



Legal Analysis of April 27, 2021 DHS Memorandum “Civil Immigration Enforcement Actions in or near Courthouses”

DHS has released its revised [policy memorandum](#) regarding civil immigration arrests of people attending court. The memorandum, dated April 27, 2021, is titled “Civil Immigration Enforcement Actions in or near Courthouses” and was issued from ICE Acting Director Tae Johnson and CBP Acting Commissioner Troy Miller to employees of both ICE and CBP.

Under the Trump administration, the Immigrant Defense Project documented an [alarming 1700% increase in ICE courthouse arrests and attempted arrests across New York State](#). For four years, ICE agents stalked immigrants at their court appearances across the country. The tactic became official policy, widely lauded by Trump Administration officials, and announced through public release of an internal memorandum, [Directive 11072.1](#).

The April 27, 2021 memorandum “supersedes and revokes” the Trump-era Directive 11072.1, but continues to authorize courthouse arrests in a variety of circumstances.

It takes the position that a "courthouse is a place where the law is interpreted, applied, and justice is to be done" and that "civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses and, as a result, impair the fair administration of justice." The memo asserts as a guiding principle: the goal "not to unnecessarily impinge upon the core principle of preserving access to justice."

The memorandum applies to "civil immigration enforcement," defined to include: "civil apprehensions, service of subpoenas, searches, seizures, interviews, and surveillance." All of these things can continue to happen "in or near" ("in the close vicinity of") courthouses, in deceptively broad categories of circumstances:

- "national security threat"
- "imminent risk of death, violence, or physical harm to person"
- "hot pursuit of an individual who poses a threat to public safety"
- "imminent risk of destruction of evidence"
- **"an individual" "poses a threat to public safety" and" "safe alternative for such action does not exist or would be too difficult to achieve the enforcement action at that location"**

and "the action has been approved in advance" by a slightly narrower category of DHS supervisors than previously.

It directs ICE and CBP agents to the February 18, 2021 ["Interim Guidance: Civil Immigration Enforcement and Removal Priorities"](#) memorandum to determine whether an individual is a public safety or national security "threat."

The policy does not apply to "adjacent buildings" "that are not part of the courthouse or otherwise are not used for court-related business." It does not apply to jails attached to courts in the cases of individuals being released from custody "at the conclusion of any criminal sentence." It does not apply to DHS facilities or offices, but does apply to immigration courts.

The memorandum also specifically calls for collaboration between DHS agents and local court staff in courthouse arrest cases. For example, it explicitly encourages that courthouse arrests take place in non-public areas, outside of the public view, "in collaboration with courthouse security personnel," and using non-public doors.

Local and state laws and court rules may prohibit ICE from implementing its revised courthouse arrest policy in a particular state, city, or locality. In addition, every state has measures that protect the right to attend court and participate in the court process, including remote appearances, waived appearances, and orders of protection. Immigrants with concerns about attending court can consult with local public defender offices, as well as criminal justice and immigration advocacy organizations, for up-to-date information about how to safely participate in the court process.

In New York State, three important laws, regulations, and court orders remain in place that legally prohibit ICE from implementing its revised policy within the State:

- In April 2019, the New York State Office of Court Administration (OCA) implemented [rules](#) prohibiting ICE from arresting individuals in state courthouses without a judicial warrant or judicial order.
- In June 2020, in *State of New York, et al. v. U.S. Immigration and Customs Enforcement, et al.*, Federal District Court Judge Hon. Jed Rakoff [enjoined](#) ICE from conducting courthouse arrests against people coming to, attending, and returning from court in New York, functionally prohibiting ICE from implementing Directive 11072.1.
- In December 2020, the New York State legislature and governor enacted the [Protect Our Courts Act](#), which prohibits civil arrests--including ICE arrests--of people going to, attending, and returning from court. The law also applies to people who are accompanying loved ones and community members to court.

To learn more about the Immigrant Defense Project's ICE Out of Courts campaign, please visit <https://www.immigrantdefenseproject.org/ice-courts/>. To find out more about how your state can adopt a law like New York's Protect Our Courts Act, check out this model legislation [toolkit](#).