

SECTION 6: STATEMENTS AND POLICIES BY THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION (OCA) IN RESPONSE TO ADVOCACY EFFORTS

BACKGROUND

In New York, a significant part of the advocacy campaign is for the Chief Judge to promulgate rules that would protect universal courthouse access. (See Proposed Judicial Rules). The Chief Judge has also been an important actor in legislative advocacy and conversations with other policymakers, as these actors appeared to view the courts as to a relevant degree the domain of the Chief Judge, and so they were interested in her office's position on courthouse arrests and raids.

Our advocacy with the Chief Judge began with a first joint letter from the ICE Out of Courts Coalition to the Office of Court Administration. This was followed by a series of meetings with different representatives from OCA, and with the Chief Judge herself and her Chief Administrative Judge and counsel. During those meetings, we and Coalition partners and other advocates presented our concerns over courthouse arrests and their threats to public safety, due process, and to constitu-

tional rights to participate in the court process. We have presented data, case stories, legal theories, and have proposed judicial rules.

Part of our advocacy and conversations with the Chief Judge and her office have involved us educating them about the way ICE functions as an agency, and in particular how it functions under Trump. This has involved walking decisionmakers through the federal statutes, regulations, and court decisions that establish the range of what is within the scope of lawful ICE authority, and then contrasting those standards with ICE's adopted policies (like the courthouse arrest directive) and the conduct of its agents in the field. It has also involved conversations about the escalating role of court officers and other employees of OCA working in the courts. We documented cases of OCA staff facilitating arrests, separating people facing arrest from counsel, giving ICE access to private areas of courthouses and to identifying information about litigants before the courts, and rearranging court calendars and moving files.

During the campaign, the union of court officers in New York released a one-sentence memorandum voicing its support for courthouse arrests. (See Memo of Dennis Quirk). Recently, the union stated publicly that it would comply with a law like the New York Protect Our Courts Act that regulates courthouse arrests.

Our conversations with the Chief Judge and her office have been ongoing since April 2017. OCA, the Chief Judge, and other influencers have expressed concerns or had questions about some of the following issues about courthouse arrests:

- Whether ICE arrests of those attending court are causing declines in court participation, or otherwise disrupting court functioning.

- Whether decisionmakers in other states have taken the kinds of action we are requesting.
- Whether ICE is making arrests in the family and human trafficking courts, and/or arrests of people traditionally regarded as vulnerable (in particular, victims and witnesses).
- Whether prosecutors are having difficulty prosecuting cases because of ICE arrests, and whether prosecutors support judicial rules or other policies that would regulate courthouse arrests.

The media has widely covered public statements of OCA and the Chief Judge on courthouse arrests, reaching out to their office for comment after almost all major incidents in New York. OCA has also publicly released an internal policy that addresses federal civil immigration arrests inside courthouses in New York. (See OCA Policy). IDP and partners have found the policy to be inadequate to mitigate the negative impacts of courthouse arrests, and have continued to advocate for better, more effective policies.


RESOURCES

- OCA protocol
- OCA public statements
- “Memo” from Dennis Quirk, leader of the Court Officers’ Union in New York
- Examples of New York OCA officer involvement in ICE arrests



MEMORANDUM

TO: All Chiefs and Majors

FROM: Chief Michael Magliano 

DATE: April 26, 2017

**Office of the Chief Administrative Judge
New York State Unified Court System**

**Policy and Protocol Governing
Activities in Courthouses by Law Enforcement Agencies**

It continues to be the policy of the Unified Court System to permit law enforcement agencies to act in the pursuit of their official legal duties in New York State courthouses, provided that the conduct in no way disrupts or delays court operations, or compromises public safety or court decorum.

