

ICE OUT OF COURTS CAMPAIGN TOOLKIT



EXECUTIVE SUMMARY

Soon after the inauguration in January 2017, the Immigrant Defense Project (IDP) started to receive reports of U.S. Immigration and Customs Enforcement (ICE) arrests of those attending court from public defenders, civil legal services providers, family court practitioners, community-based organizations, and anti-violence advocates throughout New York, Washington, Massachusetts, and California. The arrests and raids at state courthouses have escalated--indeed, through an agency memorandum and in public statements, ICE has named courthouses as one of its preferred sites to conduct such arrests. In response, IDP initiated a campaign to help advocates to document the ICE courthouse raids and their impact in their respective states, and to develop state and local legal policy responses. Our work has focused on a statewide campaign in New York, and on working with partners in other states as part of what has become a national movement.

This toolkit presents materials generated by IDP, the ICE Out of Courts Coalition (#ICEOutOfCourts), and national partners in waging our campaigns against ICE courthouse raids. It includes legal theories, legislation, judicial rules, and campaign materials as examples on how to build meaningful policy interventions at the state and local level. We also include statements and policies by ICE, state and federal officials, and the New York Office of Court Administration (OCA) developed in response to advocacy on this issue. We hope this information can be a useful guide to campaigns blossoming across the country to end ICE courthouse arrests.

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INTRODUCTION AND BACKGROUND

Five days after the inauguration on January 20, 2017, the Trump administration laid out its mass deportation agenda in an Executive Order, [“Enhancing Public Safety in the Interior of the United States.”](#) This included an escalation of community arrests and raids, and the targeting of “sanctuary jurisdictions”--those that have policies limiting collusion between local law enforcement ICE.

Almost immediately, this included a tactic of stalking immigrants at their court appearances for arrest, detention, and deportation. Under the Obama Administration, reports of courthouse arrests were far less frequent (in New York, for example, IDP received 11 reports total in all of 2016, in 2017 we received 146 reports). Under Trump, the tactic has become official policy, widely lauded by Administration officials, and announced through public release of an internal memorandum, Directive 11072.1

ICE’s use of this tactic escalated quickly, with reports of arrests coming in from New York, Massachusetts, Washington, Oregon, New Jersey, Colorado, New Mexico, Pennsylvania, Maryland, Illinois, Texas, and Ohio from public defenders, legal services providers, anti-violence advocates, immigration lawyers, and family and community members calling our helplines. In New York State, IDP documented a 1200% increase in arrests of those attending court in 2017. The New York legal services community organized quickly and joined with IDP to document these arrests and raids.

ICE has stated publicly on numerous occasions that they see courthouses as an ideal place to target immigrants for arrest, especially in localities that have policies that limit collusion between local law enforcement and ICE. In fact, then Acting ICE Director Thomas Homan testified that ICE does not regard the courthouse as a “sensitive location” and in fact regards courthouses as “the best place to arrest them.” Despite growing concern from elected officials, prosecutors, state Attorneys General and extraordinary public condemnation from the Chief Justices of five states, ICE has said that it will not consider courthouses to be a “sensitive location” and will continue to arrest people attending court.

With increasing frequency, lawyers and family members report squads of plainclothes federal agents lurking in and around courthouses to intimidate and arrest immigrants attending to court business. ICE targets a wide range of immigrants at courts—including those with pending criminal cases; parents attending a child support hearing; survivors of domestic violence, rape, and trafficking; vulnerable community members, such as those who are mentally ill, homeless, and LGBTQ. ICE continually exhibits extreme disregard for the integrity of the court system. In the face of public outcry, it has doubled down, declaring that no one is off limits in the courts, including victims and witnesses. Increasingly, immigrants are afraid of going to court, of filing petitions seeking protection from the court, or of testifying as witnesses.

In April 2017, IDP and partners launched the [ICE Out of Courts campaign](#) in New York State to stop ICE courthouse arrests. We convened a statewide coalition (the ICE Out of Courts Coalition) of public defenders, family defenders, legal services lawyers, anti-violence advocates, civil rights groups, good governance groups, and community based or-

ganizations. Our broad-based coalition works to protect the rights of all immigrants attending criminal, family, and civil courts—regardless of whether they are defendants, witnesses, survivors of violence, or family members--to ensure that our advocacy does not feed into criminalizing narratives or privilege the rights of some immigrants over others.

