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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:

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In removal proceedings

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File No: A#

[REDACTED]

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

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PRELIMINARY STATEMENT

Despite a centuries-long common law limitation on civil arrests in courthouses, a practice that had long faded from the American legal landscape, ICE has recently resurrected this practice of civil arrests in courthouses by arresting immigrants in state courthouses for violations of immigration law. ICE's reliance on carrying out its immigration enforcement actions at courthouses has skyrocketed – in New York State, for example, there was a 1200% increase in the frequency of courthouse arrests in 2017 compared to 2016. Immigrant Defense Project, Press Release: *IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2017*, Dec 31, 2017, attached as Exhibit A (Exhibit p. 1). When immigrants are arrested by ICE in state courthouses, both their Tenth Amendment right to a federalist system of governance and their right to access court under the First, Fifth, and Sixth Amendments are violated. Further, because ICE has refused to protect any classes of immigrants from its policy of courthouse arrests, all immigrants who have any business at state courthouses, whether as witnesses, defendants, victims, supportive family members, or simply members of the public, are now fearful of coming to court. Without necessary parties present in court, state courts are in turn less able to effectively administer justice, and the safety of the whole community suffers as a result. Terminating proceedings in these cases, like the instant case, where immigration proceedings are instituted on the basis of a courthouse arrest is the only remedy that can deter ICE from continuing to deprive immigrants of their fundamental rights and the only remedy that can protect the functioning of the state courts.

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. IDP is a leading national expert on issues that arise from the interplay of immigration and criminal law. Since 1997, IDP has provided expert legal advice, training and publications on such issues to criminal defense, family defense, and immigration lawyers; criminal court, family court, and Immigration Court judges; and noncitizens. 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*, 138 S. Ct. 830 (2018); 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*, 884 F.3d 442 (2d Cir. 2018); Brief of Amicus Curiae IDP et al. Supporting Petitioner in *Richards v. Sessions*, 711 F. App'x 50 (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 B (Exhibit p. 3). *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 C (Exhibit p. 5). *See also* Priscilla DeGregory, *New York authorities demand ICE stop hunting immigrants in courthouses*, N.Y. Post (Aug. 3, 2017), attached as Exhibit D (Exhibit p. 9); Liz Robbins, *A Game of Cat and Mouse With High Stakes: Deportation*, N.Y. Times (Aug. 3, 2017), attached as Exhibit E (Exhibit p. 11).

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

A. ICE has disrupted the long-standing American limitation on civil arrests in courthouses

Few American values are more dearly held than pride in the courts of this country - courts which strive to be open, accessible to all, and the place where people from all walks of life can go to seek the justice that they deserve. Immigrants and non-immigrants alike enjoy the right to access court, *see* n. 2 *infra*, and from the time of the founding of this country, there has existed a long-standing common law principle rejecting civil arrests in courthouses so as to protect the effective administration of justice in the courts.

This common law principle 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”). 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 explicitly noted it in several cases, even emphasizing that immunity extends also to civil service of process in courthouses, which is inherently less disruptive than civil arrest in courthouses. *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 in another”).

The practice of civil arrests, and thereby civil arrests at courthouses, had long faded from the American legal landscape until it was recently resurrected through ICE’s practice of courthouse arrests. 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”). When ICE arrests an individual, it is because of a suspected violation of civil immigration law. By contrast, when local, state, or federal police officers arrest an individual, it is because they have probable cause to believe the individual is committing or has committed a crime, and there are procedures in place to assess whether this belief justifies the arrest. This fundamental distinction creates a clear difference between ICE civil arrests and criminal arrests. Under the common law, civil arrests are not allowed at courthouses, while criminal arrests are, demonstrating that this crucial distinction has long historical roots.

ICE’s escalating use of courthouse arrests resurrects a practice of civil arrests that had long faded from the American legal landscape, and thus represents a new practice for ICE. *See* Sec. B *infra* (describing a 1200% increase in courthouse arrests between 2016 and 2017). Moreover, this arrest practice is being used in lieu of far less invasive and damaging ways of initiating removal proceedings that are authorized by statute, such as issuing Notices to Appear (NTAs) by mail. ICE’s new choice of making arrests of individuals while they attend court is having widespread and damaging effects on immigrant and mixed-status communities across the country.

B. ICE’s policy of courthouse arrests is having devastating effects on immigrant and mixed-status communities

Across the board, immigrants who are going to court for any reason – as defendants, witnesses, victims, family supporters, and members of the public obtaining records – are fearful of going to court due to ICE’s persistent presence and the threat of arrest. 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 F (Exhibit p. 15). 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 G (Exhibit p. 18).

This widespread fear mirrors the courthouse arrest trend itself: a widespread and egregious practice that has culminated in a formal policy from ICE. Throughout the year of 2017, IDP documented 144 courthouse arrests and attempted arrests in New York State, representing a 1200% increase in courthouse arrests compared to 2016. Exhibit A (Exhibit p. 1). Since the beginning of 2018, IDP has further documented over 50 arrests and attempted arrests at courthouses around the state by ICE, an additional 60% increase from the same time period in 2017. Erin Durkin, *Judge Urged to Curb Courtside Arrests at New York State Courts*, N.Y. Daily News (May 9, 2018), attached as Exhibit H (Exhibit p. 21).

Because ICE’s courthouse arrest policy leaves no immigrant immune from being an arrest target, there is no group of immigrants—not even the most vulnerable in our communities—that is able to feel safe at the courthouse. 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, “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.” James Queally, *Fearing deportation, many domestic violence victims are steering clear of police and courts*, Los Angeles Times (Oct 9, 2017), attached as Exhibit I (Exhibit p. 23). Further, a new survey by the National Immigrant Women’s Advocacy Project, partnering with the American Civil Liberties Union, found that of the prosecutors they interviewed across 19 states, “82 percent of prosecutors reported that since President Trump took office [in 2017], domestic violence is now underreported and harder to investigate and/or prosecute [compared to in 2016]. Seventy percent of prosecutors reported the same for sexual assault, while 55 percent state the same difficulties for human trafficking and 48 percent for child abuse.” American Civil Liberties Union, *Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system* (2018), attached as Exhibit J (Exhibit p. 32).

ICE has arrested a human trafficking victim in a Human Trafficking Intervention Court (Melissa Gira Grant, *ICE Is Using Prostitution Diversion Courts to Stalk Immigrants*, The Village Voice (July 18, 2017), attached as Exhibit K, Exhibit p. 42), a father attending family court to seek custody of his children (Steve Coll, *When a day in court is a trap for immigrants*, The New Yorker (Nov 8, 2017), attached as Exhibit L, Exhibit p. 47), a DACA recipient in traffic court to pay a fine (Robert McCoppin and Robert L. Cox, *ICE detains man at traffic court after DACA status expires, then frees him after outcry*, Chicago Tribune (Feb 2, 2018), attached

as Exhibit M, Exhibit p. 52), and a woman seeking a protective order against her abusive ex-boyfriend (Jonathan Blitzer, *The Woman Arrested by ICE in a Courthouse Speaks Out*, The New Yorker (Feb 23, 2017), attached as Exhibit N, Exhibit p. 55).

IDP's data collected showed that, in 2017, 28% of undocumented immigrants targeted for courthouse arrests had no prior criminal history, and in many cases these individuals were in court for a first-time arrest for a traffic violation. Exhibit A (Exhibit p. 1). Further, "in cases where criminal charges were known, 80% of individuals who were arrested while attending court were appearing for violations and misdemeanors." *Id.* "Immigrants are being arrested in a broad range of courts - including criminal courts, family courts, traffic courts, and specialized courts that are designed as rehabilitation programs," showing that the widespread fear that no undocumented immigrants are safe from arrest in courthouses is grounded in reality. *Id.*

ICE courthouse arrests are also 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. Exhibit C (Exhibit p. 5); Exhibit D (Exhibit p. 9). In an April 4, 2018 arrest, an individual was arrested after an ICE agent eavesdropped on a private attorney-client conversation in the courthouse hallway, hearing the individual tell his attorney that he was born in Mexico. Sydney Brownstone, *Vancouver Immigrant Claims ICE Arrested Him After Eavesdropping on Him and His Lawyer*, The Stranger (Apr 4, 2018), attached as Exhibit O (Exhibit p. 59).

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

C. ICE's policy of courthouse arrests is impairing the functioning of the courts

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. 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. 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 interfere with the ability of those individuals to attend future court dates.

ICE's newfound reliance on courthouse immigration arrests has created an uproar amongst prosecutors, defense attorneys, and judges. Numerous state supreme court justices have submitted letters to the Department of Homeland Security, asking ICE to end its practice of courthouse arrests within their respective states. *See* Letter from Hon. Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of Cal., to Jeff Sessions, Attorney General, and John F. Kelly, Sec'y of DHS (Mar. 16. 2017) (expressing concerns about "the impact on public trust and confidence in our state court system" resulting from courthouse arrests), attached as Exhibit P (Exhibit p. 62); Letter from Hon. Mary E. Fairhurst, Chief Justice, Supreme Court of Wash., to

¹ These trends are based on the facts of 144 courthouse arrests and arrest attempts that IDP documented in 2017. The specifics of the removal proceedings arising out of these arrests remain confidential at this time.

John F. Kelly, Sec’y of DHS (Mar. 22, 2017) (“When people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access justice is compromised”), attached as Exhibit P; Letter from Hon. Chase T. Rogers, Chief Justice, Supreme Court of Conn., to Jeff Sessions, Attorney General, and John F. Kelly, Sec’y of DHS (May 15, 2017) (“I believe 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”), attached as Exhibit P; Letter from Hon. Stuart Rabner, Chief Justice, Supreme Court of N.J., to John F. Kelly, Sec’y of DHS (Apr. 19, 2017) (“To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum.”), attached as Exhibit P; Letter from Hon. Thomas A. Balmer, Chief Justice, Or. Supreme Court, to Jeff Sessions, Attorney General, and John F. Kelly, Sec’y of DHS (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 P.

Prosecutors and defense attorneys alike have also spoken out in strong opposition to ICE’s newfound reliance on courthouse arrests. On Feb 14, 2018, Bronx DA Darcel Clark, Manhattan DA Cy Vance, Brooklyn DA Eric Gonzalez and Public Advocate Letitia James held a joint press conference pleading with ICE to halt its courthouse arrests of immigrants. Erin Durkin, *City DAs plead with ICE to stop arresting immigrants at NYC courthouses: 'It jeopardizes public safety'*, NY Daily News (Feb 14, 2018), attached as Exhibit Q (Exhibit p. 71). Brooklyn DA Eric Gonzales made clear, “We’re appealing to them as law enforcement officers not to make these arrests. ... It does not keep us safe. It jeopardizes public safety,” while Bronx DA Darcel Clark emphasized that “this enforcement is having a chilling effect on witnesses.” *Id.*

Manhattan DA Cy Vance reiterated how immigrants “can't go there [to court] without fear of getting arrested. That means critical witnesses and victims in cases don't proceed with important prosecutions, and New Yorkers are less safe because of it.” *Id.* In addition to opposition from New York City prosecutors, numerous state attorneys general have submitted letters to DHS officials, expressing their concerns about ICE’s interference with the administration of justice and demanding an end to courthouse arrests. *See* AG Eric Schneiderman Press Release, *New York AG Eric Schneiderman and Acting Brooklyn DA Eric Gonzalez Call for ICE to End Immigration Enforcement Raids in State Courts* (Aug 3, 2017) (warning that “if the Trump Administration continues to arrest people in the heart of our justice system, immigrants will be less likely to serve as witnesses or report crimes - and that leaves us all at risk. ... Everyone, regardless of their immigration status or the status of their loved ones, should have access to equal justice under the law.”), attached as Exhibit R (Exhibit p. 74); Letter from the Md. Att’y Gen. Brian E. Frosh to John F. Kelly, Sec’y of DHS, Lori Scialabba, Acting Dir. of USCIS, Kevin K. McAleenan, Acting Comm’r of CBP, and Thomas D. Homan, Acting Dir. of ICE (Mar. 2, 2017) (“I am concerned that the Administration's aggressive new policies will discourage the most vulnerable immigrants from seeking judicial protection”), attached as Exhibit R; Letter from the Me. Att’y Gen. Janet T. Mills to Richard W. Murphy, Acting U.S. Att’y for Me., and John F. Kelly, Sec’y of DHS (Apr. 10, 2017) (expressing concern that courthouse arrests “will have an unnecessary chilling effect on our efforts to obtain the cooperation of victims and our successful prosecution of crimes”), attached as Exhibit R; Letter from N.J. Att’y Gen. Gurbir Grewal, to Sec’y of DHS Kirstjen Nielsen (Jan. 25, 2018) (“Courthouses must be safe forums, and federal immigration enforcement actions occurring at state courthouses compromise the integrity of our state's justice system”), attached as Exhibit R.

Defense attorneys from the Legal Aid Society and Brooklyn Defender Services issued a joint statement on April 6, 2018 declaring, “If the people we represent cannot safely appear in court to participate in their own defense - and further, are sanctioned with warrants for not appearing - then the integrity of the whole system must be questioned.” The Legal Aid Society and Brooklyn Defender Services, *Legal Aid, Brooklyn Defender Services Joint Statement on ICE Courthouse Arrests That Undermine Court System Integrity, Erode Due Process Rights, and Deter Immigrants from Seeking Legal Services* (Apr. 6, 2018), attached as Exhibit S (Exhibit p. 83). The frustration from New York City defense attorneys reached a head in April 2018, when, for 3 days in a row, numerous attorneys from the Legal Aid Society, the Bronx Defenders, and the Queens Law Associates staged walk-outs and protests after ICE made three courthouse arrests of their clients in the span of less than a week. Nicole Brown and Lauren Cook, *ICE detains immigrant at Queens courthouse, attorneys say*, AM New York (Apr. 10, 2018), attached as Exhibit T (Exhibit p. 85).

D. ICE’s directive formalizing its courthouse arrests policy authorizes an unconstitutional practice, and does not assuage widespread fear of attending court

On January 10, 2018, ICE issued *Directive Number 11072.1*, its first formal, public policy memo on immigration enforcement actions inside courthouses and subsequently updated its FAQ on Sensitive Locations and Courthouse Arrests on its website. U.S. Immigration and Customs Enforcement, *Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses*, issued Jan. 10, 2018, attached as Exhibit U (Exhibit p. 88); U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrest*, attached as Exhibit V (Exhibit p. 92). The directive instructs ICE agents to continue making arrests against those attending court. It does nothing to narrow the group of immigrants targeted for arrest, nor does it guarantee any protection to witnesses, victims of crimes, or family

members to be free from arrest. The directive states that “ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats.” *Id.* (emphasis added). The directive states that “Aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances” *Id.* (emphasis added). The directive then delegates to “officers and agents” the authority to “make [courthouse arrest] enforcement determinations on a case-by-case basis.” *Id.* In effect, the directive places no limits on which immigrants can be arrested at courthouses and continues to authorize the arrest of all immigrants that ICE chooses to arrest. Moreover, DHS officials have previously explicitly announced that victims and witnesses are not safe from arrest in courthouses. Devlin Barrett, *DHS: Immigration agents may arrest crime victims, witnesses at courthouses*, The Washington Post (Apr. 4, 2017), attached as Exhibit W (Exhibit p. 96).

Taken in total, ICE has embraced the courthouse arrest practice as part of its enforcement regime, and has refused to designate any category of immigrants or any category of courthouse or any nature of legal proceeding as out of bounds or off limits to its agents. Many state courthouse buildings around the country are multipurpose buildings, housing family, traffic, civil, and criminal court in the same or adjacent buildings. In Brooklyn, NY, for example, Kings County Family Court is located at 330 Jay St, adjacent to Kings County Criminal Court at 320 Jay St. In the Skokie Courthouse for the Second Municipal District in Skokie, Illinois, where, as discussed *supra*, a DACA recipient was arrested after attending traffic court, the following court matters are all handled in the same courthouse building: traffic, criminal matters, domestic

violence, expungements and record sealing, civil cases, housing, small claims, name changes, child support, marriage ceremonies, mental health court, veteran's court, and juvenile justice. The ICE directive makes clear that immigrant witnesses, victims, family members, defendants, and members of the general public, in attendance at any type of court, are justified in fearing arrest.

In carrying out its new deliberate policy of courthouse arrests, therefore, ICE has disrupted the long-standing limitation against civil arrests 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).

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. There are two fundamental rights at stake here: the Tenth Amendment right to a federalist system of governance, and the right to access court under the First, Fifth, and Sixth Amendments. Courthouse arrests deny these rights to the individuals being arrested, as well as to the immigrant communities that have been made fearful of attending court. The policy renders state courts less able to administer justice effectively because necessary parties, witnesses, defendants, and victims are afraid to come to court. This, in turn, interferes with access to justice for all persons—citizen and noncitizen alike—who rely on the state court system. Terminating proceedings in cases of respondents arrested in courthouses is the appropriate remedy to protect the functioning of the state courts and deter ICE from continuing its policy of depriving immigrants of their fundamental rights.

ARGUMENT

I. An IJ is empowered to terminate removal proceedings where ICE has engaged in conduct that is conscience shocking or deprives the respondent of fundamental rights, and where termination will deter deliberate misconduct.

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 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). INA § 242(b)(9) affirmatively seeks to combine all issues into one proceeding before the Immigration Court.

Given the Immigration Court’s exclusive jurisdiction over removal proceedings, it is the norm for all issues that arise in the course of removal proceedings to be adjudicated in individual cases before IJs. This gives the IJ an important role in preventing systemic abuse by ICE. IJs can and should discourage misconduct by terminating proceedings where ICE has displayed a widespread pattern of acting in egregious violation of the law.

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 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.

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

ICE’s courthouse arrests hijack the sovereign state judiciary to serve federal interests, in violation of the principle of federalism as embodied in the Tenth Amendment. Under the Constitution, the states retain “a residuary and inviolable sovereignty.” *Alden v. Maine*, 527 U.S. 706, 715 (1999) (citing *The Federalist* No. 39, at 245); *see also Blatchford v. Native Village of Noatak*, 501 U.S. 775, 779 (1991) (“[T]he States entered the federal system with their sovereignty intact”). Federalism “requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation.” *Alden*, 527 U.S. at 748.

States exercise this sovereignty by maintaining independent state governments of their own design. *See, e.g., Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1475 (2018) (“When the original States declared their independence, they claimed the powers inherent in sovereignty—in the words of the Declaration of Independence, the authority ‘to do all ... Acts and Things which Independent States may of right do.’” ¶ 32.”); *Alden*, 527 U.S. at 749 (“[P]lenary federal control of state governmental processes denigrates the separate sovereignty of the States.”); *Gregory v. Ashcroft*, 501 U.S. 452, 460, 462 (1991) (“Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign.”); *Oregon v. Mitchell*, 400 U.S. 112, 125 (1970) (“No function is more essential to the separate and independent existence of the States and their governments than the power to

determine within the limits of the Constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices.”). State courts, as a core institution of state government, require the utmost protection from federal intervention in order to preserve state sovereignty. *See Younger v. Harris*, 401 U.S. 37, 43–44 (1971) (describing the “longstanding public policy against federal court interference with state court proceedings” in accordance with “the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways”); *Alden*, 527 U.S. at 749 (holding that the federal government cannot compel state courts to hear private suits for damages against nonconsenting states); *Gregory*, 501 U.S. at 452 (declining to apply federal law to qualifications for state judges and emphasizing that qualifications for state judges were decisions of “the most fundamental sort for a sovereign entity”); *see also Heath v. Alabama*, 474 U.S. 82, 88 (1985) (“[P]owers to undertake criminal prosecutions derive from separate and independent sources of power and authority originally belonging to [the states] before admission to the Union and preserved to them by the Tenth Amendment.”).

