

SECTION 4: STATEMENTS FROM CHIEF JUDGES, GOVERNORS, PROSECUTORS, ATTORNEYS GENERAL, AND BAR ASSOCIATIONS

*The ICE Out of Courts Coalition and its advocacy campaign
in New York State*

BACKGROUND

In nearly every part of our advocacy, we have had to marshal the statements and influence of certain key policymakers and stakeholders--chief judges, attorneys general and other prosecutors, governors, and bar associations. We consistently gained the impression from decisionmakers in New York that a consensus view from disparate actors in government and in the legal system would be persuasive, and perhaps even necessary to compel them to take action.

Even though District Attorneys, the Governor, and the Attorney General do not have the legal authority to impose rules to govern activity in the courts in New York, they are influential stakeholders for a variety of reasons. The Office of Court Administration has been consistently concerned about the position of elected DAs on ICE courthouse activity.

The Governor, as the Chief Executive of the State, can influence legislators, issue Executive Orders (for example, ones that place some limits of state government information-sharing and collaboration with ICE), support the judiciary's decision to issue rules, and must ultimately sign any bill that the legislature passes. The Attorney General, as the chief prosecutor of the state, is seen as a legal authority, and could issue legal analyses of the illegality of ICE courthouse arrest practices or the legality of rules limiting ICE courthouse arrests.

Many of our advocacy materials and memoranda contain statements from key actors nationwide. By accumulating statements and policies from policymakers and diverse stakeholders from states and localities across the country, we have been able to construct a consensus view against ICE courthouse arrests.

In this section we have aggregated these statements, to assist campaigns in other states to use them as part of their advocacy.

RESOURCES

Statements of Chief Judges. Five State Chief Judges have sent letters to AG Sessions and then-DHS Secretary John Kelly expressing grave concerns regarding reports of ICE arrests conducted at courthouses and the risk of such arrests eroding public trust in the state court system. A sixth Chief Judge made strong comments condemning the practice.

- [Chief Justice Cantil-Sakauye of California](#): “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.”
- [Chief Justice Rogers of Connecticut](#): “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.”
- [Chief Justice Rabner of New Jersey](#): “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.”
- [Chief Justice Balmer of Oregon](#): “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 the courts for many Oregon residents.”
- [Chief Justice Fairhurst of Washington](#): 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.

- Comments by [Chief Justice Suttell of Rhode Island](#):
“If people in our immigrant communities are afraid to come to court, out of fear of federal apprehension, our core mission is compromised and there is a risk of our neighborhoods becoming less safe.”

Statements of State AGs and prosecutors. Many local prosecutors and attorneys general have expressed serious concerns about ICE courthouse arrests compromising their work and undermining public safety. In a [joint press conference](#), three NYC District Attorneys and the NYC Public Advocate Letitia James condemned ICE courthouse arrests as compromising public safety. A dozen prosecutors in California issued a similar message in a letter to DHS. Denver’s city attorney has also publicly said that ICE’s courthouse arrests have prevented her from bringing prosecutions. Attorneys General from Maine, New York, Maryland and Michigan have also condemned the practice.

Bar association statements. The American Bar Association passed a [resolution](#) urging ICE to add courthouses to its “sensitive locations” list and urging Congress to amend the Immigration and Nationality Act to designate courthouses as “sensitive locations.” The New York State Bar Association followed suit with a similar [resolution](#), and the New York City Bar Association recently weighed in with a [report](#) condemning courthouse arrests and calling for meaningful policy interventions.

Additional resources:

- U.S. Commission on Civil Rights, [U.S. Commission on Civil Rights Expresses Concern with Immigrants' Access to Justice](#) (April 2017).
- ACLU, [Report: Freezing Out Justice--How immigration arrests at courthouses are undermining the justice system](#) (2018).





Supreme Court of California

350 McALLISTER STREET
SAN FRANCISCO, CA 94102-4797

TANI G. CANTIL-SAKAUYE
CHIEF JUSTICE OF CALIFORNIA

415-865-7000

March 16, 2017

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

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

RE: Immigration Enforcement Tactics at State Courthouses

Dear Attorney General Sessions and Secretary Kelly:

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

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

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

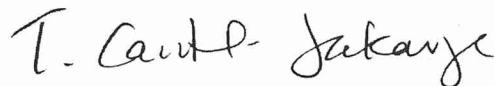
mitigate fear to ensure fairness and protect legal rights. Our work is critical for ensuring public safety and the efficient administration of justice.

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

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

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

Sincerely,

A handwritten signature in black ink, reading "T. Cantil-Sakauye". The signature is fluid and cursive, with the first name "T." and last name "Sakauye" clearly legible.

TANI G. CANTIL-SAKAUYE

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



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,

A handwritten signature in black ink, appearing to read "Chase T. Rogers".

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.

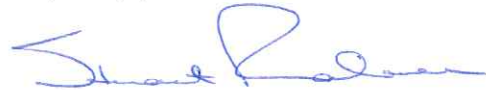
To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum. Enforcement actions by ICE agents inside courthouses would produce the opposite result and effectively deny access to the courts.

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.

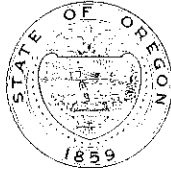
Very truly yours,

A handwritten signature in blue ink, appearing to read "Stuart Rabner", with a stylized, flowing script.

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
Phone: 503.986.5717
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
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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
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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 'Thomas 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

News Advisory

From the Rhode Island Judiciary



Courts must remain open and accessible to all, Chief Justice tells lawyers, judges

June 16, 2017: Rhode Island state courthouses should be open and accessible to all persons, including undocumented immigrants, Supreme Court Chief Justice Paul A. Suttell said today.

Speaking this afternoon to a group of lawyers and judges attending the Rhode Island Bar Association's Annual Meeting at the Rhode Island Convention Center, Chief Justice Suttell said he has become concerned that the arrests of undocumented immigrants either inside or near state court buildings may deter individuals from going to court to obtain restraining orders, to testify as witnesses or victims of crime or to seek other forms of justice.

Earlier this month, an undocumented immigrant reportedly was arrested by federal immigration agents outside the Licht Judicial Complex in Providence after appearing in Superior Court for a hearing on nonviolent offenses.

"This is not just a Rhode Island concern, it is a national one," Chief Justice Suttell said. "Currently the National Center for State Courts and the Conference of Chief Justices are working with representatives of the United States Department of Homeland Security and the United States Immigration and Customs Enforcement agency to develop protocols and best practices. We support those efforts, and to that end I will soon be meeting with the Regional Field Office Director of ICE."

Federal immigration enforcement actions have taken place at or near state and county courthouses across the country in recent months, prompting judges, prosecutors and other officials in those jurisdictions to ask the Department of Homeland Security to refrain from the practice. Chief Justice Suttell said he is concerned that even the perception that one could occur would be enough to discourage fearful parties who are in need of court services.

"It is essential that our courts remain open and safe for everyone," Chief Justice Suttell said. "I recognize that federal authorities must enforce our nation's immigration laws. But at the same time our courts need to be accessible to everyone, regardless of immigration

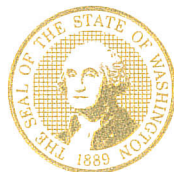
status, so that they may seek justice – whether as a crime victim, a witness, someone seeking a protection order or someone simply looking to pay a court fine.”

“Our courts are places where everyone is treated with respect, dignity and fairness,” he told the lawyers and judges. “If people in our immigrant communities are afraid to come to court, out of fear of federal apprehension, our core mission is compromised and there is a risk of our neighborhoods becoming less safe. It is vitally important, therefore, that in carrying out their responsibilities, federal authorities do so in a way that does not undermine the trust and confidence that people have in our court system.”

#

The Supreme Court
State of Washington

MARY E. FAIRHURST
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2053
E-MAIL MARY.FAIRHURST@COURTS.WA.GOV

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

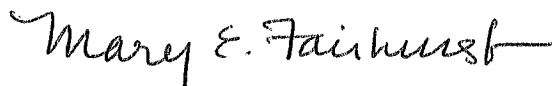
justice is compromised. Their absence curtails the capacity of our judges, clerks and court personnel to function effectively.

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,

A handwritten signature in cursive script that reads "Mary E. Fairhurst". The signature is written in dark ink and includes a horizontal flourish at the end.

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

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.

March 2, 2017

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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

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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 blue ink, reading "Brian E. Frosh". The signature is fluid and cursive, with the first name "Brian" being the most prominent part.

Brian E. Frosh

Attorney General of Maryland



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

June 29, 2017

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, DC 20536-5009

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

U.S. Customs and Border Protection
ATTN: Sabrina Burroughs, FOIA Officer
1300 Pennsylvania Ave, NW
Room 3.3D
Washington, DC 20229

To whom it may concern:

The President's Executive Orders, and the steps taken by the Department of Homeland Security to implement those orders, have generated new fears and uncertainties in immigrant communities across the country. Families are afraid to send their children to school. People are avoiding necessary medical treatment. Victims and witnesses are not reporting crimes or cooperating with state and local law enforcement. As the attorneys general of our respective states, we believe the "chilling effect" of these new policies undercuts public health, safety, and welfare.

The lack of transparency surrounding the Administration's enforcement activities and priorities is greatly exacerbating the fear in immigrant communities and decreasing cooperation with local law enforcement. Widely circulated reports in national and local media recount detentions and deportations of parents with young children, individuals approved for Deferred Action for Childhood Arrivals ("DACA"), and individuals meeting with federal immigration officials to discuss their status. Arrests are occurring in the vicinity of locations previously deemed by the Department of Homeland Security or its components as "sensitive," as well as in or around courthouses. Detainer requests are being issued more frequently to our state and local law enforcement officials and detention facilities. Meanwhile, accurate information on the

numbers of and bases for detentions, deportations, and detainer requests, as well as actions taken upon those requests, has not been made available to our states or to the general public. To the contrary, we have learned that the Department of Homeland Security has reduced the amount of information it makes available about detentions, detainer requests, and deportations, at the same time it is significantly increasing its efforts to detain and deport, and to issue detainer requests concerning, residents of our states.

To better understand how the Department of Homeland Security is implementing its immigration enforcement policies, this letter contains a series of requests made under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 522. As you are aware, Immigration and Customs Enforcement (“ICE”), Customs and Border Protection (“CBP”), and U.S. Citizenship and Immigration Services (“USCIS”) are subject to the requirements of FOIA.

Instructions. Unless otherwise stated in a specific request, the date range of this request is for records in the custody, control, or possession of ICE, CBP, and USCIS, and all respective subdivisions of each entity, between October 1, 2016 and the date of this request. For each request in which data or other compilations of information are sought, please provide a state-by-state breakdown of such data or compilations of information, should it exist. **Nothing in these requests should be interpreted to be seeking personally identifiable information such as names or addresses.**

Definitions. For the purpose of these requests, the following are defined as:

“Administration” – The President of the United States, the President of the United States’ staff, White House staff, or any person communicating on behalf of those individuals.

