *see also* Angélica Cházaro, *Challenging the "Criminal Alien" Paradigm*, 63 UCLA L. REV. 594, 598 (2016) (observing that crimmigration "requires the constant production of populations who can be labeled 'criminal aliens'" and that "this production of 'criminal aliens' occurs along lines of race, class, and other vectors of social vulnerability"); Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, 39 CONN. L. REV. 1827, 1839-43 (2007) (describing the construction of immigrants as criminals and perpetuation of "images of migrant criminality"); César Cuauhtémoc García Hernández, *Creating Crimmigration*, 2013 B.Y.U. L. REV. 1457, 1458 (describing how the "emblems of

criminal problem, and therefore a problem appropriately solved by state and local police.[36] The "inherent authority" argument, though, was susceptible to challenge based on principles of federalism,[37] and was ultimately discredited in the Supreme Court's 2012 decision striking down portions of Arizona's Senate Bill 1070.[38]

Meanwhile, by 2008, as enforcement numbers soared, the federal appetite for crime-based immigration enforcement could no longer await voluntary or even encouraged local participation. The "Secure Communities" program, initially depicted as a voluntary data-sharing program from which localities could "opt out" if they did not want to be part of the local-federal immigration enforcement team, was finally unmasked in 2011 (three years into the program) as a mandatory regime.[39] This brought the federalism battle to the fore, as unwilling participants at both the local and state level turned to the Tenth Amendment to disentangle local law enforcement from federal immigration enforcement.[40] After a federal court decision in early 2014[41] made clear that the federal government could not use immigration "detainers" to command localities to prolong the detention of noncitizens otherwise entitled to release from local custody, a wave of policies limiting detainer compliance engulfed the

crimmigration law" work to "abandon framing noncitizens as contributing members of society" and instead "reimagine[] noncitizens as criminal deviants and security risks").

36. *See* S. Karthick Ramakrishnan & Pratheepan Gulasekaram, *The Importance of the Political in Immigration Federalism*, 44 ARIZ. ST. L.J. 1431, 1475 (2012) (noting that the trope of immigrant criminality leads to the conclusion that "states and cities could and should be part of the solution, thereby justifying local police participation in immigration enforcement.").

37. *See, e.g.*, Wishnie, *supra* note 34, at 1088-95 (arguing that legislative history shows that Congress understands it "has preempted all state and local power to make immigration arrests except where specifically authorized"); Huyen Pham, *The Inherent Flaws in the Inherent Authority Position: Why Inviting Local Enforcement of Immigration Laws Violates the Constitution*, 31 FLA. ST. U. L. REV. 965, 967 (2004) (arguing that the Constitution demands that immigration enforcement power, "because of its effect on foreign policy, must be exercised exclusively and uniformly at the federal level.").

38. Arizona v. United States, 132 S.Ct. 2492, 2506 (2012) (rejecting the inherent authority theory and finding that state-level immigration enforcement was largely preempted in light of the INA's specification of "limited circumstances in which state officers may perform the functions of an immigration officer"). *See also* Lucas Guttentag, *Immigration Preemption and the Limits of State Power: Reflections on* Arizona v. United States, 9 STAN. J. CIV. RTS. & CIV. LIBERTIES 1, 34 (2013) (finding "no force" to the "inherent authority" argument after *Arizona*).

39. Christopher N. Lasch, *Rendition Resistance*, 92 N.C. L. REV. 149, 154-59 (2013).

40. *Id.* at 160-63 (describing the resistance of Santa Clara County, California, and other jurisdictions characterized by "legal reliance on the Tenth Amendment, and the argument that the federal government—particularly in the absence of compensation—cannot compel enforcement of federal law by state and local officials").

41. Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. 2014).

country.[42] Currently, over twenty-five percent of counties decline to hold prisoners based on immigration detainers.[43]

The Trump Administration, apparently intent on exceeding the record deportation numbers of the Obama Administration,[44] has not retreated from the federalism battle. Instead, President Trump has attempted to pressure localities into immigration enforcement at every turn. A January 2017 Executive Order suggests that accomplishing the Administration's enforcement goals depends on the participation of state and local criminal justice actors.[45] The Order promised a return to the Secure Communities program[46] (which the Obama Administration had abandoned after losing the federalism fight it engendered[47]), expressed a policy authorizing 287(g) agreements "to the maximum extent permitted by law,"[48] and directed the DHS Secretary to "on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers

42. *See* Juliet P. Stumpf, *D(e)volving Discretion: Lessons from the Life and Times of Secure Communities*, 64 AM. U. L. REV. 1259, 1279–81 (2015) (describing policy changes following *Galarza* and the decision in *Miranda-Olivares v. Clackamas Cnty.*, No. 3:12-CV-02317-ST, 2014 WL 1414305 (D. Or. Apr. 11, 2014), granting summary judgment on the claim that a prisoner's detention based on an immigration detainer violated the Fourth Amendment).

43. *National Map of Local Entanglement With ICE*, IMMIGRANT LEGAL RESOURCE CTR., (Dec. 19, 2016), http://www.ilrc.org/local-enforcement-map [http://perma.cc/8WW6-WWMG].

44. Early in his campaign, candidate Trump said he would deport all of the estimated eleven million undocumented immigrants in the United States. *See* Jeremy Diamond, *Trump's Immigration Plan: Deport the Undocumented, 'Legal Status' for Some*, CNN (July 30, 2015, 8:48 AM ET), http://www.cnn.com/2015/07/29/politics/donald-trump-immigration-plan-healthcare-flip-flop [http://perma.cc/38WD-VP6Z]. After he was elected, he vowed to deport two to three million undocumented people with criminal records "immediately" on taking office. Amy B. Wang, *Donald Trump Plans to Immediately Deport 2 Million to 3 Million Undocumented Immigrants*, WASH. POST (Nov. 14, 2016), http://www.washingtonpost.com/news/the-fix/wp/2016/11/13/donald-trump-plans-to-immediately-deport-2-to-3-million-undocumented-immigrants [http://perma.cc/R27K-JNUG].

45. Exec. Order 13,768 at § 5, 82 Fed. Reg. 8799 (Jan. 25, 2017); Walter Ewing, *Understanding the Dangerous Implications of President Trump's Immigration Executive Order*, IMMIGR. IMPACT (Jan. 26, 2017), http://immigrationimpact.com/2017/01/26/understanding-dangerous-implications-president-trumps-immigration-executive-order [http://perma.cc/966S-LJBR] (stating that the priorities in the Executive Order were "defined so expansively as to be meaningless").

46. Exec. Order 13,768, *supra* note 45, § 10.

47. Memorandum from DHS Secretary Jeh Charles Johnson to Acting ICE Director Thomas S. Winkowski, "Secure Communities" (Nov. 20, 2014), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf [http://perma.cc/R6A6-9EQY].

48. Exec. Order 13,768, *supra* note 45, § 8.

with respect to such aliens."[49] Finally, the Order appeared to make good on Trump's campaign promise to "end . . . sanctuary cities"[50] by starving them of federal funding.[51] This latter provision spawned immediate litigation and was enjoined by a federal judge in part because it "attempts to conscript states and local jurisdictions into carrying out federal immigration law,"[52] and its coercion of local governments "runs contrary to our system of federalism."[53]

Three decades of crimmigration have thus set the stage for the current conflict, as the federal government moved from strategies of coaxing and cajoling states and localities to participate in immigration enforcement to strategies of co-opting, coercing, and commandeering them.

II. COURTHOUSE IMMIGRATION ARRESTS: THE LATEST FRONT IN THE FEDERALISM BATTLE

Courthouse arrests represent the latest front, with some new twists, in crimmigration's ongoing federalism battle. One such twist has been the emergence of state-court judges at the front lines of this conflict: where the federalism battlefield was previously on the street (when entanglement of local police was at issue[54]) or in the jails (when detainer policies were contested), it is now in state and local courthouses. In addition, the Tenth Amendment has not been invoked—yet. But a closer look at the complaints of state and local govern-

49. Exec. Order 13,768, *supra* note 45, § 9(b). This "name and shame" report was abandoned after three weeks, due to numerous inaccuracies. Darwin BondGraham, *ICE 'Public Safety Advisory' Criticizing Local Law Enforcement for Immigration Policies Appears to Contain Bad Data*, EAST BAY EXPRESS (Mar. 21, 2017), http://www.eastbayexpress.com/SevenDays/archives/2017/03/21/ice-public-safety-advisory-criticizing-local-law-enforcement-for-immigration-policies-appears-to-contain-bad-data [http://perma.cc/5R4P-CE4G]; David Nakamura & Maria Sacchetti, *Trump Administration Suspends Public Disclosures of 'Sanctuary Cities,'* WASH. POST (Apr. 11, 2017), http://www.washingtonpost.com/politics/trump-administration-suspends-public-disclosures-of-sanctuary-cities/2017/04/11/7ea7f078-1ec8-11e7-ad74-3a742a6c93a7_story.html [http://perma.cc/US9D-VCT4].

50. Montenaro et al., *supra* note 29 ("We will end the sanctuary cities that have resulted in so many needless deaths.").

51. Exec. Order 13,768, *supra* note 45, § 9(a).

52. County of Santa Clara v. Donald J. Trump, No. 5:17-cv-00574, 2017 WL 1459081, at *23 (N.D. Cal. Apr. 25, 2017).

53. *Id.* (quoting Nat'l Fed'n Indep. Bus. v. Sebelius, 567 U.S. 519, 577-78 (2012)).

54. *See New Orleans: How the Crescent City Became a Sanctuary* City *Hearing Before the H. Subcomm. on Immigration and Border Security of the H. Comm. on the Judiciary*, 114th Cong. (2016), http://judiciary.house.gov/wp-content/uploads/2016/09/114-96_22124.pdf [http://perma.cc/V2F7-BYKW] (compiling testimony concerning the New Orleans Police Department policy against participating in immigration enforcement).

ments—and the response of the federal government—reveals that the controversy over courthouse arrests is merely a continuation of crimmigration's federalism battle.

State-court judges primarily feared that civil immigration arrests would cause witnesses,[55] criminal defendants,[56] and civil litigants[57] to avoid the courthouse.[58] Deterring people from coming to court, they argued, in turn interferes with the state and local courts' administration of justice,[59] deprives them of their ability to adjudicate cases effectively,[60] and threatens to cut off access to justice.[61] In sum, state-court judges believed their "fundamental mis-

55. *E.g.* Cantil-Sakauye Letter, *supra* note 15, at 1 (mentioning crime victims and witnesses); Fairhurst Letter, *supra* note 16, at 1 (noting that "witnesses summoned to testify" may no longer find state courthouses to be a trustworthy public forum).

56. Fairhurst Letter, *supra* note 16, at 1 (describing how immigration officials in the courthouse may erode the trust of "criminal defendants being held accountable for their actions," reducing their likelihood to "voluntarily appear to participate and cooperate in the process of justice"); Rabner Letter, *supra* note 18, at 1 (noting that "defendants in state criminal matters may simply not appear").

57. *E.g.*, Cantil-Sakauye Letter, *supra* note 15, at 1 (mentioning "unrepresented litigants"); Balmer Letter, *supra* note 17, at 2 (mentioning "a driver paying a traffic fine; a landlord seeking an eviction or a tenant defending against one; or a small claims court plaintiff in a dispute with a neighbor" and "a victim seeking a restraining order against an abusive former spouse"). A number of the letters referenced domestic violence victims, who could be appearing either as witnesses or as litigants seeking a protective order. *E.g.*, Fairhurst Letter, *supra* note 16, at 1 (referencing "victims in need of protection from domestic violence"); *see also* P.R. Lockhart, *Immigrants Fear a Choice Between Domestic Violence and Deportation*, MOTHER JONES (Mar. 20, 2017, 10:00 AM), http://www.motherjones.com/politics/2017/03/ice-dhs-immigration-domestic-violence-protections [http://perma.cc/A6M2-H73M] (documenting concerns about the underreporting of domestic violence).