ICE’s policy of courthouse arrests impedes the efficient functioning of this important sovereign state institution. As described *supra* in the background section, the policy deters immigrants from attending court. IDP Survey, *supra* at 6, Exhibit F (Exhibit p. 15). This deterrence interferes with the court’s ability to adjudicate disputes, because necessary parties are afraid to attend court. Robbins *supra* at 3, Exhibit E (Exhibit p. 11) (describing a press conference where the Brooklyn District Attorney and 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 P (Exhibit p. 62); Letter from Hon. Thomas A. Balmer, Chief Justice, Or. Supreme Court (Apr. 6, 2017), attached as Exhibit P (Exhibit p. 62); Letter from Hon. Stuart Rabner, Chief Justice, Supreme Court of N.J. (Apr. 19, 2017), attached as Exhibit P (Exhibit p. 62). The Tenth Amendment does not allow federal actors to undermine a sovereign state institution in this way.

The disruption of state court is the inevitable consequence of ICE courthouse arrests, which is why the common law rule does not allow civil arrests of individuals attending, coming, or going from court. *See supra* Background Section. Courts have long recognized that civil arrests at or around courthouses disrupt the administration of justice, most notably by interfering with the attendance of parties who are necessary for court proceedings. The purpose of the common law tradition against courthouse arrests has always been to encourage attendance in court by protecting “any...person without whose presence full justice cannot be done.” *Montague v. Harrison*, 3 C.B., N.S., 292; *see also Netograph Mfg. Co. v. Scrungham*, 197 N.Y. 377, 380 (1910) (“[T]he obvious reason of the rule is to encourage voluntary attendance upon courts and to expedite the administration of justice”). The privilege has been extended to civil service of process for the same reason. *Lamb v. Schmitt*, 285 U.S. 222, 225 (1932) (“[T]he 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.”). Given that mere civil service of process can intimidate necessary parties, the threat of ICE officers prepared to take noncitizens into indefinite detention pending deportation is an even greater problem for the court.

In addition to the Tenth Amendment violation inherent in the federal government disrupting a core institution of state sovereignty, ICE's courthouse arrests also violate the Tenth Amendment through unlawful commandeering of the state judicial apparatus. The anti-commandeering doctrine prevents the federal government from hijacking any of the three branches of state governmental power. *New York v. United States*, 505 U.S. 144 (1992) (holding that the federal government may not compel state legislatures to adopt laws); *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that the federal government may not directly conscript the state's executive officers); *Alden*, 527 U.S. at 749 (stating that the federal government may not "press a State's own courts into federal service"); *Murphy*, 138 S. Ct. at 175 ("The anticommandeering doctrine...is simply the expression of a fundamental structural decision incorporated into the Constitution."). As the Court noted in *Printz*, "The power of the Federal Government would be augmented immeasurably if it were able to impress into its service—and at no cost to itself—the police officers of the 50 states." *Printz*, 521 U.S. at 898. ICE's policy impresses into its service, at no cost to itself, the courthouses of the 50 states. The Court's recent decision in *Murphy* widened the scope of the anti-commandeering doctrine by holding that no affirmative Congressional command is required to trigger a commandeering problem. *Murphy*, 138 S. Ct. at 1478 (rejecting the federal government's arguments that commandeering occurs "only when Congress goes beyond precluding state action and affirmatively commands it").

The courts apply the anti-commandeering doctrine against ICE's practices that impermissibly hijack state law enforcement resources, facilities, and systems. *See, e.g., Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014) ("Under the Tenth Amendment, immigration officials may not order state and local officials to imprison suspected aliens subject to removal at the request of the federal government."); *City. of Santa Clara v. Trump*, 275 F. Supp. 3d 1196, 1215 (N.D. Cal.

2017) (“[C]ondition[ing] all federal grants on honoring civil detainer requests...is likely unconstitutional under the Tenth Amendment because it seeks to compel the states...to enforce a federal regulatory program through coercion.”); *The City of Philadelphia v. Sessions*, No. CV 17-3894, 2018 WL 1305789, at *11 (E.D. Pa. Mar. 13, 2018) (denying motion to dismiss claim that policy conditioning state funding on cooperation with ICE was unconstitutional commandeering of city employees to perform federal functions). As the Seventh Circuit recently identified, forced cooperation between states and federal immigration enforcement undermines the states’ legitimate “concerns with maximizing the safety and security of their own communities” because “persons who are here unlawfully—or who have friends or family members here unlawfully—might avoid contacting local police to report crimes as a witness or a victim if they fear that reporting will bring the scrutiny of the federal immigration authorities[.]” *City of Chicago v. Sessions*, No. 17-2991 at *9 (7th Cir. April 19, 2018). ICE’s forced intrusion into the state courts implicates the precise same set of problems.

Through its policy of courthouse arrests, ICE has conscripted those who work in state courthouses—including state-employed judges, clerks, prosecutors, and security guards. *Cf. Murphy*, 138 S. Ct. at 1477 (“[The anticommandeering] rule applies, *Printz* held, not only to state officers with policymaking responsibility but also to those assigned more mundane tasks.”). The entire premise of courthouse arrests is to use state resources, employees, and facilities. The state judicial apparatus of the state brings individuals to the courthouse, an enclosed physical space where individuals are screened by security guards, and ICE’s policy takes advantage of these state functions to effectuate immigration arrests. *See ICE Directive 11072.1* (noting that “Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband” and advising that arrests should “take place in non-public

areas of the courthouse be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits"). ICE also uses state courts' public dockets, maintained by state employees, to locate noncitizens for arrest. This federal interference taxes the states with nonmonetary costs, as the states' ability to administer justice is hampered and community trust in the courts is undermined. *See Printz*, 521 U.S. at 898. ("[E]ven when the States are not forced to absorb the costs of implementing a federal program, they are still put in the position of taking the blame for its burdensomeness and for its defects."). The purpose of the ICE courthouse arrest policy is to commandeer state resources—an impermissible federal action that puts a costly political burden on the states and violates the Tenth Amendment.

In its recent decision in *Murphy*, the Supreme Court struck down a federal anti-gambling law, explaining, "It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine." 138 S. Ct. at 1478. In the case of courthouse arrests, no metaphor is necessary to understand the affront to state sovereignty—federal officers are literally patrolling state courthouses and disrupting the judicial process.

Whether understood as unlawful interference with a core state institution or as an act of commandeering, or both, ICE's courthouse arrests are in violation of the Tenth Amendment.

This violation of state sovereignty and the commandeering of the courthouse are deprivations of individual fundamental rights warranting termination of immigration proceedings. The right to a federalist system of governance that separates power between the states and the federal government is a fundamental right of all individuals in the United States. *Bond v. United States*, 564 U.S. 211, 220-22 (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.”). Therefore, an individual can independently allege violations of the Tenth Amendment on her own behalf. *See Bond*, 564 U.S. at 220–22 (holding that criminal defendant could challenge his conviction based on a contention that the federal statute he was convicted under violated the Tenth Amendment). ICE’s courthouse arrests deprive individuals of fundamental Tenth Amendment rights and thus constitute grounds for terminating removal proceedings.

b. ICE’s deliberate policy of courthouse arrests violates the fundamental constitutional right to access both civil and criminal courts.

ICE’s courthouse arrests are interfering with access to court for both this individual respondent and the entire community, noncitizens and citizens. The threat of ICE arrest, and subsequent prolonged detention and deportation, is so intimidating to noncitizens that it constitutes a barrier to access to the courts. Noncitizens are intimidated from attending court in any capacity: as plaintiffs, defendants (both criminal and civil), witnesses, victims of crimes, friends or family members of a party involved in a case, interested members of the general public, or simply to access court records. Individuals like the Respondent, in particular, are essentially penalized for attending court because attendance is what led to courthouse arrest and removal proceedings. Citizens are also affected because they may need to rely on noncitizen witnesses in their cases. This is a constitutional problem both because it interferes with the functioning of a core state institution as described in the proceeding section, but also because it violates the fundamental right to access court.²

² The Supreme Court established long ago that the constitutional guarantee of due process and equal protection is applicable to noncitizens present in the United States. *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“[T]he Due Process Clause applies to all “persons” within the U.S., including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”) The Supreme Court has also long held that

The right to access court is a fundamental, constitutionally protected right. *E.g. Tennessee v. Lane* 541 U.S. 509, 533 (2004) (recognizing “the fundamental right of access to the courts”); *Bounds v. Smith*, 430 U.S. 817, 828 (U.S. 1977) (enforcing “the fundamental constitutional right of access to the court”). The right is derived from the Fourteenth Amendment due process and equal protection clauses, and thereby incorporated into the Fifth Amendment. *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971) (“[D]ue 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.”); *Griffin v. Illinois*, 351 U.S. 12, 24 (1956) (Frankfurter, J., concurring) (states may not “bolt the door to equal justice” by creating financial barriers to appeals for indigent defendants). The right is also protected through the First Amendment Right to Petition. *E.g. 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.”); *see also* Benjamin Plener Cover, *The First Amendment Right to a Remedy*, UC DAVIS L. REV., 1742, 1745 (2017) (“In more than twenty Supreme Court cases over the past five decades, one or more Justices has asserted or assumed that a lawsuit is a petition, without a single colleague disputing the premise.”).

The right to access the court is so fundamental that it requires government officials to take affirmative steps to remove barriers to ensure that people have meaningful access to the court

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. *Padilla v. Kentucky*, 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.

system. *Lane*, 541 U.S. at 542 (finding an access to court problem where a wheelchair user was required to attend court on the second floor of a building without an elevator, though he could have reached the courtroom by crawling or being carried); *Bounds*, 430 U.S. at 828 (1977) (holding that the right of access to the courts requires prison authorities to assist inmates with filing of meaningful legal papers by providing inmates with adequate law libraries or adequate assistance from persons trained in the law); *Burns v. Ohio*, 360 U.S. 252, 257 (1959) (holding that filing fees for criminal appeals are impermissible where they “effectively foreclose[] access”). Constitutional law requires not just literal availability of a day in court—it requires that “access to the courts is adequate, effective, and meaningful.” *Bounds* at 822.

Where any noncitizen present in court potentially faces civil arrest, prolonged detention, and deportation by ICE, access to court for noncitizens is not “adequate, effective, and meaningful.” *Id. Cf. Directive 11072.1* (simultaneously asserting priorities for courthouse arrest targets and delegating absolute discretionary decision-making power to line agents to make courthouse arrests). Courthouse arrests interfere with the right to access courts both for individuals arrested in the state court, and also for the 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. The courts developed the common law privilege against civil arrest based largely on the barriers that such arrests pose to attending court. *Lamb*, 285 U.S. at 225. Today ICE is forcing communities across the country to confront these barriers, as pervasive fear of ICE enforcement keeps people from acting on their right to attend court—a right often born out of necessity. Supreme Court jurisprudence on accessibility for people with disabilities, 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.

This inability to access courts is particularly troubling in the context of criminal defendants, who have additional rights protected by the Sixth Amendment. Under the Confrontation Clause, criminal defendants have a right to be present in the courthouse to confront witnesses. *See Faretta v. California*, 422 U.S. 806, 819-20 n. 15 (1975); *Sanchez v. Duncan*, 282 F.3d 78 (2d Cir. 2002). ICE courthouse arrests interfere with this right by penalizing defendants who exercise their rights. Defendants who may need to appear for a minor misdemeanor trial are threatened by ICE with the possibility of a civil arrest leading to prolonged detention and deportation. Under common law tradition, the right to be present in court necessarily assumes that parties will not be civilly arrested, knowing that the threat of civil arrest will prevent parties from attending. *See* 3 William Blackstone, *Commentaries on the Laws of England* 289 (1769); *Lamb v. Schmitt*, 283 U.S. 222, 225 (1932); *Long v. Ansell*, 293 U.S. 76, 83 (1934); *see also Crawford v. Washington* 541 U.S. 36, 43 (2004) (relying on common law tradition to interpret the Confrontation Clause). While ICE justifies its policy by dismissing criminal defendants as “criminals and fugitives,” FAQ on Sensitive Locations and Courthouse Arrests, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/ero/enforcement/sensitive-loc>, the Constitution recognizes that being accused of a crime does not strip an individual of her rights. Rather, the Constitution affords criminal defendants a range of specific and sacred rights and protections. Among those protections is the right to be present in court.

Moreover, under the Compulsory Process Clause of the Sixth Amendment, criminal defendants have a right to present a defense, including by calling witnesses. *E.g., Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (“Few rights are more fundamental than that of an accused

to present witnesses in his own defense.”); *Washington v. Texas*, 388 US 14, 18 (1967) (“The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies.”). The criminal defendant’s right to present witnesses goes beyond literally calling his witnesses to the stand; the right also means that the government cannot interfere with these witnesses. In a multitude of cases, the federal courts have found a violation of the Sixth Amendment due to government conduct in connection with a criminal proceeding. In *Webb v. Texas*, the Supreme Court found that a judge’s “lengthy admonition on the dangers of perjury” interfered with the defendant’s right because it “could well have exerted such duress on the witness' mind as to preclude him from making a free and voluntary choice whether or not to testify.” 409 U.S. 95, 98 (1972). The Courts of Appeals have found that witness intimidation by prosecutors or other government officials can also violate the Sixth Amendment. *See, e.g., Soo Park v. Thompson*, 851 F.3d 910, 921 (9th Cir. 2017) (finding a Sixth Amendment violation where detective made intimidating phone call to material defense witness); *United States v. Little*, 753 F.2d 1420, 1439–40 (9th Cir. 1984) (analyzing claim of defense witness intimidation by IRS agents); *United States v. Blackwell*, 694 F.2d 1325, 1333 (D.C. Cir. 1982) (holding that prosecutor threatening prospective witness with prosecution was impermissible interference with the defendant’s right to present witnesses); *United States v. Goodwin*, 625 F.2d 693 (5th Cir.1980) (remanding on other grounds, but noting that allegations that defense witnesses were threatened by prison officials regarding testimony for trial would also be grounds for remand).

ICE’s courthouse policy articulated in *Directive 11072.1* is a government threat against noncitizen potential witnesses, as it intimidates them from appearing in court through the

possibility of arrest, detention, and deportation. This is impermissible governmental interference with the Sixth Amendment right to present a defense. Interference with witnesses is inherent to the ICE policy—as long as ICE is successfully able to initiate removal proceedings this way, witnesses will be intimidated. The violation of fundamental rights of all criminal defendants who may need to rely on a noncitizen witness compounds the seriousness of the violation of the rights of the respondent in this particular case, and is further grounds for termination of proceedings.

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 constitutional rights to federalism and to access court.

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 V (Exhibit p. 92), 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 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 untrammelled 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 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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B	Stephen Rex Brown, <i>ICE Courthouse Arrests of Immigrants up 900% Across N.Y. in 2017</i> , N.Y. Daily News (Nov. 15, 2017), http://www.nydailynews.com/new-york/ice-courthouse-arrests-immigrants-900-n-y-2017-article-1.3633463?cid=bitly .	3
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Exhibit A

FOR IMMEDIATE RELEASE:



IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2017

Reports of ICE Targeting Immigrants at Courthouses Increased Nearly 1200% since Last Year

Spike Reflects Dangerous New Era of Enforcement and Immigrant Rights Violations under Trump Administration

NEW YORK – December 31, 2017 – The Immigrant Defense Project (IDP) released new statistics & trends detailing Immigration and Customs Enforcement (ICE) arrests and attempted arrests in courthouses across New York State from January to December 2017. IDP compiled statistics from attorneys and advocates who work with immigrants and the family members of immigrants as part of their practice.

There have been **144 reports of ICE arrests and attempted arrests in courthouses this year**, up from 11 reports in all of 2016. **This more than 1200% increase from 2016** signifies a new era in aggressive ICE enforcement emboldened under the Trump administration.

“The exponential increase in ICE courthouse arrests reflects a dangerous new era in enforcement and immigrant rights violations,” said Lee Wang, Staff Attorney at IDP. “Immigrants seeking justice in the criminal, family, and civil courts should not have to fear for their freedom when doing so. The alarming ICE trends we’re seeing in New York undermine the safety and promise of sanctuary.”

“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,” said Tina Luongo, Attorney-In-Charge of the Criminal Defense Practice at The Legal Aid Society. “This report shows that courthouse arrests will only continue to proliferate under this Administration. We hope to work with Albany leaders and the Office of Court Administration next session on a legislative remedy that could address this injustice that’s now truly statewide.”

KEY STATISTICS & TRENDS:

- **The majority of ICE courthouse arrests are taking place in NYC.** Of the 144 reports, 97 of the incidents took place across all five counties of New York City. 84 were arrests; 13 were attempted arrests.

- **47 of the incidents took place in upstate New York and Long Island.** These incidents were spread across 16 counties including Westchester, Nassau, Suffolk, Ulster, Columbia, Putnam, Rockland, Onondaga, Albany, Saratoga, Monroe. 44 were arrests; 3 were attempted arrests.
- **Both documented and undocumented immigrants are being arrested. In cases where immigration status is known, 1 out of the 5 incidents involve documented immigrants.** Of these, the vast majority are green card holders, while others are in the U.S. on valid visas.
- **ICE has expanded arrests to target undocumented immigrants with NO prior criminal history.** 28% of the undocumented immigrants ICE has targeted have NO prior criminal history. In many of these cases, individuals were facing a first-time arrest for a traffic violation. And in some cases, charges were dismissed, but ICE still proceeded with the arrest.
- **Most immigrants were reporting to court on low-level offenses.** In cases where criminal charges were known, 80% of individuals who were arrested while attending court were appearing for violations and misdemeanors.
- **Immigrants are being arrested in a broad range of courts—including criminal courts, family courts, traffic courts, and specialized courts that are designed as rehabilitation programs.** ICE has arrested immigrants twice in family courts, once at a child support hearing, and another at a visitation hearing. They have also targeted immigrants in Youth Parts (designed to help provide rehabilitation to teenagers) and Community Courts (designed around a restorative justice model that emphasizes rehabilitation).
- **ICE has targeted immigrants in particularly vulnerable groups.** Several of those arrested have documented mental health issues, and/or are survivors of family violence. ICE agents have also gone after immigrants in Human Trafficking Intervention Court, which is designed for victims of human trafficking who face prostitution-related charges.
- **In some cases, court staff have facilitated ICE arrests.** In at least 21 incidents, employees of the Office of Court Administration assisted ICE agents. Assistance has included notifying ICE agents of an immigrant's presence in the courtroom, delaying the calling of a case to facilitate an arrest, physically assisting an arrest, and escorting ICE into restricted areas of the court meant only for court personnel.

Advocates across the country are working with state court justices and legislators to identify and implement solutions to address ICE's reckless disregard for public safety and access to justice. Given the complex entanglement of the criminal justice system with federal immigration law and deportation policies, many sanctuary cities often inadvertently feed the President's deportation machine. State and local officials need to stop federal immigration agents from using the U.S. court system to trap immigrants for arrest, detention, and deportation.

For more information, please visit the Immigrant Defense Project at ImmigrantDefenseProject.org.


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Exhibit B

Courthouse arrests of immigrants by ICE agents have risen 900% in New York this year: Immigrant Defense Project

 [nydailynews.com/new-york/ice-courthouse-arrests-immigrants-900-n-y-2017-article-1.3633463](https://www.nydailynews.com/new-york/ice-courthouse-arrests-immigrants-900-n-y-2017-article-1.3633463)

By Stephen Rex Brown



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.

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"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 they'd been charged with a low-level offense. 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.

