

CARDOZO LAW

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Via Email to ICE-FOIA@dhs.gov
U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

RE: Freedom of Information Act Request

Dear U.S. Immigration and Customs Enforcement FOIA Unit:

The Kathryn O. Greenberg Immigration Justice Clinic (“Clinic”) and the Immigrant Defense Project (“IDP”) (collectively “Requestors”) submit this letter as a request for information under the Freedom of Information ACT (FOIA), 5 U.S.C. § 552, *et seq.* We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

Records Requested

Requestors seek disclosure of records related to civil immigration arrests by U.S. Immigration and Customs Enforcement (“ICE”) agents that occur within, on the property of, or within two city blocks of New York State courthouses (hereinafter “courthouse arrests”). Specifically, the Clinic and IDP request any and all records¹ prepared, received, transmitted,

¹ The term “records” as used herein includes all records or communications preserved in electronic or written form including but not limited to training manuals, correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memorandum, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form or electronic format on computers and/or other electronic storage devices and electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any reproduction, such as copies containing marginal notations. Requestors do not object to redaction of personally identifying information.

collected, and/or maintained by United States the Immigration and Customs Enforcement (“ICE”) New York and Buffalo field offices that reflect the following:

1. Any internal protocols regarding communication between the Department of Homeland Security (“DHS”) or its subcomponents and the New York State Office of Court Administration (“OCA”) staff.
2. Any policies, protocols, or trainings about courthouse arrests within the area of responsibility of the New York and Buffalo Field Office Directors, including:
 - a. Specific protocols re enforcement actions (defined as arrest, attempted arrest, or surveillance) in courthouses or areas within courthouses dedicated to either criminal or non-criminal proceedings (including criminal, family, civil courts, integrated, and problem-solving courts).
 - b. OCA’s April 26, 2017 “Policy and Protocol Governing Activities in Courthouses by Law Enforcement Agencies”).
 - c. Arrests of noncitizens encountered during a civil immigration enforcement action inside a courthouse, including family members or friends accompanying the “target alien” (as defined in ICE’s January 10, 2018 Directive 11072.1) to court appearances or serving as a witness in a proceeding.
 - d. Arrests of individuals serving as witnesses in a proceeding.
 - e. ICE’s January 10, 2018 Directive 11072.1.
 - f. Use of non-public areas of courthouses and non-public exits/entrances of courthouses.
 - g. Communication and collaboration with OCA staff, including court officers.
 - h. Compliance with 8 U.S.C. § 1229(e).
3. Information about each enforcement incident conducted at or near a New York State courthouse from 2015 to the present, including:
 - a. Date of each enforcement incident.
 - b. Target address of each enforcement incident.
 - c. Type of each enforcement incident (arrest, attempted arrest, or surveillance).
 - d. Number of people targeted in each operation.
 - e. Number of people arrested.
 - f. Number of non-targeted people arrested (i.e., collateral arrests).
 - g. The following documents and information about each of these arrests:²
 - i. Notice to Appear, Administrative Warrant (Form I-200, I-205, or any other document purporting to be an administrative warrant), and I-213.
 - ii. Field Operations Worksheet.
 - iii. Any and all correspondence between DHS and NYS OCA staff about these arrest operations, internal DHS correspondence, and any correspondence between OCA, local police, and/or DHS in advance of an arrest.
4. Meetings between DHS staff and OCA staff.

² Requestors may be willing to narrow or modify this request if a mutually agreeable alternative can be reached.

5. The following information regarding the production of individuals held in ICE custody from said custody to that of any New York State law enforcement or correctional agency for purposes of an appearance before a non-federal court within New York State.
 - a. Any internal policies, protocols or correspondence regarding response by ICE to requests (including any writ of habeas corpus ad prosequendum or other court order requiring production) for production issued by a New York State Court.
 - b. The number of times since January 2017 that ICE has received a request (including any writ of habeas corpus ad prosequendum or other court order requiring production) from a New York State Court for the production of an individual held in ICE's custody pursuant to 8 U.S.C. § 1226 or 8 U.S.C. § 1231.
 - c. For each recorded request:
 - i. Copy of request.
 - ii. Date of request.
 - iii. Whether or not the request was honored.
 - iv. If request was honored, date of production.
 - v. Name of law enforcement agency that took custody of individual ICE detainee.
 - vi. All correspondence between district attorneys' offices, local law enforcement agencies, and ICE regarding production of individual ICE detainees.
6. Copies of the following:
 - a. DHS Directive 034-06, *Department Reporting Requirements*, October 23, 2015.
 - b. DHS Instruction 034-06-001, Rev. 1, *Department Reporting Requirements*, March 28, 2017.

Request for Expedited Processing

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity,” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). This request demonstrates that both criteria are satisfied. 6 C.F.R. § 5.5(d)(3).