58. *See* Rogers Letter, *supra* note 19, at 1 (expressing concern that "having ICE officers detain individuals in public areas of our courthouses may cause litigants, witnesses and interested parties to view our courthouses as places to avoid, rather than as institutions of fair and impartial justice").

59. *See* Balmer Letter, *supra* note 17, at 3 (describing courthouse arrests as a "current and prospective interference with the administration of justice in Oregon"); Fairhurst Letter, *supra* note 16, at 2 (suggesting courthouse arrests "impede" the "mission, obligations, and duties of our courts").

60. *See* Balmer Letter, *supra* note 17, at 2 ("The safety of individuals and families, the protection of economic and other rights, and the integrity of the criminal justice system all depend on individuals being willing and able to attend court proceedings . . . ."); Cantil-Sakauye Letter, *supra* note 15, at 2 (noting that courthouse arrests "compromise our core value of fairness").

61. Rabner Letter, *supra* note 18, at 1 ("Enforcement actions by ICE agents inside courthouses would . . . effectively deny access to the courts."); Balmer Letter, *supra* note 17, at 2 ("Oregon courts must be accessible to all members of the public."); Fairhurst Letter, *supra* note 16, at 1-2 ("When people are afraid to appear for court hearings . . . their ability to access justice is compromised."); Cantil-Sakauye Letter, *supra* note 15, at 2 (stating that courthouse

sion"[62] and "ability to function"[63] were undermined by courthouse arrests. Federal courts have not faced similar problems, as federal immigration officials can count on the cooperation and support of federal criminal justice agencies in lieu of making courthouse arrests.

The federal response made no effort to address the concerns of state-court judges that courthouse immigration arrests erode and undermine justice in state and local courts. Instead, administration officials suggested that the courthouse arrests might in some sense be retaliation for earlier federal defeats in the ongoing federalism battle fueled by the rise of crimmigration. "Some jurisdictions," wrote Attorney General Sessions and then-DHS Secretary Kelly in response to California's Chief Justice, "have enacted statutes and ordinances designed to specifically prohibit or hinder ICE from enforcing immigration law by prohibiting communication with ICE, and denying requests by ICE officers and agents to enter prisons and jails to make arrests."[64] It was because of such policies, General Sessions and Secretary Kelly insisted, that "ICE officers and agents are required to locate and arrest these aliens in public places."[65]

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arrests "undermine the judiciary's ability to provide equal access to justice"). Notably absent from the chief justices' letters was any discussion of the discriminatory intent or effect of the courthouse immigration arrests. The chief justices' reticence contrasts with state officials' allegations that other Trump Administration immigration programs are motivated by animus. *See, e.g.*, State of Hawai'i, et al. v. Donald J. Trump, et al., No. 1:17-cv-00050, Document 64 ("Second Amended Complaint for Declaratory and Injunctive Relief") at 32 (D. Haw. Mar. 8, 2017) (arguing March 6 executive order imposing travel ban was "motivated by animus and a desire to discriminate on the basis of religion and/or national origin, nationality, or alienage"); States of New York, Massachusetts, et al. v. Donald Trump et al., No. 1:17-cv-05228, Document 1 ("Complaint for Declaratory and Injunctive Relief") at 2-3, 52 (E.D.N.Y. Sep. 6, 2017) (arguing President's decision to end Deferred Action for Childhood Arrivals program "is a culmination of President's Trump's oft-stated commitments . . . to punish and disparage people with Mexican roots" and violates equal protection principles because it was grounded in anti-Mexican animus).

62. Fairhurst Letter, *supra* note 16, at 1; *see also* Balmer Letter, *supra* note 17, at 2 (arguing that courthouse immigration arrests "seriously impede[]" efforts to "ensure the rule of law for all Oregon residents").

63. Fairhurst Letter, *supra* note 16, at 1; *see also* Rabner Letter, *supra* note 18, at 2 (suggesting that courthouse arrests "compromise our system of justice").

64. Sessions Letter, *supra* note 23, at 2. As one commentator trenchantly observed, the Attorney General and DHS Secretary arrived at this explanation only after "needlessly mansplain[ing] the elements of the federal crime of 'stalking' (and basic Fourth Amendment doctrine on public arrests) to the Chief Justice . . . ." Jennifer Chacón, *California v. DOJ on Immigration Enforcement*, TAKE CARE (Apr. 11, 2017), http://takecareblog.com/blog/california-v-doj-on-immigration-enforcement [http://perma.cc/YHT3-J8XB].

65. *Id.* The federal response also indicated that courthouse arrests were a way to decrease risk to federal immigration officers, since arrests could take place behind the security screening provided by the state courts. *Id.*

ICE later suggested courthouse arrests would be directly correlated to a locality's cooperation with (or resistance to) federal immigration enforcement: "As ICE undertakes the necessary enforcement of our country's immigration laws, its officers and agents will continually improve their operations to meet the challenges to effective enforcement, *including state and local policies that hinder their efforts*."[66] The suggestion in both letters that courthouse arrests were a response to local "sanctuary" policies reveals that the federal government viewed courthouse arrests as another weapon in the ongoing federalism battle, deployed simultaneously with the defunding threat.[67]

The current federalism impasse raises several questions: Can state and local courts do anything more to protect those coming before them, beyond simply pleading with ICE to change its practice?[68] Or does the classification of a courthouse as a "public place" end the inquiry, as the Attorney General and DHS Secretary have argued?[69] And, even if the courthouse itself can be protected, will ICE lurk outside the courthouse and render such protection meaningless?[70]

A legal doctrine from the past—the common-law privilege from arrest—suggests possible answers to these questions. Mainly concerned with the practice of arresting the defendant to commence a civil suit, which fell into disuse when civil arrests largely disappeared from the American legal landscape,[71] the

66. Albence Letter, *supra* note 10, at 2 (emphasis added).

67. *See supra* notes 50-53 and accompanying text.

68. In Denver, for example, the City Council enacted legislation prohibiting city employees (specifically including "Denver County Court administrative and clerical employees") from using city resources to assist in immigration enforcement, declaring that "courts serve as a vital forum for ensuring access to justice and are the main points of contact for the most vulnerable in times of crises, . . . who seek justice and due process of law without fear of arrest from federal immigration enforcement agents." Council Bill No. 17-0940 (Denver, Colo. Aug. 31, 2017) (enacted). And Mayor Hancock issued an executive order committing the City and County to "strongly advocate" that areas including courthouses "should be respected as 'sensitive locations' to ensure the fair and effective administration of justice." Michael B. Hancock, Mayor of Denver, Colo., Exec. Order No. 142 (Aug. 31, 2017).

69. *See* Sessions Letter, *supra* note 23, at 1 (discussed *infra* at notes 153-159 and accompanying text).

70. *See* Balmer Letter, *supra* note 17, at 1 (requesting that ICE officials not "detain or arrest individuals *in or in the immediate vicinity of* the Oregon courthouses" (emphasis added)).

71. *See* Nathan Levy, Jr., *Mesne Process in Personal Actions at Common Law and the Power Doctrine*, 78 YALE L.J. 52, 61-68 (1968) (describing the rise and fall of this civil procedure). *But see* Hale v. Wharton, 73 F. 739, 740-41 (W.D. Mo. 1896) (suggesting that "[t]he rule in the English courts at first was limited to exemption from arrest in a criminal proceeding"). This Essay does not address whether and to what extent the privilege from arrest might be applied to prevent criminal arrests, because immigration arrests are civil in nature. *See infra* Section IV.A. Likewise, this Essay is concerned with arrests, and therefore does not address many of

privilege from arrest has become newly relevant in light of the Trump Administration's increased use of courthouse arrests.[72]

III. THE ANCIENT COMMON-LAW PRIVILEGE FROM ARREST

The common-law privilege from arrest dates back at least to the early fifteenth century.[73] Blackstone succinctly described it as follows:

> Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning. And no arrest can be made in the king's presence, nor within the verge of his royal palace, nor in any place where the king's justices are actually sitting.[74]

Blackstone's first sentence describes a strand of the privilege pertaining to *persons* conducting business with the courts, while his second sentence describes a strand more generally pertaining to *places*—courthouses and their surroundings. Each is addressed here in turn.

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the nuances attendant to the doctrine as it was extended beyond arrest to service of process and then to the question of how personal jurisdiction might or might not be obtained over non-residents. *See infra* notes 91-93 and accompanying text.

72. *See* Liz Robbins, *A Game of Cat and Mouse with High Stakes: Deportation*, N.Y. TIMES (Aug. 3, 2017), http://www.nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html [http://perma.cc/XA2A-LLJG] (reporting the Immigration Defense Project's assertion that compared to 14 courthouse arrests in 2015 and 11 in 2016, there had been 53 courthouse arrests in the state of New York in the first seven months of 2017).

73. Sampson v. Graves, 203 N.Y.S. 729, 730 (N.Y. App. Div. 1924) (noting that "[t]he doctrine of the immunity from arrest of a litigant attending the trial of an action to which he was a party found early recognition in the law of England, and in Viner's Abridgment (2d Ed.) vol. 17, p. 510 et seq., is to be found a very interesting collection of cases asserting the privilege dating back to the Year Book of 13 Henry IV, I. B."), *overruled on other grounds* by Chase Nat. Bank of City of New York v. Turner, 199 N.E. 636 (N.Y. 1936); *see also* Meekins v. Smith (1971) 126 Eng. Rep. 363, 364; 1 H. Bl. 636, 637 (referencing a yearbook from the reign of King Edward IV as supporting the notion that "a mainpernor [surety] shall have the privilege of the Court").

74. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 766 (1877) (footnote omitted).

A. The Privilege as Applied to Persons Attending Court

A leading English case from 1791 set forth the general rule reported by Blackstone, "that all persons who had relation to a suit which called for their attendance, whether they were compelled to attend by process or not, . . . were intitled to privilege from arrest eundo et redeundo,[75] provided they came bonâ fide."[76] A decade later, *Spence v. Stuart* demonstrated the breadth of this privilege.[77] The court found the defendant "clearly privileged" from his arrest, even though the proceeding he had attended was an arbitrator's examination at a coffee house.[78] Application of the privilege to the arrest occurring the morning after the proceeding[79] showed the liberality with which "eun-

75. "Eundo et redeundo" means "going and returning." BLACK'S LAW DICTIONARY (2d ed. 1910). Another common formulation of the privilege was to say it applies "eundo, morando, et redeundo" (with "morando" meaning "remaining," *id.*). *See* Person v. Grier, 66 N.Y. 124, 125 (1876) ("It is the policy of the law to protect suitors and witnesses from arrests upon civil process while coming to and attending the court and while returning home. Upon principle as well as upon authority their immunity from the service of process for the commencement of civil actions against them is absolute *eundo, morando et redeundo.*"); *Spence v. Stuart*, 102 Eng. Rep. 530, 531; 3 East at 89, 91 ("[T]he privilege extends to one redeundo as well as eundo et morando."); SIMON GREENLEAF, A TREATISE ON THE LAW OF EVIDENCE § 316, at 474 (Lawbook Exchange, Ltd. 2001) (16th ed. 1899) (emphasis added) (footnote omitted) ("Witnesses as well as parties are protected from arrest while going to the place of trial, while attending there for the purpose of testifying in the cause, and while returning home, *eundo, morando, et redeundo.*") (footnote omitted). As will be shown below, *see infra* Section III.B, a privilege preventing arrests at the courthouse and its environs addressed much of what might be encompassed by "morando."

76. *Meekins*, 126 Eng. Rep. at 363; 1 H. Bl. at 637. The privilege was not extended to the habeas petitioner in *Meekins*, on the ground that he was "an uncertificated Bankrupt, and in desperate circumstances," and showed "a manifest intention . . . to impose upon the Court . . . ." *Id.* at 363-364.

77. (1802) 102 Eng. Rep. 530; 3 East 89.

78. *Id.* at 90.