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Exhibit C

Secret Police

SLATE

[slate.com/articles/news_and_politics/jurisprudence/2017/09/plainclothes_ice_agents_in_brooklyn_refused_to_identify_themselves.ht](https://slate.com/articles/news_and_politics/jurisprudence/2017/09/plainclothes_ice_agents_in_brooklyn_refused_to_identify_themselves.html)

[Slate](#)

[Jurisprudence](#)

The law, lawyers, and the court.

Sept. 15 2017 4:05 PM

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.

Leon Neyfakh

Leon Neyfakh is a **Slate** staff writer.



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.

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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.

In a free society, a law enforcement officer should state clearly that he or she represents the state.

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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:



A.P. Joyce
@AndrewPaulJoyce

Alleged ICE agent at Brooklyn court house refused to answer questions. Leaves black car with two others.

9:24 AM - Sep 14, 2017

104 123 people are talking about this

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.

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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.

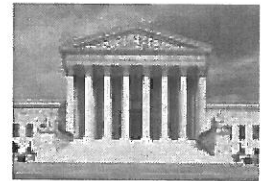
The stonewalling Mease, Ryan, and I got from the men we encountered at the courthouse doesn't seem to be a consequence of strict departmental policy. When one of Mease's colleagues from Brooklyn Defender Services, Nathaniel Damren, asked one of them on Thursday morning if he was with ICE, the officer 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.

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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 D

New York authorities demand ICE stop hunting immigrants in courthouses

 nypost.com/2017/08/03/new-york-authorities-demand-ice-stop-hunting-immigrants-in-courthouses/

By Priscilla DeGregory and Linda Massarella

August 3, 2017

Metro

August 3, 2017 | 1:17pm | Updated August 3, 2017 | 3:29pm

Modal Trigger



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 Schneiderman. "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."

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Exhibit E

A Game of Cat and Mouse With High Stakes: Deportation

 [nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html](https://www.nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html)

By Liz Robbins

August 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."

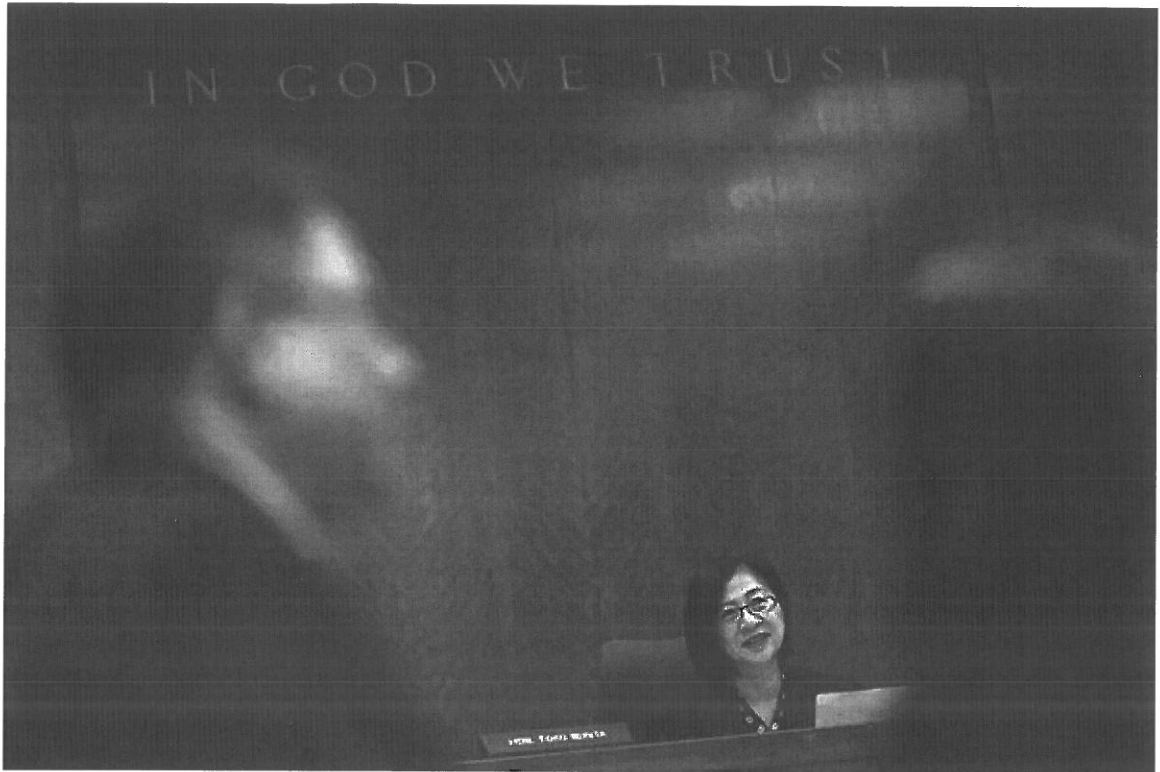
Mr. Gonzalez added that ICE's arrests had undermined the trust people have in the justice system.

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."

Image



Judge Toko Serita, shown in 2014, recently set bail for a woman accused of prostitution; the woman was then able to speak to her lawyer without being arrested by ICE. Credit: Uli Seit for The New York Times

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."

In a Queens Court, Women in Prostitution Cases Are Seen as Victims

Nov. 21, 2014

Image

Immigration Agents Should Not 'Stalk' Courts, California Justice Says

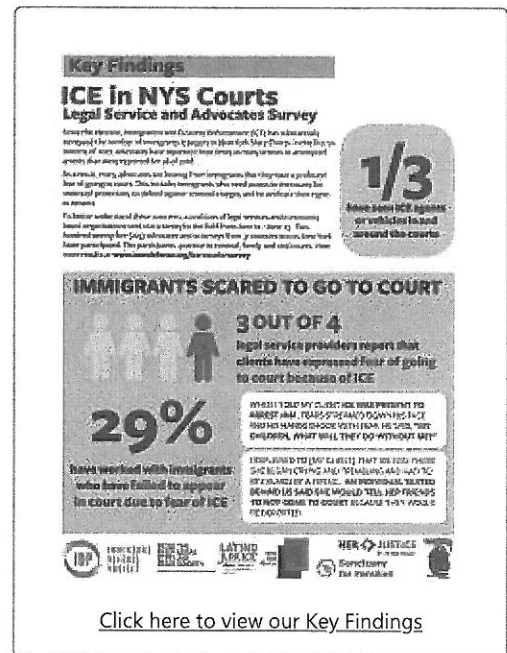
Exhibit F

ICE in New York State Courts Survey

IDP immigrantdefenseproject.org/ice-courts-survey/

Since the election, Immigration and Customs Enforcement (ICE) has substantially increased the number of immigrants it targets in New York State Courts. For more information, visit our [Ice out of the Courts campaign](#). 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 – 23. 225 advocates and attorneys from 31 counties across New York State participated. The participants work in criminal, family, housing, employment, education, and immigration law, and practice in criminal, family, and civil courts in New York State.



ICE'S PRESENCE IN NEW YORK STATE COURTS

- A third of respondents reported seeing ICE agents and/or ICE vehicles in and around the courts where they practice in New York State.
- Respondents have been seen ICE in all five boroughs of NYC; Suffolk; Nassau; Westchester; Columbia; Dutchess, and Putnam.

IMMIGRANTS TOO SCARED TO GO TO COURT

- 74% have worked with immigrants who have expressed fear of the courts because of ICE

- 45% have worked with immigrants who have either failed to file a petition or withdrawn a petition due to fear of encountering ICE in the courts
- 48% say their clients have expressed fear of calling police for fear of ICE
- 29% have worked with immigrants who have failed to appear in court due to fear of ICE

29%

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

CHILLING EFFECT ON SURVIVORS OF VIOLENCE

A third of the survey participants work with survivors of violence.

- **67% of advocates working with survivors of violence have had clients who decided not to seek help from the courts due to fear of ICE**
- 50% have worked with immigrants who are afraid to go to court because their abusive partners have threatened that ICE will be there
- 37% have worked with immigrants who have failed to pursue an order of protection due to fear of ICE
- 48% have worked with immigrants who have failed to seek custody or visitation due to fear of ICE
- 37% have worked with immigrants who have failed to seek a U certification verifying that they are a victim of violence (through the courts, from police, or from a District Attorney's office)

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


HOUSING COURT

A sixth of the respondents work with tenants in Housing Court.

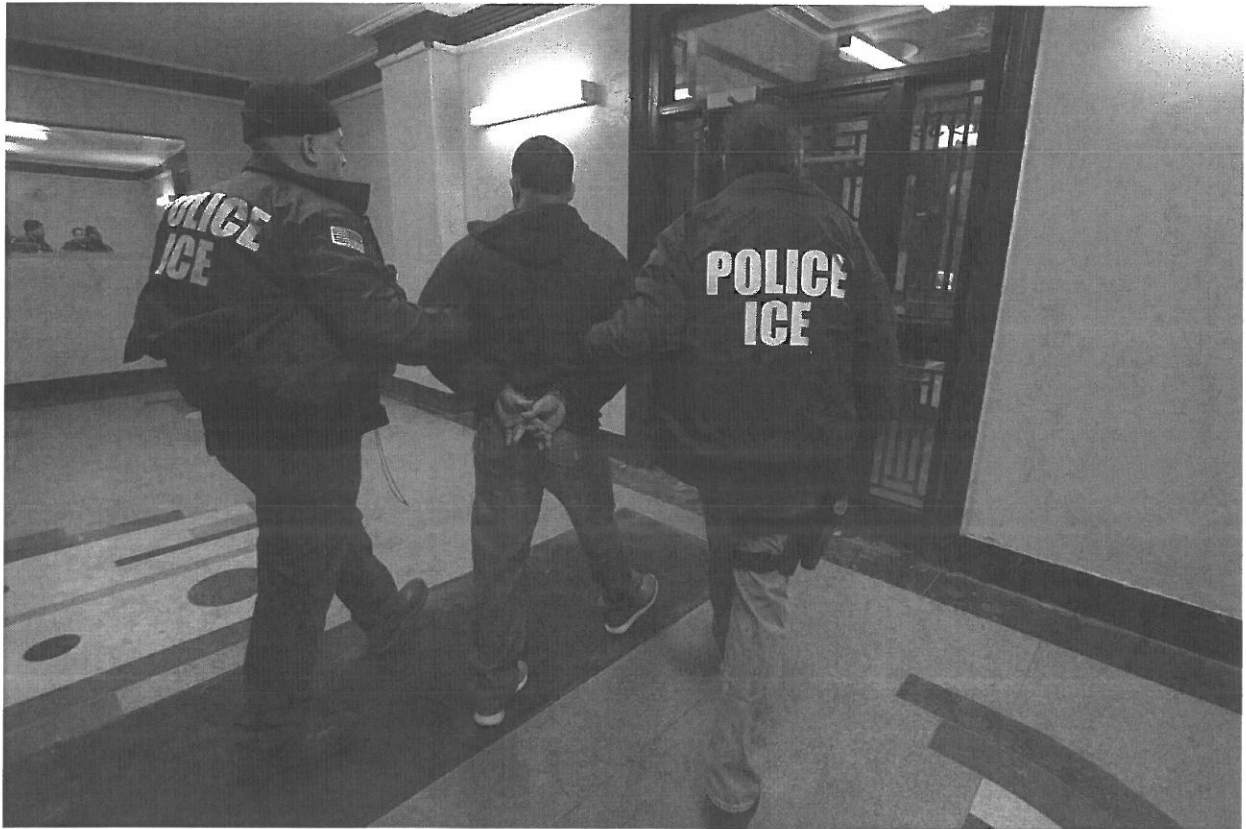
56% have clients who have expressed fear of filing a housing court complaint due to fear of ICE

Exhibit G

Immigrant victims of violence won't cooperate for fear of deportation as ICE lingers near N.Y. courts, survey reveals

 [nydailynews.com/new-york/immigrant-violence-victims-fear-n-y-courts-ice-lingers-nearby-article-1.3286562](https://www.nydailynews.com/new-york/immigrant-violence-victims-fear-n-y-courts-ice-lingers-nearby-article-1.3286562)

By VICTORIA BEKIEMPIS



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.

Advertisement

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. 18

Another 13% specifically work with immigrants in housing court.

Of those advocates working with immigrant violent crime 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.



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.

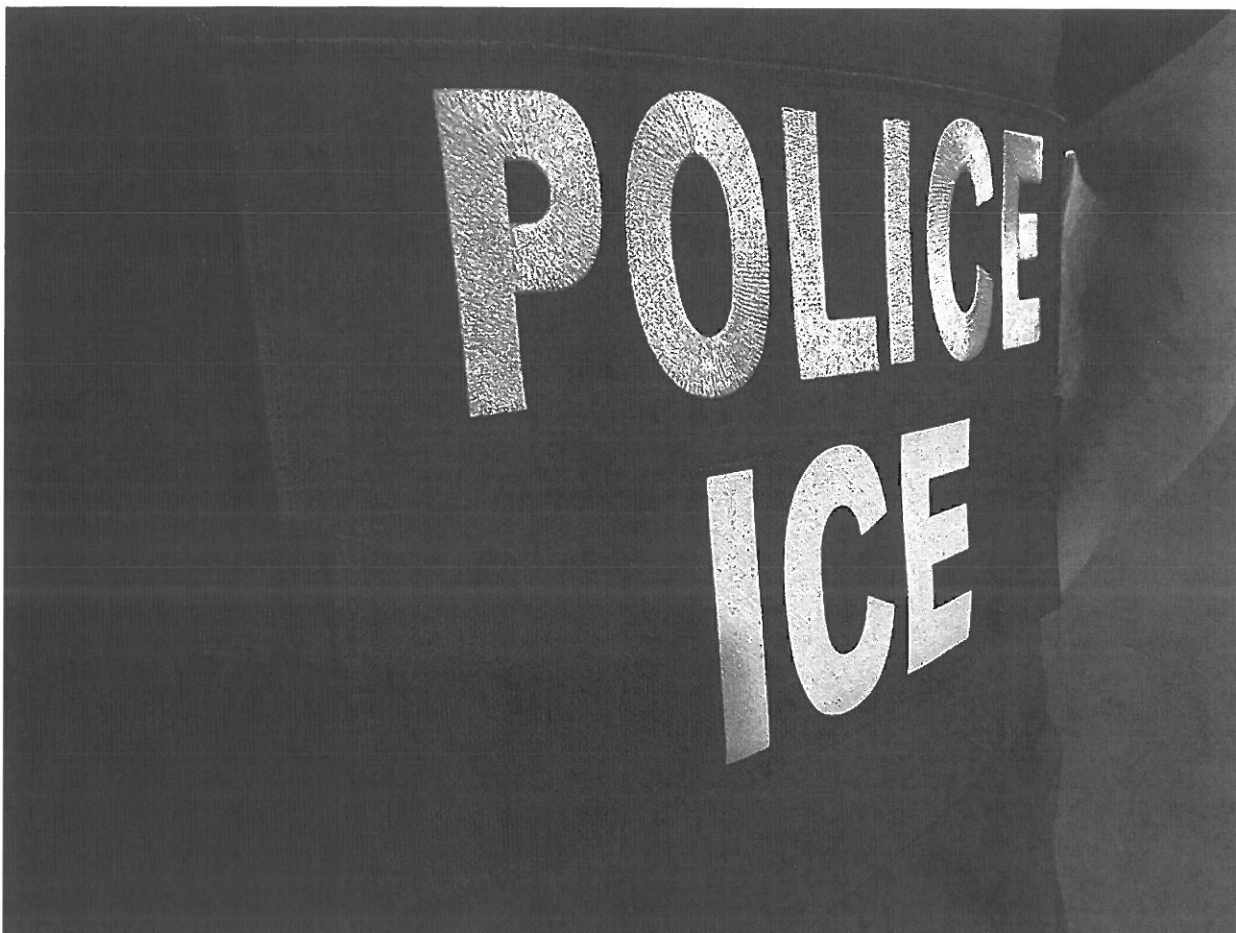
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Exhibit H

Judge urged to curb ICE arrests at New York State courts

 [nydailynews.com/new-york/judge-urged-curb-ice-arrests-new-york-state-courts-article-1.3981075](https://www.nydailynews.com/new-york/judge-urged-curb-ice-arrests-new-york-state-courts-article-1.3981075)

By Erin Durkin



Federal agents have ignored calls to stop making arrests at New York courts, spurring critics to ask the state's chief judge for help. (U.S. Department of Homeland Security)

City pols and public defenders pushed the state's chief judge Wednesday to bar ICE from making most arrests in state court houses.

Gov. Cuomo signed an order two weeks ago prohibiting the federal immigration agency from making arrests in state government buildings without a judicial warrant — but his order does not apply in the courts, where the state's chief executive does not have jurisdiction.

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Outside City Hall Wednesday, City Council members pushed Chief Judge Janet DiFiore to issue a similar order for courts, barring arrests unless agents have a warrant or order from a judge.

"We were shocked to hear from [the Office of Court Administration] and our chief judge that that order did not apply to our courthouses," said Stan German, executive director of New York County Defenders. "We are asking her to follow the governor's lead."

There have been 52 arrests or attempted arrests of immigrants in and around courthouses in New York State this year, according to the Immigrant Defense Project. It's unclear how many of those arrests took place inside the court building.

Court officials maintain it would not be legal for them to prohibit arrests.

"What the defender organizations and these elected officials are asking us to do, which they are fully aware is illegal, is to shut down a public building to law enforcement," said OCA spokesman Lucian Chalfen. "We cannot do that and we will not do that."

When armed ICE agents enter courthouses and say they intend to make an arrest, they're required to present a warrant — but it may either be a judicial warrant or a civil administrative warrant issued by the Department of Homeland Security, he said.

The New York courts have asked ICE to treat courts as sensitive locations, where agents usually don't make arrests, but ICE has refused.

Chalfen also criticized public defender groups for staging protests outside courthouses when ICE has shown up to arrest an immigrant. "These impromptu demonstrations only serve to disrupt court operations which ironically is what the defender organizations claim ICE is responsible for doing," he said.

City district attorneys have joined the push to get ICE to stop courthouse arrests, saying it makes suspects, victims and witnesses alike too scared to show up for court.

"We won't have a system of justice if people are afraid to come and be a part of that system," said Councilman Rory Lancman (D-Queens).