The following protocol shall apply to representatives of law enforcement agencies who enter a New York State courthouse to take a person into custody but do not have a warrant issued by a judge of the Unified Court System authorizing them to do so:

- Upon entry to a courthouse, law enforcement officials covered by this protocol shall identify themselves to UCS uniformed personnel, and state their specific law enforcement purpose and the proposed enforcement action to be taken. The UCS officer shall immediately transmit this information to an appropriate supervisor.
- The supervisor shall inform the judge if a law enforcement agent covered by this protocol is present in the courthouse with the intent of arresting or otherwise taking into custody a party or other participant in a case before the judge.
- Absent leave of the court under extraordinary circumstances (e.g., extradition orders), no law enforcement action may be taken by a law enforcement agency in a courtroom.
- UCS uniformed personnel shall file an Unusual Occurrence Report for each law enforcement action taken in a New York State courthouse by a law enforcement agency covered by this protocol.
- UCS uniformed personnel remain responsible for ensuring public safety and decorum in the courthouse at all times.

This policy and protocol is subject to modification based on changed circumstances.



NEWS & POLITICS

Court Officers Are Aiding in Immigration Arrests, Say Lawyers

ICE agents have now arrested 69 immigrants at city courthouses this year, and lawyers say state officers are abetting Trump's crackdown