“Any record” – Records sufficient to provide the information sought in a particular request, **excluding redundant or duplicative records and any personally identifiable information.**

“All records” – Each and every record responsive to a particular request, **excluding any personally identifiable information.**

“DACA” – Deferred Action for Childhood Arrivals.

“Memorandum” – Includes any policy directive, analysis, white paper, or order.

“Policies” – Includes any policy, procedure, manual, guidebook, protocol, or handbook.

“Respective States” – California, District of Columbia, Hawaii, Illinois, Iowa, Massachusetts, Maryland, New York, Oregon, and Washington.

“Sensitive Locations” – Includes, but is not limited to, schools, including daycares and bus stops; medical treatment and health care facilities, including hospitals and doctors’ offices; churches, synagogues, mosques, or other institutions of worship, such as buildings rented for the purpose of religious services; the site of a funeral, wedding, or

other public religious ceremony; and a site during the occurrence of a public demonstration, such as a march, rally, or parade.¹

We hereby request any and all records that reflect the following information:

1. Records related to DACA, specifically:

- a. All memoranda issued from the Administration and/or the Department of Homeland Security regarding DACA;
- b. Any record containing information and/or data reflecting the number of individuals residing in our respective states whose deferred action under the DACA process have been terminated;
- c. All records regarding the detention and/or deportation of any individual residing in our respective states previously granted an approval or extension of DACA since its initiation on June 15, 2012, including the specific factual basis for detaining and/or initiating deportation proceedings for each individual notwithstanding their DACA status; and
- d. All policies, procedures, and training documents that were in effect between October 1, 2016 and the date of this request concerning the process for checking an individual's DACA status prior to arresting, issuing a detainer request, initiating a removal proceeding, or removing an individual.

2. Records related to arrests and/or detentions of individuals at certain locations, specifically:

- a. All memoranda issued from the Administration and/or the Department of Homeland Security regarding ICE or CBP designated sensitive locations;
- b. Any record containing information and/or data reflecting the number of individuals in our respective states arrested and/or detained at, or within 100 exterior feet of an entrance or exit to, an ICE or CBP designated sensitive location;
- c. All memoranda issued from the Administration and/or the Department of Homeland Security regarding ICE or CBP immigration enforcement at, or within 100 exterior feet of an entrance or exit to, a state or local courthouse;
- d. Any record containing information and/or data reflecting the number of individuals in our respective states arrested and/or detained at an ICE or CBP designated check-in and/or interview;

¹ This definition is intended to comport with the definition currently in use by the Department of Homeland Security. See <https://www.ice.gov/ero/enforcement/sensitive-loc> (last visited June 28, 2017).

- e. Any record containing information and/or data reflecting the number of individuals in our respective states arrested and/or detained at, or within 100 exterior feet of an entrance or exit to, a courthouse (excluding those arrested or detained pursuant to a courthouse official's voluntary cooperation with a detainer request);
- f. Copies of all I-213 forms that contain the term "courthouse" or "court house;"
- g. Any chart, spreadsheet, data compilation, or record that shows any of the following relating to Form I-9 audits in our respective states:
 - i. The action taken and its outcome;
 - ii. The business sector, industry, or category of the employer;
 - iii. The size of the employer; and
 - iv. The location of the employer;
- h. All memoranda issued from the Administration and/or the Department of Homeland Security regarding Form I-9 audits;
- i. Any record containing information and/or data reflecting the number of individuals in our respective states arrested and/or detained at, or within 100 exterior feet of an entrance or exit to, the individual's workplace or jobsite; and
- j. All memoranda issued from the Administration and/or the Department of Homeland Security regarding workplace and/or jobsite enforcement actions.

3. Records related to ICE or CBP detainer requests and databases, specifically:

- a. Any chart, spreadsheet, data compilation, or record that shows any of the following:
 - i. All detainer requests issued in our respective states by ICE or CBP;
 - ii. The immigration status of individuals in our respective states for whom ICE or CBP requested a detainer;
 - iii. The nationality/citizenship of individuals in our respective states for whom ICE or CBP requested a detainer, including those individuals with U.S. citizenship;
 - iv. All cancelled detainer requests issued in our respective states by ICE or CBP;

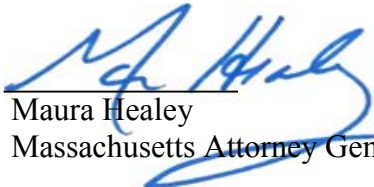
- v. All ICE or CBP detainer requests issued in our respective states that were later determined to be based on the mistaken identity of the subject;
 - vi. For each individual in our respective states for which ICE or CBP issued a detainer request, the individual's criminal history, or, any indication that the individual has no criminal history; and/or
 - vii. All ICE or CBP detainer requests in our respective states that were later determined to concern a United States citizen or individual otherwise not subject to removal and/or deportation;
- b. All records reflecting detainer requests issued in our respective states by ICE or CBP that were later determined to be based on the mistaken identity of the subject;
 - c. All records reflecting detainer requests issued in our respective states by ICE or CBP for an individual later determined to be a United States citizen or otherwise not subject to removal and/or deportation;
 - d. All memoranda, policies, procedures, and training documents that were in effect between October 1, 2016 and the date of this request relating to the process for issuing, withdrawing, and deciding whether to undertake enforcement on the basis of a detainer request; and
 - e. Any record describing the databases used by ICE or CBP for immigration enforcement, including but not limited to any record describing the fields maintained in each such database.

If responsive data exists in a database but not in a specific record, we request that you run a query to produce the data set in response to the request, with the data properly correlated. See Nat'l Sec. Counselors v. Cent. Intelligence Agency, 898 F. Supp. 2d 233, 270 (D.D.C. 2012) ("In responding to a FOIA request for 'aggregate data,' therefore, an agency need not create a new database or a [sic] reorganize its method of archiving data, but if the agency already stores records in [its] electronic database, searching that database does not involve the creation of a new record."); Long v. U.S. Dep't of Justice, 450 F. Supp. 2d 42, 48 (D.D.C. 2006) ("fields of data" in a database are subject to FOIA). In an effort to assist the agency in complying with these requests, where responsive records would offer identical or redundant information to other records to be provided in response to these requests, the agency may note this in its response and withhold the records with redundant information.

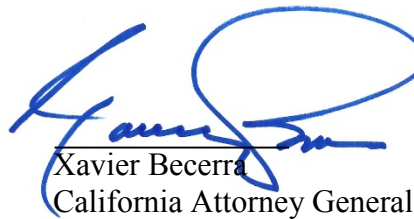
We also request that all fees be waived as these requests are in the public interest. In the event that there are fees, please inform us of the total charges in advance of fulfilling these requests. We request that your responses be fulfilled electronically.

Thank you in advance for your attention to this matter. If you have any questions or wish to clarify any request, please do not hesitate to contact **Jonathan Sclarsic, Assistant Attorney General in the Massachusetts Attorney General's Office, at 617-963-2045**. We look forward to receiving your response to these requests within twenty (20) business days, as required by FOIA.


Sincerely,



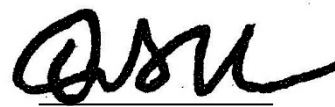
Maura Healey
Massachusetts Attorney General



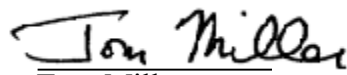
Xavier Becerra
California Attorney General



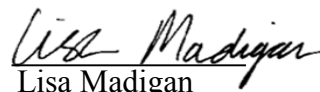
Karl A. Racine
District of Columbia Attorney General




Douglas S. Chin
Hawaii Attorney General



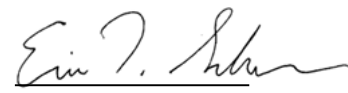
Tom Miller
Iowa Attorney General



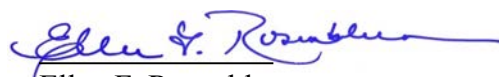
Lisa Madigan
Illinois Attorney General



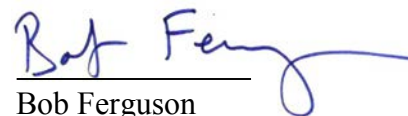
Brian E. Frosh
Maryland Attorney General



Eric T. Schneiderman
New York Attorney General



Ellen F. Rosenblum
Oregon Attorney General



Bob Ferguson
Washington Attorney General

PA James, District Attorneys Calls on ICE to Rescind New Courthouse Arrest Policy

Today, Public Advocate Letitia James called on U.S. Immigration and Customs Enforcement (ICE) to rescind a new policy that allows ICE to detain any undocumented immigrant inside of courthouses. This new policy, which was implemented on February 1st, gives ICE the authority to detain anyone present in court including victims, witnesses, or even family members. Many of these individuals are at the courts to report crimes, testify, or support others, but themselves are not being charged with a crime. Public Advocate James was joined by Bronx District Attorney Darcel Clark, Brooklyn District Attorney Eric Gonzalez, Manhattan District Attorney Cyrus Vance, Council Member Carlos Menchaca, the Legal Aid Society, Make the Road, and the Bronx Defenders.

“Not only is this new policy an attack on our immigrants, but it is an attack on our judicial system,” said **Public Advocate Letitia James**. “ICE's plan to arrest undocumented immigrants in our courthouses undermines our pursuit of justice by discouraging victims of crimes and critical witnesses from coming forward. It is imperative that our courts take action immediately and intervene to ensure that all New Yorkers are safe and our justice system uncompromised.”

In 2017, the number of arrests or attempted arrests by ICE agents at courthouses in New York increased 900 percent from the previous year, despite no formal policy allowing these actions. This new policy will deter victims from reporting crimes and witnesses from testifying. These individuals could be subject to detainment even if they have not committed a crime.

“All New Yorkers deserve safe and accessible courts, whether they are documented or undocumented under federal law,” said **Manhattan District Attorney Cyrus R. Vance, Jr.** “And when fear of deportation deters victims and witnesses from coming forward, all New Yorkers are less safe. I am here to let immigrant New Yorkers know that we are here to protect your safety and your rights, and you can report crimes to us without fear of deportation. I thank Public Advocate James for prioritizing this issue.”

“The ongoing enforcement actions ICE is conducting in courthouses jeopardize public safety by forcing immigrants into the shadows, disrupt court proceedings and deprive defendants of their due process and victims of their day in court,” said **Brooklyn District Attorney Eric Gonzalez**. “They must stop. In Brooklyn, protecting the rights of everyone, including immigrants, is our priority and we have taken proactive steps to achieve that. I have been vocal in criticizing ICE's policies and it's important that elected and law enforcement officials speak in one voice against this misguided policy like we're doing today. I commend Public Advocate Letitia James for her leadership on this issue.”

“As the Bronx District Attorney, I encourage people to take part in the criminal justice system,” said **Bronx District Attorney Darcel D. Clark**. “If a witness is

unavailable because he has been arrested, and we cannot go forward with the case, it could result in cases being dismissed and dangerous individuals being released back into the community. This could have a chilling effect on getting witnesses to assist in our cases, potentially resulting in a threat to public safety. We not only encourage but we desperately need everyone to cooperate in our fight to keep the streets of the Bronx safe.”