In this toolkit, we share the campaign materials IDP and partners have developed and used to support campaign efforts to end ICE courthouse arrests in New York and in states across the country. In the course of our New York campaign, we have gathered, documented, and published information and data on courthouse arrests; advocated with New York's Chief Judge for promulgation of judicial rules; helped to develop legislation recently introduced into the New York State Assembly and Senate; consulted with policymakers; participated in public hearings, rallies, press conferences, and other political actions; filed amicus briefs in immigration courts; worked with the media; and trained lawyers and judges. In our national work, we have consulted with experts leading campaigns in other states, and include in this toolkit resources that they have produced that could be similarly modified for other state work.

WHY CONSIDER AN ICE OUT OF COURTS CAMPAIGN?

Expand sanctuary protections in a meaningful way. States and localities across the country have adopted “sanctuary” policies and laws--those that restrict local and state collusion with federal immigration enforcement, given the threats to due process and other constitutional and human rights protections, and threats to public safety that are created by enmeshing federal immigration enforcement in state services. Courthouses have generally not been regulated in existing state and local sanctuary laws. A successful campaign resulting in legislation or a judicial rule would extend sanctuary policies to a core state civic institution that can be vital to public safety and the provision of due process. For some, it can also be a place where harmful criminalization policies play out, with the added burden of fearing ICE arrest.

Protect fundamental rights around access to courts. Nondiscriminatory courthouse access is required by federal and state law. A campaign to get ICE Out of Courts stands up for this fundamental right, and helps to expose that ICE is an agency that routinely violates the law in ways that undermine safety and rights.

Build power with unlikely allies. In New York and other states, campaigns have brought together public defenders; anti-violence advocates; civil rights groups; membership organizations; elected officials at the local state, and federal levels; prosecutors and states Attorneys General; judges--all speaking out about the dangers or unlawfulness of courthouse raids. Campaigns have

shown and allowed for communication about the shared goals and concerns of people working in and participating in the court system. Because of this work, when ICE reaches out to local law enforcement and DAs about working together, these actors may be less interested. Building relationships in this context may also help garner support in other areas of your work - like individual case campaigns or in pursuing other political or legislative goals.

Cut off one of ICE's preferred tactics, making it more difficult for Trump, Sessions, and ICE to carry out their mass deportation agenda. Sanctuary jurisdictions have already successfully made it more difficult for the Trump administration to carry out mass deportation on the scale it seeks. As they pivot their tactics, so must we. Every chip in the armor helps to defend our communities.

Feed into campaigns to #abolishICE and #DefundHate. ICE courthouse arrests are a part of a much larger systemic problem that ICE (and DHS more broadly) acts with abusive impunity in carrying out a mass deportation mandate that violates human rights. The work of a campaign to get ICE out of the courts can achieve meaningful local victories while reinforcing campaigns like #abolishICE and #DefundHate that identify and expose ICE as bad actors and call for broader systemic change.

HOW TO USE THIS TOOLKIT

Each section of this toolkit contains documents and information regarding a different aspect of a campaign to end courthouse arrests:

- [Section 1: Documenting the Problem and Building a Case](#)—includes data sets, affidavits, FAQs, stories, survey tools, and infographics
- [Section 2: Researching Local and State Legal Solutions](#)—includes sample rules and legislation either promulgated by or proposed in New York, California, New Mexico, Illinois, Rhode Island, and King County (Washington)
- [Section 3: Building a Statewide Campaign](#)—primarily documents generated by IDP and partners in the ICE Out of Courts Coalition in New York, including primers prepared for meetings with judges, elected officials, and prosecutors; letters sent by the Coalition and other advocates to New York’s Chief Judge; materials submitted to the Chief Judge, and to elected officials; and information about municipal city council hearings, press events, and rallies
- [Section 4: Statements from Chief Judges, Governors, Prosecutors, Attorneys General, and Bar Associations](#)—includes an explanation of how these materials can be used in the context of a state campaign
- [Section 5: ICE Policies and Public Statements](#)—Executive Orders, Directives, and legal commentary on these documents by IDP

- [Section 6: Statements and Policies by the New York Office of Court Administration \(OCA\) in Response to Advocacy Efforts](#)
- [Section 7: Legal Resources](#)—including Immigration Court amicus brief, and list of legal resources
- [Section 8: Trainings & Practice Advisories for Those Working with Immigrants in the Courts](#)
- [Section 9: Media](#)—includes a discussion of the utility of the media in a state campaign, and key articles from national and regional press regarding courthouse arrests