by FELIPE DE LA HOZ AND EMMA WHITFORD

NOVEMBER 16, 2017

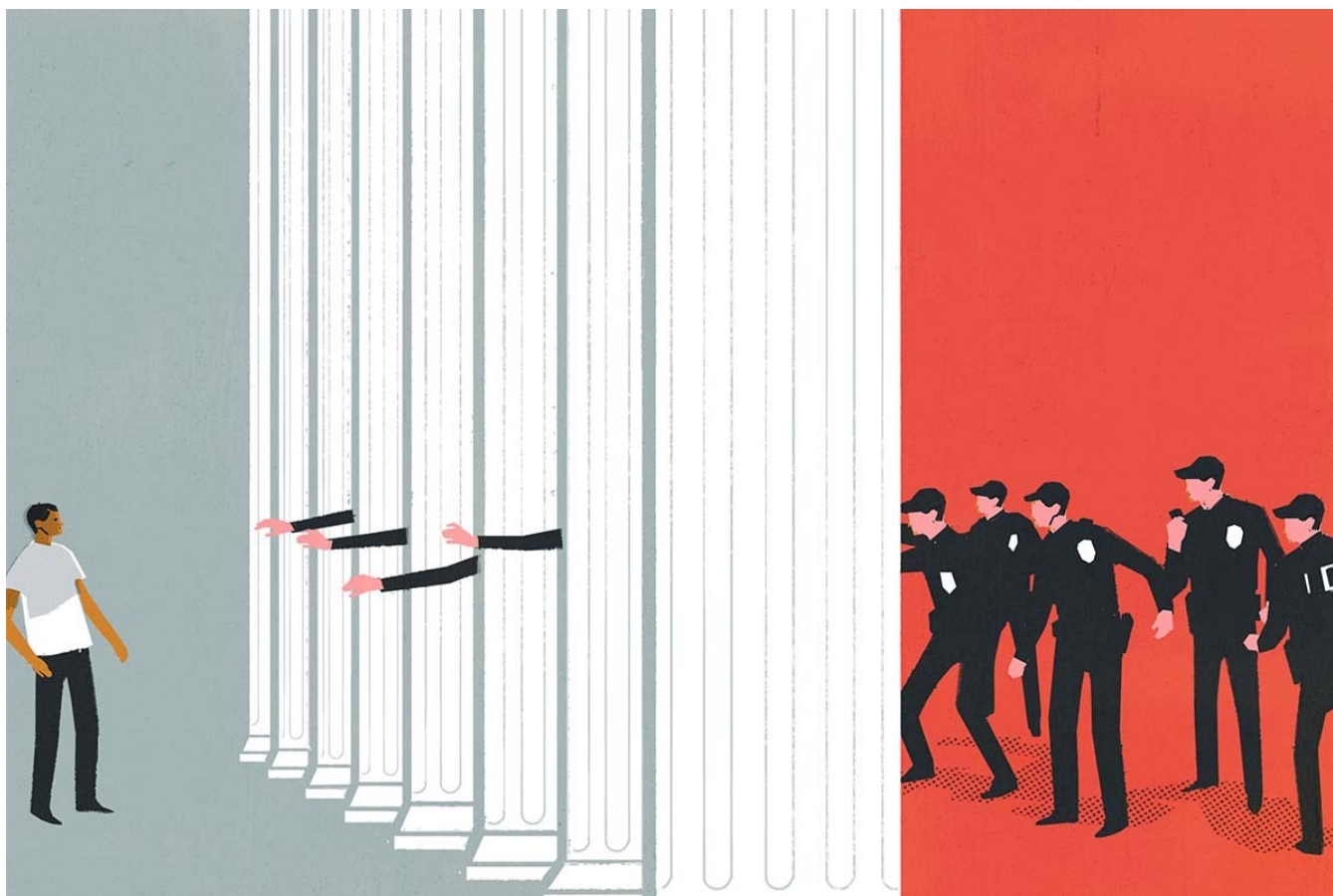


ILLUSTRATION BY CHRIS GASH

Ishmael Garcia-Velasquez wore a suit and tie to Brooklyn Criminal Court on Tuesday morning. The 35-year-old father has made routine appearances over the past seven months on petit larceny and misdemeanor assault charges, according to his lawyer. But this time, after yet another adjournment, plainclothes agents from Immigration and Customs Enforcement handcuffed Garcia-Velasquez outside of the courtroom. Several court officers helped usher him into a private elevator



There was no apparent reason for Garcia-Velasquez, a noncitizen originally from Mexico, to have been targeted, his Legal Aid Society attorney, Rebecca Kavanagh, tells the *Voice*. “He had no record and no previous removal order,” she explains. “He just has nothing like that and it’s just really upsetting.”

Prosecutors charge that Garcia-Velasquez punched his ex-wife’s boyfriend and took the man’s wallet, though Garcia-Velasquez maintains his innocence. He has twice rejected a plea that would land him five days of community service. “It’s a matter of principle,” Kavanagh says. “He was determined not to plead to anything.”

As of Tuesday, Garcia-Velasquez was the 38th person to be escorted from a New York City courthouse in ICE custody since February, according to the state Office of Court Administration. The Immigrant Defense Project, a legal services and advocacy organization that has been monitoring the phenomenon, says that including arrests made outside of city court buildings, Garcia-Velasquez’s was the 67th city courthouse arrest so far this year.

By mid-morning Wednesday, that count had been brought up to 69, as ICE arrested two more noncitizens at Brooklyn Criminal Court, OCA confirmed: Jasmine Rowe and Jaime Buestan were both taken into custody in the hallway outside of a courtroom after their misdemeanor assault cases were adjourned until January. Rowe, like Garcia-Velasquez, is a parent with no criminal record, according to her lawyer. She also maintains her innocence, and has refused to plea.

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ICE Is Using Prostitution Diversion Courts to Stalk Immigrants

by MELISSA GIRA GRANT

Since President Donald Trump widened the immigration enforcement dragnet early this year, Mayor Bill de Blasio and Governor Andrew Cuomo have taken pains to assure noncitizens that city and state employees, including police officers, will not assist ICE in deporting local residents. But courthouses, which ICE can enter freely, fall outside of city and state jurisdiction. They are the purview of OCA.

“We do not facilitate or impede ICE when they effect an arrest,” OCA spokesperson Lucian Chalfen tells the *Voice*. ICE agents must announce themselves when they enter a courthouse and can’t make arrests inside courtrooms. Beyond that, says Chalfen, “We ensure that their activity does not cause disruption or compromise public safety in the courthouse.”

“In maintaining order they *are* assisting the [deportation] process,” Kavanagh counters. “It’s one thing that ICE is able to make these arrests in court. It’s quite another that they are being accommodated the way they are” by court officers.

In Garcia-Velasquez’s case, says Legal Aid senior attorney Melissa Kanas, the arrest could not have been facilitated so smoothly without court officers’ help. Kanas, who was present in the court at the time, managed to take one picture of the arrest for her colleague Kavanagh to tweet out as a warning to other noncitizens, then attempted to follow Garcia-Velasquez through a set of double doors to the inmate elevator. Though the doors also lead to the clerk’s office, which is open to the public, she says a court officer stopped her.



going to go down, and we're in the hallway to prevent any further altercation."

Kanas was denied access to the elevator, says Quick, because the inmate elevator is private.