“Our legal system is once again being threatened by Federal government policies,” said **Council Member Carlos Menchaca**. “The presence of federal agents outside courthouses intimidates immigrants who might be witnesses in a court case, or victims of a crime. We don’t want victims to miss their court dates because they fear being detained by immigration officers. This practice goes against our values and our sanctuary city status. I’m glad to have the support of our Public Advocate Letitia James in our fight to protect immigrant families in New York City.”

“These guidelines create a sense of fear and threaten the purpose of our legal system,” said **Council Member Keith Powers**. As Chair of the Criminal Justice Committee, I am committed to making sure that the justice system does not put people at risk of losing their families. I applaud Public Advocate James for taking a stand here.”

"The increasingly aggressive ICE enforcement tactics in and near courtrooms has a chilling effect on immigrant communities and denies justice to many victims of domestic violence and violent crimes and terrorizes both immigrant victims and witnesses into staying silent. This doesn't just hurt immigrants, it hurts all of us and makes our city less safe. If we want real justice in our justice system, we need ICE out of our courthouses," said **Hector Figueroa, President, 32BJ SEIU**.

“ICE’s unfettered presence in local courts undermines our legal system and deters immigrants and other New Yorkers from seeking justice,” said **Tina Luongo, Attorney-In-Charge of the Criminal Defense Practice at The Legal Aid Society**. “We can’t allow this to continue to happen. We need immediate action from the Office of Court Administration and bold policy that addresses the core of this issue. The Legal Aid Society is proud to join this call for action with Public Advocate Letitia James, other local elected officials, fellow defenders and immigrant New Yorkers.”

“Keeping ICE out of our courthouses is essential to upholding respect for all members of our community and the integrity of our justice system. Every New Yorker has the right to due process, regardless of immigration status, and absent of any fear that following court orders will result in detention. We applaud Public Advocate Letitia James for her leadership in addressing this issue, and look forward to working with her to protect the rights of immigrant New Yorkers,” said **Steven Choi, Executive Director of the New York Immigration Coalition**.

"It is appalling that ICE is targeting members of our communities at courthouses," said **Javier H. Valdés, Co-Executive Director of Make the Road New York**. "Our government needs to consider the harm that this practice is doing to our communities--and how it makes all New Yorkers less safe--and take immediate measures to remove ICE from our courthouses."

“New York City’s promise as a sanctuary city is not only threatened but a myth as long

as federal deportation officers are allowed in our courts,” said **Sarah Deri Oshiro, Managing Director, Immigration Practice, The Bronx Defenders**. “It is critical to our clients, immigrant communities, and our city to ensure all New Yorkers can seek justice, due process, and their day in court.”

“It is so sad and wrong that ICE should choose to detain undocumented immigrants within the premises of the Judicial System, in blatant disrespect to the upholders of Justice in the land,” said **Sam Owusu-Sekyere, President, Ghanaian Association of Staten Island**. “People, who are responding to Court appearances due to being summoned there for various adjudications, end up being detained for something completely different which will change their lives forever! This is unacceptable and sending mixed messages to NYC residents, and the rest of the State.”



April 4, 2017

Attorney General Jeffrey Sessions
U.S. Department of Justice
950 Pennsylvania Avenue, NW

Secretary of Homeland Security John Kelly
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW

Dear Attorney General Sessions and Secretary Kelly:

As prosecutors with extensive experience protecting communities with immigrant populations, we write in strong support of California Supreme Court Chief Justice Tani Cantil-Sakauye's objections to immigration enforcement arrests in and around California courthouses.

ICE courthouse arrests make all Californians less safe. These practices deter residents concerned about their immigration status from appearing in court--including as crime victims and witnesses--jeopardizing effective prosecution of criminals who may then re-offend. Courthouse enforcement by ICE also risks confrontations that could endanger members of the public at courthouses throughout our state.

No one should fear that their immigration status prevents them from seeking justice, whether as a crime victim or otherwise. ICE's practice is antithetical to a fair system of justice that must protect all of us.

We urge you to reconsider your position, and include areas in and around courthouses among the sensitive sites where immigration enforcement actions are discouraged.

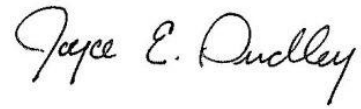
Thank you.

Mike Feuer
Los Angeles City Attorney

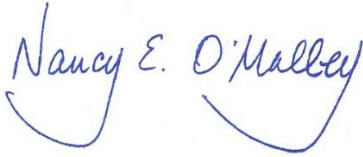
Jackie Lacey
Los Angeles County District Attorney



Bonnie Dumanis
San Diego County District Attorney



Joyce E. Dudley
Santa Barbara County District Attorney



Nancy E. O'Malley
Alameda County District Attorney



Russell I. Miyahira
Hawthorne City Attorney



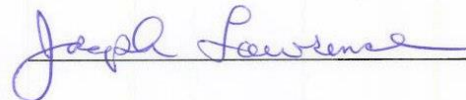
Amy Albano
Burbank City Attorney



Maria Elliott
San Diego City Attorney



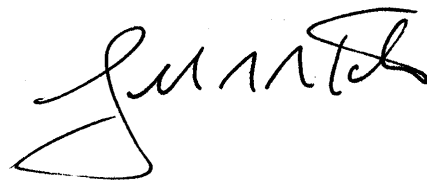
Doug Haubert
Long Beach City Prosecutor



Joseph Lawrence
Santa Monica City Attorney



George Gascon
San Francisco District Attorney



Jill Ravitch
Sonoma County District Attorney

Crackdown on immigrants undermines public safety

Originally published March 24, 2017 at 2:20 pm Updated March 24, 2017 at 3:16 pm



GABRIEL CAMPANARIO / THE SEATTLE TIMES

Anti-immigrant rhetoric from the Trump administration is undermining the relationships between immigrants and law enforcement officers.

By

[Dan Satterberg](#)

Special to The Times

PRESIDENT Donald Trump claims that immigrants threaten public safety, and he promises that a massive wall, immigration agency sweeps and deportations will make us safer. From my position as King County prosecutor, I can tell you these actions have the opposite effect for crime victims.



Dan Satterberg is King County's prosecuting attorney.

When victims of crime are afraid to trust police and the courts, the only winners are violent people. Because our top mission is public safety, this “crackdown” is an immediate and serious concern to those of us who work to protect all King County residents.

There are an estimated 1 million immigrants in Washington, one in every seven people in the state. Police and prosecutors have worked for decades to build trust with these communities, and encourage them to cooperate with the justice system. In King County, brave cooperation from undocumented residents who are witnesses or victims has allowed us to hold many violent offenders accountable. The wisdom of this approach has been widely recognized. Indeed, Congress even passed laws to protect immigrant crime victims to encourage them to come forward and report crimes that put us all at risk.

Undocumented immigrant victims, who are disproportionately women and children, are particularly vulnerable to crime due to language barriers, cultural differences and a lack of familiarity with the justice system. Violent criminals are adept at preying on the most vulnerable and marginalized in our community. This is of special concern in cases of domestic violence, sexual assault and human trafficking, where victims already take enormous risks to stand up to their abusers.

“We are not safer when a victim of abuse thinks she must choose between deportation or suffering more violence at the hands of her abuser. Unpunished violent crime threatens us all.”

Today that hard-earned trust, built intentionally over many years, is being quickly eroded by Trump administration comments and highly publicized actions of U.S. Immigration and Customs Enforcement agents. Prior administrations had focused their attention on undocumented people in jails or prisons; today the ICE attention is on neighborhoods. In El Paso, Texas, last month, a victim seeking protection from violent abuse was arrested by federal immigration agents in the courthouse where she sought help.

Just this week, Washington Chief Justice Mary Fairhurst wrote a letter to Homeland Security Director John Kelly asking that ICE agents cease operating near our state's courthouses, citing the real potential for driving victims and witnesses away from the justice system. No longer hypothetical or anecdotal, ICE actions are undermining trust in the neutrality of the court system, where "justice for all" has been our hallmark.

We are not safer when victims of crime fear being deported if they call 911, talk to police, or come to the courthouse to get protection. We are not safer when a victim of abuse thinks she must choose between deportation or suffering more violence at the hands of her abuser. Unpunished violent crime threatens us all.

My alarm isn't theoretical. Last year our office worked with 67 undocumented immigrants (more than 300 in the last five years) to prosecute crimes ranging from murder and rape to domestic violence. Without that cooperation and trust of undocumented immigrants, we wouldn't have been able to get some dangerous offenders off the streets.

We must continue to assure our most marginalized communities that it is safe to ask police and the courts for help. Here's how we do that in King county:

- Neither the 911 operator, the police, nor the prosecutor will ask about immigration status. We want people to report crime and be safe;
- Victims and witnesses who assist local law enforcement and prosecution are eligible for immigration protection. Federal law still protects immigrants who are crime victims and witnesses.

- Crime victims are eligible for a new service from local civil legal aid organizations in partnership with my office at both Superior Court courthouses (Seattle and Kent). Among the legal services available for crime victims is advice and representation by Northwest Immigrant Rights Project.

Confusion, fear and demagoguery are destabilizing important ties between immigrant communities, police and the court system. This directly undermines public safety. That's why I join other criminal justice leaders in calling for an immediate end to this dangerous crackdown on law-abiding undocumented immigrants.

The trust we have spent decades building with immigrant communities can be lost in a few weeks. As for my office, we remain committed to doing all we can to encourage and protect all crime victims in our community.

Michael B. Hancock
Mayor



City and County of Denver

OFFICE OF THE MAYOR
CITY AND COUNTY BUILDING
DENVER, CO 80202-5390
TELEPHONE: (720) 865-9090 • FAX: (720) 865-8787
TTY/ TTD: (720) 865-9010

April 6, 2017

Jeffrey D. Lynch
Acting Field Office Director
U.S. Immigration and Customs Enforcement
12484 East Weaver Place
Centennial, CO 80111

Mr. Lynch:

The undersigned officials for the City and County of Denver and Denver Public Schools strongly endorse the letter and the spirit of the policies adopted by Immigration and Customs Enforcement in the memorandum dated October 24, 2011 and titled ***"Enforcement Actions at or Focused on Sensitive Locations."*** To the extent the current administration has announced its intention to increase and broaden immigration enforcement efforts throughout the United States, we believe it is going to be more important than ever for Immigration and Customs Enforcement (ICE) officers to respect "sensitive locations" when carrying out their duties, for all of the reasons set forth in the 2011 policy memorandum.

We especially appreciate the wisdom of these elements of your 2011 sensitive locations policy:

- The admonition to ICE officers and agents to "make substantial efforts to avoid unnecessarily alarming local communities" when carrying out enforcement actions.
 - The direction to ICE supervisors to "take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing a significant disruption to the normal operations of the sensitive location."
 - The direction to all ICE employees to take "particular care" when taking enforcement actions that might affect any organization that assists victims of crime or abuse.
- We are writing today to express our concerns about recent ICE enforcement actions in Denver which we believe may be inconsistent with the letter and the spirit of your sensitive locations policy.