There is an urgent need to obtain the information sought in the instant request which, at this point, is not publicly available. The records described above would accurately reflect the scope, details, and policies regarding the phenomenon known colloquially as “courthouse arrests.” The practice increased 1,100% from 2016 to 2017 and has had a documented chilling effect on access to justice for noncitizens throughout New York State.³ It is critical to obtain this information because information on the frequency of this type of arrest, agency policies, and ICE's working relationship with OCA will provide the public—including crucial stakeholders such as legal services lawyers, anti-violence advocates, and other participants in the court

³ Nancy Morawetz & Lindsay Nash, *Get ICE Out of N.Y.'s Courtrooms*, THE DAILY NEWS (Jan. 25, 2018), available at <http://www.nydailynews.com/opinion/ice-n-y-s-courtrooms-article-1.3777389> (“As documented by the Immigrant Defense Project, there was a 1,100% increase in incidence of ICE courthouse arrests in New York in 2017 from the previous year.”).

system—much needed clarity on the risks that individuals face when participating in court proceedings in New York State.

In light of the dramatic increase in arrests and ICE’s official policy of conducting enforcement operations within and near courthouses, immigrant communities are suffering from immense fear about the risks of attending court as litigants, witnesses, or other attendees. This fear is compounded by the huge gaps in information about when and whether an interaction with the court system will result in arrest, detention, and deportation, all of which has led to significant declines in court participation by victims of domestic violence, sexual assault, and rape, posing a significant threat to public health and safety.⁴ Despite ICE’s vague and standardless assertion that its agents will “generally” seek to avoid enforcement actions in areas that are dedicated to non-criminal proceedings,⁵ there have been numerous instances of such actions in New York State and nationally.⁶ Moreover, DHS’s statements about this policy and practice are inconsistent and vague⁷ and provide little if any guidance to the public as to when ICE will conduct such an enforcement action. The only statistics on the frequency and type of these arrests are from self-reported data collected by IDP from advocates and attorneys practicing in counties across New York State, which is incomplete and in any event does not provide

⁴ See, e.g., James Queally, *Latinos are Reporting Fewer Sexual Assaults Amid Climate of Fear in Immigrant Communities, LAPD Says*, THE LOS ANGELES TIMES (Mar. 21, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>; Brooke A. Lewis, *HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year*, CHRON (April 6, 2017), available at <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>; Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, THE NEW YORK TIMES (April 30, 2017), available at <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html>; 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors, TAHIRIH JUSTICE CENTER, <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf> (reporting that, in survey of 715 advocates and attorneys from 46 states and the District of Columbia, three out of four advocated reported immigrant survivors of abuse afraid to go to court).

⁵ See ICE, FAQ on Sensitive Locations and Courthouse Arrests, <https://www.ice.gov/ero/enforcement/sensitive-loc>; ICE Directive 11072.1: Civil Immigration Enforcement Actions Inside Courthouses, ICE (Jan. 10, 2018), <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> (“ICE officers and agents should generally avoid enforcement actions in courthouses, or areas within courthouses that are dedicated to non-criminal (e.g. family court, small claims court) proceedings.”)

⁶ Steve Coll, *When A Day in Court is a Trap for Immigrants*, THE NEW YORKER (Nov. 8, 2017), <https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants> (reporting arrests of fathers in family court and victims of domestic violence in human trafficking court).

⁷ See Devlin Barrett, *DHS: Immigration agents may arrest crime victims, witnesses at courthouses*, THE WASHINGTON POST (April 4, 2017), available at https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.a0ba68f162ec (“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 prison. ‘[a witness or victim] may have circumstances in their own case that would them subject to arrest,’ While it may be a stated policy to arrest crime victims in some cases, in practice, it seems to happen only rarely.”); Directive 11072.1: Civil Immigration Enforcement Actions Inside Courthouses, ICE (Jan. 10, 2018) <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> (“Aliens encountered during a civil immigration enforcement action inside a courthouse such as . . . a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances”).

information about ICE's policies or procedures or the manner in which it works with OCA.⁸ Without gaining access to the requested records, there will continue to be mass confusion and misunderstanding over courthouse arrests, meaning that potential litigants and witnesses will refrain from accessing the courts and attorneys will be unable to advise their clients about the consequences of participation.

The intense public interest in issues relating to courthouse arrests is evident.⁹ Various media reports detail specific instances of these arrests, fear from immigrant communities, and outcries from communities, attorneys,¹⁰ district attorneys,¹¹ and judges.¹² However, despite the widespread interest and attention, little to no information about the relationship between DHS and OCA is available in the public domain.¹³ Without access to the above-mentioned information, the public is unable to fully comprehend the emerging practice or the roles agencies

⁸ See *State AG, Brooklyn DA Want ICE to Stop Courthouse Arrests*, NEWS 12 THE BRONX (Aug. 3, 2017), <http://bronx.news12.com/story/36058427/state-ag-brooklyn-da-want-ice-to-stop-courthouse-arrests> (quoting Lee Wang from Immigrant Defense Project: "We don't know if they will be sitting in the back of the courtroom or lurking in the hallway. We don't know whether they will be in plain clothes, whether they will show a warrant, or even say who they are.").