79. *Id.* at 89-90 (reporting that the arbitrator's examination concluded at 11 o'clock in the evening, whereupon the defendant, "having intimat[ed] that bailiffs were lying in wait to arrest him . . . slept at the coffee-house that night, and was arrested there early the next morning").

do et redeundo" was interpreted.[80] This served the rule's policy "to encourage witnesses to come forward voluntarily."[81]

The breadth of this component of the privilege was sustained upon its arrival in America. Greenleaf's influential treatise on evidence, citing the leading English and American cases, noted that the rule was interpreted broadly to encompass "all cases" and "any matter pending before a lawful tribunal" (including proceedings before arbitrators, bankruptcy proceedings, and the like).[82] Additionally, the courts were "disposed to be liberal" with respect to "going . . . and returning."[83] And neither a writ of protection nor a subpoena compelling one's attendance was a prerequisite for enjoyment of the privilege.[84]

At common law a court might issue a "writ of . . . protection" to a litigant or witness who feared arrest while coming to court.[85] But obtaining the writ was not a precondition for exercise of the privilege; rather, it served simply to provide "convenient and authentic notice to those about to do what would be a violation of the privilege. It neither establishes nor enlarges the privilege, but merely sets it forth, and commands due respect to it."[86]

The Supreme Court has addressed the common-law privilege from arrest in a series of decisions in two closely related contexts—in construing the privilege afforded legislators under the Constitution, and in assessing the extent to which out-of-state residents are immune from service of process while in a state for the purpose of attending court. The Court's discussions demonstrate that the English common-law privilege from arrest has been firmly entrenched in American law from the outset.

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80. The court noted that "it does not appear that [the defendant] has been guilty of any negligence in not availing himself of his privilege redeundo within a reasonable time; for he was arrested early the next morning, before it could be known whether he were about to return home or not." *Spence*, 102 Eng. Rep. at 531; 3 East at 91; *see also* Lightfoot v. Cameron, 96 Eng. Rep. 658, 658 (1776); 2 Black W. 1113, 1113 (collecting similar cases and holding that a party who was dining with his counsel and witnesses after court recessed for the day was privileged from arrest).

81. Walpole v. Alexander (1782) 99 Eng. Rep. 530, 531; 3 Dougl. 45, 46.

82. GREENLEAF, *supra* note 75 § 317, at 475 (footnotes omitted).

83. *Id.* at § 316, at 459.

84. *Id.* at § 316, at 474 (noting that a writ of protection served only to prevent an arrest and perhaps lay the groundwork for subjecting the arresting officer to punishment for contempt for disobeying the writ).

85. *See* Parker v. Marco, 32 N.E. 989, 989 (N.Y. 1893) ("At common law a writ of privilege or protection would be granted to the party or witness by the court in which the action was pending, which would be respected by all other courts.").

86. Bridges v. Sheldon, 7 F. 17, 44 (D. Vt. 1880) (citations omitted).

In *Williamson v. United States*, the Court addressed whether the privilege for legislators extended to arrests for criminal offenses, and quoted Joseph Story, who likened the legislator's privilege to the common-law privilege from arrest described by Blackstone: "*This privilege is conceded by law to the humblest suitor and witness in a court of justice;* and it would be strange indeed if it were denied to the highest functionaries of the State in the discharge of their public duties."[87] And in *Long v. Ansell*, addressing the same question, the Court said that the legislator's privilege "must not be confused with the common law rule that witnesses, suitors and their attorneys, while in attendance in connection with the conduct of one suit, are immune from service in another."[88] The Court noted that "arrests in civil suits were still common in America" when the Constitution was adopted, and cited several treatises as authority for this proposition,[89] each of which explicitly recognized the privilege from arrest for those attending court.[90]

Similarly, in the context of immunity for out-of-state residents traveling to a state to attend court, the Court in *Lamb v. Schmitt* noted the "general rule that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit are immune from service of process in another."[91] Here, and in two other cases addressing jurisdiction over nonresidents, the Court adverted to the seminal American decisions concerning the common-law privilege

87. 207 U.S. 425, 443 (1908) (emphasis added) (quoting 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 859, at 608 (4th ed. 1873)).

88. 293 U.S. 76, 83 (1934).

89. *Id.* at 83 & n.4 (citing WILLIAM WYCHE, PRACTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK 50 et seq. (2d ed. 1794); CONWAY ROBINSON, PRACTICE IN COURTS OF LAW AND EQUITY IN VIRGINIA 126-30 (1832); SAMUEL HOWE, PRACTICE IN CIVIL ACTIONS AND PROCEEDINGS AT LAW IN MASSACHUSETTS 55-56, 141-48, 181-87 (1834); FRANCIS J. TROUBAT & WILLIAM W. HALY, PRACTICE IN CIVIL ACTIONS AND PROCEEDINGS IN SUPREME COURT OF PENNSYLVANIA 170-89 (1837)); *see also supra* note 71.

90. HOWE, *supra* note 89, at 143-44 ("[A]ll persons connected with a cause, which calls for their attendance in court, and who attend *bonâ fide*,—are protected from arrest, *eundo, morando, et redeundo*"; ROBINSON, *supra* note 89, at 133 (providing that witnesses should be exempt from arrest) (citing, *inter alia*, Ex Parte McNeil, 6 Mass. Rep. 245 (1810)); TROUBAT & HALY, *supra* note 89, at 178 ("The parties to a suit, their attorneys, counsel and witnesses, are, for the sake of public justice, privileged from arrest in coming to, attending upon, and returning from the court; or as it is usually termed, *eundo, morando, et redeundo*."); WYCHE, *supra* note 89, at 36 ("The parties to a suit, and their witnesses, are, for the sake of public justice, protected from arrest, in coming to, attending upon, and returning from the court. Nor have the courts been nice in scanning this privilege, but have given it a large and liberal construction.") (citations omitted).

91. 285 U.S. 222, 225 (1932).

from arrest.[92] Those decisions recognized the firm entrenchment of the privilege as it pertained to all persons (whether resident or nonresident) attending court.[93]

The Court's decisions, and the lower court rulings upon which they relied, articulated the policy rationale behind the privilege. Quoting a "leading" New Jersey decision, the Court in *Stewart v. Ramsay* said that "[c]ourts of justice ought everywhere to be open, accessible, free from interruption, and to cast a perfect protection around every man who necessarily approaches them."[94] And in *Lamb*, the Court described the privilege as

> proceed[ing] upon the ground that the due administration of justice requires that a court shall not permit interference with the progress of a cause pending before it, by the service of process in other suits, which would prevent, *or the fear of which might tend to discourage, the voluntary attendance of those whose presence is necessary or convenient to the judicial administration in the pending litigation.*[95]

The Court also characterized the privilege as "founded in the necessities of the judicial administration"[96] and the notion that the courts should be "available to

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92. *See e.g., id.* (citing Hale v. Wharton, 73 F. 739 (C.C.W.D. Mo. 1896); Bridges v. Sheldon, 7 F. 17 (C.C.D. Vt. 1880)); *Stewart* v. Ramsay, 242 U.S. 128, 131 (1916) (citing *Hale,* 73 F. 739 and Peet v. Fowler, 170 F. 618 (C.C.E.D. Pa. 1909)); Page Co. v. MacDonald, 261 U.S. 446, 447 (1923) (citing Larned v. Griffin, 12 F. 590, 590 (C.C.D. Mass. 1882)).

93. *Peet*, 170 F. at 618 ("It is a well-established principle of law that parties to a suit, for the sake of public justice, are privileged from the service of process upon them in coming to, attending upon, and returning from the court, or as it is usually termed, eundo, morando, et redeundo."); *Hale*, 73 F. at 740 ("[N]o rule of practice is more firmly rooted in the jurisprudence of United States courts than that of the exemption of persons from the writ of arrest and of summons while attending upon courts of justice, either as witnesses or suitors." (citations omitted)); *Larned*, 12 F. at 590 ("It has long been settled that parties and witnesses attending in good faith any legal tribunal, with or without a writ of protection, are privileged from arrest on civil process during their attendance, and for a reasonable time in going and returning." (citations omitted)); *Bridges*, 7 F. at 43 ("The privilege to parties to judicial proceedings, as well as others required to attend upon them, of going to the place where they are held, and remaining so long as is necessary and returning wholly free from the restraint of process in other civil proceedings, has always been well settled and favorably enforced.").

94. *Stewart*, 242 U.S. at 129 (quoting Halsey v. Stewart, 4 N.J.L. 366, 367 (1817)).

95. *Lamb*, 285 U.S. at 225 (emphasis added) (citations omitted).

96. *Id.* Similarly, when addressing the legislative privilege, the Court found the privilege *necessary* for the functioning of the legislative branch. *See* Williamson v. United States, 207 U.S. 425, 443 (1908) ("It seems absolutely indispensable for the just exercise of the legislative power in every nation purporting to possess a free constitution of government, and it cannot be surrendered without endangering the public liberties as well as the private independence of the members.").

suitors, fully available, neither they nor their witnesses subject to be embarrassed or vexed while attending, the one 'for the protection of his rights', the others 'while attending to testify.'"[97]

An early New York decision went further and expressed the privilege as an *obligation* of the courts: "We have power to compel the attendance of witnesses, and when they do attend, we are bound to protect them *redeundo*."[98]

B. The Privilege as Applied to the Courthouse and Its Environs

Blackstone's second sentence—"And no arrest can be made in the king's presence, nor within the verge of his royal palace, nor in any place where the king's justices are actually sitting"[99]— addresses the sanctity of the court as a *place*, rather than formulating the privilege as attaching to certain people.[100]

An English case from 1674, in which a person was arrested while "entering his coach at the door of Westminster hall," was cited in a leading treatise in support of an expansive view of the privilege: "[I]t was agreed, that . . . *all persons whatsoever*, are freed from arrests, so long as they are in view of any of the courts at Westminster, or if near the courts, though out of view, lest any disturbance may be occasioned to the courts or any violence used . . . ."[101]

The salient points of this aspect of the privilege—that it applies to "all persons whatsoever" and that it precludes arrest not only in the courts but also "near the courts, though out of view"—are confirmed in other English cases. In *Orchard's Case*,[102] a person was arrested on civil process[103] either inside the court or "in the space between the outer and the inner doors" of the court.[104] Although Orchard was an attorney, he had no business before the court at the time of his arrest.[105] Thus, there was no claim (and could have been no claim) that Orchard enjoyed the privilege of someone "necessarily attending any

97. *Page Co.*, 261 U.S. at 448 (quoting *Stewart*, 242 U.S. at 130).

98. Norris v. Beach, 2 Johns. 294, 294 (1807).

99. BLACKSTONE, *supra* note 74, at *290.

100. *See also* JAMES FRANCIS OSWALD, CONTEMPT OF COURT, COMMITTAL, AND ATTACHMENT, AND ARREST UPON CIVIL PROCESS, IN THE SUPREME COURT OF JUDICATURE: WITH THE PRACTICE AND FORMS 193 (London, William Clowes & Sons, Ltd., 2d ed. 1895) (discussing "[p]laces in which persons are privileged from arrest").

101. 6 MATTHEW BACON, A NEW ABRIDGMENT OF THE LAW 530 (London, A. Strahan, 7th ed. 1832) (emphasis added and omitted).

102. (1828) 38 Eng. Rep. 987, 987; 5 Russ. 159.

103. The arrest was pursuant to a writ of *capias ad satisfaciendum*. *Id.*

104. *Id.*

105. *Id.* ("It was admited that *Orchard* was not in court for the purpose of professional attendance, or of discharging any professional duty.").

courts of record upon business."[106] Instead, the case was argued and decided on the basis of a privilege of *place,* with Orchard's representative submitting:

> that every place, in which the Judges of the King's superior courts were sitting, was privileged, and that no arrest could be made in their presence or within the local limits of the place where they were administering justice. To permit arrest to be made in the Court would give occasion to perpetual tumults, and was altogether inconsistent with the decorum which ought to prevail in a high tribunal.[107]

In addition to quoting the sentence from Blackstone referencing a privilege "where the King's justices are actually sitting,"[108] Orchard's counsel cited *Long's Case,*[109] wherein arrest had been made "in the palace-yard, not far distant from the hall gate, the Court being then sitting."[110] The arresting officer in this case was "committed to the *Fleet,* that he might learn to know his distance."[111] In *Orchard's Case,* the court (after discharging Orchard from custody) "admonished the officer to beware of again acting in a similar manner."[112]

The common-law privilege surrounding the court was deemed sufficiently important that it extended beyond arrest, to mere service of process. In *Cole v. Hawkins,* for example, the court held that an attorney attending court was privileged from service made on the courthouse steps, because "service of a process in the sight of the Court is a great contempt."[113]

American jurists likewise recognized this component of the privilege protecting the *place* of the court. In *Blight v. Fisher,* a federal judge explained that

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106. BLACKSTONE, *supra* note 74, at 288.