"Legal Aid knows damn well that if ICE is there and knows who they're taking, they're going to take them," he adds. "So what is the purpose of creating this commotion in the hallway? All they do is alarm everybody else that's there. They create a public nuisance."

Federal immigration enforcement in courthouses has spiked under Trump. The IDP counted 110 arrests and attempted arrests at courthouses statewide this year, a nearly 900 percent increase over the 11 courthouse arrests and attempted arrests counted in all of 2016.

As word spreads of ICE arrests in courthouses, more and more immigrants are choosing to just stay home, dropping cases against predatory employees and abusive spouses for fear of being deported.

Carmen Maria Rey, the deputy director of the Immigration Intervention Project at Sanctuary for Families, describes the plight of one client, a 37-year-old Central American woman who didn't seek to regain custody of her daughter from an abusive partner out of fear that she'd be arrested at court. He "has told her all the time that if she goes into proceedings, he'll call immigration on her. He'll know exactly where she'll be," says Rey. "Does she try to negotiate with the father to see her daughter again, or does she get deported and never see her daughter again?"

AS WORD SPREADS OF ICE ARRESTS IN COURTHOUSES, MORE IMMIGRANTS ARE CHOOSING TO JUST STAY HOME

In New York City, where about 400,000 residents are undocumented, the share of the population affected is not trivial. And with the federal government's decision to wind down portions of the Temporary Protected Status program, and no legislative replacement yet for the recently canceled Deferred Action for Childhood Arrivals (DACA) program, the ranks of the fearful could very well swell in the coming months.

Lee Wang, a staff attorney with IDP, says that in court buildings, ICE agents benefit from what she describes as a dangerous "fraternity among law enforcement."

Since February, her group has kept a running list of instances where court officers allegedly assist ICE in making an arrest.



In one sworn affidavit to IDP, attorney Katherine Bajuk of New York County Defender Services described an arrest that took place on April 5, when one of her clients was in court on a second-degree robbery charge. The client, a sexual assault survivor, was exiting the courtroom with two lawyers when, she says, ICE agents and one court officer intervened. The two lawyers “were stopped at the door by ICE and one court officer assisting them,” Bajuk wrote, “and excluded from the area between the two sets of doors where the arrest took place and not allowed to witness her arrest even though we requested access.”

Quirk, the union head, says OCA officers will help ICE under certain circumstances. “If a fight breaks out and they are having a difficulty, we would assist any law enforcement person,” he says. “But other than that we are not involved. If we are attempting to arrest, and ICE is there, they’d help us. That’s what law enforcement does.”

“I understand that as an impulse,” says Wang. “But then there’s also the question of who are [court officers] there to serve and protect? They are there to ensure the orderly operation and safety in courts. The idea that rogue ICE agents are picking people up is undermining the safety of the courts. That seems like a conflict.”

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by MAX RIVLIN-NADLER

Asked to comment on the risks noncitizens face in court, mayoral spokesperson Seth Stein said, “Over-broad federal immigration enforcement in courts is a threat to public safety that discourages victims, witnesses, and defendants from coming forward.” He also stressed that courts are under OCA’s jurisdiction.

Any change in court officer directives would come from the state’s chief judge, Janet DiFiore. “We maintain a continuing dialogue, and have met with federal officials on a local and national level to convey our concerns and request that they treat courthouses as sensitive locations,” says OCA’s Chalfen. (ICE already considers schools and places of worship “sensitive,” and discourages agents from making arrests inside of them.) Chalfen adds that OCA leadership has “held several lengthy meetings with the defense bar and advocates, and are always available to further discuss the issue.”

If legal advocates want to prevent ICE arrests in courts, Quirk says, they should file suit to prevent it. Legal Aid “may be 100 percent right in that politically, and legally, ICE shouldn’t be doing what they’re doing,” he surmises. “But we have a president of the United States who has directed them to do their duty.”

One policy change floated by advocates would be to require agents entering courthouses to have a judicial warrant in hand, instead of camping in corridors waiting for possible targets. Judicial warrants have to be reviewed and signed by a judge, while immigration warrants can easily be issued at will by ICE’s own staff.