ICE enforcement actions in Denver Courthouses

As you know, recent media accounts in Denver have called attention to the presence of ICE agents in the hallways of Lindsay-Flannigan Courthouse, deployed in the courthouse for the express purpose of arresting individuals going to or from a courtroom on a state or local criminal matter.

The sanctity of the courtroom has traditionally been recognized by law enforcement and judicial officers and the deference given to courthouses allows for the fair and effective administration of justice. We acknowledge that, even before the recent media accounts, ICE has used courthouses in Denver as staging areas for enforcement activities. However, we believe this practice has and will increasingly lead to an environment of fear for victims and witnesses. Already, we have victims of domestic violence refusing to come to court for fear of immigration consequences which results in violent criminals being released into the community. Unless ICE has a criminal warrant, we respectfully request you consider courthouses sensitive locations and follow your own directive which states that particular care should be given to organizations assisting victims of crime.

Denver officials are not alone in expressing this concern about the deleterious effect that immigration enforcement in or near courtrooms has on the administration of justice at the state and local level. For example, the statement issued by the chief justice of California Supreme Court on March 16, pleading with ICE agents in her state to refrain from enforcement actions within California court facilities, reflects the same concerns we are expressing in this letter.

ICE enforcement actions at or near Denver schools

On March 14, Denver officials were alerted by the principal of Colorado High School Charter of a possible ICE enforcement action at a residence directly adjacent to the school's campus during the traditional drop off time for the school, and in plain view of parents and children coming to and from the school. Colorado High School Charter is located in a Denver neighborhood that serves a large immigrant population. We investigated the incident and confirmed that ICE did in fact notify local dispatch and initiate an action near the school between 5:30am and 8:30am. We believe this enforcement action, particularly because it was scheduled to occur during the morning drop-off period, may have violated both the letter and the spirit of your sensitive location policy. The hour and location of this action potentially put children, staff and parents in danger should your agents have encountered resistance, and clearly caused alarm to the principal and the community served by the school. We are not aware of any exigency that would have required the enforcement action to occur at that location and at that hour. We strongly urge ICE to refrain from future enforcement actions near schools in Denver that do not comport with the sensitive locations policy.

The March 14 incident also raises a related concern. Video taken during the incident shows ICE agents wearing black uniforms with the word "POLICE" in large white block letters. The word "ICE" was much smaller and below the word "POLICE." These types of uniforms lead to confusion and fear within our community as many mistakenly assume that our local police are involved in immigration enforcement actions.

The Denver Police Department has worked tirelessly to reassure the immigrant community that they should feel comfortable calling the police and reporting crimes. Our local police rely on information and cooperation from our immigrant community to protect the entire city. Identifying yourselves as "police" confuses and erodes the trust between our local police and the immigrant community endangering the community at large. Again, Denver's concerns in this regard are being increasingly expressed by city leaders and local law enforcement officials elsewhere in the United State. Like our counterparts in other cities, we respectfully request that ICE agents carrying out their duties in Denver cease identifying themselves as police and clearly identify themselves as ICE in any official action where display of a law enforcement insignia is deemed operationally necessary.

We look forward to continuing to communicate about these and other issues. We all share the common goal of keeping our community safe from those that would do harm to our residents. Please do not hesitate to contact us regarding these or any other issues.

Respectfully,



Michael B. Hancock
Mayor



Tom Boasberg
Superintendent, Denver Public
Schools



Judge Theresa Spahn
Presiding Judge, Denver County
Court



Beth McCann
Denver District Attorney



Kristin Bronson
City Attorney, City and County of
Denver



Albus Brooks
City Council President, District 9



Rafael G. Espinoza
City Council, District 1



Kevin Flynn
City Council, District 2



Paul D. López
City Council, District 3



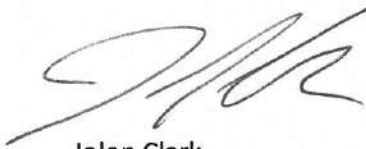
Kendra Black
City Council, District 4



Mary Beth Susman
City Council, District 5



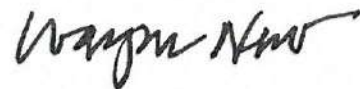
Paul Kashmann
City Council, District 6



Jolon Clark
City Council, District 7



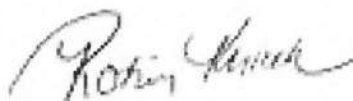
Christopher J. Herndon
City Council, District 8



Wayne New
City Council, District 10



Stacie Gilmore
City Council, District 11



Robin Kniech
City Council, At Large



Deborah "Debbie" Ortega
City Council, At Large

ADOPTED**AMERICAN BAR ASSOCIATION****MASSACHUSETTS BAR ASSOCIATION****CRIMINAL JUSTICE SECTION****SECTION OF LITIGATION****COMMISSION ON IMMIGRATION****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

1 **RESOLVED**, That the American Bar Association, in recognition of the critical
2 importance of the fair and unfettered administration of justice and in order to protect the right of
3 all persons to access to federal, state, local, territorial and tribal courthouses, urges Congress to
4 amend Section 287 of the Immigration and Nationality Act to expand and codify Department of
5 Homeland Security guidelines regarding immigration enforcement actions to include courthouses
6 as “sensitive locations” in which immigration enforcement actions may only be taken upon a
7 showing of exigent circumstances and with prior approval of a designated supervisory official.
8

9 **FURTHER RESOLVED**, That the American Bar Association urges U.S. Immigration
10 and Customs Enforcement and Border Protection to revise the existing guidelines on
11 enforcement actions in “sensitive locations” to include federal, state, local, territorial and tribal
12 courthouses in which immigration enforcement actions may only be taken upon a showing of
13 exigent circumstances and with prior approval of a designative official and to do so without
14 awaiting congressional action.

REPORT

I. Introduction

The American Bar Association (ABA) is committed to supporting everyone's right to the fair and unfettered access to justice. However, in recent months, the U.S. Department of Homeland Security (DHS), acting principally through the Immigration and Customs Enforcement (ICE), has significantly increased enforcement actions in and around our courthouses. This practice interferes with the right of victims of crime, and persons aggrieved by civil wrongs, to access justice. To the extent that these enforcement practices prevent the fair adjudication of criminal cases in which undocumented persons are defendants, they deny such persons their constitutional right to defend themselves in criminal cases. These practices impact some of our most vulnerable populations and interfere with the proper administration of justice. They chill undocumented victims and defendants from seeking justice in court and deter witnesses from responding to legal process, frightened by the knowledge that they run the risk of being detained and deported should they participate in our system of justice, comply with lawful process requiring their participation, or dare enter an American courthouse.

This Resolution seeks to address currently unrestrained and unguided immigration enforcement practices in and around our courthouses by recognizing courthouses as “sensitive locations,” places in which enforcements actions—although certainly permissible—should only be undertaken with circumspection and in the event of exigency. This Resolution would limit immigration enforcement in our courthouses only to those situations where there is a showing of exigent circumstances, and upon the prior approval from a previously designated, supervisory official.

II. Current Immigration Enforcement Regulations Do Not Designate Courthouses As “Sensitive Locations” And Provide No Guidance Or Restriction On When An Immigration Enforcement Officer May Make Arrests In A Courthouse

Current ICE policy limits immigration enforcement actions at “sensitive locations,” but courthouses are not a location deemed worthy of such protection. Sensitive locations, currently, are designated to include the following:

- 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.¹

¹ Memorandum from ICE Director John Morton, Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

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Where “exigent circumstances” are present, ICE policy allows for enforcement actions at sensitive locations.² Exigent circumstances are defined as: 1) if the action involves a national security or terrorism matter, 2) there is an imminent risk of death, violence, or physical harm to any person or property; 3) the action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or anyone that presents an imminent danger to public safety; or 4) there is an imminent risk of destruction of evidence material to an ongoing criminal case.³

U.S. Customs and Border Patrol (CBP) policy is similar, except that CBP does not require the presence of “exigent circumstances” to justify enforcement actions at designated sensitive locations, officers merely being “expected to exercise sound judgment and common sense while taking appropriate action”.⁴

Notably, neither policy designates courthouses as sensitive locations. Accordingly, under either ICE or CBP policy, there is no limitation—or guidance—on when an ICE or CBP enforcement officer may make an arrest in any American courthouse.

III. The Escalation Of Immigration Enforcement Actions in Our Courthouses

In March 2014, the Washington Legislative Office of the American Civil Liberties Union (ACLU) recommended that DHS to issue new guidelines that specified courthouses and their premises as sensitive locations.⁵ The ACLU cited “countless cases” from across the country in which ICE agents were documented “interrogating, detaining, and even deporting individuals” at courthouses.⁶ It went on to list myriad purposes for which these individuals were at a courthouse, including to obtain a domestic violence restraining order, pay for traffic tickets, appear for court hearings, meet with interpreters, get married, and accompany friends or family on their court visits. The ACLU was concerned that pursuing enforcement actions at courthouses obstructs access to the courts, endangers public safety, and in turn “runs counter to ICE’s stated priorities.”⁷

More recently, reports of enforcement actions at courthouses have been on the rise. In April 2017 alone, the Massachusetts Committee for Public Counsel Services Immigration Impact Unit received reports of almost 40 people who had been arrested by ICE agents in Massachusetts while on the courthouse steps, getting out of their cars to enter the courthouse, or inside courthouses.⁸ Massachusetts attorneys have observed that among those persons being arrested in

² *Id.*, at pp. 2-3

³ *Id.*

⁴ Memorandum from David Aguilar, Deputy Commissioner of Customs and Border Protection, “U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations,” Jan. 18, 2013, <https://foiarr.cbp.gov/streamingWord.asp?i=1251>.

⁵ American Civil Liberties Union - Washington Legislative Office, “ACLU Recommendations to DHS on Sensitive Locations Enforcement” (March 2014), <https://www.aclu.org/other/aclu-recommendations-dhs-sensitive-locations-enforcement>.