107. 38 Eng. Rep. at 987.

108. *Id.* (quoting BLACKSTONE, *supra* note 74, at 289).

109. (1676-77) 86 Eng. Rep. 1012; 2 Mod. 181.

110. 38 Eng. Rep. at 987 (quoting *Long's Case,* 86 Eng. Rep. at 1012).

111. *Id.* The reference was to the Fleet Prison, the "most venerable of all English prisons." Margery Bassett, *The Fleet Prison in the Middle Ages,* 5 U. TORONTO L.J. 383, 383 (1944).

112. 38 Eng. Rep. at 988.

113. (1738) 95 Eng. Rep. 396, 396; Andrews 275, 275. The court rejected the argument that service of process on the courthouse steps "did not hinder, or tend to hinder" the court's business. *Id.* In the New Jersey case of *Halsey v. Stewart,* 4 N.J.L. 366, 368 (1817), a "leading authority" cited by the Supreme Court, *Stewart v. Ramsay,* 242 U.S. 128, 129 (1916), the court took a similarly expansive view of the privilege, discrediting "the idea, that the interruption of the court, must arise from noise, disturbance, or confusion created by the service, in its presence." The court afforded the privilege to a person who was initially read the summons by the sheriff "while descending the steps" from the courthouse, but upon whom the summons was not served until later when he was meeting with counsel in his office. *Id.* at 367.

"[t]he service of process . . . in the actual or constructive presence of the court, is a contempt, for which the officer may be punished."[114] The decision relied on *Cole v. Hawkins* and on the Pennsylvania Supreme Court's decision in *Miles v. M'Cullough* setting aside process served on a person attending oral argument.[115]

These seminal cases—*Blight*, *Cole*, and *Miles*—were cited in Greenleaf's 1864 treatise on evidence, which likewise understood the privilege as heightened at the courthouse and its surroundings, encompassing protection not only from arrest but also from service of process. "[I]t is deemed as a contempt to serve process upon a witness, even by summons, if it be done in the immediate or constructive presence of the court upon which he is attending; though any service elsewhere without personal restraint, it seems, is good."[116]

* * *

The tendency of American courts was to expand the privilege,[117] and the privilege as it pertained to persons expanded in some instances to encompass protection from service of process even if it occurred beyond the "actual or constructive presence of the court."[118] This expansion of the privilege as applied to some *persons* attending court,[119] did not diminish or otherwise alter the privilege as to *place* described in *Blight* and established in other English and American decisions. The broad contours of the privilege as to *place* were that it ap-

114. 3 F. Cas. 704, 704-05 (C.C.D.N.J. 1809) (No. 1,542). The court noted that the strand of the privilege pertaining to *persons* "extends only to an exemption from arrest." *Id.* at 704.

115. *Id.* at 705 (citing *Cole*, 95 Eng. Rep. 396; *Miles v. M'Cullough*, 1 Binn. 77 (Pa. 1803)).

116. GREENLEAF, *supra* note 75, at § 316, at 475 (footnote omitted); *see also In re* Healey, 53 Vt. 694, 696 (1881) (noting a similar understanding of the privilege); *Cole*, 95 Eng. Rep. at 396 (same); *Blight*, 3 F. Cas at 704 (same); *Miles*, 1 Binn. at 77 (same).

117. Larned v. Griffin, 12 F. 590, 592 (C.C.D. Mass. 1882) (describing "the tendency in this country . . . to enlarge the right of privilege so as to afford full protection to suitors and witnesses from all forms of process of a civil character during their attendance before any judicial tribunal, and for a reasonable time in going and returning").

118. *Blight*, 3 F. Cas at 704-05. In *Parker v. Hotchkiss*, the court understood *Miles v. M'Cullough* as applying the privilege pertaining to persons, and "plac[ing] the case of a summons on precisely the same ground as that of an arrest on the score of privilege." 18 F. Cas. 1137, 1138 (C.C.E.D. Pa. 1849) (No. 10,739) (discussing *Miles*, 1 Binn. 77). The Supreme Court later noted that *Parker* had expanded the protection from service beyond that recognized in *Blight* and had given rise to a line of federal decisions that "consistently sustained the privilege" to protect *persons* from service of process regardless of their proximity to the *place* of the court. *Stewart*, 242 U.S. at 130-31 (citing *Parker*, 18 F. Cas. at 1138, as "overrul[ing]" *Blight*, 3 F. Cas. 704; other citations omitted).

119. As noted above, the Supreme Court's decisions were addressing the immunity of nonresidents from service of process. *See supra* notes 91-93 and accompanying text.

plied to prevent arrest and service of process, both at the courthouse or near it, and to all persons regardless of whether or not they were pursuing business before the court.

IV. APPLYING THE COMMON-LAW PRIVILEGE TO CONTEMPORARY COURTHOUSE IMMIGRATION ARRESTS

As arrest gave way to summons as the principal means for initiating a civil suit, the privilege from arrest fell into disuse, and courts increasingly concerned themselves with questions of immunity from service of process.[120] ICE's courthouse arrests justify awakening the doctrine for three compelling reasons. First, the common-law privilege was typically used to address arrests commencing civil litigation. As immigration proceedings are civil, the privilege maps well onto courthouse arrests for immigration violations. Second, the policy objectives underlying the privilege align significantly with the concerns expressed regarding courthouse immigration arrests. And third, the American incorporation of the privilege demonstrates that federal and state courts alike have an interest in enforcing the privilege, making the doctrine particularly apt for resolving the federalism conflict created by courthouse arrests.

Thus, state and local courts not only have the legal authority to protect their courthouses and people coming and going on court business, but also their authority is likely to be respected.

A. Immigration Enforcement Is Largely Civil Enforcement

The Supreme Court has explained that immigration arrests that initiate deportation proceedings are civil in nature.[121] In *Arizona v. United States*, the Court noted that "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States," and that where a person is seized "based on nothing more than possible removability, the usual predicate for an arrest is

120. *See supra* note 71.

121. There are, of course, immigration crimes that may be enforced through criminal arrests and criminal prosecutions. *See* Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U.L. REV. 1281 (2010) (describing rise of criminal immigration enforcement); *see also* Chacón, *supra* note 25, at 137 ("In recent years . . . the U.S. government has increasingly handled migration control through the criminal justice system."); César Cuauhtémoc García Hernández, *Naturalizing Immigration Imprisonment*, 103 CALIF. L. REV. 1449, 1470 (2015) (documenting the rise of criminal immigration prosecutions). This Essay does not address the applicability of the common-law privilege from arrest to arrests for crimes.

absent."[122] Such an arrest must find justification in federal immigration statutes and regulations, which generally require that trained federal immigration officers perform the arrest.[123] And the proceedings that such an arrest initiates are also characterized as civil: "Removal is a civil, not criminal, matter."[124]

The legal categorization of immigration arrests and proceedings as civil supports application of the common-law privilege, which was largely used to address civil arrests.[125] Furthermore, important similarities exist between civil immigration arrests and civil arrests commencing private litigation. They are both arrests—physical seizures of a person—made by public "officers."[126] For the privilege to apply, the arrests occur either in or near the courthouse,[127] or the arrests are of people who are attending the courts on business.[128] The arrests are followed by jail. And they are accomplished in order to commence a second, unrelated legal proceeding in a different court.[129] These similarities, particularly when considered in light of the policy rationales supporting the privilege,[130] and the shared federal and state interest therein,[131] support application of the privilege.

Reframing immigration arrests as somehow criminal in nature—based on, for example, the fact that immigration proceedings are initiated by the federal government rather than a private litigant—could conceivably support an argument against application of the privilege. But doing so would turn existing precedent on its head and undermine a premise currently used to justify denying criminal-style procedural protections to immigrants in removal proceedings, making this an argument unlikely to come from the federal government.[132]

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122. 132 S.Ct. 2492, 2505 (2012) (citing INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984)).

123. *Id.* at 2505-06. This Essay does not examine whether the statutory basis for a lawful civil immigration arrest is being met in the courthouse immigration arrests that are occurring. The privilege against arrest would apply even in the face of an otherwise lawful arrest.

124. *Id.* at 2499; *see also Lopez-Mendoza*, 468 U.S. at 1038 ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country.").

125. *See supra* note 71.

126. *See* Orchard's Case, (1828) 38 Eng. Rep. 987, 987; 5 Rus. 158 (referring to the "officer" who made the arrest); *Long's Case*, (1676-77) 86 Eng. Rep. 1012, 1012; 2 Mod. 181, 181 (referring to the same).

127. *See supra* Section III.B.

128. *See supra* Section III.A.

129. *See supra* note 91 and accompanying text.

130. *See infra* Section IV.B.

131. *See infra* Section IV.C.

132. *Lopez-Mendoza*, 468 U.S. at 1038 (explaining that "[c]onsistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a

B. Significant Policy Alignment

The policy reasons underlying the common-law privilege from arrest dovetail nicely with the objections raised to courthouse immigration arrests. The privilege was principally concerned with protecting the business of the court.[133] The privilege pertaining to the place of the court—preventing all arrests in the "face"[134] or "view"[135] of the court, or "near the courts, though out of view"[136] (in the "constructive presence"[137])—prevented "violence" and "disturbance" in or near the courts.[138] This preservation of decorum[139] upheld the dignity and authority of the court generally.[140] But the privilege of place attaching to the courthouse was also deemed essential to the administration of justice itself:[141]

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deportation hearing"). Some have argued that the rise of a "crimmigration" enforcement system justifies importation of criminal procedural protections into immigration proceedings. *See, e.g.*, Yafang Deng, *When Procedure Equals Justice: Facing the Pressing Constitutional Needs of a Criminalized Immigration System*, 42 COLUM. J.L. & SOC. PROBS. 261, 291 (2008) (describing immigration enforcement as "a system of criminal investigation and punishment held only to civil law standards" and arguing for application of criminal protections); Allegra M. McLeod, *Immigration, Criminalization, and Disobedience*, 70 U. MIAMI L. REV. 556, 558-59 (2016) (describing the push to "extend[] to immigrants enhanced judicially enforced procedural protections" but arguing that "[j]ust as the Warren Court revolution in constitutional criminal procedure failed to ameliorate the harshness of substantive criminal law, more robust immigration procedural protections would likely fail to reorient immigration enforcement in a more humane and sustainable direction").

133. *Long*, 293 U.S. at 83 (describing the privilege as "founded upon the needs of the court").

134. Whited v. Phillips, 126 S.E. 916, 917 (W. Va. 1925).

135. BACON, *supra* note 101, at 530.

136. *Id.*

137. *Blight*, 3 F. Cas. at 704.

138. BACON, *supra* note 101, at 530 ("[L]est any disturbance may be occasioned to the courts or any violence used.").

139. *See Orchard's Case*, 38 Eng. Rep. at 987; 5 Russ. at 159 (arguing that "[t]o permit arrest to be made in the Court would give occasion to perpetual tumults, and was altogether inconsistent with the decorum which ought to prevail in a high tribunal.").

140. *See* Bramwell v. Owen, 276 F. 36, 41 (D. Or. 1921) (citation omitted) (stating that the "rule is even buttressed upon a broader principle, namely, that it is a privilege of the court as affecting its dignity and authority, and is founded upon sound public policy."); Bridges v. Sheldon, 7 F. 17, 44 (C.C.D. Vt. 1880) ("The privilege arises out of the authority and dignity of the court where the cause is pending"); Parker v. Marco, 32 N.E. 989, 989 (N.Y. 1893) ("It is not simply a personal privilege, but it is also the privilege of the court, and is deemed necessary for the maintenance of its authority and dignity . . . .").