Once an immigrant is in ICE custody, regardless of his innocence in criminal court, attorneys have little recourse. Until Tuesday, Garcia-Velasquez had worked at a diner and picked up his six-year-old daughter from school each day. As of



Kavanagh compares Garcia-Velasquez’s arrest and the two that followed to September 14, when ICE agents arrested four men outside of Brooklyn Criminal Court in one go. That day, she says, a large group of reporters descended. She sees these individual courthouse arrests, in murky consort with court officers, as “much more surreptitious.”

“It just becomes the norm,” she adds. “And that’s a real problem.”

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The City Council, at the direction of Speaker Melissa Mark-Viverito, is currently evaluating what recourse, if any, the city has to prevent ICE officers from entering courtrooms. | Getty

Court officers union tells members to cooperate '100 percent' with ICE

By COLBY HAMILTON, GLORIA PAZMINO and AZI PAYBARAH | 03/24/2017 08:04 PM EDT

Court officers across New York have been instructed to provide "100 percent cooperation" with Immigration and Customs Enforcement" as part of a directive sent by the head of the State Court Officers' union this week.

The memo, from New York State Court Officers Association head Dennis Quirk, was in

response to requests by legal service providers in New York City who have been pushing the state's Office of Court Administration (OCA) to establish the courthouses as sanctuary spaces. The issue has taken on newfound relevance in recent weeks, after an increase in enforcement by ICE officials, including attending local court proceedings in order to make arrests.

"Effective immediately, inform members to provide 100 percent cooperation to ICE and any other law enforcement agency and disregard any instruction to the contrary," wrote Quirk in the memo. "Also, report any attempts by anyone to obstruct ICE to the union immediately."

OCA has yet to decide whether to set a policy on the controversial issue, and has not determined whether officers even have the power to deny federal law enforcement officers access to defendants in its facilities.

"We're aware of the ongoing situation. The chief administrative judge and senior court administrators are monitoring what's transpiring on a daily basis," Lucian Chalfen, a spokesman for OCA, told POLITICO New York. "We'll see as things develop ultimately what there should be, if any, necessitated change to our policy."

The union memo comes in the middle of a larger debate on the role of the courts in the battle over new federal immigration policies under President Donald Trump. According to Quirk, who spoke with POLITICO New York, the memo was not an attempt by the union to become part of that debate.

"We're not getting into this political fight between Washington and everybody else," he said. Rather, after speaking with their own counsel, Quirk said the union believes, absent a legislative change, that ICE — nor any other individual or group — cannot be barred from entrance.

The City Council, at the direction of Speaker Melissa Mark-Viverito, is currently evaluating what recourse, if any, the city has to prevent ICE officers from entering courtrooms.

Mark-Viverito has said she would be willing to pursue legislation to make the change, although it remains unclear which agency has authority to make those rules or if the change can be made through legislation.

"Telling court officers to disobey a directive is irresponsible. I am confident that the Court officers who keep the courts secure for the public would not disobey any directive from their superiors," Mark-Viverito told POLITICO New York in a statement, referring to the

difference between official OCA policy and the union's legal opinion.

Quirk said that New York State courthouses are public buildings and, unlike city schools or detention facilities — both of which the city has taken measures to restrict ICE from — allow any and all entrance, whether relatives of defendants or federal law enforcement officials.

“Our policy in the state courts is: We don't ask anybody any questions,” he said.

What happens when ICE officials are inside the courthouses is another story, he noted. Judges have almost unilateral control over what happens in their courtrooms. If a judge doesn't want ICE officials present in their courtroom, they have the power to keep them out, Quirk said.

“It's going to be up to the judge in each individual courtroom,” he said. “We're not going to make that decision.”

For example, Quirk said a judge in the Bronx this week agreed to a request by an attorney to set bail for a defendant facing possible deportation by ICE. Unable to afford bail, the defendant was handed back over to the city's Department of Correction—which follows city rules to limit cooperation with ICE officials.

Legal service providers have been pushing OCA to set rules in accordance with a recent legal opinion issued by the office of state Attorney General Eric Schneiderman.

In his guidelines, Schneiderman contended that state employees are not compelled to cooperate with ICE. The legal providers believe state court officers fall under that category, and legal observers who have reviewed the guidelines agreed about the officers' status.