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Exhibit I

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

 beta.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html

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L.A. Now

Local

By James Queally

Oct 09, 2017 | 5:00 AM

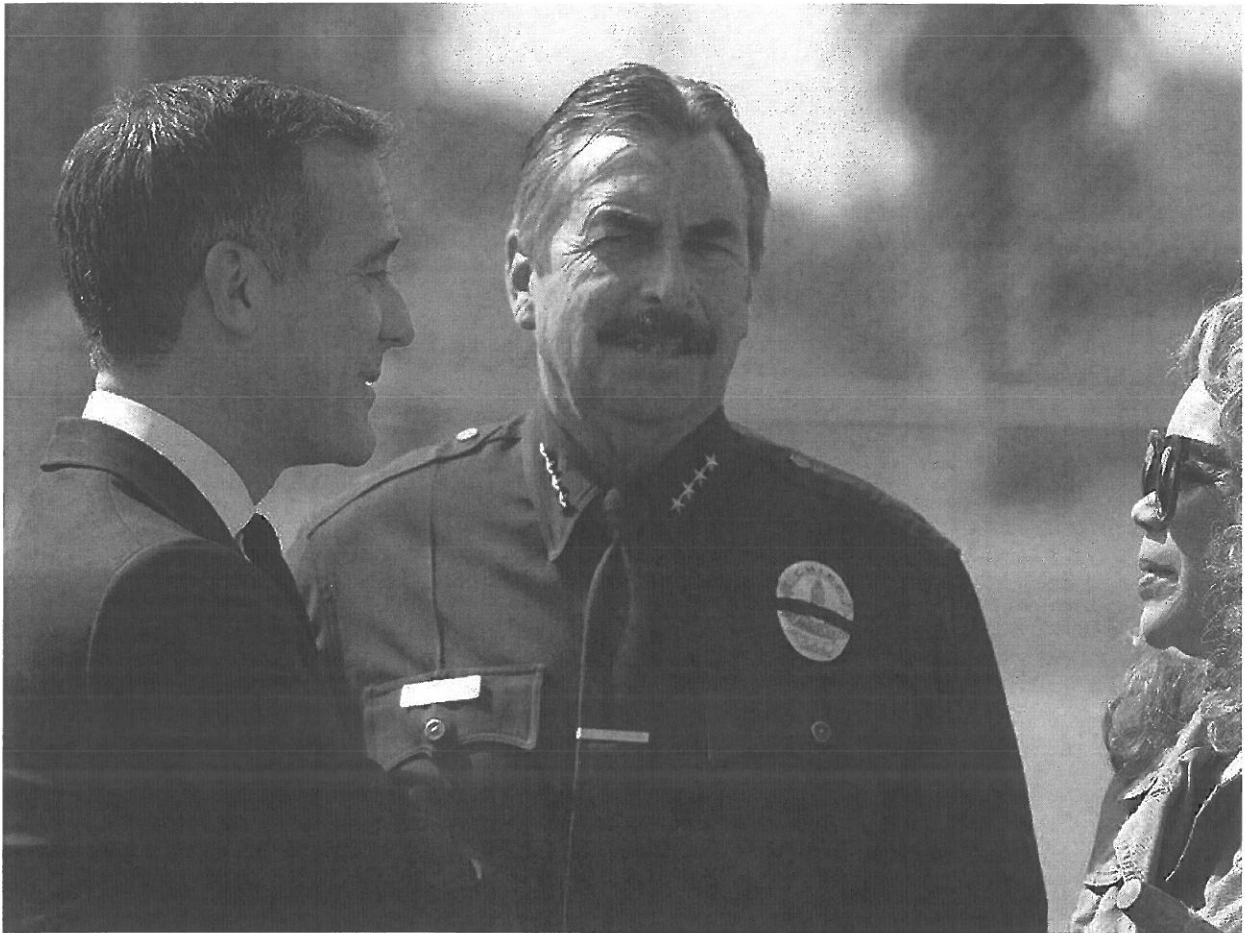
In the first six months of 2017, reports of domestic violence have declined among Latino residents in some of California's largest cities. Crisis professionals say immigrants without legal status fear that interacting with police or entering a courthouse could make them easy targets for deportation.

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.

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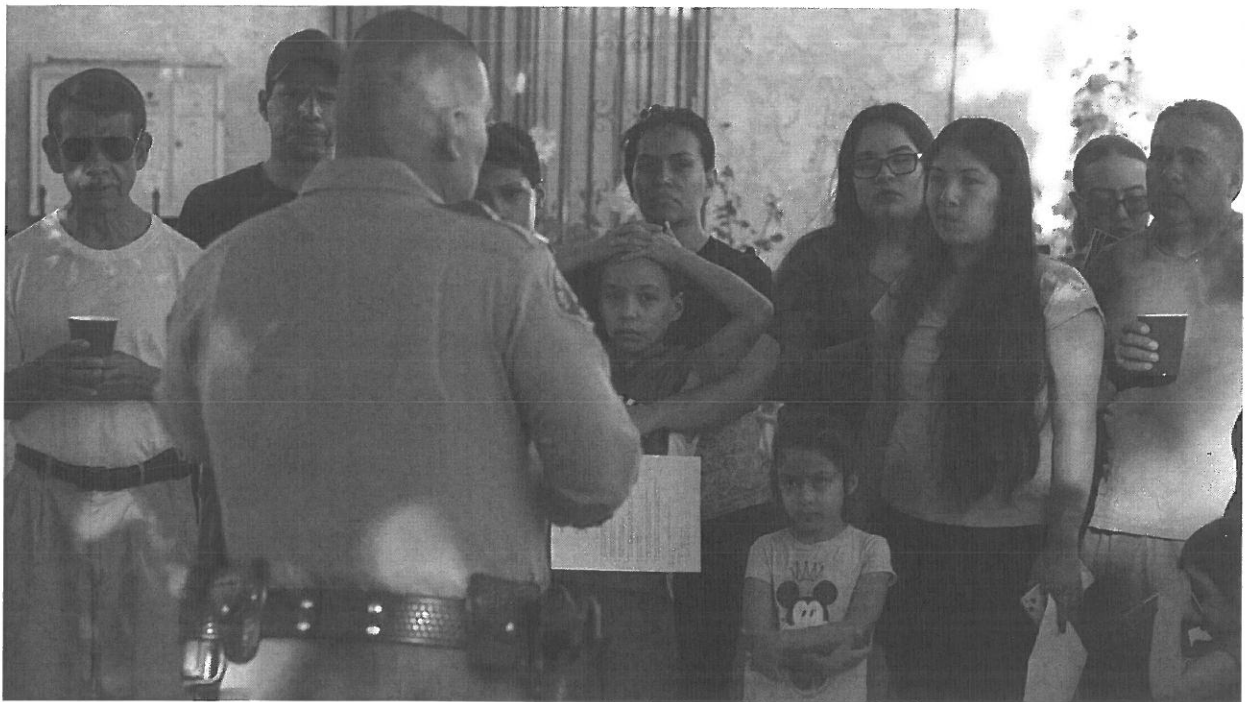
It is a story that Jocelyn Maya, program supervisor at the domestic violence shelter Su Casa in Long Beach, has heard often this year.



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.



Sheriff's Deputy Marino Gonzalez talks with community members during a block meeting in Cudahy. (Brian van der Brug / Los Angeles Times)

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.

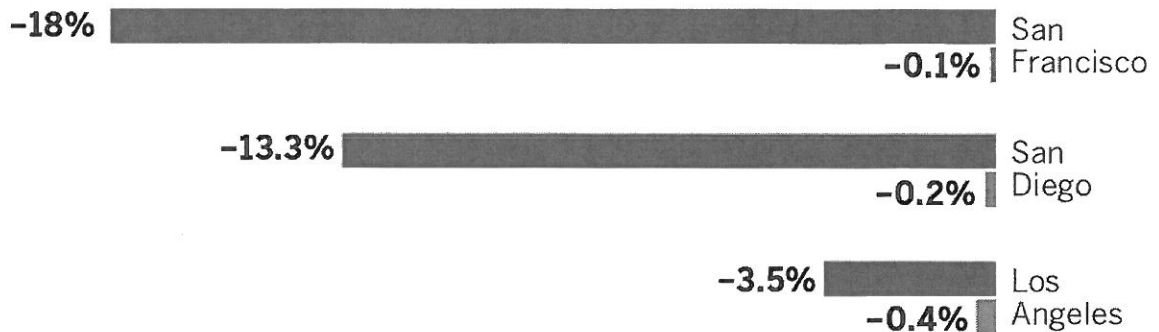
The Long Beach abuse victim, fearing she had no other recourse, sent her oldest children back to Mexico to live with relatives.

"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 positive word for them and say: 'It's going to be OK. You can go into a courtroom. You can call the police.' "

Domestic violence reports down among Latinos

In the first six months of 2017, Latino residents have reported fewer instances of domestic violence to police compared with the same period in 2016

■ Latinos ■ Non-Latinos



Sources: Los Angeles, San Francisco and San Diego police departments

Chris Keller / @latimesgraphics

(Los Angeles Times)

Los Angeles County sheriff's Deputy Marino Gonzalez said he addresses such apprehension frequently as he patrols the streets of East L.A. — even though his department doesn't question 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.

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"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

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Sheriff's deputy Marino Gonzalez, left, talks with deputies while investigating a disturbance in Maywood. (Brian van der Brug / Los Angeles Times)

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.

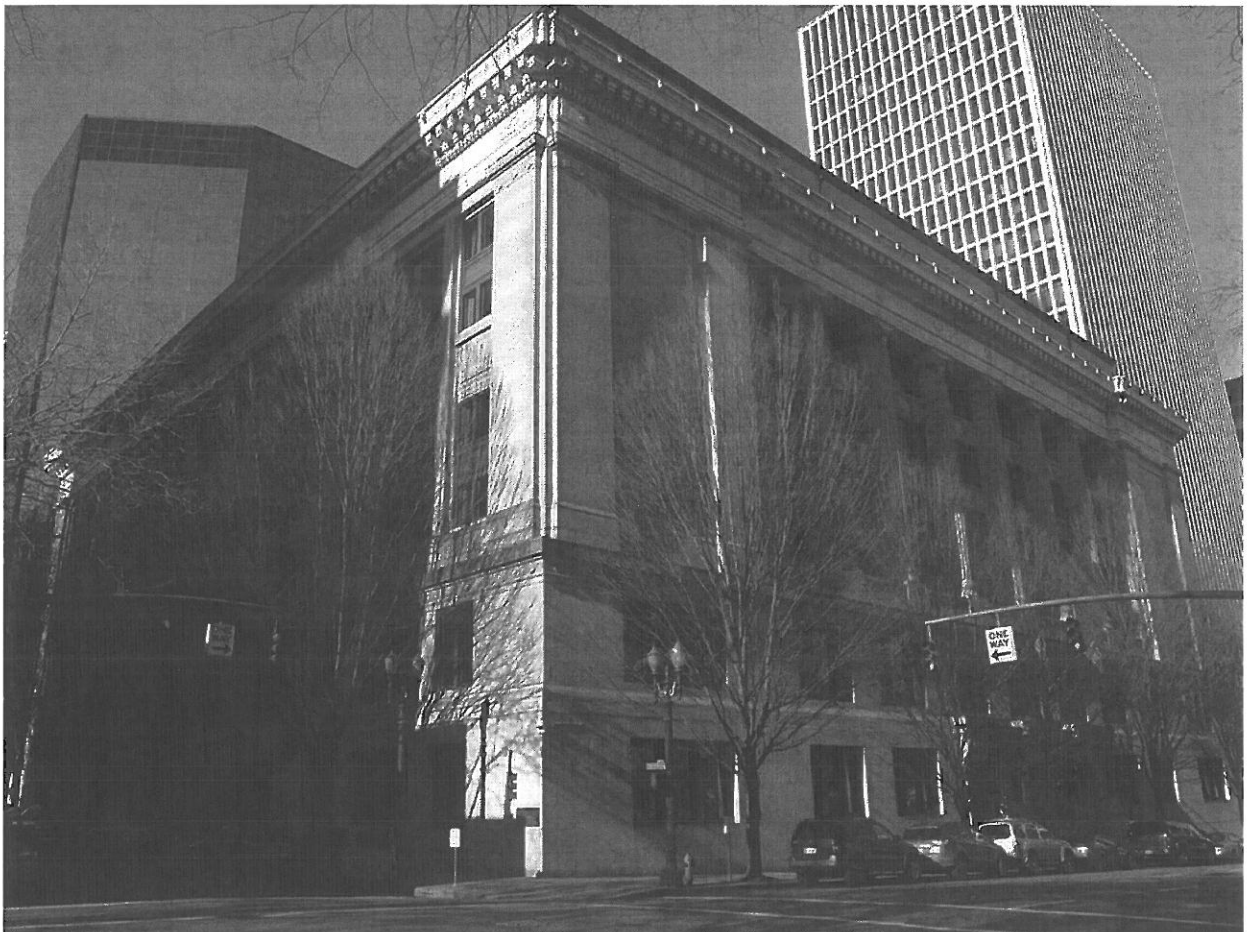
In Los Angeles and San Diego, reporting of domestic violence crimes remained unchanged among non-Latinos. The decline among Latinos in San Diego was more than double the overall citywide decrease, records show. In San Francisco, the reporting decline among Latinos was nearly triple the citywide decrease.

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.

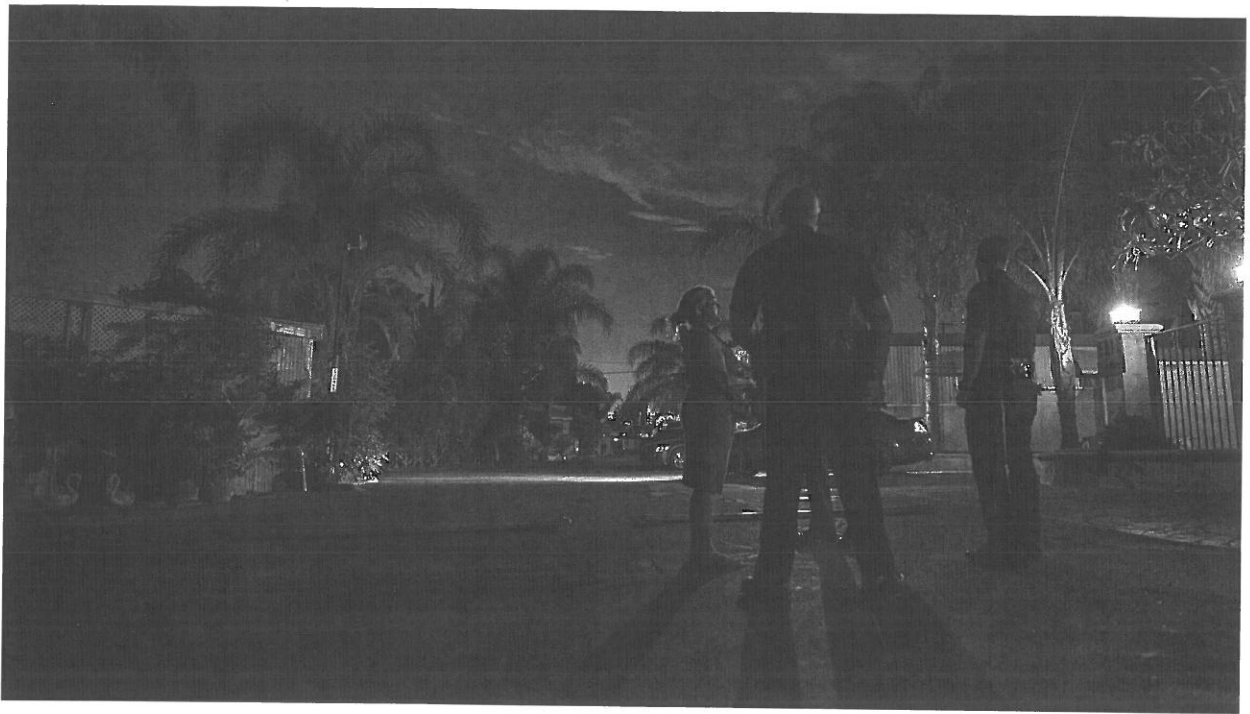
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"They instilled the ultimate fear into our community," she said. "They know they can trust us, but they are not trusting very many people past us."

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.



LAPD officers investigate a reported disturbance in a Sylmar mobile home park. (Robert Gauthier / Los Angeles Times)

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.

james.queally@latimes.com

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Monday - Saturday

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Exhibit J

Freezing Out Justice

How immigration arrests at courthouses are undermining the justice system

ACLU

Freezing Out Justice

How immigration arrests at courthouses are undermining the justice system

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ACLU

Cover photo: icedmocha/Shutterstock

Since President Trump took office last year, immigration enforcement officers from Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) have dramatically expanded their presence at criminal and civil courts, including in family, landlord-tenant, and traffic courts across the United States. The presence of these officers and increased immigration arrests have created deep insecurity and fear among immigrant communities, stopping many from coming to court or even calling police in the first place. The impact of immigration enforcement at courthouses greatly undermines the security of vulnerable communities and the fundamental right to equal protection under the law, shared by noncitizens and citizens. These actions have sown confusion and spread fear and mistrust — limiting the efficacy of the judiciary, law enforcement, survivors' services, public defenders, and other core services available at courthouses.

A new and extensive survey conducted by the [National Immigrant Women's Advocacy Project](#) (NIWAP) in partnership with the ACLU shows that the fear of deportation — magnified by immigration arrests in courthouses since President Trump took office — is stopping immigrants from reporting crimes and participating in court proceedings. The NIWAP survey compares 2017 data with 2016 data on crime survivor participation in investigations and court proceedings. It is based on responses from 232 law enforcement officers in 24 states; 103 judges, three court staff and two court administrators in 25 states; 50 prosecutors in 19 states; and 389 survivor advocates and legal service providers spread across 50 states.

What is clear from the results is that when immigration officers conduct arrests in courthouses, there can be significant damage to the ability of the police, prosecutors, defenders, and judges to deliver justice. This is true even in places where local law enforcement and court officers are supportive of immigrants' right to access the justice system and have invested in efforts to build trust and relationships with the immigrant community. These results show that federal immigration enforcement undermines local policies designed by officials who know their communities best.

The Impact of Fear on Public Safety

In 2017, immigration arrests by ICE soared by 30 percent from the 2016 fiscal year. During the same period, police officers reported the most dramatic drop in outreach from and cooperation with immigrant and limited English proficiency (LEP) communities over the past year. Since police are often the first point of contact for survivors of crime within the justice system, the decline in trust and cooperation has a significant impact on their work and on the rest of the justice system. Sixty-four percent of police officials surveyed cited a concern for community safety when immigrant crime survivors are afraid to seek assistance.

Approximately 22 percent of police officers surveyed reported that immigrants were less likely in 2017 than in 2016 to be willing to make police reports; 21 percent said immigrant crime survivors were less likely to help in investigations when police arrived at the scene of a crime; 20 percent reported that they were less likely to help in post-crime scene investigations; and 18 percent said immigrant crime survivors were less willing to work with prosecutors. As a result, law enforcement officials reported that many crimes have become more difficult to investigate: 69 percent said domestic violence was harder to investigate, 64 percent said this applied to human trafficking, and 59 percent said this was true about sexual assault.

Seventy-one percent of surveyed law enforcement officers also reported that the lack of trust and cooperation from immigrant crime survivors and those with limited English proficiency has already had an adverse impact on officers. Sixty-seven percent reported an impact on their ability to protect crime survivors generally and 64 percent reported an adverse impact on officer safety.

Fifty-four percent of judges participating in this survey reported court cases were interrupted due to an immigrant crime survivor's fear of coming to court, representing a significant disruption in the justice system compared with 43 percent of judges reporting this effect in 2016.

Prosecutors surveyed stated that in prior years, as cooperation between prosecutors and immigrant communities increased, survivors of crime were increasingly willing to come forward and assist law enforcement in prosecuting cases. However, over the past year, many categories of crimes have become more difficult to prosecute as a result of an increase in fear of immigration consequences. In particular, 82 percent of prosecutors reported that since President Trump took office, domestic violence is now underreported and harder to investigate and/or prosecute. Seventy percent of prosecutors reported the same for sexual assault, while 55 percent stated the same difficulties for human trafficking and 48 percent for child abuse. Even prosecutors in offices that offer assistance to crime survivors by providing necessary certifications for immigration visas said that crimes were being underreported by immigrant survivors of crime.

This survey also received information from legal services attorneys and victims' advocates who represent immigrant survivors of domestic violence, sexual assault, child abuse, human trafficking, and other criminal matters. The advocates surveyed worked for agencies that regularly represent immigrant crime survivors and help them to pursue related immigration relief. Survey respondents had served a total of 75,979 such individuals between January 2016 and October 2017.

Advocates and legal service providers reported that in 2017 the number of cases their offices filed for immigrant crime survivors decreased 40 percent from 2016. Instead, clients were staying in abusive, even dangerous situations, afraid to go to court and pursue claims that would provide them and their children with protection. Many reported that their clients stayed with or returned to abusers; 72 percent of advocates reported that their clients suffered daily, weekly or monthly abuse from their partner.