⁶ *Id.*

⁷ *Id.*

⁸ Maria Cramer, *ICE courthouse arrests worry attorneys, prosecutors*, BOSTON GLOBE, June 16, 2017, <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMi8gI/story.html>.

courthouses are individuals who are not even the subject of a detainer order.⁹ Other prominent reports of courthouse arrests include instances of ICE targeting asylum seekers (Maine),¹⁰ agricultural workers (Vermont),¹¹ victims of domestic violence (Texas),¹² and recipients of Deferred Action for Childhood Arrivals (Arizona).¹³ In February, 2017, ICE agents appeared in both the arraignment department and misdemeanor courtrooms at the New York County Criminal Courthouse in Manhattan, arresting at least one individual.¹⁴ Videos recorded in late April and early May in Denver showed two ICE arrests, one in the vestibule of the courtroom and the other in the plaza outside.¹⁵ One of the men arrested was at court for a misdemeanor traffic violation, and both were being held at detention centers at the time of reporting. One man leaving a Pasadena, California courtroom in February was rushed and detained by four ICE agents as soon as he entered the hallway.¹⁶ Similar reports of courthouse arrests have come in from Colorado, Oregon,¹⁷ and Washington.¹⁸ Victims of domestic abuse actually in the process of seeking protection from the courts have been arrested¹⁹ and in April, 2017, DHS formally announced its intention to continue pursuing enforcement actions at courthouses, even against individuals who are at court as witnesses or victims of crime.²⁰

⁹ Of note, the Massachusetts Supreme Judicial Court ruled on July 24, 2017 that it is illegal under state law for law enforcement officials, including court officers, to hold individuals on ICE detainers. *Lunn v. Commonwealth*, SJC No. 12276, slip op. at ___ (July 24, 2017). See also Kelly Cohen, *Massachusetts Supreme Judicial Court rules ICE detainer requests are illegal*, WASH. EXAMINER, July 24, 2017, <http://www.washingtonexaminer.com/massachusetts-supreme-judicial-court-rules-ice-detainer-requests-are-illegal/article/2629492>.

¹⁰ Danielle Waugh, *Attorney: ICE Arrests Asylum Seeker in Maine Courthouse*, NECN, Apr. 6, 2017, <http://www.necn.com/news/new-england/ICE-Courtroom-Arrest-Portland-Maine-418544273.html>.

¹¹ Kathleen Masterson, *ICE Agents Arrest Dairy Worker Outside Burlington Courthouse*, VERMONT PUBLIC RADIO, Mar. 16, 2017, <http://digital.vpr.net/post/ice-agents-arrest-dairy-worker-en-route-burlington-courthouse#stream/0>.

¹² *Undocumented transgender woman filing domestic violence claim arrested at El Paso courthouse by ICE, official says*, CBS NEWS, Feb. 16, 2017, <http://www.cbsnews.com/news/undocumented-transgender-woman-filing-domestic-violence-claim-arrested-at-el-paso-courthouse-by-ice-official-says/>.

¹³ James Queally, *ICE makes arrests at courthouses, sparking backlash from attorneys and state supreme court*, LOS ANGELES TIMES, Mar. 16, 2017, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>.

¹⁴ Will Bredderman, *ICE Agents Arresting Undocumented Immigrants in NYC Misdemeanor Court, Advocates Report*, OBSERVER, February 21, 2017, <http://observer.com/2017/02/immigration-agents-arresting-undocumented-immigrants-in-nyc-misdemeanor-court-advocates-report/>.

¹⁵ Erica Meltzer, *New videos show ICE arresting immigrants at Denver courthouse, despite local leaders' requests*, DENVERITE, May 9, 2017, <https://www.denverite.com/new-videos-show-ice-arresting-immigrants-denver-county-court-something-local-officials-asked-not-35314/>.

¹⁶ James Queally, *ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court*, LOS ANGELES TIMES, March 16, 2017, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>.

¹⁷ *Id.*

¹⁸ Gene Johnson, *Washington justice to feds: Keep immigration agents away*, ASSOCIATED PRESS, March 22, 2017, <https://www.apnews.com/5622e73e5f014f2d8822f8d5f200358a/Washington-justice-to-feds-Keep-immigration-agents-away>.

¹⁹ *Id.*

²⁰ Devlin Barrett, *DHS: Immigration agents may arrest crime victims, witnesses, at courthouses*, WASH. POST., April 4, 2017, http://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.976562fa9d9b.

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These actions by ICE and CBP agents have sparked a backlash among state and federal prosecutors, judges, and politicians. Of particular concern for prosecutors are the chilling effect that such actions can have within a community, leading to less cooperation between immigrants and law enforcement. San Francisco District Attorney George Gascon called the effect “devastating.”²¹ Denver City Attorney Kristin Bronson has reported that courthouse detentions have already made a significant impact, leading to the dismissal of four separate domestic violence prosecutions because the witnesses feared facing deportation should they testify.²² In May, Orange County Superior Court Presiding Judge Charles Margines was so concerned that he arranged a meeting with local ICE agents to determine the exact bounds of the policy and what agents will or won’t do in local courthouses, later communicating the information to courthouse staff.²³ The chief justices of both the California and Washington State Supreme Courts have separately sent letters to DHS, urging an end to enforcement actions at courthouses.²⁴

California Chief Justice Tani G. Cantil-Sakauye wrote that “courthouses serve as a vital forum for ensuring access to justice and protecting public safety.”²⁵ Addressing the letter to both Attorney General Jeff Sessions and Secretary of Homeland Security John Kelly, the Chief Justice referenced the need to protect and ensure justice for “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,” and suggested that ICE’s policy of pursuing enforcement actions at courthouses amounts to “stalking courthouses.”²⁶ The letter was met with emphatic support from City Attorney of San Francisco Dennis Herrera.²⁷ In response, Sessions and Kelly wrote that sanctuary policies, such as those enacted by the State of California and many counties and cities therein, “prohibit or hinder ICE from enforcing immigration law” and have necessitated the courthouse detentions.²⁸ Sessions and Kelly also cited the fact that courthouse visitors are screened upon entry as further justification for the policy, reducing safety risks for the arresting officers.²⁹ But as the California Chief Justice stated in her remarks to the Section of Litigation Annual Conference in San Francisco on May 3, 2017, to respect the

²¹ *Id.*

²² *Id.*

²³ Jordan Graham, *Some Orange County judges worry ICE presence might scare undocumented immigrants away from court*, ORANGE COUNTY REGISTER., May 8, 2017, <http://www.ocregister.com/2017/05/08/some-orange-county-judges-court-workers-worry-that-courthouse-presence-of-immigration-agents-is-steering-some-people-away/>.

²⁴ Johnson, *supra* note 8.

²⁵ Letter from Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of Cal., to Jeff Sessions, Attorney General, U.S. Dep’t of Just. and John F. Kelly, Sec’y, U.S. Dep’t of Homeland Security (March 16, 2017), <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>.

²⁶ *Id.*

²⁷ City Attorney of San Francisco, Statement in support of Chief Justice Cantil-Sakauye’s request that ICE refrain from arrests at courthouses (April 3, 2017), <https://www.sfcityattorney.org/2017/04/03/statement-support-chief-justice-cantil-sakauyes-request-ice-refrain-arrests-courthouses/>.

²⁸ Letter from Jeff Sessions, Attorney General, U.S. Dep’t of Just. and John F. Kelly, Sec’y, U.S. Dep’t of Homeland Security to Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of Cal. (March 29, 2017), <http://apps.washingtonpost.com/g/documents/national/attorney-general-and-homeland-security-secretary-defend-immigration-arrests-at-courthouses/2394/>; Will Racke, *Department of Homeland Security: Courthouse arrests are necessary because of sanctuary city policies*, DAILY SIGNAL, April 5, 2017, <http://dailysignal.com/2017/04/05/department-of-homeland-security-courthouse-arrests-are-necessary-because-of-sanctuary-city-policies/>.

²⁹ *Id.*

sensitivity of courthouses is not to question the legitimate role of ICE and CBP in enforcement of the nation's immigration laws. Respect for the sensitivity of courthouses acknowledges that courts encourage “the vulnerable to come to our courthouses for help,” and recognizes that the fear of arrests at courthouses detracts from public trust in our institutions, disrupts court activities and negatively impacts the lives of those seeking justice.³⁰

State and federal legislators around the country have begun to take action to ban courthouse detentions. In Rhode Island, State Representative Jean Philippe Barros has co-sponsored a bill barring “schools, churches, hospitals, and courthouses from allowing immigration arrests.”³¹ Legislators in California, Illinois, and Pennsylvania have all proposed similar legislation, even extending the protection to workplaces in one California version.³² Federally, the “Protecting Sensitive Locations Act” was introduced in the House of Representatives on March 30, 2017.³³ A parallel version of the bill was introduced in the Senate on April 5.³⁴

IV. The Protecting Sensitive Locations Act

The Protecting Sensitive Locations Act was introduced in the House of Representatives as House Bill 1815 on March 20, 2017. The bill was introduced by a total of twenty-five cosponsors from fourteen states: Arizona, California, Colorado, Florida, Illinois, Massachusetts, Minnesota, New York, Oregon, Pennsylvania, Vermont, Virginia, Wisconsin, and Texas, as well as the District of Columbia. As of July 11, seventeen additional cosponsors have joined the legislation. House Bill 1815 has been referred to the House Committee on the Judiciary. In the Senate, a parallel version of the bill was introduced on April 5, 2017. Senate Bill 845 was introduced with eleven cosponsors hailing from nine states: Senators Blumenthal (CT), Hirono (HI), Franken (MN), Kaine (VA), Merkley (OR), Gillibrand (NY), Harris (CA), Markey (MA), Booker (NJ), Warren (MA), and Wyden (OR). As of July 11, four additional cosponsors have joined: Senators Cortez Masto (NV), Murphy (CT), Udall (NM), and Heinrich (NM). Senate Bill 845 was read twice and referred to the Senate Committee on the Judiciary.³⁵

While the two versions of the Protecting Sensitive Locations Act have some differences, they largely mirror one another. Both bills would amend Section 827 of the Immigration and Nationality Act (8 U.S.C. 1357)³⁶ by adding language to codify and expand upon existing DHS guidelines regarding sensitive locations. One example of expansion of existing guidelines is that the bill would require both exigent circumstances *and* prior approval before an “enforcement

³⁰ *The Mercury News*, Commentary, “*Cantil-Sakauye: Courthouse Isn’t Place for Immigration Enforcement*,” April 21, 2017, available at <http://www.mercurynews.com/2017/04/21/cantil-sakauye-courthouse-isnt-place-for-immigration-enforcement/>.

³¹ Tim Henderson, *Cities, states move to calm fear of deportation*, STATELINE, May 10, 2017, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/10/cities-states-move-to-calm-fear-of-deportation>.

³² *Id.*

³³ Katie Mettler, *Democrats want to limit ICE power by banning agents from courthouses, bus stops*, WASH. POST, April 3, 2017, <https://www.washingtonpost.com/news/morning-mix/wp/2017/04/03/democrats-want-to-limit-ice-power-by-banning-agents-from-courthouses-bus-stops/>.

³⁴ See Protecting Sensitive Locations Act, S. 845, 115th Cong. (2017); Protecting Sensitive Locations Act, H.R. 1815, 115th Cong. (2017).

³⁵ See H.R. 1815; S. 845. Bill activity recorded in the Congressional Record details additions of cosponsors.

³⁶ H.R. 1815, § 2; S. 845, § 2.