If the state legislature wants to tackle the issue and specifically bar ICE from entry into state courthouses, Quirk said he and his fellow officers would be happy to follow the new rules.

“If this is really a problem and they wanted to do something about this, they could do it,” he said.

ICE Arrests In NYC Courts Done Behind Lawyers' Backs, They Say

NEW YORK, NY — Jasmine Rowe's Nov. 15 appearance at the Brooklyn criminal court was supposed to be routine. She and Sarah O'Leary, her Legal Aid defense attorney, spent about 10 minutes discussing her low-level assault case with the prosecution and Judge Rosemarie Montalbano.

Rowe, a 40-year-old immigrant living in Flatbush with no prior criminal record, is fighting the charges. The judge told them all to have a nice holiday season and come back Jan. 10, O'Leary said.

O'Leary spent a few more minutes discussing the case with Rowe before her client left the courtroom. When O'Leary walked into the hallway a few minutes later, she said, she found Rowe gone and her friend sitting distraught on a bench.

"I don't understand, why are they arresting her?" O'Leary recalled the friend telling her.

O'Leary had no idea Immigration and Customs Enforcement officers were waiting outside the courtroom to arrest Rowe. She's among a growing number of criminal defense attorneys kept in the dark when ICE plans to arrest their clients, lawyers and immigrant-rights advocates say.

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The state Office of Court Administration's protocol requires ICE agents to tell court officers when they come to make an arrest. But no one has to tell lawyers when an arrest is imminent.

O'Leary was able to give Rowe a quick primer on her rights in immigration custody before ICE took her away, she said. But defense attorneys don't get that chance if ICE whisks away their clients without their knowledge, according to lawyers.

That can leave immigrants with a lack of knowledge about what to do if they're searched or interrogated while in ICE custody, said Lee Wang, a staff attorney with the Immigrant Defense Project, an advocacy group that tracks ICE arrests at New York courts.

"It's almost kind of like they're defending their clients with their hands tied behind their backs," Wang said. "If they don't have the information, how are they supposed to stand up for their clients' rights?"

Immigrants have a right to speak to a lawyer and [don't have to answer questions](#) or sign anything, according to the IDP. New York City and the state offer to pay for legal help with immigration proceedings.

But if someone doesn't know those things when they're arrested, they could end up answering questions and giving the government evidence to use against them in immigration court, lawyers said.

It also becomes harder for immigrants to defend themselves in criminal cases — and for local prosecutors to try them — when ICE takes them to immigration detention centers in sometimes far-off locations, Wang said.

Immigration arrests at New York City courthouses have [skyrocketed 600 percent](#) in the past year, according to Immigrant Defense Project data published earlier this month. The IDP counted 78 ICE arrests in New York City as of Nov. 14, up from just 11 in all of 2016.

In many cases, public defenders learn only from other attorneys that ICE has arrested someone in a courthouse, said Patricia Lavelle, a staff attorney in the Legal Aid Society's Brooklyn immigration law unit.

ICE officers have to identify themselves to court personnel when they come to make an arrest, according to protocol set by the Office of Court Administration, a state agency. Court officers must then inform judges if ICE plans to arrest someone involved in a hearing over which they're presiding.

Judges can let attorneys for both sides know that the defendant may be arrested after a hearing, OCA spokesman Lucian Chalfen said. But whether to do so is entirely up to the judges.

"This advisement is intended to give defense counsel time to advise the defendant regarding his immigration case and, if appropriate, give time to execute a notice of appearance to attach the right of counsel," Chalfen said in an email.

An ICE spokesperson has not yet answered questions that Patch emailed Wednesday. But a spokeswoman told Politico New York in August that arresting immigrants at courthouses comes with a [lower safety risk](#) for ICE agents.

"Because courthouse visitors are typically screened upon entry to search for weapons and other contraband, the safety risks for the arresting officers and for the arrestee inside such a facility are substantially diminished," the ICE spokeswoman, Rachel Yong Yow, told Politico.

"As such, ICE plans to continue arresting individuals in courthouse environments as necessary, based on operational circumstances."