Eighty-seven percent of advocates surveyed stated they worked with law enforcement officers on community policing measures and providing outreach, services and support for crime survivors. And yet, despite these partnerships with local law enforcement, the recent upswing in immigration enforcement has had a severe adverse impact on the advocates' ability to help the clients pursue claims and protection in court.

The arrests of immigrants at courthouses in 2017 have had a far-reaching chilling effect. In interviews conducted by the ACLU, prosecutors and judges around the United States in the fall of 2017, these officials indicated that courthouse arrests that occurred far away, in other states, were well-known to their local immigrant communities and impacted immigrants' decisions to call for help or appear in court. This effect has consequences not only for immigrants but for the safety of entire communities.

Closing the Courthouse Doors

Under the Trump administration, the presence of immigration officers in and near courthouses has dramatically increased. A survey by the Immigrant Defense Project (IDP) found that courthouse arrests by ICE have increased by a staggering 1200 percent in New York in 2017, eroding confidence in the justice system for immigrants and non-immigrants. Andrew Wachtenheim of IDP says, "Every day we hear about the most vulnerable people in our communities — survivors of violence, people who are mentally ill, young people, those who are LGBT, people racially profiled and arrested — terrified of going to court."

Immigration arrests at courthouses have risen not only in urban centers with large immigration populations like New York City or Los Angeles but also other parts of the country. The enforcement

actions are taking place in many kinds of civil and criminal courts, sweeping in people going to family court, for housing matters or traffic infractions, as witnesses, or to defend against criminal charges (including individuals who are acquitted or whose charges are dropped). In Burlington, Vermont, for example, ICE arrested a dairy worker who was married to a U.S. citizen and the father to two young children as he was arriving at the courthouse to appear on charges for a DUI; the DUI charges were dismissed. In a family court in Oakland County, Michigan, an undocumented father was arrested by Customs and Border Protection agents when he appeared at a hearing to request custody of his children, who he believed were in danger from his ex-wife's violent boyfriend.

In one notorious courthouse arrest in 2017, ICE agents arrested an undocumented woman at an El Paso County courthouse as she sought a protective order against her abusive boyfriend, who is believed to have tipped off immigration officials to the woman's upcoming court appearance. This and other high-profile courthouse arrests have spread fear nationwide to immigrants and their relatives who, according to police and prosecutors, are now terrified to come forward because of the possible immigration consequences for their own security and their family's safety.

The right to access courts is a fundamental right, and one that protects and ensures other core constitutional rights like due process and equal protection of the law. The Supreme Court has recognized that "the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy." But courts can't operate fairly or effectively when people don't feel safe coming forward. Recognizing the far-reaching impact of ICE arrests at courthouses, judges in states like California, New Jersey, and Washington have protested against courthouse enforcement, telling the Department of Homeland Security that courts and the justice system should not be used as "bait" and warning of the danger to public safety when crime survivors and witnesses are afraid to come forward. State judge Rosemary Collins in Illinois said that heightened immigration enforcement in the community could dissuade survivors of crime from coming to courthouses seeking protection orders against their abusers: "That's my concern, that people won't come to court to get orders of protection they are entitled to get because of fear they or their families will be put on ICE's radar. As a result, their safety and the safety of the community will suffer."

The Chief Justice of California, Tani G. Cantil-Sakauye, wrote to Attorney General Jeff Sessions and then-Secretary of Homeland Security John Kelly, "[E]nforcement 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." In New Jersey, Chief Justice Stuart Rabner wrote to then-Secretary Kelly that "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. . . . 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."

Similarly, prosecutors around the country — including in California, Colorado, Massachusetts, and New York — have publicly condemned immigration enforcement actions in courthouses given the chilling effect on immigrants. These concerns are not speculative. According to Denver City Attorney Kristin Bronson, in the months following the release of a videotape of ICE waiting in a courthouse hallway to make an arrest in Denver, Colorado, 13 women decided not to pursue domestic violence cases against their abusers for fear of deportation.

In Michigan, Washtenaw County Sheriff Jerry Clayton, who also consults with the ACLU on policing policies, observes that the immigrant community has been an essential partner in addressing and improving public safety. "At the local level, in this profession, we know that our success in keeping communities safe is grounded in our relationship with the community — that there is respect

between police and the community as well as a clear understanding of what our role is, which is not to enforce federal immigration law,” says Clayton. “This relationship means that people are more likely on the front end to report crimes and be an active participant throughout the whole justice process, from investigation through the court process.” He says that what ICE is doing at courthouses “severely compromises us at the local and community level and undercuts our ability to provide public safety. Every time someone refuses to participate by reporting a crime, we run the risk of continuing the victimization of that individual and possibly of someone else.”

Kristin Bronson from the Denver City Attorney’s Office raised concerns that local police could be confused with ICE officers who are in plainclothes in the Denver courthouses every week. “People don’t know how to identify them,” she said, “And that is our concern too — when you can’t identify them as ICE, you may confuse them with undercover police officers and we want to avoid any appearance that our local police are engaged in enforcing federal civil immigration laws.”

Even without a local arrest or reported incident, law enforcement and community advocates observe that immigrant survivors of crime are afraid to approach police because of the risk that asking for help will lead to harmful consequences. Michael LaRiviere, the Victim Services Officer in the Criminal Investigations Division with the Salem Police Department in Massachusetts, notes that even without a major local incident, the fear in the community is palpable. “We have had to address reluctance and fear but we do it. A person’s immigration status isn’t an issue for us, and people need to know they can come to us without fear.”

Because of these effects, there has been growing resistance to these courthouse arrests, with public defenders walking out of court in protest in New York; pastors organizing court-watching programs in New Jersey; and groups like the ACLU organizing vigils and suing for information in Oregon.

Federal Policies on Immigration Arrests in Courthouses

Despite this outpouring of concern from police, prosecutors, judges, legal service providers, and affected communities, in October 2017, the Acting Director of ICE, Thomas Homan, reaffirmed that ICE will continue to arrest immigrants at courthouses. A new ICE directive on courthouse arrests, released in early 2018, provided some guidance to when immigration arrests were permitted, noting that ICE “should generally avoid enforcement actions” in and near non-criminal court proceedings and will not arrest witnesses or family members “absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE’s enforcement actions.” At the same time, the directive authorizes courthouse arrests in civil and criminal courts and significant discretion and ambiguity in the hands of ICE. For one thing, in many jurisdictions and particularly in rural areas of the United States, civil and criminal court proceedings take place in the same building. Moreover, this directive leaves in place ICE’s position that it can go after any person it believes is removable without categorically prohibiting those arrests in courthouses.

At the same time, some law enforcement groups support ICE actions at courthouses. The New York State Court Officers’ union, for example, has told its officers to cooperate with federal immigration agents conducting courthouse arrests and instructed staff to “report any attempts by anyone to obstruct ICE to the union immediately.” In Orange County, California, Delia (full name withheld), a young woman with DACA status (Deferred Action for Childhood Arrivals), was arrested at her home by immigration agents who claimed to be probation officers, a day after her routine probation check-in. Delia was on probation after destroying some clothes that belonged to her abusive former boyfriend. According to her attorneys, she had not violated the terms of her probation but it appears that the probation office provided her information to ICE, leading to her arrest and detention.

ICE's position has been that courthouse arrests are both permissible and justifiable because courts are a safe setting for immigration agents to conduct arrests. ICE also claims that conducting these courthouse arrests is necessary because some law enforcement agencies now refuse to carry out immigration holds ("detainers") on noncitizens with whom they come into contact. (An ICE detainer is a request from ICE to local or state law enforcement to detain a person for an additional 48 hours after their release date, without a judicial warrant and without an opportunity to contest detention and sometimes without any pending charges, allowing ICE to decide whether to take custody of the individual and to start deportation proceedings). In 2014, the Department of Homeland Security had actually directed ICE to limit its use of detainers, acknowledging "the increasing number of federal court decisions that hold that detainer-based detention by state and local law enforcement agencies violates the Fourth Amendment."

Turning Our Back on Immigrant Crime Survivors

Using the courts to go after survivors of abuse is an about-face in federal policy. Over the years, Congress has adopted several bipartisan measures to protect immigrant survivors of crime and to encourage them to report crimes to law enforcement. Those measures, including the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPPA), were passed to protect survivors of crime by removing abusers' ability to use the threat of deportation to silence those they victimized. VAWA, for example, permits spouses, children, and parents of U.S. citizens or lawful permanent residents to "self-petition" for lawful permanent residence rather than rely upon their abusers to request an immigration visa. VAWA also includes confidentiality provisions to prevent agencies — including the Department of Homeland Security — from relying on tips from abusers to locate and arrest noncitizen crime survivors.

The U and T visas were created for survivors of domestic violence, sexual assault, trafficking and other crimes who cooperate with law enforcement to identify and prosecute abusers. Immigrant crime survivors who are eligible for these visas need to have their applications "certified" by a designated official — often a police officer, prosecutor or a judge — to confirm their participation and assistance in bringing a case to justice. Special Immigrant Juvenile Status (SIJS) protections apply to immigrant children who have been abused, abandoned or neglected by one or both of their parents; as a prerequisite to applying, a child must obtain a finding from a court that their situation qualifies.

These programs have been a critical lifeline for immigrant survivors of crime and an important tool for law enforcement to ensure that survivors and witnesses can safely come forward and pursue cases without the looming danger of deportation. According to the NIWAP study, in 2017, whether immigrant crime survivors continued to go to court depended largely on the court's participation in programs to help immigrant crime survivors and witnesses. Courts that signed certifications for one or more of these cases reported an *increase* in requests for visa certifications (20 percent for U visas and 30 percent for SIJS) in 2017 compared to 2016. Thirty-five percent of judges surveyed in 2017 compared with 27 percent in 2016 reported that their cases were interrupted due to immigrants' fear of coming to court. Judges in courts that participate in programs to certify visas also reported hearing more cases in 2017 than in 2016 in which parties raised the immigration status of an opposing party, survivor or parent.

Leslye Orloff, director of NIWAP and the study's principal author, observes that the damage to police and community relations when courts are not seen as safe spaces can be devastating but is also predictable: "Eroding trust that law enforcement has built with immigrant crime survivors is particularly dangerous. Our prior research has found that when survivors find the courage to seek immigration relief, perpetrators of domestic violence and workplace-based sexual assault are actively involved in reporting survivors for deportation to ICE and CBP. Stepped up immigration enforcement, particularly at courthouses, aligns with perpetrators' threats that if survivors report

the abuse, seeking help from police or courts will result in the survivor being detained and deported and never seeing her children again.”

Last July, members of the Democratic Senate Caucus wrote to then-Secretary John Kelly of the Department of Homeland Security expressing deep concern that courthouse enforcement undermined critical protections for immigrant survivors of crime like the Violence Against Women Act (VAWA) that have long had bipartisan support. VAWA is up for reauthorization in 2018, and at a recent hearing before the Senate Judiciary Committee, Katharine Sullivan from the Department of Justice’s Office on Violence Against Women reaffirmed the importance of a “a real collaborative community response” where survivors know they can go to police and receive support.

But the future of federal protections for crime survivors is uncertain. In 2013, the last time Congress reauthorized VAWA, only 22 Senators opposed reauthorization — one of whom was Jeff Sessions. Sessions recently signaled that the Justice Department may erode protections for immigrant survivors of domestic violence and sexual assault. On March 7, he ordered the review of a court decision granting immigration relief to a Salvadoran woman who sought asylum after repeated physical and sexual abuse by her ex-husband. Not only did he order the case reexamined but referred it to himself for review, prompting widespread concern amongst advocates and immigration judges about the fairness and transparency of this review.

The battle over courthouses is only one site in the growing feud between federal immigration agents and many state and local officials. The Justice Department recent lawsuit against the State of California is one of the most public and aggressive actions taken against state officials for implementing pro-immigrant, sanctuary policies. Homeland Security Secretary Kirstjen Nielsen has also said that her department has asked the Justice Department to investigate whether criminal charges could be levied against local officials for carrying out sanctuary policies.

When the federal government insists on conducting immigration arrests in courthouses and taking away that central space for justice, it is harder for prosecutors, police, defenders, and judges to do their job. This tactic, by instilling fear and essentially excluding noncitizens and their relatives from the courts, threatens constitutional rights, like equal protection and due process, as well as the safety of the broader community.

Recommendations on Immigration Enforcement in Courthouses

To the Department of Homeland Security:

- **Issue new department-wide guidance that adds courts to the list of sensitive locations that are protected from immigration enforcement actions.** Like schools, hospitals, and places of worship, courthouses should be safe places that are easily accessed by all people. The ACLU encourages DHS to modify the 2011 ICE sensitive locations memo and the 2013 CBP sensitive locations memo to explicitly state that courthouses are protected.

To Congress:

- **Pass the Protecting Sensitive Locations Act (S. 845/H.R. 1815).** The Protecting Sensitive Locations Act codifies the Department of Homeland Security’s existing sensitive locations policies and expands on them to ensure that immigrants are able to access education, criminal justice, and social services without fear of deportation. The bill also prohibits CBP, along with ICE, from arresting, interviewing, searching, or surveilling anyone

for the purposes of immigration enforcement within 1,000 feet of a courthouse or other sensitive location.


- **Direct the DHS Office of the Inspector General (OIG) to conduct an investigation into ICE/CBP policies and actions at courthouses and other sensitive locations.** While this report provides a glimpse into ICE and CBP practices and the frequency of courthouse arrests, a lack of oversight and public reporting has left the public with a number of unanswered questions around DHS' sensitive location practices and procedures. An OIG investigation should seek to provide the public with concrete data on rationales for and results of enforcement actions at courthouses and other sensitive locations, as well as specific information regarding how DHS oversees such actions, including how they, along with ICE and CBP:
 - Request and approve enforcement actions at or near courts and sensitive locations;
 - Train employees regarding courthouse arrests and sensitive locations policies and procedures;
 - Keep records with regard to enforcement actions at or near courthouses and other sensitive locations;
 - Process complaints at ICE and CBP regarding enforcement actions at courthouses and other sensitive locations (data should include the number of complaints made against the agencies since January 20, 2017);
 - Implement disciplinary procedures with regard to agent actions at or near courthouses and other sensitive locations. Data should include the number of complaints since January 20, 2017 that have been acted upon by management at ICE and CBP, and the number and types of disciplinary actions taken.
- **Limit ICE and CBP funding for enforcement at courthouses and other sensitive locations.** The ACLU supports efforts to prohibit funding for ICE and CBP enforcement activity in and around courts and other sensitive locations. Such requirements would provide much needed oversight and hold immigration agencies accountable for actions that threaten the constitutional rights and safety of all those in the community.
- **Pass legislation to mandate data collection and public reporting on enforcement actions at courthouses and other sensitive locations.** Transparency and oversight are fundamental to ensuring that immigrants' rights are respected by all law enforcement agencies. Congress should require that ICE and CBP maintain detailed data on rationales for and results of enforcement actions, and provide regular public reports with data on enforcement actions at courthouses and other sensitive locations.
- **Pass legislation to require ICE and CBP to seek approval from a chief judicial officer before conducting immigration enforcement actions at or around courthouses.** Judicial officers have an administrative responsibility to ensure orderly and fair operation of their courtrooms without warrantless interference by federal immigration enforcement. Mandating their approval would respect federalism, recognize the vital role that unimpeded access to civil and criminal justice processes plays in our society, and provide another important check against harmful routine ICE and CBP presence at courthouses.

To State and Local Court Officials:

- **Issue guidance directing court personnel not to facilitate federal immigration enforcement activities in the course of their employment, unless required by a judicial order.** The guidance should clarify that court personnel are not required to disclose citizenship or immigration status information about any person, unless required by judicial order or state or federal law. The guidance should include a prohibition on providing any information to federal immigration officials other than citizenship or immigration status information, or taking any action not required in the regular course of a court personnel's duty to stop, question, interrogate or investigate an individual based solely on actual or suspected immigration or citizen status or a civil immigration warrant, administrative warrant, or an immigration detainer. It should be made clear that court personnel should not inquire about the immigration status of an individual, including a crime victim, a witness, or a person who calls or approaches the police seeking assistance, unless such inquiry is required for the performance of the court personnel's regular duties.
- **Educate judges, prosecutors, and police about their role in providing certifications for U visas and encourage them to do so in appropriate cases.** Congress specifically authorized judges to provide certifications to noncitizen victims of crime who have suffered substantial mental and physical abuse resulting from the criminal activity and are willing to cooperate with law enforcement in the detection, investigation or prosecution of that criminal activity. These certifications are required to qualify for U visas, which were created in federal law to encourage immigrant crime victims to report criminal activity. If judges in a court system carry out this role, they will send a message to crime victims that their courts recognize the important role they play in the criminal justice process.

Exhibit K

ICE Is Using Prostitution Diversion Courts to Stalk Immigrants

 villagevoice.com/2017/07/18/ice-is-using-prostitution-diversion-courts-to-stalk-immigrants/

News & Politics

by Melissa Gira Grant

July 18, 2017

Alex Nabaum

Alex Nabaum

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 Alatraste/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,” Mogulescu said. “This is a question of arrest policy, and who is brought into criminal court as sitting ducks for ICE enforcement.”

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

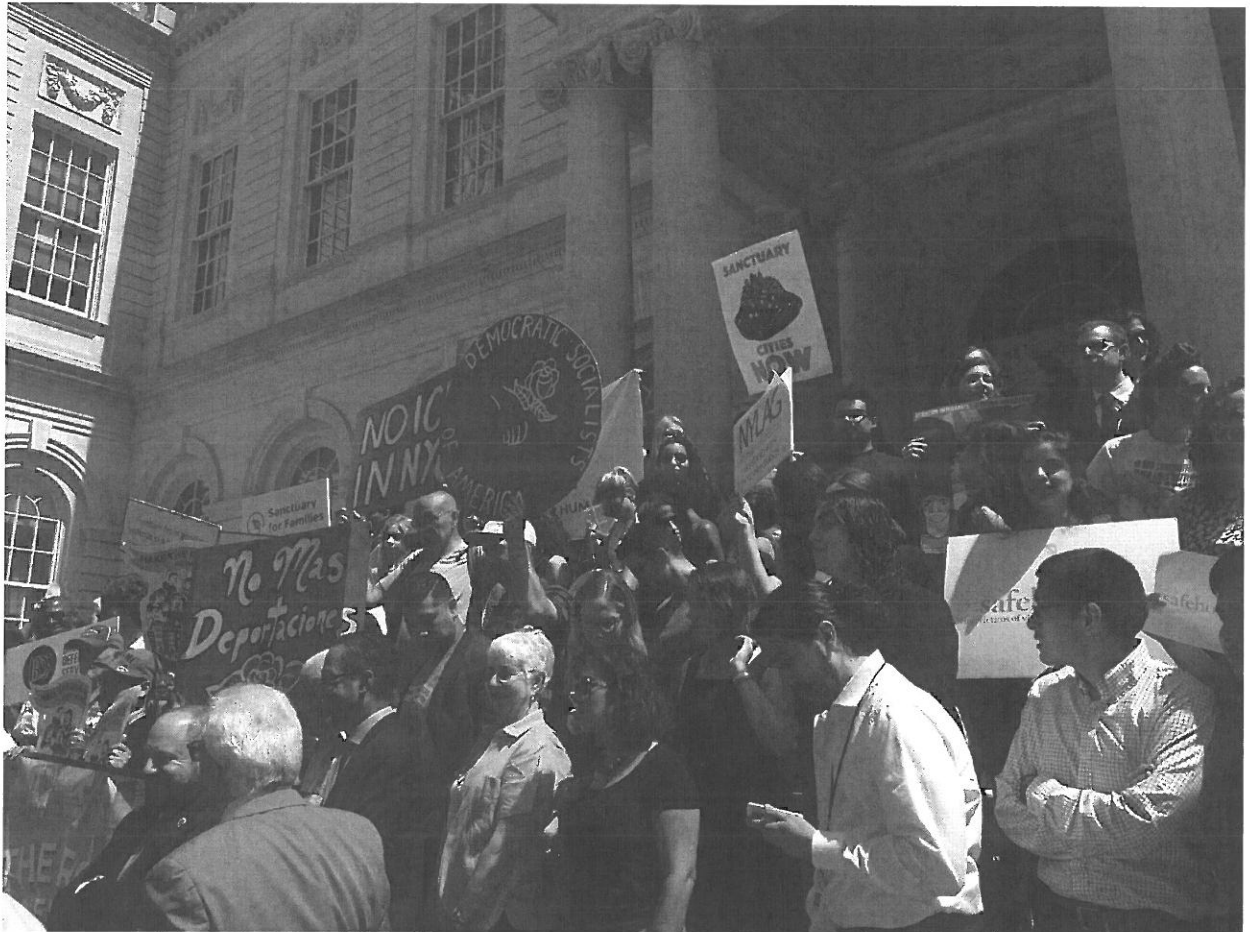
The day after the City Hall press conference, Judge Serita would hear another thirty or so cases in her trafficking court. Waiting their turn on the wooden benches, the defendants sat solo and in pairs. It was not unusual to see one woman stick around until another’s case was called; they’d watch each 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 — 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: “If you stay out of trouble and lead a law-abiding life, your case will be dismissed.” 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 “law-abiding lives” as the judge orders?