141. *See, e.g.*, *Parker*, 32 N.E. at 989 (stating the privilege "is deemed necessary . . . in order to promote the due and efficient administration of justice . . . .").

> This rule is buttressed with the high conception that as courts are established for the ascertainment of the whole truth, and the doing of exact justice, as far as human judgment can attain, in disputes between litigants, every extraneous influence which tends to interfere with or obstruct the trial for the attainment of this sublime end should be resisted by the ministers of justice to the last legitimate extremity in the exercise of judicial power.[142]

Justice was thought to be hindered in two ways by courthouse arrests. First, the threat of arrest and additional litigation might "disturb and divert the witness so that on the witness stand his mind might not possess that repose and equipoise essential to a full and true deliverance of his testimony."[143] Proceedings might even be interfered with, interrupted, or delayed by the arrest of a witness or party.[144] Second, the fear of arrest might deter parties and witnesses from coming to court at all.[145] To borrow the words of Chief Justice Lee in *Cole v. Hawkins*, "it would produce much terror."[146]

This last reason, of course, was why the privilege pertaining to *people* attending court was extended "eundo et redeundo."[147] Protection at or near the courthouse was deemed insufficient, so the threat of arrest was removed as a possibility (and a deterrent) during the journey to and from the courthouse. Only in this way could the courts be made "available to suitors, *fully available*, neither they nor their witnesses subject to be embarrassed or vexed while at-

142. Hale v. Wharton, 73 F. 739, 741 (C.C.W.D. Mo. 1896)

143. *Id.*

144. Stewart v. Ramsey, 242 U.S. 128, 129 (1916) (quoting Parker v. Hotchkiss, 18 F. Cas. 1137, 1138 (C.C.E.D. Pa. 1849)) (stating that the privilege "is founded in the necessities of the judicial administration, which would be often embarrassed, and sometimes interrupted, if the suitor might be vexed with process while attending upon the court for the protection of his rights, or the witness while attending to testify").

145. *Id.* at 130-31 ("Witnesses would be chary of coming within our jurisdiction . . . and even parties in interest, whether on the record or not, might be deterred from the rightfully fearless assertion of a claim or the rightfully fearless assertion of a defense . . . ." (quoting *Parker*, 18 F. Cas. 1137, 1138)); Person v. Grier, 66 N.Y. 124, 126 (N.Y. Ct. App. 1876) ("Witnesses might be deterred, and parties prevented from attending, and delays might ensue or injustice be done."); Diamond v. Earle, 105 N.E. 363, 363 (Mass. 1914) (stating that "justice requires the attendance of witnesses cognizant of material facts, and hence that no unreasonable obstacles ought to be thrown in the way of their freely coming into court to give oral testimony."); Bramwell v. Owen, 276 F. 36, 40 (D. Or. 1921) (noting that deterring witnesses "would result many times in a failure of justice").

146. (1738) 95 Eng. Rep. 396, 396; Andrews 275, 275.

147. Meekins v. Smith (1791) 126 Eng. Rep. 363, 363; 1 H. Bl. 636, 636.

tending, the one 'for the protection of his rights,' the others 'while attending to testify.'"[148]

All of these policy reasons support application of the privilege to courthouse immigration arrests, given the shared features of immigration arrests and arrests to which the privilege was applied at common law.[149] The prospect of arrest and jail—whether at the hands of an eighteenth-century English or American lawman or a twenty-first-century ICE officer—provides a powerful deterrent to the attendance of parties and witnesses in court. Indeed, echoing the concern of "terror" raised by Chief Justice Lee in *Cole v. Hawkins*[150] (who was merely discussing service of process), those chief justices objecting to ICE's courthouse arrests have principally complained about the "chilling effect" of ICE arrests.[151] Furthermore, the prospect of violent courthouse arrests, like those captured on video in Denver, for example, offers no less a threat today to the decorum, dignity, and authority of the courts than it has in the past.[152]

The ancient foundations of the common-law privilege also neatly address the argument put forth by the Attorney General and DHS Secretary: that courthouse arrests are lawful because they take place in a "public place based on probable cause."[153] Attorney General Sessions and Secretary Kelly relied on a Supreme Court case, *United States v. Watson*, in which postal officers conducted a warrantless arrest of the defendant in a restaurant.[154] In *Watson*, the Court relied heavily on an examination of common-law sources (including Black-

148. Page Co. v. MacDonald, 261 U.S. 446, 448 (1923) (emphasis added).

149. *See supra* Section IV.A.

150. Cole v. Hawkins (1738) 95 Eng. Rep. 396; Andrews 275.

151. *E.g.*, Balmer Letter, *supra* note 17, at 2 (noting the "chilling effect" of courthouse arrests); Rabner Letter, *supra* note 18, at 1 (same); Rogers Letter, *supra* note 19, at 1 (worrying that courthouses will be seen "as places to avoid"). The common-law privilege, in its application "eundo et redeundo," *Meekins*, 126 Eng. Rep. at 363, addresses the concern that even if ICE ceases arrests in courthouses it will simply wait outside the courthouse to make its arrests. *Cf.* S. 845, 115th Cong. § 2 (2017) (proposing a 1,000-foot penumbra around "sensitive locations" including courthouses).

152. *See* Meltzer, *supra* note 9.

153. Sessions Letter, *supra* note 23, at 1.

154. 423 U.S. 411, 412-13 (1976). Note that the case is cited incorrectly as 432 U.S. 411 in Sessions Letter, *supra* note 23, at 1. A critique of *Watson* is beyond the scope of this Essay, as is the question of *Watson*'s suitability as authority to justify ICE courthouse arrests. The assertion by the Attorney General and Secretary Kelly that *Watson* supports ICE courthouse arrests because ICE is "authorized by federal statute" to arrest based upon probable cause of removability, Sessions Letter *supra* note 23, at 1 (citing 8 U.S.C. § 1357), is at best incomplete. The statute, as the Supreme Court has pointed out, indicates such warrantless arrests are permissible "only where the alien 'is likely to escape before a warrant can be obtained.'" Arizona v. United States, 132 S. Ct. 2492, 2506 (2012) (quoting 8 U.S.C. § 1357(a)(2)).

stone) and ultimately held that its Fourth Amendment jurisprudence "reflect[s] the ancient common-law rule" regarding warrantless arrest, and that "[t]he balance struck by the common law in generally authorizing felony arrests on probable cause, but without a warrant, has survived substantially intact."[155]

But to say that an arrest in a restaurant is consonant with "the ancient common-law rule" is to prefer the more general rule (concerning arrest on probable cause in a public place) to the more specific—but equally ancient and well-established in the common law—rule examined here, the common-law privilege from arrest. Indeed, these two rules can coexist comfortably, as the former is a rule for determining when an arrest is lawful and the latter a rule for determining when there is a privilege from even lawful arrests.

This is not to say the common law rejected the notion of the courthouse as a public place. Rather, to ensure that the courts remained truly accessible to the public, it was deemed necessary to proscribe arrests at or near courthouses,[156] and of those coming and going from the court.[157] The Supreme Court acknowledged the wisdom of this "balance struck by the common law"[158] when it quoted a leading early American case grounding the privilege in the notion that "[c]ourts of justice ought everywhere to be open, accessible, free from interruption, and to cast a perfect protection around every man who necessarily approaches them."[159]

C. Shared Interests of Federal and State Courts

Because ICE can work closely with other agencies in the federal criminal justice system, it has not found it necessary to make arrests in federal courthouses, and the federal courts will likely have little need to assert the privilege from arrest in order to protect their own administration of justice. But American judicial decisions demonstrate the aligned interests of federal and state tribunals in advancing the public policy goals of the common-law privilege from arrest. First, federal, state, and local governments historically demonstrated a shared interest in applying the privilege from arrest to protect their own courts and those attending them, and therefore a shared interest in the idea that those courts are sufficiently empowered to do so. Second, all courts—federal, state,

155. *Watson*, 423 U.S. at 418, 421.

156. *See supra* Section III.B.

157. *See supra* Section III.A.

158. *Watson*, 423 U.S. at 421.

159. Stewart v. Ramsey, 242 U.S. 128, 129 (1916) (quoting Halsey v. Stewart, 4 N.J.L. 366, 367 (N.J. 1817)).

and local—demonstrated a shared interest in enforcing the privilege as to other courts, that it might likewise be enforced by other courts as to their own.

The privilege from arrest has been deemed necessary to preserve courts' ability to administer justice.[160] The jurisprudence surrounding the privilege unsurprisingly establishes that protecting the courthouse and its environs from disruption and violence (as accomplished by the privilege as to place) and protecting the administration of justice by privileging those with business before the court (as accomplished by the privilege as to people) is deemed a necessary power belonging to all courts.[161]

The most obvious demonstration of this power, at common law, was each court's power to issue a writ of protection. That the power to issue such writs was held by American courts at common law is demonstrated by numerous authorities.[162] A Rhode Island case recounted that a writ of protection had issued

> in the ordinary form, commanding the sheriffs of the several counties, and their deputies, that they "let the said William T. Merritt of and from all civil process, whether original or judicial, so long as he shall attend said court, and until he shall be discharged from the protection aforesaid by this court at the present term."[163]

But the writ of protection was not deemed necessary[164]—the power to grant privilege from arrest was deemed "*a power inherent in courts.*"[165] This inherent power flowed necessarily from the understanding that courts could not do justice without "preventing delay, hindrance, or interference with the orderly ad-

160. *See supra* Section IV.B.

161. Beyond the scope of this Essay is the question of whether a sovereign government can exercise power over the privilege through nonjudicial action, or whether the power over the privilege is limited to the courts themselves. *Cf.* Diamond v. Earle, 105 N.E. 363, 363 (Mass. 1914) (describing the privilege as "a prerogative exerted by the sovereign power through the courts for the furtherance of the ends of justice").

162. *See, e.g.*, Bridges v. Sheldon, 7 F. 17, 44 (D. Vt. 1880) ("A writ of protection issued out of that court is proper . . . "); Parker v. Marco, 32 N.E. 989, 989 (N.Y. 1893) ("We cannot find that the power to issue such a writ has been abrogated by legislation, and it doubtless exists, and the writ may still be granted by courts possessing a common-law jurisdiction . . . ."); HOWE, *supra* note 89, at 144-46 (describing Massachusetts procedure with respect to writs of protection).

163. Waterman v. Merritt, 7 R.I. 345, 345-46 (1862); *see also Ex parte* Hall, 1 Tyl. 274 (Vt. 1802) (issuing a writ and upholding liberal reading of the writ).

164. *See* Thompson's Case, 122 Mass. 428, 429 (1877) (recognizing the privilege "whether they have or have not obtained a writ of protection" (citations omitted)).

165. Wemme v. Hurlburt, 289 P. 372, 373 (Or. 1930) (citations omitted) (emphasis added).

ministration of justice"[166]—and that courts could not expect the attendance of parties and witnesses, even pursuant to court order, without the power (or obligation)[167] to also offer protection.[168]

Courts needed this power to operate, but they also needed other courts to recognize it. Indeed, the privilege can be understood as a rule governing the relationship of courts, whereby courts follow the rule out of a categorical imperative, respecting other courts' dignity[169] to ensure their own:

> Out of the enforcement of this policy has sprung the doctrine of comity. No court will direct its process to be served upon litigants before another court where it would protect its own litigants from a like service. Every court will aid every other court by permitting attendance upon one free from the danger of service of process by another. All courts recognize this principle of immunity involved.[170]

A leading case from New York put it similarly: "[T]his court ought not to suffer its process to be executed in violation of the privileges of other courts . . . ."[171] Moreover, the Supreme Court was emphatic in its endorsement of comity as applied to the privilege in a case where service of process in a federal case was served on a nonresident present in Massachusetts to attend state-court proceedings. The Court was asked to uphold the service of process on the ground that the federal lawsuit and the state-court proceedings were taking place in different jurisdictions, but the Court rejected this, holding that "[a] federal court in a State is not foreign and antagonistic to a court of the State within the principle . . . ."[172] The privilege against service of process

166. *Id.*

167. An important early decision from New York described the privilege as an obligation of the court, owing to the court's power to compel the attendance of persons before the court. Norris v. Beach, 2 Johns. 294 (N.Y. 1807).