On the day ICE arrested Rowe, O'Leary spent the afternoon trying to inform tell family — including her client's 16-year-old son — what had happened. As of Wednesday, O'Leary still hadn't been able to speak with the single mom, who was taken to an immigrant detention center in New Jersey.

Until this year, O'Leary had never heard of ICE arresting people in criminal courts in her eight years with Legal Aid. She said court officers should cooperate more with lawyers when ICE comes to courthouses.

But she and other attorneys say ICE agents shouldn't be allowed in the courts at all. New York City limits local authorities' communication and cooperation with ICE..

"This is a whole new era for us, and is a terrifying place that we are walking into," O'Leary said.

(Lead image: An Immigration and Customs Enforcement officer arrests a man in Manhattan in January. Photo from ICE.gov)

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NY Court Officials Say They 'Cannot and Will Not' Ban ICE From Courtrooms

By CLAUDIA IRIZARRY APONTE FEB 26, 2018 IMMIGRATION NEWS

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Hundreds of immigration activists, clergy members and others participate in a protest against President Donald Trump's immigration policies in front of the Federal Building on January 11, 2018 in New York City. (Photo by Spencer Platt/Getty Images)

NEW YORK, NY — Following a reported 900 percent increase of arrests in New York courthouses, several members of the New York City Council, Public Advocate Letitia James, City Comptroller Scott Stringer and four out of five borough presidents [issued a letter](#) last week to NY State Chief Judge Janet DiFiore to ban U.S. Immigration and Customs Enforcement (ICE) agents from the state's courtrooms.

According to the [letter](#), ICE agents attempt to or conduct these operations in criminal and family courts, prompting "widespread fear of the courts in immigrant and mixed-status communities."

"[ICE agents] are preying on people with documented mental illness, people who are survivors of domestic violence and sexual violence, immigrants who are documented and undocumented, and others from the most vulnerable populations in our state."

Meanwhile, court officials have pointed out that it is illegal to ban ICE from public buildings.

"There is not one state court system in the country that bars law enforcement from their courthouses," said Lucian Chalfen, a spokesperson for the state's Office of Court Administration, via e-mail. "We cannot do that and we will not do that."

"We will continue to request that [ICE] treat all courthouses as sensitive locations, and will continue to ensure that any activity by outside law enforcement agencies does not cause disruption or compromise Court operations," he said.

According to the Immigrant Defense Project (IDP), since January 2017 [there has been a 900 percent increase in ICE arrests](#) at New York courthouses, with 110 arrests by the end of the year, compared to 11 for all of 2016. In that same study, IDP revealed that 20 percent of people arrested were undocumented with no prior criminal history.

There have been 17 successful and unsuccessful enforcement operations in New York state so far in 2018, about triple the amount compared to February 2017, according to the IDP.

The City Council's letter condemns ICE's practice of staking out immigrant in courthouses. In January, ICE announced a new [formal policy directive](#) that states their agents should "generally avoid" enforcement actions in courthouses, even though they are "are wholly consistent with longstanding law enforcement practices nationwide."

Meanwhile, that same policy states some exceptions: those who are accompanying the "target alien" inside the courthouse, like family and friends, or those who are serving as witnesses in a proceeding, will not be subject to enforcement actions.

However, the Immigrant Defense Project says it has evidence provided by public defenders and defendants that they were targeted even under these exceptions. Alejandra López, a spokesperson for IDP, said many defendants now hesitate to appear in court. "The fear is there," she said.

Chief Judge DiFiore has not formally responded to the Council's letter, López said, but advocates say there is work to be done. "There are steps that the court can take to protect immigrants before banning ICE," she added.

Redmond Haskins, a representative of the Legal Aid Society, a non-profit organization that provides legal services for low-income New Yorkers, said that most of their clients are predominantly Latino, and many hesitate to appear in court out of fear of being targeted. "It is an ongoing constitutional issue."

The New York Civil Liberties Union (NYCLU) has spoken out about this issue in the past. In a testimony before the New York City Council last summer, the NYCLU condemned the practice as a violation of the constitutional right to access to courts, claiming that it "undermines" the due process of law.