⁹ See, e.g., Michelle Chen, *Why is ICE Arresting Immigrants in New York City's Courts?*, THE NATION (Dec. 4, 2017), available at <https://www.thenation.com/article/why-is-ice-arresting-immigrants-in-new-york-citys-courts/>; Protecting the Administration of Justice in New York State: Impact of ICE Arrests on New Yorkers' Access to State Courts, THE FUND FOR MODERN COURTS (Dec. 5, 2017) <http://moderncourts.org/wp-content/uploads/2017/12/Modern-Courts-Report-December-2017-ICE-and-NY-COURTHOUSES2-1.pdf>; Noah Manskar, *Latest ICE Arrest in Brooklyn Courthouse Protested by NYC Lawyers*, THE BROOKLYN HEIGHTS PATCH (Nov. 28, 2017) <https://patch.com/new-york/heights-dumbo/nyc-defense-lawyers-protest-ice-arrest-brooklyn-court>; Cesar Cuauhtemoc Garcia Hernandez, *ICE's Courthouse Arrests Undercut Democracy*, THE NEW YORK TIMES (Nov. 26, 2017) <https://www.nytimes.com/2017/11/26/opinion/immigration-ice-courthouse-trump.html>; Amanda Ottaway, *Attorneys Hold Chilly Protest as Immigration Arrests at Courts Surge*, Courthouse News Services (Dec. 7, 2017) <https://www.courthousenews.com/attorneys-hold-chilly-protest-as-immigration-arrests-at-court-surge/>.

¹⁰ Beth Fertig, *Outcry After Immigration Agents Seen at Queens Human Trafficking Court* WNYC (June 16, 2017) <https://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>; Stephen Rex Brown, *ICE Courthouse Arrests of Immigrants up 900% across N.Y. in 2017*, THE DAILY NEWS (Nov. 15, 2017), available at <http://www.nydailynews.com/new-york/ice-courthouse-arrests-immigrants-900-n-y-2017-article-1.3633463>; Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants 'Sitting Ducks' Lawyers Warn*, THE GOTHAMIST (June 22, 2017) http://gothamist.com/2017/06/22/ice_immigrants_courts.php.

¹¹ *ICE Should Stop Conducting Raids at New York Courthouses, Gonzalez Says*, NPR (Aug. 12, 2017) <https://www.npr.org/2017/08/12/542998615/ice-should-stop-conducting-raids-at-new-york-courthouses-gonzalez-says>.

¹² Kristine Phillips, *California Chief Justice to ICE: Stop 'Stalking' Immigrants at Courthouses*, THE WASHINGTON POST (March 17, 2017), available at https://www.washingtonpost.com/news/post-nation/wp/2017/03/17/california-chief-justice-to-ice-stop-stalking-immigrants-at-courthouses/?utm_term=.f71ea130b8c6 (California Chief Justice Tani Cantil-Sakauye's "letter echoes concerns raised across the country by some local and state officials who fear that ICE's increased presence at courthouses may deter immigrants from coming to court for legal matters, such as testifying or seeking protective orders from alleged abusers."); S.P. Sullivan, *N.J.'s Chief Justice Asks ICE to Stop Arresting Immigrants at Courthouses*, NJ.COM (April 19, 2017) http://www.nj.com/politics/index.ssf/2017/04/nj_top_judge_asks_ice_to_stop_arresting_immigrants.html.

¹³ Jonathan Blitzer, *The Woman Arrested by ICE in a Courthouse Speaks Out*, THE NEW YORKER, available at (Feb. 23, 2017) <https://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out> ("Officials at ICE were circumspect about how they had located Gonzalez, telling the local press that they had received notice about her from 'another law-enforcement body,' without specifying which one.").

are playing, and will lack information that is necessary to participate in the debate about these governmental activities.

The Requestors are “primarily engaged in disseminating information” and thus warrant expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(3). The Department of Homeland Security’s (“DHS”) regulations specifically provide that “information dissemination . . . need not be [a requestor’s] sole occupation.” 6 C.F.R. § 5.5(d)(3). IDP is an expert resource and advocacy organization that monitors the intersection of the criminal justice system and immigration system.¹⁴ It disseminates information about these issues to policy makers, attorneys, the general public, and affected communities, and these materials routinely include information obtained through FOIA requests.¹⁵ IDP publishes newsletters, know-your-rights pamphlets, and reports on immigration issues.¹⁶ The Clinic is also primarily engaged in disseminating information and has published reports and other materials using records obtained via FOIA requests,¹⁷ meaning that it is well positioned to analyze the records and has a demonstrated track record in doing so. As such, the Requestors meet the standard for expedited processing.