168. Bridges v. Sheldon, 7 F. 17, 46 (D. Vt. 1880) (holding a writ of protection unnecessary, because "[t]he order to take testimony issued under the authority of the court carried with it the protection of the court"); United States v. Edme, 9 Serg. & Rawle 147, 151 (Pa. 1822) ("[T]he court must necessarily possess the power to protect from arrest all who are necessarily attending the execution of their own order.").

169. *See* Kaufman v. Garner, 173 F. 550, 554 (W.D. Ky. 1909) (stating that the rule is based on "the dignity and independence of the court first acquiring jurisdiction").

170. Feister v. Hulick, 228 F. 821, 823 (E.D. Pa. 1916).

171. Bours v. Tuckerman, 7 Johns. 538, 539 (N.Y. Sup. Ct. 1811); *see also* Vincent v. Watson, 30 S.C.L. (1 Rich.) 194, 198 (S.C. Ct. App. 1845) (describing *Bours* as expressing "[t]he rule most consistent with the courtesy due from the courts to each other, and with a proper care for the liability of the citizen").

172. Page Co. v. Macdonald, 261 U.S. 446, 447-48 (1923).

rests on "the necessities of the judicial administration," the Court wrote.[173] "[T]he courts, federal and state, have equal interest in those necessities."[174]

These decisions have two important implications for the current impasse over courthouse immigration arrests. First, state and local courts have the power "inherent in courts" to privilege from arrest those who attend their courts on business (in their coming, remaining, and returning) as well as those people present in and around the courts.[175] The letters asking ICE to stop making courthouse arrests need not be the last step taken—ICE's refusal to stop these arrests cannot deprive courts of a power they derive simply from being courts. Second, if ICE refuses to respect the power of state and local courts concerning the privilege, once asserted, state and local courts can reasonably expect to be supported by the federal courts, if not the immigration courts, because of the federal courts' shared interest in upholding rules that address the administration of justice and therefore must be universally enforced. This is so even though the federal courts are not identically situated, as ICE arrests have not yet become a problem for federal courts. This difference is insufficient to make the federal courts "antagonistic" to the state courts.[176] That the privilege is thus universally followed[177] as a matter of comity[178] makes it a uniquely suitable solution to the federalism clash caused by immigration courthouse arrests.

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173. *Id.* at 448 (quoting Stewart v. Ramsay, 242 U.S. 128, 130 (1916)).

174. *Id.* at 448.

175. Wemme v. Hurlburt, 289 P. 372, 373 (Or. 1930).

176. *Page Co.*, 261 U.S. at 447.

177. *See* People *ex rel.* Watson v. Judge of Superior Court of Detroit, 40 Mich. 729, 733 (1879) ("If any court were disposed to suffer its own process to be employed for such a purpose, any other court with competent authority should interfere to correct the wrong."); Parker v. Marco, 32 N.E. 989, 989 (N.Y. 1893) (noting that a writ of protection "would be respected by all other courts"); Sofge v. Lowe, 176 S.W. 106, 108 (Tenn. 1915) (applying the privilege in an interstate setting, and concluding: "Justice, in such connection, is to be conceived of as a thing integral and not partible by state or jurisdictional lines; all courts must be presumed to interest themselves alike in promoting and keeping unhampered its fair administration . . . . The courts of this state will see to it that their processes are not used to thus embarrass the administration of justice in a sister state, and we shall expect the courts of other states to rule in reciprocation. Thus, by a species of comity, a common end will be served."); CHARLES ALAN WRIGHT, ARTHUR R. MILLER & ADAM N. STEINMAN, 4A FEDERAL PRACTICE AND PROCEDURE § 1078 (4th ed. 2015) (addressing the privilege as applied to service of process on non-residents, stating that "the objectives of the immunity doctrine and notions of judicial cooperation dictate that state courts should grant immunity to persons who have entered the jurisdiction for the purpose of attending federal proceedings and that federal courts should quash service made on those who are in the jurisdiction to attend pending state proceedings" (footnotes omitted)).

CONCLUSION

The common-law privilege from arrest provides a rule of law that could break the federalism impasse caused by immigration courthouse arrests. This Essay has attended to the substance and grounding of the rule,[179] demonstrating that state and local courts have the power to regulate courthouse arrests and in doing so, would be pursuing policy goals recognized by state and federal courts. But numerous questions for future study remain.

First, what are the procedural mechanisms by which the privilege against courthouse immigration arrests can be invoked? Perhaps the most obvious mechanism suggested by the analysis here would be for a court to issue some form of writ of protection. But might the privilege also be implemented by state or local legislative enactments?[180]

Second, what remedies are available for violations of the privilege (or of a writ of protection)? Certainly, the cases surveyed would suggest ICE agents making arrests in violation of the privilege might be held in contempt.[181] But

178. A question beyond the scope of this Essay is whether federalism under the Constitution would *require* federal actors to refrain from interfering with state and local sovereign governments by making arrests in violation of the common-law privilege.

179. There are many nuances in American jurisprudence, not explored here, which are artifacts of the doctrine's migration into the question of interstate personal jurisdiction. I have attempted to canvass the core of the privilege from civil arrest, which came into American law largely unquestioned. *See, e.g.*, Greer v. Young, 11 N.E. 167, 169-70 (Ill. 1887) (distinguishing between the question at hand, involving service of process, and the entrenched doctrine of privilege from civil arrest); Jenkins v. Smith, 57 How. Pr. 171, 173 (N.Y. Supr. Ct. 1878) (noting "[i]t is also well settled that a resident witness is privileged from arrest, but not from the service of a summons.").

180. There are some state statutes addressing privilege from arrest. *E.g.*, IDAHO CODE § 9-1303 (2017) (establishing privilege from arrest for subpoenaed witness); OR. REV. STAT. § 44.090 (2017) (same); ARIZ. REV. STAT. ANN. § 12-2213 (2017) ("A witness shall be privileged from arrest, except for treason, felony and breach of the peace, during his attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from his place of abode."). Such statutes raise additional questions—are they supplements to the common-law privilege or displacements of it? *See, e.g.*, Davis v. Hackney, 85 S.E.2d 245, 247 (Va. 1955) (interpreting Uniform Act regarding out-of-state witnesses as enacted in aid of the common-law privilege). If the latter, can state or local legislatures displace the common-law privilege without violating separation of powers principles? *See, e.g.*, State *ex rel.* Veskrna v. Steel, 894 N.W.2d 788, 801 (Neb. 2017) ("It is for the judiciary to say when the Legislature has gone beyond its constitutional powers by enacting a law that invades the province of the judiciary.").

181. This is certainly suggested by the common-law cases surveyed herein. *E.g.*, *Larned*, 12 F. at 594 (stating that the "offender may be punishable for contempt if the arrest is made in the actual or constructive presence of the court . . . . "); *Ex parte* Hall, 1 Tyl. at 281 (in case where a writ of protection was violated, holding "the constable be in mercy for his contempt

could a violation of the privilege also support discharge from custody,[182] suppression of evidence or termination of immigration proceedings,[183] or a damages lawsuit?[184] Could declaratory or injunctive relief be available to prevent further violations?

Third, what is the relation between the privilege and other constitutional provisions guaranteeing individual rights[185] or trial rights for civil or criminal litigants,[186] or prescribing the structures of government?[187]

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of the Court"); *Long's Case*, 2 Mod. 181 (committing officer to the Fleet prison for making arrest in the yard of the court).

182. *E.g.*, *Larned*, 12 F. at 591 (noting an English common-law remedy whereby "writ of privilege" would result in prisoner's discharge); *id.* (collecting cases where discharge was accomplished by motion or by plea in abatement); Thompson's Case, 122 Mass. 428, 430 (1877) (noting that "any one arrested in violation of privilege may, like any other person unlawfully imprisoned or restrained of his liberty, be discharged by this court, or by any justice thereof, in the exercise of the general power to issue writs of habeas corpus." (citations omitted)); *Ex parte* Hall, 1 Tyl. At 281 (granting habeas petition and ordering discharge of the prisoner).

183. *See, e.g.*, Bramwell v. Owen, 276 F. 36 (D. Or. 1921) (quashing service made in violation of the privilege and dismissing suit); *Larned*, 12 F. at 594 (allowing a plea in abatement of civil suit initiated in violation of the privilege because such remedy "in our opinion is necessary to the due administration of justice, that this immunity extends to all kinds of civil process, and affords an absolute protection" (citation omitted)).

184. *See, e.g.*, Mary E. O'Leary, *11 Immigrants Arrested in 2007 Raids in New Haven Win $350K Settlement with Feds, Won't Be Deported*, NEW HAVEN REG. (Feb. 14, 2012), http://www.nhregister.com/news/article/11-immigrants-arrested-in-2007-raids-in-New-Haven-11527436.php [http://perma.cc/VU9K-3422] (reporting the settlement of claims alleging, *inter alia*, wrongful arrests by ICE agents).

185. *See supra* notes 153-155 and accompanying text (describing the use of common-law authorities to inform Fourth Amendment analysis); *see also* Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667 (2003) (arguing that law enforcement policies that deter noncitizens from reporting crimes may be unconstitutional).

186. Trial rights implicated could include the right to a public trial; the right to testify, see Diamond v. Earle, 105 N.E. 363, 363 (Mass. 1914) (noting that a party's right to testify on his own behalf might be "hampered by the hazard that he may become entangled in other litigation"); the right to compulsory process, see Halsey v. Stewart, 4 N.J.L. 366, 367-68 (N.J. 1817) (noting that the privilege enables a litigant "to procure, without difficulty, the attendance of all such persons as are necessary to manifest his rights"); the right to be present at critical stages of the case, see Parker v. Marco, 32 N.E. 989, 989 (N.Y. 1893) ("It is the right of the party, as well as his privilege, to be present whenever evidence is to be taken in the action which may be used for the purpose of affecting its final determination."); and the right to present claims or defenses.

187. *See* New York v. United States, 505 U.S. 144, 155 (1992) (describing Tenth Amendment inquiry into "whether [the federal government] invades the province of state sovereignty reserved by the Tenth Amendment."); U.S. CONST. art. IV, § 4 (directing the United States to "guarantee to every State . . . a Republican Form of Government . . . .").

And finally, could the privilege be applied or extended to protect other government institutions by preventing arrests at probation offices, administrative courts, public legislative assemblies or offices, or government offices where benefits are sought or distributed?[188]

* * *

The search for a solution to the courthouse-immigration-arrests problem requires blowing the dust off ancient treatises and delving into centuries-old English cases. But there is a good reason the existence of the privilege from arrest now comes as breaking news. The privilege receded from the body of modern law not because the doctrine fell by the way, but rather because the practice of commencing civil litigation with an arrest did.[189] The privilege from arrest was firmly entrenched and undisputed in both English and American jurisprudence when the need for its application waned, and the courts moved on to busy themselves with questions concerning extension of the doctrine to the service of civil process. *Arrests* under circumstances in which the privilege would apply all but disappeared.[190]

The need to resort to ancient authority stands not as evidence of weakness in the doctrine, but rather as an attestation to how aberrational courthouse immigration arrests are. The poor instincts of those who have directed these arrests, and those who have defended them, desperate to harness local criminal systems even at the risk of harming their integrity, stand rebuked by this rule that has been "sustained by [an] almost unbroken current of authority."[191] Those who have expressed outrage at ICE's courthouse arrests and decried the harm they threaten to state and local courts, on the other hand, are fully vindicated by the privilege, its unquestioned status, and its policy justifications that echo undiminished across the centuries.

Their outrage, it seems, would have been shared by judges in every age.