These defendants’ victim status is conditional: not only on agreeing to “stay out of trouble,” 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 “unauthorized practice of a profession,” 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. "I'm gonna *try* to stay out of trouble," one of the Queens AP8 defendants was heard to say as she left court. "But I can't promise." 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 Gira 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 — also testified. "The assumption is embedded in the system right now that arresting folks is rescue

and is a way to get people into services," Ray told the council. "There has been a lot of talk today about the violence of the sex industry and the trauma people face....For us, experiences in the courts and experience with the police — that is trauma and violence."

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. "You understand that if this happens again," Judge Serita told a defendant in 2013 when a reporter was present, "the offer that is being made now might not happen, and if there are immigration issues you can be deported." At the press conference to protest ICE actions in the trafficking courts, Kluger — one of the architects of the courts — told reporters that the agency's actions were a "violation." 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: "Well," she said, "that's a whole other issue." Pressed, Kluger added that while she didn't think they should be arrested, "You'd have to direct that to NYPD."

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 "in essence decriminalizing prostitution offenses." 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.

More:[Immigration](#)

Exhibit L

When a Day in Court Is a Trap for Immigrants

 [newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants](https://www.nytimes.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants)

By Steve Coll



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 reexamine 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.

Exhibit M

ICE detains man at traffic court after DACA status expires, then frees him after outcry

 chicagotribune.com/suburbs/skokie/news/ct-met-dreamer-daca-skokie-courthouse-arrest-20180131-story.html

Robert McCoppin and Brian L. Cox

Christian Gomez Garcia went to traffic court Monday to deal with a ticket and ended up with a much bigger legal problem.

As Gomez Garcia left the room where driving offenses are heard in Cook County's Skokie branch court, U.S. Immigration and Customs Enforcement agents approached and arrested him, shipping him off to a holding facility in Wisconsin, apparently with plans to begin deportation proceedings.

Following an outcry two days later by immigration advocates and his lawyer, who appeared at a news conference in front of the courthouse with Gomez Garcia's tearful mother, federal authorities reversed course and released him Thursday.

Luz Maria Garcia said she brought her son to the U.S. when he was 4 years old. Now 29, Gomez Garcia had previously qualified for the federal Deferred Action for Childhood Arrivals program, or DACA, but that lapsed because of mistakes on his renewal applications, his advocates said.

They objected to authorities arresting people who they say are productive and pose no public safety threat. And they say such arrests discourage people from engaging with the justice system at all.

"We in this county and in this city should not be a part of this conspiracy of ICE to try and take out immigrants from this country that are eligible for legalization through this (DACA) program," said Juan Soliz, an attorney for Gomez Garcia.

ICE officials did not elaborate on why they targeted Gomez Garcia in the first place or why they decided to release him, other than to say it was "after further review of his case circumstances."

But the federal agency has in the past said courthouse arrests are safer because people are in a controlled environment where they've been screened for weapons.

Soliz said he thinks federal authorities recognized that because Gomez Garcia is still eligible for a DACA extension, "they shouldn't have picked him up in the first place and they're compelled to release him."

Federal authorities noted that Gomez Garcia is a citizen of Mexico. His mother said she fled Mexico with him about 25 years ago because of domestic violence she endured and had to leave five other children behind. She and her son now live in Skokie. She said he helps support her and is enrolled in a real estate program at a junior college.

"My son is really sad because he is no criminal," Garcia, 52, said Wednesday, prior to the news of Gomez Garcia's planned release. "He is studying and working hard. He helps me in everything. He is a really good boy."

According to the Secretary of State's office, Gomez Garcia's driver's license was suspended for failing to pay a fine for a driving offense. A search of court records in Cook County and other Chicago-area counties found no indication of criminal charges against Gomez Garcia.

After his release, Gomez Garcia told WGN-TV that he was treated in a manner that was "very aggressive, inhumane, very unfair. You don't have a chance to react, to think, to do anything. They ask for a name, they turn you around and handcuff you. We're here just working, making a living, trying to become somebody in this world, and anybody that has this could go through this same process that I'm going (through)."

In President Donald Trump's State of the Union address Tuesday, he proposed a path to citizenship for some 1 million young undocumented immigrants as part of a wider plan that he has said needs to include money for a border wall and other reforms.

Trump announced last fall that he was rescinding DACA, a move that's been blocked in federal court as lawsuits proceed.

The president's stepped-up enforcement of illegal immigration has included an apparent increase in the arrests of immigrants at courthouses, said Fred Tsao, senior policy counsel for the Illinois Coalition for Immigrant and Refugee Rights in Chicago.

It's not clear how common the practice is, but Tsao said he's heard occasional reports of such arrests in the Chicago area and New York City.

It's a bad idea, he said, because it discourages immigrants from participating in the justice system, whether as defendants, plaintiffs, witnesses or victims of crime.

Immigration officials issued a general statement last year that courthouses are a safer place to make arrests because those entering have been screened for weapons.

ICE has previously said it has followed a routine practice of law-enforcement agencies arresting individuals while they appear in court for separate cases. ICE has stated that its agents generally go after convicted criminals, people who pose public safety risks or those who have been deported but have returned. The earlier statement said agents should generally avoid enforcement in noncriminal proceedings.

"Courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails," the statement read.

Cook County passed an ordinance in 2011 prohibiting county law enforcement from holding or notifying ICE of individuals wanted for immigration warrants. Illinois lawmakers passed last year the Trust Act, which prohibits local law enforcement from holding inmates solely on immigration detention orders.

Just after the Trust Act went into effect, McHenry County officials prompted outcry from some immigrant advocates, families and lawyers after jail inmates were taken into ICE custody after a family member put up their bail.

Brian L. Cox is a freelance reporter. Tribune reporter Jeff Coen contributed.

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Exhibit N

The Woman Arrested by ICE in a Courthouse Speaks Out

 [newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out](https://www.nytimes.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out)

By Jonathan Blitzer



Officers of Immigration and Customs Enforcement, which arrested a transgender woman in Texas earlier this month as she sought a protective order against an abusive ex-boyfriend.

PHOTOGRAPH BY JASON DECROW / AP

On the morning of February 9th, Irvin González, a thirty-three-year-old transgender woman, was sitting in a waiting room on the tenth floor of a courthouse in El Paso, Texas. At 9 A.M., a judge was scheduled to hear her request for a protective order against an abusive ex-boyfriend. González was nervous that she'd have to confront him in court, but her caseworker, who was from a local aid agency, reassured her that he might not even be there, and that if he was he wouldn't be able to get too close. She allowed herself, momentarily, to relax. "I felt very safe and protected in the court," she said.

A sudden commotion outside the door jolted her upright. González assumed her ex had arrived, and the caseworker hurried out to see what was happening. She returned with unexpected news: an Immigration and Customs Enforcement officer was there to arrest her. Born in Mexico, González had lived in the U.S., off and on, for more than a decade, but was undocumented. She had been deported six times since 2010. ICE had managed to track her to the courthouse. "I did not think this situation would be possible," she said. Then, before anything else could happen, the judge called González in for her hearing. "I had a hard time understanding some of the judge's questions

because I was thinking about the *ICE* officer outside,” she said. The judge granted her the protective order, but she left the courtroom in a daze. Her caseworker told her, “Are you ready? We are going to start walking, and then *ICE* is going to arrest you.”

That week, immigration authorities arrested more than six hundred people across the country in a string of raids, from Staten Island to Seattle. The Department of Homeland Security, which oversees *ICE*, has insisted that the raids were routine, though they came just days after President Trump issued an executive order expanding the categories of people eligible for deportation. The message was clear even if D.H.S. wouldn’t acknowledge it: a new crackdown on the undocumented had begun. Trump welcomed the news of mass arrests, tweeting that the roundups were “merely the keeping of my campaign promise.” González, who in addition to her past deportations has served prison time in the U.S. for a range of crimes, including larceny and assault, may well have been targeted for deportation under the Obama Administration, which also carried out mass raids and deported millions of people. But the circumstances of González’s arrest were dramatic and highly irregular—and her case drew national headlines.

Earlier this week, I communicated with González, who is being held in a county jail, through her immigration lawyer, Melissa Untereker. (Untereker asked González questions I’d sent in an e-mail, then wrote down and relayed her answers.) González had been in custody for eleven days, and she said she’d been denied the hormones she takes. The withdrawal effects had left her feeling nauseated and uneasy. She wasn’t sleeping, her teeth and head ached, and she’d begun to grow facial hair. “I am in shock,” González said.

According to the federal criminal complaint documenting her arrest, *ICE* and Border Patrol agents had learned about González’s whereabouts on February 2nd. At the time, she was staying in a shelter for domestic-abuse victims in downtown El Paso. Rather than apprehend her there, the agents waited a week before they picked her up. Local officials were outraged by the decision to arrest her at the courthouse. “I have never seen this before,” the El Paso County Attorney, Jo Anne Bernal, told me. “I’ve been in the courthouse twenty-three years, and I cannot recall immigration officials ever going into a courtroom or targeting a protective-order court.”

The criminal complaint, however, makes no mention of the officers entering the courthouse. In a sworn affidavit, John Urquidi, a Border Patrol agent, said that agents “were conducting surveillance” outside the courthouse that morning, when, “at approximately 9:30AM” they “observed González exiting the El Paso County Courthouse.” This account is easily disproved. Just after González was arrested, Bernal asked her office’s chief investigator to take statements from everyone who had witnessed the incident. An associate judge, a court bailiff, three assistant county attorneys, and González’s caseworker all confirmed that González had been taken into custody on the tenth floor of the courthouse. The arrest was also captured on tape. In a security-camera video that was later made public, two plainclothes officers—one in a hoodie and baseball cap, the other in a khaki jacket—can be seen walking González to the tenth-floor elevators. Another video, from the first floor, shows González and the officers leaving the building together, with one of the officers holding González firmly by her right arm. (This week, a D.H.S. spokesperson conceded to me, in an e-mail, that “the agents encountered González inside the El Paso County Courthouse.”)

González is certain that her ex-boyfriend tipped off the immigration authorities. (He couldn't be reached for comment.) "This is something he always threatened me with," she said. "He would tell me that, if I reported him to the police, they would only believe him, because he is a U.S. citizen and not me." In late January, he had been in jail, for allegedly forging checks, when he was served with an order to appear at the protective-order hearing. By then, González had already lodged three complaints against him in as many months, saying that he had been brutally beating her.

Officials at ICE were circumspect about how they had located González, telling the local press that they had received notice about her from "another law-enforcement body," without specifying which one. Gonzalez had no local, state, or federal warrants out for her arrest, according to a report by the county attorney's office. The timing of her arrest, however, was suggestive: the ex-boyfriend, who had been released at the end of January, was re-arrested for violating his probation on February 2nd, the same day that, according to Urquidi's affidavit, law enforcement "received information" that González "was in the United States."

González is now in a desperate position. In the next few days, a grand jury will decide whether to indict her on charges of illegal reentry into the U.S. If the grand jury decides to drop the charges, she'll be turned over to ICE, which will most likely deport her once more. Either way, her arrest illustrated the lengths to which agents are willing to go to pursue the undocumented. "What message does it send? 'We are coming after you,' " Veronica Escobar, a county judge, said. "We don't want to rattle the community or scare off other victims who may be afraid to come forward to report abuse."

Late last week, Escobar and Beto O'Rourke, El Paso's Democratic congressman, met with the deputy director of ICE's Enforcement and Removal operations and the agent in charge of Homeland Security Investigations in the area. O'Rourke told me that he and Escobar brought up two main concerns: first, they wanted to know what would happen to the agent who had submitted the apparently false affidavit, and second, they demanded clarity on whether González's arrest was the consequence of a directive from the new Administration. Both Escobar and O'Rourke left the meeting feeling "reassured." The officials, they said, acknowledged that the circumstances of González's apprehension were "extraordinary." "They said they hadn't heard of this happening before," Escobar told me afterward. "This wasn't part of some larger scheme." They promised Escobar and O'Rourke that there would be an investigation into both the operation itself and the questionable affidavit. (In a statement, a spokesman for Customs and Border Protection told me that the matter had been referred to the agency's inspector general for review, and that both C.B.P. and ICE "take all allegations involving agent/officer conduct and integrity very seriously, and hold their personnel to the highest standards of professionalism and personal conduct.")


The possibility that the agents who arrested Gonzalez were acting on their own initiative is, in some ways, an even more alarming prospect than if they were only following orders. Trump, with his law-and-order boosterism and rhetorical attacks on immigrants, has inspired fresh zeal at D.H.S. One border-patrol agent, from San Diego, recently told the *Times*, "For the first time in my nineteen years, I feel like I can do the job I was hired to do, the job they tell you you'll be doing when you leave the academy."

On Monday, I spoke with Fernando Garcia, the director of the Border Network for Human Rights, a community organization in El Paso, which works with Border Patrol and other law-enforcement agencies to reduce and prevent abuses. Garcia feared that the growing hostility to immigrants could derail the progress his group has made over the past several years. "There's really a sense now that you can be apprehended at any time," he said. González's arrest showed that "you might not be protected even if you are the victim of a crime or abuse."

Just before we spoke, news reports had surfaced with details about how D.H.S. was preparing for an unprecedented mass-deportation effort, which, among other things, frees up immigration authorities to deport virtually anyone whom they deem to be a threat to national security. I asked Garcia what he made of it. "Everyone is a target now," he said. "We don't need a memo to know that. It's already happening. The perception, under Trump, is that every undocumented person is a criminal."

Exhibit O

Vancouver Immigrant Claims ICE Arrested Him After Eavesdropping on Him and His Lawyer

 the stranger.com/slog/2018/04/04/26000666/vancouver-immigrant-claims-ice-arrested-him-after-eavesdropping-on-him-and-his-lawyer

SLOG

News

by [Sydney Brownstone](#) • Apr 4, 2018 at 1:37 pm

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Jorge Luis Acebal-Coria has been detained at the Northwest Detention Center, pictured above, for the last two months. ASK

Attorneys for the Northwest Immigrant Rights Project (NWIRP) say a plain clothes immigration enforcement officer arrested a man outside a courthouse in Vancouver, Washington after eavesdropping on the man's conversation with his lawyer.

According to a complaint filed with the Department of Homeland Security (DHS), 46-year-old Vancouver resident Jorge Luis Acebal-Coria showed up in Clark County District Court on January 24 for a hearing on a misdemeanor charge (third-degree malicious mischief, which is basically intentional property damage) at 8:30 AM. When Acebal-Coria's publicly appointed lawyer called his name to confer with him in the courtroom hallway, Acebal-Coria noticed a man dressed in plain clothes who followed them. In his DHS complaint, Acebal-Coria wrote that this man sat across from them as they spoke.

"The same man arrested me after I left the courthouse, and he told me he heard everything I said to my attorney," Acebal-Coria wrote.

NWIRP also says that the ICE officer, Jordan Vossler, wrote in his own arrest report that he was listening to Acebal-Coria's conversation in the courthouse. But Vossler, according to a section of the arrest report, said he only overheard Acebal-Coria's conversation with "court staff."

The section of the arrest report, furnished by NWIRP, reads: "As SUBJECT was approached by his defense attorney and Spanish translator he identified himself to court staff as Jorge ACEBAL and provided the date of birth of [REDACTED] 1972. As SUBJECT continued to speak to court staff as they communicated in Spanish and English in the public waiting room DO Vossler overheard SUBJECT inform court staff that he was not a United States Citizen and was born in Mexico."

NWIRP contends that Vossler was not eavesdropping on a conversation between Acebal-Coria and court staff, but between Acebal-Coria and Gregger Highberg, his lawyer.

Highberg told *The Stranger* that he didn't notice someone trying to listen in when speaking to Acebal-Coria at the time. But while Highberg stressed that he couldn't discuss what he and Acebal-Coria spoke about, he said he would find it very unusual for Acebal-Coria to have had a separate conversation at the same time with any kind of court staff regarding his immigration status.

"I think frustrating is the best word for it," Highberg said. "When an attorney speaks with their client, there's an expectation of privacy when they're intending for that conversation to be private. When privacy is compromised, it can lead to all sorts of unfortunate things, as evidenced with this incident."

According to NWIRP and Acebal-Coria's motion to dismiss ICE's case against him, this is what happened next:

"As Mr. Acebal left the courthouse, he got into his car and began to drive away. After driving about two blocks, Mr. Acebal noticed that an unmarked Ford Explorer behind him had activated its police lights. He heard, over the loudspeaker, a voice telling him to pull over, so he pulled his truck over on the side of the road. Mr. Acebal saw the same man from the courthouse, now wearing a vest that read 'ICE,' standing outside his vehicle, aiming a pistol at him."

The motion continues: "The officer also said that he had heard Mr. Acebal's conversation with his attorney in the courthouse, and knew that he was 'illegal.'"

That same day, Acebal-Coria was processed into the Northwest Detention Center in Tacoma, where he's been ever since. A week after he was arrested, NWIRP says, Acebal-Coria suffered a stroke for which he had to be hospitalized.

Acebal-Coria and his lawyers now say that the deportation proceedings initiated against him should be thrown out because of the way the arrest went down. ICE, according to Acebal-Coria's lawyers, violated Acebal-Coria's Fourth Amendment protections against unreasonable search, the Fifth Amendment right to due process, and his Sixth Amendment right to counsel when the officer eavesdropped on the courthouse conversation. Acebal-Coria and his lawyers additionally say that the man's arrest violated DHS's own rules of engagement.

Lori K. Haley, a spokesperson for ICE, said that the agency does not comment on pending litigation.

"However, lack of comment should not be construed as agreement or stipulation with any of the allegations," Haley said by e-mail. "In DHS's homeland security mission, our trained law enforcement professionals adhere to the Department's mission, uphold our laws while continuing to provide our nation with safety and security."

Last year, Washington State Supreme Court Justice Mary Fairhurst wrote to the head of Homeland Security with concerns about immigration officers tracking people in and around local courthouses.

Immigration officials' presence "impede[s] the fundamental mission of our courts, which is to ensure due process and access to justice for everyone, regardless of their immigration status," Fairhurst wrote. She also asked DHS to designate courthouses as "sensitive locations," like schools and churches, which would require ICE officials to get a higher level of permission to track their targets.