Request of Waiver of Fees

The Requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requestors have the ability to widely disseminate the requested information.¹⁸

As described above, disclosure of the requested information will contribute significantly to public understanding of government operations and activities and decrease the level of

¹⁴ Mission, IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/about/>.

¹⁵ IDP Resources, IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/resources2/>; Immigrant Defense Project, Defend Against ICE Raids and Community Arrests (2017), [https://www.immdefense.org/raids-toolkit/\(including documents obtained in the *Immigrant Defense Project et al. v. ICE*, et al. FOIA litigation\)](https://www.immdefense.org/raids-toolkit/(including%20documents%20obtained%20in%20the%20Immigrant%20Defense%20Project%20et%20al.%20v.%20ICE,%20et%20al.%20FOIA%20litigation);); Immigrant Defense Project, Insecure Communities, Devastated Families: New Data on Immigrant Detention and Deportation Practices in New York City (July 23, 2012), <https://www.immigrantdefenseproject.org/wp-content/uploads/2012/08/NYC-FOIA-Report-2012-FINAL-Aug.pdf> (data in part provided through FOIA with ICE); ICE Raids FOIA, IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/raids-foia/> (information on ICE trainings and practices around home raids, obtained through ongoing FOIA litigation, available online).

¹⁶ Resources for Communities, IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/category/resources-for-communities/>.

¹⁷ *See e.g.*, Aarti Kohli, Peter L. Markowitz (Immigration Justice Clinic, Cardozo School of Law), and Lisa Chavez, Secure Communities by the Numbers: An Analysis of Demographics and Due Process (Oct. 20 11), [https://www.law.berkelev.edu/files/Secure Communities by the Numbers.pdf](https://www.law.berkelev.edu/files/Secure%20Communities%20by%20the%20Numbers.pdf); Immigration Justice Clinic, Cardozo School of Law, Constitution on ICE: A Report on Immigration Home Raid Operations (2009), <http://www.cardozo.yu.edu/sites/default/files/Constitution%20n%20ICE-A%20Report%20n%20Immigration%20Home%20Raid%20operations%20%20Cardozo%20Law%20School%20O.pdfv>.

¹⁸ *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003); *supra* note 17.

misunderstanding, confusion, and fear. *See supra* note 3-13. The records requested here relate directly to governmental operations or activities; all are directly traceable to a specific federal government initiative of performing federal civil immigration enforcement at courthouses. As noted, although this is an issue of intense public concern, there is virtually no information about, among other things, the relationship between OCA and DHS, the frequency and type of arrests, the mechanisms for ensuring that individuals who are arrested can continue to participate in their state court proceedings available to the public. *See supra* notes 3-12. Thus, the requested information would significantly enhance the public's understanding of courthouse arrests, and either provide a way to reduce the mass fear, panic, and confusion of immigrant and minority communities, or more effectively engage with the government about these practices. Given the obvious access-to-justice issues that the documented chilling effect on noncitizens throughout the state creates—not only for people in court proceedings, but also those who wish to participate in the New York court system, and those who rely on noncitizens as witnesses—it is critical that the public, including noncitizens and their attorneys, understand more about the scope and contours of this practice.

Requestors have undertaken this work in the public interest and not for any private commercial interest. The Clinic and IDP are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Requestors will make information responsive to this FOIA request available to the public, including the press, at no cost. Indeed, Requestors have a proven track-record of compiling and will disseminate newsworthy information obtained through this request.¹⁹ Accordingly, disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1310, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters’”).

In the alternative, if a full fee waiver is not granted, Requestors seek all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). Further, fees are limited to only reasonable duplication costs when the request is not for commercial purposes and “the request is made by an educational or noncommercial scientific institution.” 5 U.S.C. § 522(a)(4)(A)(ii)(II). The Clinic, as an educational institution, requests that if the fee waiver is not granted, fees be limited to duplication costs only. Requestors further ask that, if no fee waiver is granted and the fees exceed \$200.00, the Agency please contact Requestors, through the undersigned counsel, to obtain consent to incur additional fees.

Certification

The Clinic certifies that the foregoing is true and correct. *See* 6 C.F.R. § 5.5(d)(3). If you have any questions regarding this request, please contact Tamar Rosen or Lindsay Nash at

¹⁹ *See, e.g., supra* note 17.

the Clinic's daytime phone number (212) 790-0433, or via email at lindsay.nash@yu.edu. Thank you in advance for your timely cooperation.

Please furnish copies of all information to

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Sincerely,



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