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188. Other privileges from arrest, such as that for state legislators, *see* Thompson's Case, 122 Mass. 428 (involving legislative privilege), or relating to elections, *e.g.* KY. CONST. § 149 ("Voters, in all cases except treason, felony, breach of surety of the peace, or violation of the election laws, shall be privileged from arrest during their attendance at elections, and while they are going to and returning therefrom."), exist to protect government functions.

189. *See supra* note 71.

190. *Id.*

191. *Greer*, 11 N.E. at 187.

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Exhibit U

Supreme Court of California
350 McALLISTER STREET
SAN FRANCISCO, CA 94102-4797

TANI G. CANTIL-SAKAUYE
CHIEF JUSTICE OF CALIFORNIA

415-865-7000

March 16, 2017

Attorney General Jeff Sessions
The United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable John F. Kelly
U.S. Department of Homeland Security
Secretary of Homeland Security
Washington, DC 20528

RE: Immigration Enforcement Tactics at State Courthouses

Dear Attorney General Sessions and Secretary Kelly:

As Chief Justice of California responsible for the safe and fair delivery of justice in our state, I am deeply concerned about reports from some of our trial courts that immigration agents appear to be stalking undocumented immigrants in our courthouses to make arrests.

Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws.

Our courts are the main point of contact for millions of the most vulnerable Californians in times of anxiety, stress, and crises in their lives. Crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families all come to our courts seeking justice and due process of law. As finders of fact, trial courts strive to

mitigate fear to ensure fairness and protect legal rights. Our work is critical for ensuring public safety and the efficient administration of justice.

Most Americans have more daily contact with their state and local governments than with the federal government, and I am concerned about the impact on public trust and confidence in our state court system if the public feels that our state institutions are being used to facilitate other goals and objectives, no matter how expedient they may be.

Each layer of government – federal, state, and local – provides a portion of the fabric of our society that preserves law and order and protects the rights and freedoms of the people. The separation of powers and checks and balances at the various levels and branches of government ensure the harmonious existence of the rule of law.

The federal and state governments share power in countless ways, and our roles and responsibilities are balanced for the public good. As officers of the court, we judges uphold the constitutions of both the United States and California, and the executive branch does the same by ensuring that our laws are fairly and safely enforced. But enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair. They not only compromise our core value of fairness but they undermine the judiciary's ability to provide equal access to justice. I respectfully request that you refrain from this sort of enforcement in California's courthouses.

Sincerely,

T. Cantil-Sakauye

TANI G. CANTIL-SAKAUYE

cc: Hon. Dianne Feinstein, Senator
Hon. Kamala Harris, Senator
Hon. Jerry Brown, Governor

SUPREME COURT OF NEW JERSEY

STUART RABNER
CHIEF JUSTICE

RICHARD J. HUGHES JUSTICE COMPLEX
PO BOX 023
TRENTON, NEW JERSEY 08625-0023

April 19, 2017

The Honorable John F. Kelly
U.S. Department of Homeland Security
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Kelly:

In recent weeks, agents from the Immigration and Customs Enforcement agency arrested two individuals who showed up for court appearances in state court. As Chief Justice of the New Jersey Supreme Court and the administrative head of the state court system, I write to urge that arrests of this type not take place in courthouses.

ICE recognizes that arrests, searches, and surveillance only for immigration enforcement should not happen in "sensitive locations." Policy Number 10029.2 extends that principle to schools, hospitals, houses of worship, public demonstrations, and other events. I respectfully request that courthouses be added to the list of sensitive locations.

A true system of justice must have the public's confidence. When individuals fear that they will be arrested for a civil immigration violation if they set foot in a courthouse, serious consequences are likely to follow. Witnesses to violent crimes may decide to stay away from court and remain silent. Victims of domestic violence and other offenses may choose not to testify against their attackers. Children and families in need of court assistance may likewise avoid the courthouse. And defendants in state criminal matters may simply not appear.

To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum. Enforcement actions by ICE agents inside courthouses would produce the opposite result and effectively deny access to the courts.

For years, state courts and corrections officials have cooperated with detainer requests from ICE and other agencies for the surrender of defendants who are held in custody. That practice is different from carrying out a public arrest in a courthouse for a civil immigration violation, which sends a chilling message. Instead, the same sensible approach that bars ICE enforcement actions in schools and houses of worship should apply to courthouses.

I worked closely with ICE and Customs agents when I served in the United States Attorney's Office for the District of New Jersey and, later, as the State's Attorney General. Like you, I believe in the rule of law. But I respectfully urge that we find a thoughtful path to further that aim in a way that does not compromise our system of justice.

Thank you for your attention to this matter. I would be pleased to discuss the issue further.

Very truly yours,

Stuart Rabner
Chief Justice

cc: Thomas D. Homan, Acting Director, ICE
John Tsoukaris, ICE Field Office Director, Newark, NJ

Thomas A. Balmer
Chief Justice

1163 State Street
Salem, OR 97301-2563
Phone: 503.986.5717
Fax: 503.986.5730
Oregon Relay Service: 711
Thomas.Balmer@ojd.state.or.us

OREGON SUPREME COURT

April 6, 2017

Attorney General Jeff Sessions
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable John F. Kelly
Secretary of Homeland Security
Washington, DC 20528

Dear Attorney General Sessions and Secretary Kelly:

On behalf of the Oregon Judicial Department, I write to urge you to direct federal law enforcement agencies, including Immigration and Customs Enforcement (ICE), not to arrest individuals inside or in the immediate vicinity of Oregon's county courthouses. If you are unwilling to adopt that policy, then at a minimum, I request that you formally expand the definition of "sensitive locations" in the Homeland Security Policy to include these areas.

Let me explain. Our courthouses are open to the public, as a matter of tradition and as required by the Oregon Constitution, which provides that "justice shall be administered openly." ICE agents and other law enforcement officers have the same access to the public areas of our courthouses as all members of the public.

I fully recognize the scope of the statutory authority of ICE and other federal law enforcement agencies. OJD's policy is scrupulous neutrality -- just as we will not hinder federal, state, or local law enforcement agencies, including ICE, in the exercise of their enforcement authority, neither can we assist federal (or other) law enforcement in apprehending those who may have violated the law. As you know, the courts strive to be -- and must be -- impartial and neutral forums for the resolution of criminal and other cases.

To help the Oregon courts preserve their mandated impartial and neutral role, I respectfully request that you exercise your broad discretion in enforcing federal immigration and criminal laws, and *not* detain or arrest individuals in or in the immediate vicinity of the Oregon courthouses.

As I am sure you appreciate, the Oregon courts must be accessible to all members of the public. The safety of individuals and families, the protection of economic and other rights, and the integrity of the criminal justice system all depend on individuals being willing and able to attend court proceedings: a witness who is subpoenaed to testify in a criminal case; a victim seeking a restraining order against an abusive former spouse; a driver paying a traffic fine; a landlord seeking an eviction or a tenant defending against one; or a small claims court plaintiff in a dispute with a neighbor.

The State of Oregon needs to encourage, not discourage, court appearances by parties and witnesses, regardless of their immigration status. However, ICE's increasingly visible practice of arresting or detaining individuals in or near courthouses for possible violations of immigration laws is developing into a strong deterrent to access to the courts for many Oregon residents. A number of our trial courts report that even attendance at scheduled hearings has been adversely affected because parties or witnesses fear the presence of ICE agents. The chilling effect of ICE's actions deters not only undocumented residents, but also those who are uncertain about the implications of their immigration or residency status or are close family, friends, or neighbors of undocumented residents. ICE's actions also deter appearances in court by those who are legal residents or citizens, but who do not want to face the prospect of what they see as hostile questioning based on perceived ethnicity, cases of misidentification, or other intrusive interactions with ICE agents.

I understand and appreciate the difficulty of the law enforcement work that you do. I trust that you understand as well the central role that the Oregon courts play in our state's criminal justice system, our efforts to protect children and families, and our daily work to ensure the rule of law for all Oregon residents. ICE's detention or arrest of undocumented residents in and near Oregon's courthouses seriously impedes those efforts. It deters individuals, some undocumented and some not, from coming to court when they should. For that reason, I urge you to adopt a policy of *not* arresting individuals for alleged immigration violations in or near Oregon's courthouses, or, at a minimum, to formally include courthouses in your definition of "sensitive locations" where ICE will thoroughly review the implications of and alternatives to making such arrests.

We appreciate the discussions that our judges and staff have had with ICE officials in Oregon about their policies and practices, but believe this current and prospective interference with the administration of justice in Oregon calls for policy changes that only you can direct.

Thank you for your attention to this serious problem for the Oregon courts.

Sincerely,

Thomas A. Balmer
Chief Justice

cc: Governor Kate Brown
Attorney General Ellen Rosenblum
Senator Ron Wyden
Senator Jeff Merkley
Oregon Congressional Delegation
Oregon Presiding Judges

U.S. Department of Justice
Executive Office for Immigration Review
Immigration Court

OMB#1125-0006

Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court

(Type or Print)
NAME AND ADDRESS OF REPRESENTED PARTY

Immigrant Defense Project (Amicus for A 213-119-144)
(First) (Middle Initial) (Last)

40 W 39th St Fifth Floor
(Number and Street) (Apt. No.)

New York NY 10018
(City) (State) (Zip Code)

ALIEN ("A") NUMBER
(Provide A-number of the party represented in this case.)
213-119-144

Entry of appearance for
(please check one of the following):

- ☐ All proceedings
- ☐ Custody and bond proceedings only
- ☑ All proceedings other than custody and bond proceedings

Attorney or Representative (please check one of the following):

☑ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest court(s) of the following states(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia (use additional space on reverse side if necessary) and I am not subject to any order disbarring, suspending, enjoining, restraining or otherwise restricting me in the practice of law in any jurisdiction (if subject to such an order, do not check this box and explain on reverse).

Full Name of Court New York First Division **Bar Number (if applicable)** 1869502

☐ I am a representative accredited to appear before the Executive Office for Immigration Review as defined in 8 C.F.R. § 1292.1(a)(4) with the following recognized organization:

☐ I am a law student or law graduate of an accredited U.S. law school as defined in 8 C.F.R. § 1292.1(a)(2).

☐ I am a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3).

☐ I am an accredited foreign government official, as defined in 8 C.F.R. § 1291.1(a)(5), from _____ (country).

☐ I am a person who was authorized to practice on December 23, 1952, under 8 C.F.R. § 1292.1(b).

Attorney or Representative (please check one of the following):

☑ I hereby enter my appearance as attorney or representative for, and at the request of, the party named above.

☐ EOIR has ordered the provision of a Qualified Representative for the party named above and I appear in that capacity.

I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representations before the Immigration Court. By signing this form, I consent to publication of my name and any findings of misconduct by EOIR, should I become subject to any public discipline by EOIR pursuant to the rules and procedures at 8 C.F.R. 1003.101 *et seq.* I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE	EOIR ID NUMBER	DATE
X [signature]	GW082389	1/2/2018

NAME OF ATTORNEY OR REPRESENTATIVE, ADDRESS, FAX & PHONE NUMBERS, & EMAIL ADDRESS

Name: Nancy Morawetz
(First) (Middle Initial) (Last)

Address: 245 Sullivan Street, 5th Floor
(Number and Street)

New York NY 10012
(City) (State) (Zip Code)

Telephone: (212) 998-6430 Facsimile: (212) 995-4031 Email: nancy.morawetz@nyu.edu

☐ Check here if new address

Indicate Type of Appearance:

☑ Primary Attorney/Representative ☐ Non-Primary Attorney/Representative

☐ On behalf of _____ (Attorney's Name) for the following hearing: _____ (Date)

I am providing pro bono representation. Check one: ☑ yes ☐ no

Proof of Service

I (Name) Sarah Tutz mailed or delivered a copy of this Form EOIR-28 on (Date) 1/2/18

to the DHS (U.S. Immigration and Customs Enforcement – ICE) at 201 Varick Street, New York, NY 10014

X _____

Signature of Person Serving

APPEARANCES - An attorney or Accredited Representative (with full accreditation) must register with the EOIR eRegistry in order to practice before the Immigration Court (see 8 C.F.R. § 1292.1(f)). Registration must be completed online on the EOIR website at www.justice.gov/eoir. An appearance shall be filed on a Form EOIR-28 by the attorney or representative appearing in each case before an Immigration Judge (see 8 C.F.R. § 1003.17). A Form EOIR-28 shall be filed either as an electronic form, or as a paper form, as appropriate (for further information, please see the Immigration Court Practice Manual, which is available on the EOIR website at www.justice.gov/eoir). The attorney or representative must check the box indicating whether the entry of appearance is for custody and bond proceedings only, for all proceedings other than custody and bond, or for all proceedings including custody and bond. When an appearance is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under the provisions of 8 C.F.R. part 1003, he/she is authorized and qualified to represent individuals and will comply with the EOIR Rules of Professional Conduct in 8 C.F.R. § 1003.102. Thereafter, substitution or withdrawal may be permitted upon the approval of the Immigration Judge of a request by the attorney or representative of record in accordance with 8 C.F.R. § 1003.17(b). Please note that although separate appearances in custody and non-custody proceedings are permitted, appearances for limited purposes within those proceedings are not permitted. *See Matter of Velasquez*, 19 I&N Dec. 377, 384 (BIA 1986). A separate appearance form (Form EOIR-27) must be filed with an appeal to the Board of Immigration Appeals (see 8 C.F.R. § 1003.38(g)). Attorneys and Accredited Representatives (with full accreditation) must first update their address in eRegistry before filing a Form EOIR-28 that reflects a new address.