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action” could be taken at a sensitive location.³⁷ While the House version’s definition of “enforcement actions” is consistent with existing guidelines (“an arrest, interview, search, or surveillance for the purposes of immigration enforcement”),³⁸ the Senate bill expands upon the definition, including any “apprehension, arrest, interview, request for identification, search, or surveillance for the purposes of immigration enforcement.”³⁹

The heart of each bill—beyond codifying a policy that as of now exists only in agency guidelines—is the expansion of what locations qualify as “sensitive.” Many of the locations are already covered by the current guidelines (although the bills expressly protect any physical space *within 1,000 feet* of each location, which would be new).⁴⁰ These include: schools, bus stops, and scholastic-related activities;⁴¹ medical treatment or health care facilities;⁴² places of worship and civil or religious ceremonies, such as funerals or weddings;⁴³ and public demonstrations.⁴⁴ This, however, is where the current guidelines end. Going beyond them, each version of the Protecting Sensitive Locations Act includes language to cover organizations that provide emergency services, food, and shelter, including domestic violence shelters, rape crisis centers, and family justice centers, though the language of each bill differs.⁴⁵ The House version also explicitly lists various federal properties, including Congressional district offices,⁴⁶ public assistance offices,⁴⁷ Social Security offices,⁴⁸ and the departments of motor vehicles.⁴⁹

Each bill also designates federal, state, and local courthouses as sensitive locations. House Bill 1815 reads, “Any Federal, State, or local courthouse, including the office of an individual’s legal counsel or representative, and a probation office.”⁵⁰ Senate Bill 845 expands the definition slightly, including “any Federal, State, or local courthouse, including the office of an individual’s legal counsel or representative, and a probation, parole, or supervised release office.”⁵¹ As with each of the other designated locations, this includes any physical space within 1,000 feet of any courthouse.

As a remedy, the bills also mandate consequences for a violation of the requirements, the language of which is exactly the same in each version. Should immigration enforcement agents violate the policy - that is, conduct an enforcement action at any of the designated sensitive locations without both exigent circumstances and prior approval - then “no information resulting from the enforcement action may be entered into the record or received into evidence in a

³⁷ H.R. 1815, §§ 2(i)(2)(A)(i)-(ii); S. 845, §§ 2(i)(2)(A)(i)-(ii).

³⁸ H.R. 1815, § 2(i)(7)(B).

³⁹ S. 845, § 2(i)(1)(B)(i).

⁴⁰ H.R. 1815, § 2(i)(7)(E); S. 845, § 2(i)(1)(E).

⁴¹ H.R. 1815, §§ 2(i)(7)(E)(ii)-(iv); S. 845, §§ 2(i)(1)(E)(ii)-(iv).

⁴² H.R. 1815, § 2(i)(7)(E)(i); S. 845, § 2(i)(1)(E)(i).

⁴³ H.R. 1815, §§ 2(i)(7)(E)(vii)-(viii); S. 845, §§ 2(i)(1)(E)(vi), (viii).

⁴⁴ H.R. 1815, § 2(i)(7)(E)(ix); S. 845, § 2(i)(1)(E)(ix).

⁴⁵ See H.R. 1815, §§ 2(i)(7)(E)(v)-(vi); S. 845, §§ 2(i)(1)(E)(v), (x).

⁴⁶ H.R. 1815, § 2(i)(7)(E)(xi).

⁴⁷ H.R. 1815, § 2(i)(7)(E)(xii).

⁴⁸ H.R. 1815, § 2(i)(7)(E)(xiii).

⁴⁹ H.R. 1815, § 2(i)(7)(E)(xiv).

⁵⁰ H.R. 1815, § 2(i)(7)(E)(x).

⁵¹ S. 845, § 2(i)(1)(E)(vii).

removal proceeding resulting from the enforcement action.”⁵² Furthermore, the individual “who is the subject of such removal proceeding may file a motion for the immediate termination of the removal proceeding.”⁵³

It should be noted that this Resolution also urges ICE and CBP to revise their sensitive locations policies similarly, and independent of any action that might be taken by Congress, in order to ensure all persons’ fair and unfettered access to justice.

Conclusion

For the reasons set forth above, the ABA urges Congress to revise and codify Department of Homeland Security guidelines regarding immigration enforcement actions, to include courthouses as “sensitive locations” in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated supervisory official. The ABA also calls upon the U.S. Immigration and Customs Enforcement and Border Protection to revise their own existing guidelines on enforcement actions in “sensitive locations” to include federal, state, local, territorial and tribal courthouses and to do so without awaiting congressional action.

Respectfully submitted,

Jeffrey N. Catalano
President, Massachusetts Bar Association

August 2017

⁵² H.R. 1815, § 2(i)(4)(A); S. 845, § 2(i)(2)(C)(i).

⁵³ H.R. 1815, § 2(i)(4)(B); S. 845, § 2(i)(2)(C)(ii).

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GENERAL INFORMATION FORM

Submitting Entities: Massachusetts Bar Association, ABA Criminal Justice Section

Submitted By: Jeffrey N. Catalano, President, Massachusetts Bar Association;
Matthew Redle, Chair, ABA Criminal Justice Section
Laurence Pulgram, Chair, ABA Section of Litigation

1. Summary of Resolution(s).

This resolution advocates for the revision of Department of Homeland Security guidelines regarding immigration enforcement actions so as to include courthouses as “sensitive locations” in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated supervisory official. This resolution also advocates for U.S. Immigration and Customs Enforcement and Border Protection to revise the existing guidelines on enforcement actions in “sensitive locations” to include federal, state, local, territorial and tribal courthouses in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designative official and to do so without awaiting congressional action.

2. Approval by Submitting Entity.

This resolution was passed by the Massachusetts Bar and the ABA Criminal Justice Council in August 2017.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The following Association policy is relevant but none would be affected by the adoption of this resolution:

2002 (AY) 115B:

Protection of Rights of Immigration Detainees

Opposing incommunicado detention of foreign nationals and urging immigration authorities to adopt certain detention standards, including access to counsel and legal information.

2006 (MY) 107A:

Due Process Right to Counsel in Immigration Related Matters:

Supporting the due process right to counsel for all persons in removal proceedings, and the availability of legal

representation for all non-citizens in immigration-related matters.

2006 (MY) 107B:

Immigration Reform

Supporting a regulated, orderly and safe system of immigration and the need for an effective and credible immigration enforcement strategy, including one that respects domestic and international legal norms.

2006 (MY) 107C:

Due Process and Judicial Review in Immigration Related Matters:

Urging an administrative agency structure that will provide all non-citizens with due process of law and in the conduct of their hearings or appeals; supporting the neutrality and independence of immigration judges so that such judges and agencies are not subject to the control of any executive cabinet officer.

2006 (MY) 107D:

Administration of Immigration Laws

Supporting a system for administering our immigration laws that is transparent, user-friendly, accessible, fair and efficient, and that has sufficient resources to carry out its function in a timely manner.

2006 (MY) 107E:

Detention in Immigration Removal Proceedings

Opposing the detention of non-citizens in removal proceedings except in extraordinary circumstances; supporting the use of humane alternatives to detention that are the least restrictive necessary to ensure appearance at immigration proceedings.

2006 (MY) 107G:

Crime Victims in Immigration Related Matters

Supporting avenues for lawful immigration status for victims of human trafficking and other related crimes; opposing the apprehension of victims of human trafficking and other related crimes.

2008 (MY) 111B:

Immigration Detention Standards

Supporting the issuance of federal regulations that codify the DHS-ICE National Detention Standards, and the improvement, periodic review and increased oversight of the standards to ensure that detained non-citizens and their families are treated humanely and have effective access to counsel and to the legal process.

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- 2009 (MY) 101C: Due Process and Access to Counsel in Immigration Enforcement Actions
Supporting legislation and/or administrative standards to ensure due process and access to appropriate legal assistance to persons arrested or detained in connection with immigration enforcement actions.
- 2010 (MY) 102G: Non-Partisan Attorneys in the Department of Justice
Urging the President and the Attorney General to ensure that lawyers in the Department of Justice, and leaders of state, local and territorial legal offices, do not make decisions concerning investigation or proceedings based upon partisan political interests and do not perceive that they will be rewarded for, or punished for not, making a decision based upon partisan political interests.
- 2017 (MY) 10C: Urges the President to Withdraw Executive Order 13769
Urging that the Executive Branch, while fulfilling its responsibilities to secure the nation's borders, take care that any Executive Orders regarding border security, immigration enforcement, and terrorism respect the bounds of the U.S. Constitution and facilitate a transparent, accessible, fair, and efficient system of administering the immigration laws and policies of the United States.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

This resolution is the result of recent well-documented reports of a serious escalation of incidents in which persons have been arrested by DHS enforcement officers in courthouses. In order for the ABA and its members to advocate on behalf of this issue, we cannot wait until Midyear 2018 for the House of Delegates to meet again.

6. Status of Legislation.

Two parallel pieces of legislation, together called "The Protecting Sensitive Locations Act," are currently pending. House Bill 1815 has been referred to the House Committee on the Judiciary. Senate Bill House Bill 845 has been referred to the Senate Committee on the Judiciary. These bills are discussed in Section IV of the Report.

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7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

This resolution will be used by the Government Affairs Office in its lobbying efforts, as well as by ABA members who wish to engage with members of Congress and the Executive Branch to advocate on behalf of the interests expressed in this resolution.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals. Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

Commission on Veteran's Legal Services
 Legal Aid & Indigent Defense
 Commission on Disability Rights
 Special Committee on Hispanic Legal Rights & Responsibilities
 Commission on Homelessness and Poverty
 Center for Human Rights
 Commission on Immigration
 Racial & Ethnic Diversity
 Racial & Ethnic Justice
 Youth at Risk
 Young Lawyer's Division
 Civil Rights and Social Justice
 Government and Public Sector Lawyers
 International Law
 Federal Trial Judges
 State Trial Judges
 Law Practice Division
 Science & Technology
 Health Law
 Litigation

11. Contact Name and Address Information. (Prior to the meeting)

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Committee for Public Counsel Services
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12. Contact Name and Address Information. (Who will present the report to the House?)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution advocates for the amendment of Section 287 of the Immigration and Nationality Act to expand and codify Department of Homeland Security guidelines regarding immigration enforcement actions, to include courthouses as “sensitive locations” in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated supervisory official. The Resolution also urges U.S. Immigration and Customs Enforcement and Customs and Border Patrol to revise existing guidelines on enforcement actions in “sensitive locations” to include federal, state, local, territorial and tribal courthouses, in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designative official, and to do so without awaiting congressional action.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses the current state of unrestrained and unguided immigration enforcement practices taking place in our courthouses, by urging Congress and the Department of Homeland Security to recognize courthouses as “sensitive locations” in which enforcement actions should only be undertaken where there is a showing of exigent circumstances and upon the prior approval from a previously designated, supervisory official.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution will be used by the Government Affairs Office in its lobbying efforts, as well as by ABA members who wish to engage with members of Congress and the Executive Branch to advocate on behalf of the interests expressed in this resolution.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.