Advocates have pointed to another potential consequence of ICE tracking people at courthouses: Victims of crime may be targeted. After ICE detained a domestic violence survivor at a courthouse in El Paso, Texas, some police chiefs have said they've noticed a decrease in crime reporting from immigrants.

In January, however, ICE issued a policy on tracking and arresting people in courthouses, which didn't designate them as sensitive locations. In some ways, ICE doubled down on its prerogative to arrest people in and around courthouses, saying that "courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails." (This, as PBS noted, is a not-so-subtle dig at municipalities, like King County, that don't respond to federal detainer requests.) Instead, ICE offered to "conduct enforcement actions discreetly to minimize their impact on court proceedings," but only "when practicable."

Acebal-Coria's next hearing in immigration court is this coming Friday, where a federal judge will consider his motion to throw out deportation proceedings based on his courthouse arrest.

Exhibit P

Chief Justice Cantil-Sakauye Objects to Immigration Enforcement Tactics at California Courthouses

Expresses concerns in letter to Attorney General Sessions and Secretary Kelly

March 16, 2017

Contact: Cathal Conneely | 415-865-7740

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.

—Chief Justice Tani G. Cantil-Sakauye

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The Supreme Court
State of Washington

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March 22, 2017

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

Dear Secretary Kelly,

As Chief Justice of the Washington State Supreme Court and co-chair of the Board for Judicial Administration, I write to express concern regarding immigration agents being in and around our local courthouses. Lawyers and judges working in our courts have advised me that agents from the Immigration and Customs Enforcement agency of the Department of Homeland Security are being present with increased frequency. These developments are deeply troubling because they impede the fundamental mission of our courts, which is to ensure due process and access to justice for everyone, regardless of their immigration status.

In many locations around our state, a courthouse is the only place where individuals are ensured of a trusted public forum where they will be treated with dignity, respect, and fairness. This includes victims in need of protection from domestic violence, criminal defendants being held accountable for their actions, witnesses summoned to testify, and families who may be in crisis.

We have worked diligently to earn and maintain the trust of communities throughout Washington State to ensure that courthouses are that public forum. The fear of apprehension by immigration officials deters individuals from accessing our courthouses and erodes this trust, even for those with lawful immigration status.

When people are afraid to access our courts, it undermines our fundamental mission. I am concerned at the reports that the fear now present in our immigrant communities is impeding their access to justice. These developments risk making our communities less safe.

Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice. When people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access

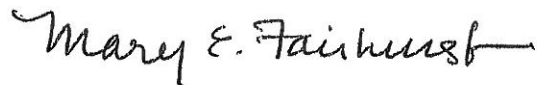
justice is compromised. Their absence curtails the capacity of our judges, clerks and court personnel to function effectively.

In light of the above, I ask that you consider taking the necessary and appropriate steps to address these concerns. For example, I encourage you to designate courthouses as "sensitive locations" as described in your Policy 10029.2. Such a designation will assist us in maintaining the trust that is required for the court to be a safe and neutral public forum. It will assure our residents that they can and should appear for court hearings without fear of apprehension for civil immigration violations.

We understand that the mission of your agency is to enforce federal laws. However, we request that the manner in which these obligations and duties are carried out aligns with, and does not impede, the mission, obligations, and duties of our courts.

My request is offered with all due respect to your commitment to serve the United States, your office, and its functions. I welcome the opportunity to meet with you or your staff to explore possible resolutions.

Very truly yours,



MARY E. FAIRHURST
Chief Justice

cc: Thomas D. Homan, Acting Director, Immigration & Customs Enforcement
Nathalie R. Asher, ICE Field Office Director, Seattle Washington
Bryan S. Wilcox, Acting Field Office Director



STATE OF CONNECTICUT
SUPREME COURT

Chambers of
CHASE T. ROGERS
Chief Justice

May 15, 2017

231 Capitol Avenue
Hartford, CT 06106
Tel: 860-757-2120

The Honorable Jefferson B. Sessions III
Attorney General
The United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable John F. Kelly
Secretary of Homeland Security
United States Department of Homeland Security
Washington, DC 20528

Dear Attorney General Sessions and Secretary Kelly:

As Chief Justice of the Connecticut Supreme Court, I write to respectfully request that you designate public areas of state courthouses as "sensitive locations" pursuant to your Policy 10029.2 and not have Immigration and Customs Enforcement (ICE) officers take custody of individuals inside the public areas of our state courthouses.

I am fully cognizant of the authority that ICE officers have to detain someone, and we are in full compliance with federal law regarding detainer requests for the surrender of defendants held in custody. However, it is of great concern when they take custody of individuals in the public areas of our courthouses. As you know, the judiciary relies on the public's trust and confidence to fulfill its constitutional and statutory obligations. We also rely on the public to comply with court orders and to show up in court when summoned to appear. I believe 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.

Thank you for your attention to this matter. I would be happy to speak with you or a designee regarding this matter at your convenience.

Very truly yours,

Chase T. Rogers
Chief Justice

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,

A handwritten signature in black ink, appearing to read "Stuart Rabner". The signature is fluid and cursive, with a large, stylized "R" and "n".

Stuart Rabner
Chief Justice

cc: Thomas D. Homan, Acting Director, ICE
John Tsoukaris, ICE Field Office Director, Newark, NJ

Thomas A. Balmer
Chief Justice



OREGON SUPREME COURT

1163 State Street
Salem, OR 97301-2563
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Fax: 503.986.5730
Oregon Relay Service: 711
Thomas.Balmer@ojd.state.or.us

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.

Letter to Attorney General Sessions
and Secretary Kelly
April 6, 2017
Page 2

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.

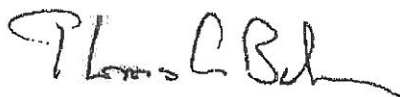
I understand and appreciate the difficulty of the law enforcement work that you do. I trust that you understand as well the central role that the Oregon courts play in our state's criminal justice system, our efforts to protect children and families, and our daily work to ensure the rule of law for all 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.

Letter to Attorney General Sessions
and Secretary Kelly
April 6, 2017
Page 3

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,

A handwritten signature in dark ink, appearing to read 'T. A. Balmer', with a stylized flourish at the end.

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

Exhibit Q

City DAs plead with ICE to stop arresting immigrants at NYC courthouses: 'It jeopardizes public safety'

 [nydailynews.com/new-york/city-das-press-ice-stop-arresting-immigrants-courthouses-article-1.3820798](https://www.nydailynews.com/new-york/city-das-press-ice-stop-arresting-immigrants-courthouses-article-1.3820798)

By Erin Durkin



Legal Aid Chief Attorney Tina Luongo (from l.), Bronx DA Darcel Clark, Manhattan DA Cy Vance, and Brooklyn DA Eric Gonzalez publicly appeal to ICE to stop making the courthouse arrests. (Jefferson Siegel/New York Daily News)

Three of the city's districts attorneys are pleading with ICE to stop arresting immigrants at city courthouses.

The Manhattan, Brooklyn and Bronx DAs joined Public Advocate Letitia James Wednesday to push the feds to stop the arrests, which they say are interfering with the justice system.

"We're appealing to them as law enforcement officers not to make these arrests," said Brooklyn District Attorney Eric Gonzalez. "It does not keep us safe. It jeopardizes public safety."

Immigration and Customs Enforcement put out rules this month formalizing its policy of going to courthouses to make arrests — rejecting requests to designate them sensitive locations like churches or hospitals where they rarely arrest people.

They said they would only go after specific targets and would not round up other undocumented immigrants they happen to encounter at court, though exceptions could be made for special circumstances. They require a supervisor's approval to make arrests in non-criminal areas like family court.



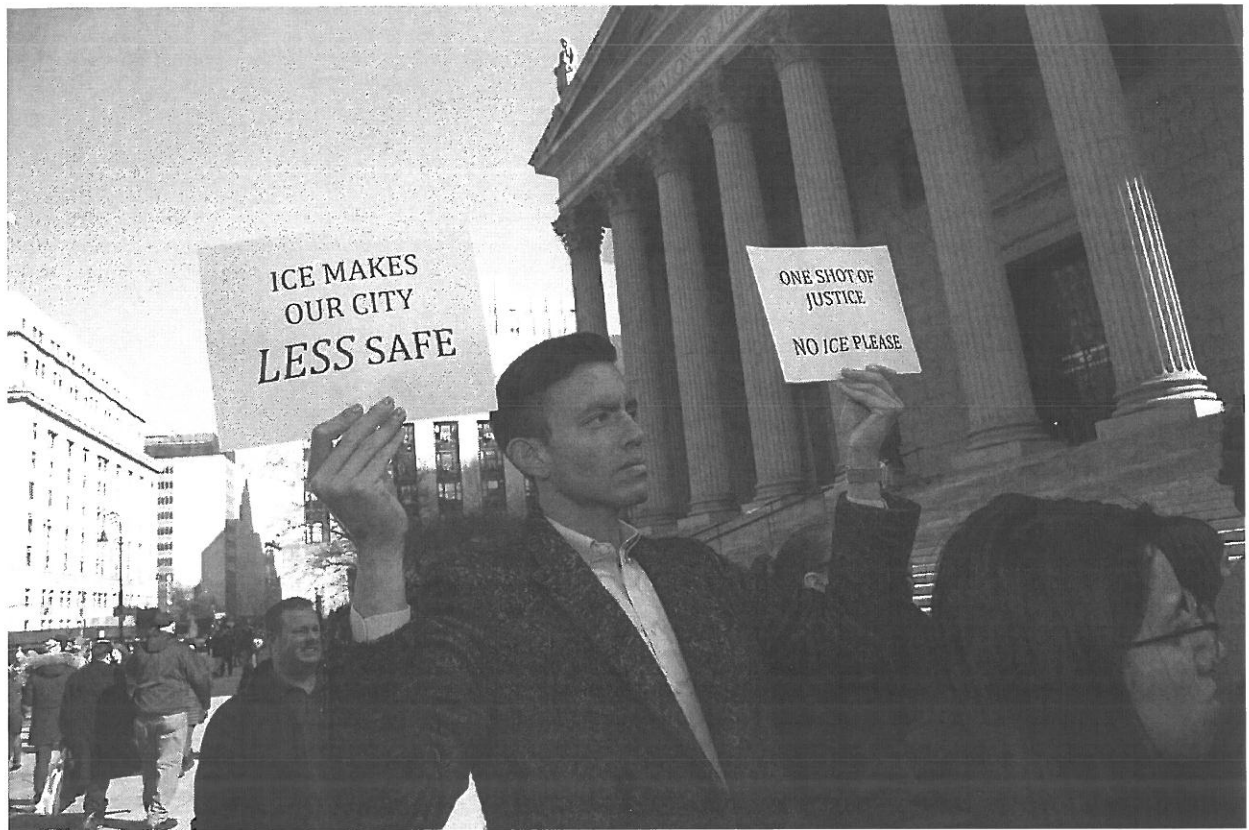
DAs and public defenders alike say the arrests are making defendants, witnesses and victims afraid to come to court. (Jefferson Siegel/New York Daily News)

DAs and public defenders alike say the arrests are making defendants, witnesses and victims afraid to come to court.

"This enforcement is having a chilling effect on witnesses," said Bronx District Attorney Darcel Clark.

There were 150 arrests in and around courthouses in New York State last year — up from just 11 in 2016 before President Trump took office.

In January, there were another seven arrests at Brooklyn courts and one in the Bronx. The Manhattan DA did not have an exact number but said there had been several.



Luis Mancheno of Bronx Defenders at the press conference outside Manhattan Supreme Court.
(Jefferson Siegel/New York Daily News)

"They can't go there without fear of getting arrested," said Manhattan DA Cy Vance. "That means critical witnesses and victims in cases don't proceed with important prosecutions, and New Yorkers are less safe because of it."

"Unfortunately, right now it is safer to be at Rikers Island because we have a detainer law than out in the community," said Legal Aid Society attorney in charge Tina Luongo, referring to the city's policy of rejecting the feds' detainer requests to turn over immigrants.

ICE has blamed those so-called sanctuary city policies for forcing it to make arrests out in the open at spots like courthouses rather than having detainees transferred inside jails. The agency did not immediately respond to a request for comment Wednesday.

"Not only is this new policy an attack on our immigrants, but it is an attack on our justice system," James said. "We cannot pursue justice when injustice prevails."

Exhibit R

New York AG Eric Schneiderman And Acting Brooklyn DA Eric Gonzalez Call For ICE To End Immigration Enforcement Raids In State Courts

Raids In NY Courthouses, Including Family And Community Courts, Spiked This Year; Victims And Witnesses Being Targeted Are Increasingly Fearful Of Cooperating With Prosecutors

New York State Attorney General Eric T. Schneiderman and Acting Brooklyn District Attorney Eric Gonzalez today called for the United States Immigration and Customs Enforcement (ICE) to stop conducting raids in New York courthouses and to recalibrate their priorities so crime victims and witnesses are not targeted for removal proceedings. Instances of arrests and attempted arrests by ICE in courts have spiked approximately five-fold this year compared to 2016, according to service providers, and a growing number of victims have expressed reluctance to move forward with criminal prosecutions due to fear of being deported, according to the Brooklyn DA's Office. These reports are consistent with findings detailed in a national report issued by the New York Attorney General's office in March. Together, the reports provide overwhelming evidence that the Trump administration's immigration enforcement policies have undermined public safety and must end.

Attorney General Schneiderman said, "Targeting immigrants at our courthouses undermines our criminal justice system and threatens public safety. If the Trump Administration continues to arrest people in the heart of our justice system, immigrants will be less likely to serve as witnesses or report crimes – and that leaves us all at risk. I join District Attorney Gonzalez in calling for ICE to stop immigration raids in our courthouses. Everyone, regardless of their immigration status or the status of their loved ones, should have access to equal justice under the law."

Acting District Attorney Gonzalez said, "The federal authorities claim they are making America safe again, but the truth is that their immigration enforcement policies are making all of us less safe. We encounter more and more victims and eyewitnesses to crime who are fearful of moving forward because of immigration status, and we see arrests by ICE spiking in our courthouses, including Family Court and courts dedicated to helping human trafficking victims and those with mental health issues. We must not allow a large number of our residents to live in the shadows and stop cooperating with law enforcement – but the Trump Administration is now creating this dangerous reality. 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."

Steven Choi, the New York Immigration Coalition's Executive Director, said, "The federal government continues to perpetuate a false narrative that immigrants are criminals. This does not make

us safer – in fact, it instills fear in a community that is now too afraid to come forward with crucial, case-saving information. This is an issue of public safety and I am proud to stand with Acting DA Gonzalez and Attorney General Eric Schneiderman to demand the United States Immigration and Customs Enforcement to stop making senseless arrests in New York courthouses. This is our New York: one that does not terrorize immigrants at the expense of due process and our democratic principles.”

Mizue Aizeki, the Immigrant Defense Project’s Acting Executive Director, said, “We commend Acting Brooklyn District Attorney Eric Gonzalez and Attorney General Schneiderman for taking a stand to protect the courts from destructive ICE arrests. ICE’s growing presence in the courthouses not only sows fear in immigrant communities, but also undermines equal access to justice. If ICE does not act immediately to stop this practice, the New York State Chief Judge can and should take decisive action to stop ICE from terrorizing immigrants in the courts.”

Tina Luongo, Attorney-In-Charge of the Criminal Practice at The Legal Aid Society, said, “We applaud New York Attorney General Eric Schneiderman and Acting Brooklyn District Attorney Eric Gonzalez for calling on Immigration and Customs Enforcement (ICE) to immediately stop courthouse raids. ICE’s presence in local courts undermines the essential functions of our criminal justice system and deters New Yorkers from seeking vital court protections and services. We hope New York City’s other District Attorneys join with us in our continued efforts to keep ICE from raiding courthouses.”

A recent survey by the Immigrant Defense Project has found that there were approximately 60 arrests and attempted arrests in New York State courts so far this year, with at least eight arrests in Brooklyn. Only 11 arrests were reported statewide in 2016 and 14 in 2015. ICE operations have expanded and the agency is arresting individuals in Family Court, Human Trafficking Intervention Court and Mental Health Treatment Court. Those arrested included lawful residents (Green Card holders), a domestic violence victim and people who appeared on low-level misdemeanors.

While ICE has designated certain locations such as schools, medical facilities and places of worship as “sensitive locations,” where it does not carry out enforcement actions, it has so far refused to designate courthouses as sensitive locations. The result is that a large segment of New Yorkers are now discouraged from appearing in state courts, including in housing disputes, to obtain orders of protection or to settle important matters such as child custody.

In addition, legal professionals, social workers and service providers have reported an increase in victims and witnesses who express reluctance to cooperate with state authorities out of fear of being targeted by ICE. For example, an elderly victim in Brooklyn who was allegedly assaulted by her son is reluctant to move forward with the case because the defendant is a Green Card holder and the complainant does not want to risk seeing him deported. This trend means that crimes will go unreported and criminals may not be held accountable and remain free to victimize others, placing all of us at risk and making us less safe.

Attorney General Schneiderman has been leading the effort to protect New Yorkers from the overreach and backsliding of the Trump administration. He was the first legal officer in the country to offer a legal roadmap for localities to become sanctuary jurisdictions while complying with federal law, and has sued the administration for constitutional violations related to its immigration policies.

Acting DA Gonzalez has been a leader in prosecutors' work to protect immigrants, creating a policy this spring to offer non-citizens plea offers that avoid collateral immigration consequences, hiring two immigration attorneys to advise his staff and holding monthly Immigration Forums to educate community members about common scams and how to avoid them. On August 8, 2017 The Brooklyn DA's Office will hold a symposium for legal professionals on the intersection of criminal law and immigration law.

The Attorney General and the Acting District Attorney thanked the New York Immigration Coalition, the Immigrant Defense Project, the Legal Aid Society, Safe Horizon and Sanctuary for Families for their work and advocacy on immigration issues.

Attorney General's Press Office: (212) 416-8060

nyag.pressoffice@ag.ny.gov

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BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
410-576-7036

WRITER'S DIRECT DIAL NO.
410-576-6311

March 2, 2017

The Honorable John Kelly, Secretary
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20528

Lori Scialabba, Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave. NW
Washington, D.C. 20528

Kevin K. McAleenan, Acting Commissioner
U.S. Customs & Border Protection
20 Massachusetts Avenue, NW
Washington, D.C. 20528

Thomas D. Homan, Acting Director
U.S. Immigration and Customs
Enforcement
500 12th Street SW
Washington, D.C. 20536

Dear Secretary Kelly, Commissioner McAleenan,
Director Scialabba and Director Homan:

In light of the Department of Homeland Security's policies released last week regarding enforcement of our nation's immigration laws, I write to make an urgent request that the Department designate Maryland's courts, hospital emergency rooms, and schools to be locations where no enforcement activities related to the identification or seizure of undocumented immigrants for purposes of deportation will be conducted.¹

As Maryland's chief law enforcement officer, I share the Administration's commitment to public safety and protection, which includes border security and adherence to the rule of law. Yet I am concerned that, by expanding the categories of people targeted for priority deportation to include virtually all undocumented adults and children, the new enforcement policies will undermine public safety, not promote it. By breaking up families

¹ See, *Implementing the President's Border Security and Immigration Enforcement Improvements Policies*, February 20, 2017; *Enforcement of the Immigration Laws to Serve the National Interest*, February 20, 2017.

and sowing fear and apprehension throughout our immigrant communities, these new policies will discourage immigrants from seeking help or reporting criminal activity, with the result that our State and local law enforcement authorities will be deprived of the assistance they need to keep us safe. And by eliminating longstanding privacy protections put in place by President George W. Bush's administration, and increasing exponentially the "expedited removal" of immigrants without hearings and other due process protections, these policies may also run afoul of constitutional principles and laws protecting civil liberties.