FREEDOM OF INFORMATION ACT - This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is in 28 C.F.R. §§ 16.1-16.11 and appendices. For further information about requesting records from EOIR under the Freedom of Information Act, see How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review, available on EOIR's website at http://www.justice.gov/eoir.

PRIVACY ACT NOTICE - The information requested on this form is authorized by 8 U.S.C. §§ 1229(a), 1362 and 8 C.F.R. § 1003.17 in order to enter an appearance to represent a party before the Immigration Court. The information you provide is mandatory and required to enter an appearance. Failure to provide the requested information will result in an inability to represent a party or receive notice of actions in a proceeding. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notice, EOIR-001, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11, 2004), or its successors and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49237 (September 1999). Furthermore, the submission of this form acknowledges that an attorney or representative will be subject to the disciplinary rules and procedures at 8 C.F.R. 1003.101*et seq.*, including, pursuant to 8 C.F.R. §§ 292.3(h)(3), 1003.108(c), publication of the name of the attorney or representative and findings of misconduct should the attorney or representative be subject to any public discipline by EOIR.

CASES BEFORE EOIR - Automated information about cases before EOIR is available by calling (800) 898-7180 or (240) 314-1500.

FURTHER INFORMATION - For further information, please see the *Immigration Court Practice Manual*, which is available on the EOIR website at *www.justice.gov/eoir*.

ADDITIONAL INFORMATION:

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

U.S. Department of Justice
Executive Office for Immigration Review
Immigration Court

OMB#1125-0006
Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court

(Type or Print)
NAME AND ADDRESS OF REPRESENTED PARTY

Immigrant Defense Project (Amicus for A 213-119-144)
(First) (Middle Initial) (Last)

40 W 39th St Fifth Floor
(Number and Street) (Apt. No.)

New York NY 10018
(City) (State) (Zip Code)

ALIEN ("A") NUMBER
(Provide A-number of the party represented in this case.)
213-119-144

Entry of appearance for
(please check one of the following):

- ☐ All proceedings
- ☐ Custody and bond proceedings only
- ☑ All proceedings other than custody and bond proceedings

Attorney or Representative (please check one of the following):

☐ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest court(s) of the following states(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia (use additional space on reverse side if necessary) and I am not subject to any order disbarring, suspending, enjoining, restraining or otherwise restricting me in the practice of law in any jurisdiction (if subject to such an order, do not check this box and explain on reverse).

Full Name of Court _____ **Bar Number (if applicable)** _____

☐ I am a representative accredited to appear before the Executive Office for Immigration Review as defined in 8 C.F.R. § 1292.1(a)(4) with the following recognized organization:

_____

☑ I am a law student or law graduate of an accredited U.S. law school as defined in 8 C.F.R. § 1292.1(a)(2).

☐ I am a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3).

☐ I am an accredited foreign government official, as defined in 8 C.F.R. § 1291.1(a)(5), from _____ (country).

☐ I am a person who was authorized to practice on December 23, 1952, under 8 C.F.R. § 1292.1(b).

Attorney or Representative (please check one of the following):

☑ I hereby enter my appearance as attorney or representative for, and at the request of, the party named above.

☐ EOIR has ordered the provision of a Qualified Representative for the party named above and I appear in that capacity.

I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representations before the Immigration Court. By signing this form, I consent to publication of my name and any findings of misconduct by EOIR, should I become subject to any public discipline by EOIR pursuant to the rules and procedures at 8 C.F.R. 1003.101 *et seq.* I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE	EOIR ID NUMBER	DATE
X [signature]	—	1/2/16

NAME OF ATTORNEY OR REPRESENTATIVE, ADDRESS, FAX & PHONE NUMBERS, & EMAIL ADDRESS

Name: Sarah (First) (Middle Initial) Taitz (Last)

Address: 245 Sullivan Street, 5th Floor
(Number and Street)

New York (City) NY (State) 10012 (Zip Code)

Telephone: (212) 998-6430 Facsimile: (212) 995-4031 Email: smt390@nyu.edu

☐ Check here if new address

Indicate Type of Appearance:

☑ Primary Attorney/Representative ☐ Non-Primary Attorney/Representative

☐ On behalf of _____ (Attorney's Name) for the following hearing: _____ (Date)

I am providing pro bono representation. Check one: ☑ yes ☐ no

Proof of Service

I (Name) Sarah Tuitz mailed or delivered a copy of this Form EOIR-28 on (Date) 1/2/19

to the DHS (U.S. Immigration and Customs Enforcement – ICE) at 201 Varick Street New York, NY 10014

X _____

Signature of Person Serving

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ADDITIONAL INFORMATION:

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

U.S. Department of Justice
Executive Office for Immigration Review
Immigration Court

OMB#1125-0006
Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court

(Type or Print)
NAME AND ADDRESS OF REPRESENTED PARTY

Immigrant Defense Project (Amicus for A 213-119-144)
(First) (Middle Initial) (Last)

40 W 39th St Fifth Floor
(Number and Street) (Apt. No.)

New York NY 10018
(City) (State) (Zip Code)

ALIEN ("A") NUMBER
(Provide A-number of the party represented in this case.)
213-119-144

Entry of appearance for
(please check one of the following):
- ☐ All proceedings AMICUS
- ☐ Custody and bond proceedings only
- ☑ All proceedings other than custody and bond proceedings

Attorney or Representative (please check one of the following):

☐ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest court(s) of the following states(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia (use additional space on reverse side if necessary) and I am not subject to any order disbarring, suspending, enjoining, restraining or otherwise restricting me in the practice of law in any jurisdiction (if subject to such an order, do not check this box and explain on reverse).

Full Name of Court _____ **Bar Number (if applicable)** _____

☐ I am a representative accredited to appear before the Executive Office for Immigration Review as defined in 8 C.F.R. § 1292.1(a)(4) with the following recognized organization:

_____

☑ I am a law student or law graduate of an accredited U.S. law school as defined in 8 C.F.R. § 1292.1(a)(2).

☐ I am a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3).

☐ I am an accredited foreign government official, as defined in 8 C.F.R. § 1291.1(a)(5), from _____ (country).

☐ I am a person who was authorized to practice on December 23, 1952, under 8 C.F.R. § 1292.1(b).

Attorney or Representative (please check one of the following):

☑ I hereby enter my appearance as attorney or representative for, and at the request of, the party named above.

☐ EOIR has ordered the provision of a Qualified Representative for the party named above and I appear in that capacity.

I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representations before the Immigration Court. By signing this form, I consent to publication of my name and any findings of misconduct by EOIR, should I become subject to any public discipline by EOIR pursuant to the rules and procedures at 8 C.F.R. 1003.101 *et seq.* I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE **EOIR ID NUMBER** **DATE**

X _____ 1/2/2018

NAME OF ATTORNEY OR REPRESENTATIVE, ADDRESS, FAX & PHONE NUMBERS, & EMAIL ADDRESS

Name: Jane W Williams
(First) (Middle Initial) (Last)

Address: 245 Sullivan Street, 5th Floor
(Number and Street)

New York NY 10012
(City) (State) (Zip Code)

Telephone: (212) 998-6430 Facsimile: (212) 995-4031 Email: jww363@nyu.edu

☐ Check here if new address

Indicate Type of Appearance:

☑ Primary Attorney/Representative ☐ Non-Primary Attorney/Representative

☐ On behalf of _____ (Attorney's Name) for the following hearing: _____ (Date)

I am providing pro bono representation. Check one: ☑ yes ☐ no

Proof of Service

I (Name) Sarah Tuitz mailed or delivered a copy of this Form EOIR-28 on (Date) 1/2/18

to the DHS (U.S. Immigration and Customs Enforcement – ICE) at 201 Varick Street, New York, NY 10014

X _____

Signature of Person Serving

APPEARANCES - An attorney or Accredited Representative (with full accreditation) must register with the EOIR eRegistry in order to practice before the Immigration Court (see 8 C.F.R. § 1292.1(f)). Registration must be completed online on the EOIR website at www.justice.gov/eoir. An appearance shall be filed on a Form EOIR-28 by the attorney or representative appearing in each case before an Immigration Judge (see 8 C.F.R. § 1003.17). A Form EOIR-28 shall be filed either as an electronic form, or as a paper form, as appropriate (for further information, please see the Immigration Court Practice Manual, which is available on the EOIR website at www.justice.gov/eoir). The attorney or representative must check the box indicating whether the entry of appearance is for custody and bond proceedings only, for all proceedings other than custody and bond, or for all proceedings including custody and bond. When an appearance is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under the provisions of 8 C.F.R. part 1003, he/she is authorized and qualified to represent individuals and will comply with the EOIR Rules of Professional Conduct in 8 C.F.R. § 1003.102. Thereafter, substitution or withdrawal may be permitted upon the approval of the Immigration Judge of a request by the attorney or representative of record in accordance with 8 C.F.R. § 1003.17(b). Please note that although separate appearances in custody and non-custody proceedings are permitted, appearances for limited purposes within those proceedings are not permitted. *See Matter of Velasquez*, 19 I&N Dec. 377, 384 (BIA 1986). A separate appearance form (Form EOIR-27) must be filed with an appeal to the Board of Immigration Appeals (see 8 C.F.R. § 1003.38(g)). Attorneys and Accredited Representatives (with full accreditation) must first update their address in eRegistry before filing a Form EOIR-28 that reflects a new address.

FREEDOM OF INFORMATION ACT - This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is in 28 C.F.R. §§ 16.1-16.11 and appendices. For further information about requesting records from EOIR under the Freedom of Information Act, see How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review, available on EOIR's website at http://www.justice.gov/eoir.

PRIVACY ACT NOTICE - The information requested on this form is authorized by 8 U.S.C. §§ 1229(a), 1362 and 8 C.F.R. § 1003.17 in order to enter an appearance to represent a party before the Immigration Court. The information you provide is mandatory and required to enter an appearance. Failure to provide the requested information will result in an inability to represent a party or receive notice of actions in a proceeding. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notice, EOIR-001, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11, 2004), or its successors and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49237 (September 1999). Furthermore, the submission of this form acknowledges that an attorney or representative will be subject to the disciplinary rules and procedures at 8 C.F.R. 1003.101*et seq.*, including, pursuant to 8 C.F.R. §§ 292.3(h)(3), 1003.108(c), publication of the name of the attorney or representative and findings of misconduct should the attorney or representative be subject to any public discipline by EOIR.

CASES BEFORE EOIR - Automated information about cases before EOIR is available by calling (800) 898-7180 or (240) 314-1500.

FURTHER INFORMATION - For further information, please see the *Immigration Court Practice Manual*, which is available on the EOIR website at *www.justice.gov/eoir*.

ADDITIONAL INFORMATION:

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.