New York State Bar Association
Committee on Immigration Representation
Resolution Adopted by House of Delegates
January 28, 2018

WHEREAS, the New York State Bar Association (NYSBA) has long supported and encouraged equal access to justice and to our courts of law for all, including immigrants residing in New York State; and

WHEREAS, in the past, NYSBA has actively promoted and participated in efforts to provide immigrants in New York with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose, as well as through partnerships with Governor Cuomo's Liberty Defense Project; and

WHEREAS, since the beginning of 2017 advocates have noticed an increase in the presence of Immigration and Customs Enforcement (ICE) agents in New York's courthouses, with a study by the Immigrant Defense Project (IDP) showing a eight-fold increase in arrests of immigrants on civil immigration charges within our State's courthouses; and

WHEREAS, the same study by IDP showed that 75% of immigration legal service providers in New York have worked with clients who have expressed fears of going to New York courts, including to resolve criminal charges against them, to act as witnesses, or to obtain orders of protection; and

WHEREAS, leading law enforcement voices in New York, including New York State Attorney General Eric Schneiderman and Kings County Acting District Attorney Eric Gonzalez have spoken of the chilling effect these tactics have had by ICE on immigrants seeking justice in our courts; and

WHEREAS, NYSBA believes that true access to justice includes the ability to appear, defend oneself, and obtain protection from our courts free from the fear of ancillary punishment;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby urges Immigration and Customs Enforcement (ICE) to include courthouses as a "sensitive location" in its Sensitive Locations Policy, which enumerates the places in which ICE will not conduct enforcement actions barring exigent circumstances.

RESOLVED, that the New York State Bar Association also urges Congress to pass the "Protecting Sensitive Locations Act" and to amend Section 287 of the Immigration and Nationality Act to codify the Sensitive Locations Policy and to include courthouses as a sensitive location therein.

NYSBA Committee on Immigration Representation
REPORT: Immigration and Customs Enforcement Arrests in Courthouses

The New York State Bar Association (NYSBA) has long supported and encouraged access to justice for all, including unfettered access to our courts of law. While in the past this has meant championing issues relating to access to affordable counsel or language access issues, recent changes at the Federal level have created new and troubling challenges.

One of the communities most targeted by these changes has been New York's immigrant communities, including those who support and champion them irrespective of legal status. Specifically, since January, 2017 when President Donald Trump assumed control of the White House, there has been a noted increase in arrests by U.S. Immigration and Customs Enforcement (ICE) agents at New York's courthouses, including family court, traffic courts and, most significantly, criminal courts.

These actions, in turn, have had a dramatically chilling effect on immigrants' willingness to avail themselves of the justice system and the protections of the Courts. This Report details the findings of advocates and legal service providers across New York State as to both ICE's activities in and around our courthouses and the devastating impact it has had on our immigrant communities. It further supports the issuance of a Resolution by the NYSBA House of Delegates calling upon ICE to declare courthouses as sensitive locations and upon Congress to codify these protections into law.

SENSITIVE LOCATIONS POLICY

U.S. Immigration and Customs Enforcement (ICE) is the agency within the U.S. Department of Homeland Security (DHS) charged with internal enforcement immigration laws and other laws relating to national security. ICE is divided into multiple sub-agencies. Those relevant to this report are Enforcement and Removal Operations (ERO), which is tasked with administrative enforcement of the Immigration and Nationality Act (INA), and Homeland Security Investigations (HSI), which handles criminal investigations of crimes threatening national security, including related immigration enforcement actions that have a criminal component.¹ The provisions of the INA that ICE enforces are civil in nature.² These include: being present in the United States without lawful status, violating the conditions attached to immigration status, or being removable from the United States based on a criminal conviction.³ The incidents described in this report relate to civil arrests either by ERO, or by HSI using their administrative authority to enforce civil immigration laws.

The INA mandates that, absent exigent circumstances, ICE civil arrests be made pursuant to administrative warrants signed by the arresting agent's supervisor.⁴ These warrants are not reviewed or issued by a judge or other neutral party to determine whether probable

¹ Immigration and Customs Enforcement, "Who We Are" (last updated September 26, 2017), <https://www.ice.gov/about>.

² *Arizona v. United States*, 567 U.S. 387, 396 (2012) ("Removal is a civil, not criminal, matter."); see also *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (characterizing a deportation proceeding as "a purely civil action to determine eligibility to remain in this country").

³ INA § 212.

⁴ Immigration Legal Resource Center, "The Basics on ICE Warrants and Detainers" (May 2017), https://www.ilrc.org/sites/default/files/resources/ice_warrants_summary.pdf.

cause or reasonable suspicion has been objectively established, or to review the accuracy of the charges contained within.⁵

In 2011, then-ICE Director John Morton issued guidance known as the “Sensitive Locations Policy,” enumerating specific places where, barring exigent circumstances, ICE agents may not undertake enforcement actions. These are:

- schools (including preschools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.⁶

The memorandum also states that this is not an exhaustive list, and that agents should check with their supervisors if a place they intend to conduct an enforcement action could reasonably be viewed as a sensitive location.⁷ Exigent circumstances allowing for enforcement at sensitive locations include when:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;
- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.⁸

However, under President Trump, ICE has steadfastly refused to hold courthouses as a sensitive location, stating unequivocally so in a “Frequently Asked Questions” fact sheet

⁵ *Id.*

⁶ Memorandum from ICE Director John Morton, Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

⁷ *Id.*

⁸ *Id.*

updated as recently as June, 2017.⁹ The agency has also made clear that no one is exempt from arrests in courthouses, including victims and witnesses.¹⁰

IMMIGRATION AND CUSTOMS ENFORCEMENT’S INCREASED PRESENCE IN NEW YORK COURTHOUSES

Since early 2017, immigration lawyers and immigrant advocates have noticed a marked increase in the presence of ICE agents seeking to arrest immigrants in courthouses nationwide¹¹ In New York the Immigrant Defense Project (IDP) began tracking ICE arrests, including those made in courthouses across the state and, in June 2017, surveyed 225 attorneys and advocates from 31 New York counties to understand the impact of these increased enforcement actions.¹²

The results of the survey were startling:

- A third of respondents have seen ICE agents in courthouses;
- ICE agents were seen at courthouses in the 5 boroughs of New York City as well as Nassau, Suffolk, Westchester, Columbia, Dutchess, Saratoga, and Putnam Counties¹³;
- 74% of respondents 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; and
- 29% have worked with immigrants who failed to appear in court due to fear of ICE.¹⁴

⁹ Immigration and Customs Enforcement, “FAQ on Sensitive Locations and Courthouse Arrests” (last updated June 13, 2017), <https://www.ice.gov/ero/enforcement/sensitive-loc>.

¹⁰ Devin Barrett, “DHS: Immigration Agents May Arrest Crime Victims, Witnesses at Courthouse”, The Washington Post (April 4, 2017), https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.5fcacdd0ea34.

¹¹ James Queally, “ICE Agents Make Arrests at Courthouses, Sparking Backlash from Attorneys and State Supreme Court”, Los Angeles Times (March 16, 2017), <http://beta.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>

¹² Immigrant Defense Project, “ICE in New York State Courts Survey”, <https://www.immigrantdefenseproject.org/ice-courts-survey>.

¹³ In addition to these counties encompassed in the survey, news reports have also reported ICE arrests at Saratoga County courthouses. See Wendy Liberatore, “ICE Arrests Mexican Man Outside Saratoga City Court”, (November 2, 2017), <http://www.timesunion.com/news/article/ICE-arrests-Mexican-man-outside-Saratoga-city-12327064.php>

¹⁴ *Id.*

In one particularly troubling incident, witnessed by a WNYC reporter who happened to be in the building at the time, ICE agents came to arrest a Chinese woman who was appearing at the Human Trafficking Intervention Court in Queens.¹⁵ The woman was appearing in court to accept an adjournment in contemplation of dismissal.¹⁶ In part due to this incident, and another in a Texas Court where a domestic violence victim was arrested by ICE when she appeared to request an order of protection against her abuser,¹⁷ ICE's presence in courthouses have had a particularly terrible effect on survivors. According to the IDP survey:

- 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); and
- 46% have worked with immigrants who have expressed fear of serving as a complaining witness.¹⁸

In addition, ICE's presence in courts results in Immigrant New Yorkers facing criminal charges to choose between equally difficult options. They must either give up their constitutional rights and plead guilty early to avoid future court appearance; fail to appear altogether and risk a warrant being issued; or risk coming back to court in a system that is

¹⁵ Beth Fertig, "When ICE Shows Up in Human Trafficking Court", WNYC (June 22, 2017), <http://www.wnyc.org/story/when-ice-shows-court/>.

¹⁶ *Id.*

¹⁷ Richard Gonzales, "ICE Arrests Alleged Victim of Domestic Abuse at Texas Courthouse," National Public Radio (February 16, 2017), <https://www.npr.org/sections/thetwo-way/2017/02/16/515685385/ice-detains-a-victim-of-domestic-abuse-at-texas-courthouse>

¹⁸ Immigrant Defense Project, "ICE in New York State Courts Survey", <https://www.immigrantdefenseproject.org/ice-courts-survey>.

backlogged and can take months or years to get to trial, exposing themselves to an ICE arrest at each interim court appearance. Moreover, ICE agents have picked up defendants from court and arraignments while cases are ongoing, causing judicial delay in the criminal court, resulting in their inability to defend themselves against the charges they face, and ultimately resulting in a lack of closure for victims and defendants who have not had the opportunity of a final determination on the case.¹⁹ In one such case, a 38-year old Salvadoran man was charged with a DWI but did not appear in Court out of fear of ICE arrests.²⁰ In that instance, ICE came to court multiple times to find the Defendant, who was ultimately issued a bench warrant because of his failure to appear in Court out of fear of being detained by ICE.²¹

NEW YORK'S RESPONSE TO DATE

The Trump Administration, and ICE specifically, have been public about the fact that they are targeting jurisdictions like New York, so-called "Sanctuary Jurisdictions", to send a message that they will not tolerate policies that seek to protect immigrants.²² Nonetheless, across New York State, ICE has made arrests in localities that have no sanctuary policies.²³ New Yorkers have responded by rejecting ICE's presence in court houses.

¹⁹ Justine Olderman, "Trapping Immigrants Using NYC Courts", The New York Daily News (April 10, 2017), <http://www.nydailynews.com/opinion/trapping-immigrants-nyc-courts-article-1.3031295>

²⁰ Liz Robbins, "A Game of Cat and Mouse With High Stakes: Deportation," The New York Times, (August 3 2017), <https://www.nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html>.

²¹ *Id.*

²² Maria Sacchetti, "Trump Administration Targets 'Sanctuary Cities' in Latest Wave of Immigration Arrests," The Washington Post (September 28, 2017), https://www.washingtonpost.com/local/immigration/trump-administration-targets-sanctuary-cities-in-latest-wave-of-immigration-arrests/2017/09/28/9b5e7de2-a477-11e7-ade1-76d061d56efa_story.html?utm_term=.6fc2c547ecca

²³ Wendy Liberatore, "ICE Arrests Mexican Man Outside Saratoga City Court", (November 2, 2017), <http://www.timesunion.com/news/article/ICE-arrests-Mexican-man-outside-Saratoga-city-12327064.php>.