Rather than advancing our common purpose to defend and protect the nation's safety and security, these new enforcement policies underscore the urgent need for, and moral imperative of, comprehensive immigration reform. As a country founded and nurtured by the ingenuity, diversity, and hard work of immigrants, we must demand of our leaders the courage and integrity to enforce security at our borders while at the same time addressing humanely and realistically the status of the millions who live, work, raise children, and make the vital contributions to our economy and civic institutions that are a hallmark of our strength as a diverse people.

As my office and others continue to assess the full impact and legality of these policies, my first priority is the safety of Marylanders who turn to the courts for protection against domestic violence and other crimes, and who seek urgent medical care in our hospital emergency rooms. I am concerned that the Administration's aggressive new policies will discourage the most vulnerable immigrants from seeking judicial protection and medical care, which will cause avoidable injuries and potentially even deaths. I ask that you take action to remove this immediate threat to the health and safety of immigrants in Maryland by declaring our courts and hospitals to be safe locations, where U.S. Immigration and Customs Enforcement and Customs & Border Protection authorities will not be allowed to identify and seize potential deportees. I seek the same assurances with respect to Maryland schools. Although the threat to public health and safety is not as immediate, the longer-term effects of discouraging immigrant children from attending school will be no less harmful and far-reaching.

The Administration's promulgation of enforcement policies that will compromise the security and well-being of all Americans cannot stand as a substitute for effective and comprehensive immigration reform. As we await congressional action on this national priority, I seek the Department of Homeland Security's commitment that it will take steps to ensure that Maryland's courthouses remain open to all victims of crime and violence, that our hospitals remain open to all who need life-saving medical care, and that our schools remain open to all children striving to attain an education.

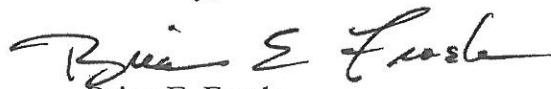
March 2, 2017

Page 3

Because the harmful impact of these new enforcement policies is not limited to Maryland, the best approach would be for the Department to incorporate these critical safe harbors into the policies themselves. Absent that preferable course of action, I ask that the Department provide me written assurance of its intent to honor my request in Maryland as soon as possible.

Thank you for your prompt attention and consideration. If you have questions about this request, please contact our Solicitor General, Steven M. Sullivan, at 410-576-6427, ssullivan@oag.state.md.us.

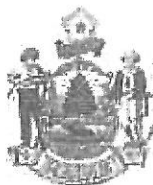
Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with the first name "Brian" being more prominent.

Brian E. Frosh

Attorney General of Maryland

JANET T. MILLS
ATTORNEY GENERAL



TEL: (207) 626-8800
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STATE OF MAINE
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TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY., STE 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

April 10, 2017

Richard W. Murphy
Acting U.S. Attorney for the State of Maine
United States Attorney's Office
100 Middle Street, East Tower, 6th Floor
Portland, ME 04101

The Honorable John F. Kelly
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

RE: Immigration and Customs Enforcement Arrests at Maine Courthouses


Dear Sirs:

I respectfully request that Immigration and Customs Enforcement Agents refrain from making arrests of individuals within or in close vicinity to State of Maine Courthouses. In investigating matters of human trafficking, domestic violence and the like, it is critical to us that all individuals have free and open access to Maine courts, regardless of their immigration status. The recent action of ICE Agents at the Cumberland County Courthouse will have an unnecessary chilling effect on our efforts to obtain the cooperation of victims and our successful prosecution of crimes.

I respectfully request that you include our State Courthouses on the Department of Homeland Security's list of sensitive locations.

Thank you for your immediate attention to this matter.

Very truly yours,


Janet T. Mills
Attorney General

JTM/mao



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
25 MARKET STREET
PO Box 080
TRENTON, NJ 08625-0080

GURBIR S. GREWAL
Attorney General

January 25, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen:

This afternoon, I learned that earlier today agents from Immigration and Customs Enforcement ("ICE") arrested two Indonesian nationals, Gunawan Liem of Franklin Park and Roby Sanger of Metuchen, New Jersey. According to press reports, the two had just dropped off their children at school in the morning when ICE arrested them.

I write to express my serious concern regarding the enforcement action taken under these circumstances. ICE has a longstanding policy that prohibits immigration enforcement actions "at or focused on sensitive locations."¹ Schools are deemed to be sensitive locations under the policy. Here, the fact that ICE arrested two parents as they were driving away from their children's school is deeply upsetting. I am not aware of any exigent or unique circumstances here that would justify such a departure from ICE's settled policy on sensitive locations. Undoubtedly, this creates a chilling environment for parents, who were simply ensuring that their children arrived to school safely. I trust that you will personally evaluate the circumstances surrounding this enforcement action and take any and all appropriate measures to remedy any violation of ICE policy.

The integrity of sensitive locations is critical. Nine months ago, the Chief Justice of the Supreme Court of New Jersey wrote to your predecessor, former Secretary John F. Kelly, urging that the same policy that bars ICE enforcement actions in schools and houses of worship equally apply to state courthouses. The Chief Justice aptly observed that a "true system of justice must

¹ John Morton, Director, United States Immigration and Customs Enforcement, "Enforcement Actions at or Focused on Sensitive Locations," Policy Number 10029.2 (Oct. 24, 2011).



have the public's confidence," and that when civil immigration arrests occur in a courthouse, a cascade of negative consequences is 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 likely avoid the courthouse. And defendants in state criminal matters may simply not appear.

I could not agree more. As the Chief Justice correctly recognized, courthouses must be safe forums, and federal immigration enforcement actions occurring at state courthouses compromise the integrity of our state's justice system. I also urge that ICE apply its policy on sensitive locations to state courthouses.

Likewise, state facilities, which routinely provide crucial services to the public, should be deemed sensitive locations under ICE's policy. Immigration enforcement actions at state facilities would substantially interfere with the proper functioning of state government services, ranging from critical support provided to children, families, workers, and veterans every day. New Jersey residents should feel confident that they can interact with their state government without the risk of an undue intrusion from federal immigration agents.

As a former federal prosecutor, county prosecutor, and now the chief law enforcement officer for New Jersey, I fully understand the need to enforce our nation's laws, but I am equally committed to ensuring that all of the residents of New Jersey have a safe environment to attend to their lives, whether it be to attend school, participate in our judicial system, or access state government services.

Thank you for your attention.

Sincerely,



Gurbir S. Grewal
Attorney General

cc: John Tsoukaris
Director, Office of Enforcement and Removal Operations
Newark Field Office
U.S. Immigration and Customs Enforcement

Exhibit S

April 6, 2018 (/news/2018/4/6/legal-aid-brooklyn-defender-services-joint-statement-on-ice-courthouse-arrests-that-undermine-court-system-integrity-erode-due-process-rights-and-deter-immigrants-from-seeking-legal-services)

Legal Aid, Brooklyn Defender Services Joint Statement On Ice Courthouse Arrests That Undermine Court System Integrity, Erode Due Process Rights, And Deter Immigrants From Seeking Legal Services (/news/2018/4/6/legal-aid-brooklyn-defender-services-joint-statement-on-ice-courthouse-arrests-that-undermine-court-system-integrity-erode-due-process-rights-and-deter-immigrants-from-seeking-legal-services)

The Legal Aid Society and Brooklyn Defender Services issued the below joint statement today responding to Immigration and Customs Enforcement's (ICE) continued courthouse raids that undermine the integrity of New York's court system, erode Constitutionally protected rights of due process, and deter immigrants from seeking services offered by the courts:

"We are appalled by yet another courthouse arrest by ICE. If the people we represent cannot safely appear in court to participate in their own defense – and, further, are sanctioned with warrants for not appearing – then the integrity of the whole system must be questioned. This situation is intolerable. Something must change, and it must change now. Courts must protect all those they

hail into their chambers, not feed them into the Trump Administration's mass detention and deportation machine. We demand ICE-free courts now, and immediate action from New York State Chief Judge Janet DiFiore and the Office of Court Administration."

***The Immigrant Defense Project has documented at least 25 courthouse arrests and three attempted arrests in New York City since the beginning of this year.

###

♥ 0 Likes ➦ Share

Newer Post

AMNY: ICE detains immigrant whose case was dismissed at Bronx court, Legal Aid says
(/news/2018/4/10/amny-ice-detains-immigrant-whose-case-was-dismissed-at-bronx-court-legal-aid-says)

Older Post

Timid Pilot Program in State Budget Virtually Ignores New York's Homelessness Crisis
(/news/2018/4/5/timid-pilot-program-in-state-budget-virtually-ignores-new-yorks-homelessness-crisis)

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Exhibit T

ICE detains immigrant at Queens courthouse, attorneys say

 amny.com/news/ice-court-arrest-nyc-1.17942936

News

The city's public defenders protested ICE in courthouses for the second day in a row.



Attorneys in Queens protest Immigration and Customs Enforcement agents in city courthouses following a third detainment in less than a week, per the Legal Aid Society. Photo Credit: Association of Legal Aid Attorneys - UAW Local 2325

Print

An immigrant was detained by Immigration Customs and Enforcement agents at a Queens courthouse on Tuesday — the third such arrest in the city in less than a week, according to the Legal Aid Society.

Attorneys with Legal Aid and Queens Law Associates picketed outside the Queens County Criminal Court building, located at 125-01 Queens Blvd. in Kew Gardens, after ICE agents showed up at the courthouse ahead of the man's scheduled appearance, a spokeswoman for a union representing Legal Aid attorneys said.

The man was taken into custody around 1:15 p.m. immediately following his appearance in court, per the spokeswoman.



The Legal Aid Society
@LegalAidNYC

For the THIRD day in a row, our attorneys protested #ICE in our courts. Earlier, we rallied outside Queens Criminal Court after several plainclothes #ICE agents were spotted searching for a Legal Aid client. #ICEout pic.twitter.com/bS3sROFr1i

11:32 AM - Apr 10, 2018

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A request for comment from ICE on the man's detainment was not immediately returned.

On Monday, Legal Aid and Bronx Defenders attorneys walked out of the Bronx County Hall of Justice on East 161st Street and Morris Avenue after an immigrant was detained by ICE there.

Rayon Smith, who is from Jamaica, was detained by ICE agents just minutes after his case was dismissed, according to Legal Aid staff attorney Casey Dalporto. He was later released after a notice to appear before an immigration judge was issued, ICE spokeswoman Rachael Yong Yow said on Monday.

Smith had been charged with misdemeanor assault after a fight in February, in which both he and the other person involved were arrested, Dalporto said. He has no prior criminal record.

Smith, who came to the United States in January 2013, remained in the country after his nonimmigrant visa expired, Yong Yow said Monday evening. The agency had filed a detainer request with the city following his Feb. 19 arrest but it was not honored and he was released from police custody, she added.

The Legal Aid Society, however, said Smith has a pending green card application through his wife, who is a citizen, from 2015. Smith, a father of three children, told his lawyers ICE released him after they realized they issued the warrant in error, per Legal Aid.

Smith was given work authorization in 2015 and has been working at a luxury condominium building in the city for over two years, the Legal Aid Society alleged. He nearly lost his job following his detainment by ICE on Monday, the nonprofit said.

ICE detains immigrant at Brooklyn court: Legal Aid

The arrest sparked an impromptu protest outside the courthouse on Schermerhorn Street Friday afternoon.

The two arrests come just days after a Panamanian man was detained at the Brooklyn criminal courthouse. Attorneys also protested after that arrest.

Between 2016 and 2017, the Immigrant Defense Project recorded a 1,200 percent increase in ICE courthouse arrests and attempted arrests in New York State. So far in 2018, the advocacy group has reported at least 25 courthouse arrests and three attempted arrests in New York City, per the Legal Aid Society.

In response to the uptick, public defenders across the city are demanding ICE agents be barred from carrying out warrants on New York court property.

"We expect the Office of Court Administration to protect our clients and their right to due process. Our call to keep Immigration and Customs Enforcement from our courthouses has the support of multiple defense organizations, district attorneys, legislators, community groups and immigrant communities themselves" said Bret Taylor, the financial secretary/treasurer for the Association of Legal Aid Attorneys.

The presence of ICE agents at courthouses is "causing a chaotic environment," according to Dalporto.

"My client in this case was also a victim," she added. "His case was dismissed and he's still a victim in the other case."

ICE has said previously that agents are complying with court policies and that the agency "makes efforts to exhaust all other avenues before effecting a courthouse arrest."



Nicole Brown is the Internet News Manager at amNY.com, covering local news since 2016. She has written for MSNBC.com and was editor-in-chief of NYU's Washington Square News.

Exhibit U

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses

Issue Date: January 10, 2018

Effective Date: January 10, 2018

Superseded: None

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding civil immigration enforcement actions inside federal, state, and local courthouses. Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents. When practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.

Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country because many individuals appearing in courthouses for one matter are wanted for unrelated criminal or civil violations. ICE's enforcement activities in these same courthouses are wholly consistent with longstanding law enforcement practices, nationwide. And, courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.

2. **Policy.** ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed, when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location.

Aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE's enforcement actions.¹

¹ ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security (DHS) policy. See Memorandum from John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017); Memorandum from John Kelly, Secretary of Homeland Security, *Implementing the President's Border Security and Immigration Enforcement Improvements Policies* (Feb. 20, 2017).

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. In those instances in which an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

Civil immigration enforcement actions inside courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits.

Planned civil immigration enforcement actions inside courthouses will be documented and approved consistent with current operational plans and field operations worksheet procedures. Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) may issue additional procedural guidance on reporting and documentation requirements; such reporting and documentation shall not impose unduly restrictive requirements that operate to hamper or frustrate enforcement efforts.

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions.

This policy does not apply to criminal immigration enforcement actions inside courthouses, nor does it prohibit civil immigration enforcement actions inside courthouses.

3. **Definition** The following definitions apply for the purposes of this Directive only.
 - 3.1. **Civil immigration enforcement action.** Action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations.
4. **Responsibilities.**
 - 4.1. The **Executive Associate Directors** for **ERO** and **HSI** are responsible for ensuring compliance with the provisions of this Directive within his or her program office.
 - 4.2. **ERO FODs** and **HSI SACs** are responsible for:
 - 1) Providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions at courthouses in their area of responsibility beyond those outlined in this Directive; and
 - 2) Ensuring civil immigration enforcement actions at courthouses are properly documented and reported, as prescribed in Section 5.1 of this Directive.

- 4.3. **ICE Officers and Agents** are responsible for complying with the provisions of this Directive and properly documenting and reporting civil immigration enforcement actions at courthouses, as prescribed in Section 5.1 of this Directive.²

5. **Procedures/Requirements.**

5.1. **Reporting Requirements.**

- 1) ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse.³
- 2) Unless otherwise directed by leadership, there will be no additional reporting requirements in effect for this Directive.

6. **Recordkeeping.** ICE maintains records generated pursuant to this policy, specifically the Field Operations Worksheets (FOW) and Enforcement Operation Plan (EOP). ERO will maintain the FOW in accordance with the Fugitive Operations schedule DAA-0567-2015-0016. HSI will maintain EOPs in accordance with the Comprehensive Records Schedule N1-36-86-1/161.3. The EOPs will be maintained within the Investigative Case Files.

7. **Authorities/References.**

- 7.1. DHS Directive 034-06, *Department Reporting Requirements*, October 23, 2015.
- 7.2. DHS Instruction 034-06-001, Rev. 1, *Department Reporting Requirements*, March 28, 2017.

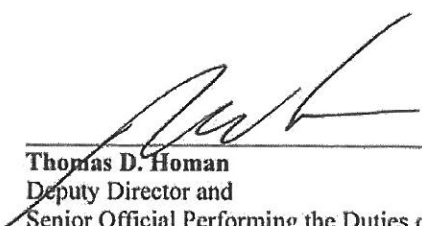
8. **Attachments.** None.

9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

² See also ICE Directive No. 10036.1, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007), for additional requirements regarding civil immigration enforcement actions against certain victims and witnesses conducted at courthouses.

³ ERO will use the Field Operations Worksheet and HSI will use the Enforcement Operation Plan.

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Thomas D. Homan
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

Exhibit V



ICE

Report Crimes: Email or Call 1-866-DHS-2-ICE

Enforcement and Removal Operations

Enforcement and Removal Operations

FAQ on Sensitive Locations and Courthouse Arrests

ERO

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

Sensitive 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

Why has ICE issued a policy on enforcement actions inside courthouses?

U.S. Immigration and Customs Enforcement has for some time had established practices in place related to civil immigration enforcement inside courthouses. However, the increasing unwillingness of some jurisdictions to cooperate with ICE in the safe and orderly transfer of targeted aliens inside their prisons and jails has necessitated additional at-large arrests, and ICE felt it was appropriate to more formally codify its practices in a policy directive that its law enforcement professionals and external stakeholders can consult when needed. It is important that such arrests, including those taking place inside courthouses, continue to be undertaken with the same level of professionalism and respect that ICE officers and agents are committed to exhibiting every day.

Why does ICE feel it's necessary to conduct enforcement inside a courthouse?

Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country, as many individuals appearing in courthouses are wanted for unrelated criminal or civil violations. ICE's enforcement activities in these same courthouses are wholly consistent with longstanding law enforcement practices nationwide. Courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails. Further, many of the aliens ICE is targeting have taken affirmative measures to avoid detection by ICE officers. Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents.

Will all aliens be subject to arrest inside courthouses?

ICE will not make civil immigration arrests inside courthouses indiscriminately. ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart (fugitives), and aliens who have re-entered the country illegally after being removed, when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location. Other aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as when the individual poses a threat to public safety or interferes with ICE's enforcement actions.

Is there any place in a courthouse where enforcement will not occur?

ICE officers and agents will generally avoid enforcement actions in courthouses, or areas within courthouses, that are dedicated to non-criminal (e.g., family court, small claims court) proceedings. In those instances in which an enforcement action in such locations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

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 removable from the United States.

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 aliens. As with all planned enforcement actions, ICE officers exercise sound 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 a prison or jail based on an ICE detainer. When criminal custody transfers occur inside the secure confines of a jail or prison, it is far safer for everyone involved, including officers and the person being arrested. Now that some law enforcement agencies no longer honor ICE detainers or limit ICE's access to their detention facilities, these aliens, many of whom have serious criminal histories, are released to the street, threatening public safety. 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, ICE officers and agents make every effort to take the person into custody in a secure area, out of public view, but this is not always possible. Further, when these arrests do occur, ICE makes every effort to ensure that the arrest occurs after the matter for which the alien was appearing in court has concluded.


Are there other advantages to arresting criminals and fugitives at a courthouse?

Yes, when ICE officers and agents have to go out into the community to proactively locate these aliens, regardless of the precautions taken, it puts personnel and potentially innocent bystanders at risk. Moreover, tracking down priority targets is highly resource-intensive. It is not uncommon for criminal aliens and fugitives to utilize multiple aliases, provide authorities with false addresses, and be working illegally with fraudulent documentation or "off the books." Absent a viable residential address 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: 01/31/2018

Exhibit W

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

 [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](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)
By Devlin Barrett

Democracy Dies in Darkness

National Security



 The Washington Post

Homeland Security Secretary John F. Kelly talks to the news media as Sen. Gary Peters (D-Mich.) looks on at the Ambassador Bridge border crossing in Detroit last. (Carlos Osorio/AP)

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.

Devlin Barrett Devlin Barrett writes about national security and law enforcement for The Washington 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