In the spring and again in the summer of 2017, 110 organizations submitted letters to state Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks urging them to take steps to prevent ICE from engaging in enforcement actions in courts.²⁴ Over the summer, New York Attorney General Eric Schneiderman and Kings County District Attorney Eric Gonzalez jointly called for ICE to cease enforcement activities in New York's courts, noting that ICE's presence interferes with the criminal justice system by making both defendants and witnesses afraid of going to court.²⁵ Similarly, after the incident at the Queens Human Trafficking Intervention Court in June, "state Chief Judge Janet DiFiore said she was 'greatly concerned' and that courts should be treated like schools, hospitals and other sensitive locations that the city considers off-limits to ICE."²⁶

In March, New York Congressman Adriano Espaillat introduced H.R. 1815, the "Protecting Sensitive Locations Act", in Congress. A similar bill, S. 845, was introduced in the Senate by Connecticut Senator Richard Blumenthal and co-sponsored by New York Senator Kirsten Gillibrand.

Both bills intend to expand upon and codify the sensitive locations memoranda from ICE and CBP by outlawing immigration-related enforcement actions at or near sensitive locations unless (1) exigent circumstances exist; and (2) prior approval is obtained. Both bills would apply

²⁴ Immigrant Defense Project, "ICE Out of Courts New York State Campaign", <https://www.immigrantdefenseproject.org/ice-courts-nys/>

²⁵ Liz Robbins, "A Game of Cat and Mouse With High Stakes: Deportation," *Supra*.

²⁶ Beth Fertig, "Should Immigration Agents Be Allowed to Wait Around Courts to Arrest People?" *PRI's The World*, (June 26, 2017), <https://www.pri.org/stories/2017-06-26/should-immigration-agents-be-allowed-wait-around-courts-detain-people>.

to any agency within DHS and also include local law enforcement officials who have been deputized to conduct immigration enforcement under INA § 287(g).²⁷

Both bills would expand the locations deemed sensitive, as compared to current ICE and CBP guidance. Notably, both bills include the space within 1,000 feet of each location, as well as the location itself.²⁸ Both bills mirror the current guidance in that they include in their list of protected locations schools (including school-related activities), medical facilities, places of worship, public ceremonies and public celebrations or demonstrations²⁹

Both bills would expand beyond current guidance, however, by adding not only courthouses, but also lawyers' offices and probation offices. Specifically, the House bill would prevent DHS enforcement at "any Federal, State, or local courthouse, including the office of an individual's legal counsel or representative, and a probation office."³⁰ The Senate bill would go further by preventing enforcement at "any Federal, State, or local courthouse, including the office of an individual's legal counsel or representative, and a probation, parole, or supervised release office."³¹

Finally, both bills list as sensitive locations places that provide emergency services, shelter, and food as well as domestic violence services, rape crisis centers, and family justice centers.³² The House bill would also include Congressional district offices, public assistance offices, social security offices, and motor vehicle departments.³³

²⁷ H.R. 1815, §§ 2(i)(2)(A)(i)-(ii); S. 845, §§ 2(i)(2)(A)(i)-(ii).

²⁸ H.R. 1815, § 2(i)(7)(E); S. 845, § 2(i)(1)(E).

²⁹ H.R. 1815, § 2(i)(7)(E); S. 845, § 2(i)(1)(E).

³⁰ H.R. 1815, § 2(i)(7)(E)(x).

³¹ S. 845, § 2(i)(1)(E)(vii).

³² *Id.*

³³ H.R. 1815, §§ 2(i)(7)(E)(xi)-(xiv).

If any DHS agent violates the bills, the information gathered during those enforcement actions could not be entered into evidence or used during removal proceedings, and the subject of the removal proceedings could move for immediate termination.³⁴

CONCLUSION

ICE's presence in New York State's courthouses has created a devastating and chilling impact on immigrant New Yorkers' ability to access the judicial system to defend themselves against criminal charges, participate in the prosecution of crimes, and obtain remedies, including sometimes life-saving protections, from our courts. These actions seriously and significantly undermine immigrant New Yorkers' access to justice through our courts, something that is antithetical to the Association's mission and the commitment we have made to our immigrant communities. For these reasons, the Committee on Immigration Representation respectfully urges the New York State Bar Association to request that ICE no longer operate in New York's courthouses, to support and encourage our court system to take all steps available to remove ICE agents from the courts, and to encourage and support our elected members of Congress who are working on passing the "Protecting Sensitive Locations Acts" in their respective chambers.

³⁴ H.R. 1815, § 2(i)(4); S. 845, § 2(i)(2)(C).



April 24, 2017

U.S. Commission on Civil Rights Expresses Concern with Immigrants' Access to Justice

The Commission is concerned that some of the most vulnerable individuals' access to justice is hindered by the recent actions of the federal government. The Commission urges Attorney General Sessions and Department of Homeland Security Secretary Kelly to consider the fair administration of justice when determining how and where they send Immigration and Customs Enforcement (ICE) agents.

In the last few months, troubling reports have emerged of federal immigration agents following, confronting, and in some instances, arresting undocumented immigrants in state and local courthouses when some of those immigrants were seeking help from authorities and the local justice system. For example, in Texas, ICE agents reportedly arrested a woman just after she obtained a protective order against her alleged abuser.¹ In Colorado, video footage of ICE agents with an administrative arrest warrant waiting in a Denver courthouse was widely circulated.² Similar reports have been made about courthouses in California,³ Washington,⁴ Arizona,⁵ and Oregon.⁶

Stationing ICE agents in local courthouses instills needless additional fear and anxiety within immigrant communities, discourages interacting with the judicial system, and endangers the safety of entire communities. Courthouses are often the first place individuals interact with local governments. It is the site of resolution for not only criminal matters, where a victim might seek justice when she has been harmed or

¹ Marty Schladen, *ICE detains alleged domestic violence victim*, El Paso Times, February 15, 2017,

<http://www.elpasotimes.com/story/news/2017/02/15/ice-detains-domestic-violence-victim-court/97965624/>.

² Erica Meltzer, *A video shows ICE agents waiting in a Denver courthouse hallway. Here's why that's controversial.*, Denverite, February 23, 2017, <https://www.denverite.com/ice-agents-denver-courthouse-hallway-video-30231/>.

³ James Queally, *ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court*, March 16, 2017, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>.

⁴ Natasha Chen, *More ICE agents seen waiting around local courthouses to intercept people*, KIRO 7, March 23, 2017, <http://www.kiro7.com/news/local/more-ice-agents-seen-waiting-around-local-courthouses-to-intercept-people/505226120>.

⁵ *Supra* note 3.

⁶ Aimee Green, *Men won't say they're federal agents, follow immigrant through Portland courthouse*, January 31, 2017, http://www.oregonlive.com/portland/index.ssf/2017/01/men_wont_say_theyre_federal_ag.html.

wronged, but also for resolution of civil matters, including family and custody issues, housing, public benefits, and numerous other aspects integral to an individual's life.

The chilling effect on witnesses and victims is already apparent. According to Denver City Attorney Kristin Bronson, four women dropped their cases of physical and violent assault for fear of being arrested at the courthouse and subsequently deported. Bronson stated that video footage of ICE officers waiting to make arrests at a Denver courthouse has “resulted in a high degree of fear and anxiety in our immigrant communities, and as a result, we have grave concerns here that they distrust the court system now and that we’re not going to have continued cooperation of victims and witnesses.”⁷

The response from Attorney General Sessions and Secretary Kelly to these concerns is that local officials “have enacted policies that occasionally necessitate ICE officers and agents to make arrests at courthouses and other public places,” and such policies “threaten public safety.”⁸ Contrary to this claim regarding jurisdictions that are refusing to hold individuals solely based on ICE detainer requests, it appears that these tactics have been deployed even where local law enforcement has indicated that they are willing to act in concert with federal immigration agents. In El Paso County, Texas, for instance, Sheriff Richard Wiles signed a letter requiring his office to hold any individuals with an ICE detainer request.⁹ Despite this, ICE agents entered a courthouse in El Paso County to arrest a woman after she left the courtroom where she secured a protective order against her alleged abuser.¹⁰

More importantly, even if this strategy were used exclusively in jurisdictions refusing to cooperate regarding enforcement of ICE detainers, studies have shown that public safety is in fact undermined when members of the community are fearful of local law enforcement and therefore less likely “to report crimes, make official statements to police or testify in court.”¹¹

⁷ Heidi Glenn, *Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver*, NPR, March 21, 2017, <http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver>.

⁸ Letter from Attorney General Sessions and Secretary Kelly to the Honorable Tani G. Cantil-Sakauye, dated March 29, 2017, available at <https://www.nytimes.com/interactive/2017/03/31/us/sessions-kelly-letter.html>.

⁹ Aileen B. Flores, *Sheriff honors US immigration detention requests*, El Paso Times, January 23, 2017, <http://www.elpasotimes.com/story/news/local/el-paso/2017/01/23/sheriff-honors-us-immigration-detention-requests/96972384/>.

¹⁰ See *supra* note 1; Jonathan Blitzer, *The Woman Arrested By ICE In A Courthouse Speaks Out*, The New Yorker, February 23, 2017, <http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>.

¹¹ Wayne A. Cornelius, Angela S. Garcia, and Monica W. Varsanyi, *Giving sanctuary to undocumented immigrants doesn't threaten public safety – it increases it*, L.A. Times, February 2, 2017, <http://www.latimes.com/opinion/op-ed/la-oe-sanctuary-cities-trump-20170202-story.html> (citing Doris Marie Provine, Monica W. Varsanyi, Paul G. Lewis, and Scott H. Decker, *Policing Immigrants: Local Law Enforcement on the Front Lines*, University of Chicago Press, 2016).

In the words of California Supreme Court Chief Justice Tani G. Cantil-Sakauye: “Courthouses should not be used as bait in the necessary enforcement of our country’s immigration laws.”¹² Chair Catherine E. Lhamon adds: “The fair administration of justice requires equal access to our courthouses. People are at their most vulnerable when they seek out the assistance of local authorities, and we are all less safe if individuals who need help do not feel safe to come forward.”

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The U.S. Commission on Civil Rights is an independent, bipartisan agency charged with advising the President and Congress on civil rights matters and issuing an annual federal civil rights enforcement report. For information about the Commission, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).

¹² Letter from Chief Justice Tani G. Cantil-Sakauye to Attorney General Sessions and Secretary Kelly, dated March 16, 2017, available at <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>.

Freezing Out Justice

How immigration arrests at courthouses are undermining the justice system

The background of the lower half of the image shows three ornate wooden judge's benches in a courtroom. The benches are dark wood with decorative carvings and are set against a wood-paneled wall. The lighting is warm and focused on the benches.

ACLU

Freezing Out Justice

How immigration arrests at courthouses
are undermining the justice system

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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 (TVPA), 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.