"For those who stand accused of crimes, the notion of a fair trial requires that a defendant have the chance to appear in court and confront the witnesses testifying against her," said NYCLU Policy Council Zachary Ahmad, speaking to the Council. "The promise of due process cannot be realized when individuals are intimidated from availing themselves of the judicial process."

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The New York Times

Lawyers Walk Out to Protest ICE, and Court Objects

By Liz Robbins

April 11, 2018

Since last year, immigration agents have been making arrests far more frequently in New York City's courthouses, sparking outrage from lawyers, district attorneys and activists.

Their fight has been with the federal authorities. But now, a rift has erupted along local lines.

It started when agents for United States Immigration and Customs Enforcement, known as ICE, detained two undocumented immigrants who had come to Queens Criminal Court on minor charges. In protest, lawyers for the Legal Aid Society of New York and Queens Law Associates staged a walkout, saying ICE should stay out of courthouses. It was the second such walkout this week, and the fifth in the last year.

The Office of Court Administration, which oversees the courts in New York State, responded by fulfilling a warning it had made an hour earlier: if the public defenders walked out on the job while court was still in session, cases would be reassigned to private defense lawyers under contract to represent the poor. Ten cases were reassigned.

The public defense organizations saw it as punishment for political advocacy; court administrators saw it as a matter of keeping the courts running.

"We say, 'By you doing what you did, you are disrupting operations,'" said Lucian Chalfen, the spokesman for the O.C.A. "We won't have that. It helps no one."

Mr. Chalfen added: "Yesterday was the day that enough was enough."

Tuesday was the first time that the state judiciary had taken such a step, which was first reported by WNYC.org.

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Directors for Legal Aid were infuriated by the court's suggestion they were abandoning their clients, but agreed on one point: "'Enough is enough' — with ICE taking our clients," said Justine Luongo, the chief of Legal Aid's criminal defense practice, in an interview Wednesday.

Ms. Luongo insisted several times that Legal Aid lawyers never left a court unattended to participate in the noon walkout; she said it drew between 50 and 70 people, including many staff members who had not been in court that morning. When a Legal Aid supervisor checked on the arraignment court before the 1 p.m. lunch break, there were no cases to be called, she said.

The lawyers returned when court reconvened at 2:15 p.m.

Legal Aid charged that court administrators deliberately, and deceptively, reassigned those cases during the lunch hour to retaliate against people taking a stand on the issue. Mr. Chalfen disputed that: "We're not in the business of fooling them; we're in the business of running courts," he said. He suggested the lawyers protest outside of court hours.

The public defenders are paid a salary and will not lose earnings because defendants were assigned to private lawyers. But Ms. Luongo said the decision had damaged Legal Aid's reputation.

"None of us want to feel like we're fighting both the federal government and the state," she said, adding that the defenders and O.C.A. have been discussing the issue for months.

The public defenders say that courthouses should be treated as what are known as "sensitive locations," like schools, hospitals and places of worship, where ICE agents generally do not enter. New York State Attorney General Eric T. Schneiderman and other officials have also said that the courthouses should be off limits, and that immigration authorities were interfering with the criminal justice system, making witnesses and

defendants afraid to appear in court.

State policy prohibits ICE officers from making arrests inside courtrooms. They must do their work in a hallway or outside a building.

ICE has said that it goes to courthouses in New York because security screening there makes it safer than trying to detain people in the community — which ICE says it is forced to do by a 2014 law that generally prohibits correction officers in city jails from holding undocumented immigrants convicted of crimes for ICE to detain.

Courts are open to the public, and court administrators have no authority to bar ICE from them.

The Immigrant Defense Project, a nonprofit organization that has been tracking arrests, said that ICE has arrested 24 people since January in or around city courthouses. The court administration's figures show that ICE has made 26 appearances at city courts, arresting six people, including one in the Bronx that led to this week's first protest.

Follow Liz Robbins on Twitter: [@nytlizrobbins](https://twitter.com/nytlizrobbins)

A version of this article appears in print on April 12, 2018, on Page A26 of the New York edition with the headline: Lawyers Walk Out to Protest Immigration Arrests; New York's Courts Object

Council Speaker, legal aid groups slam top judge for not blocking ICE arrests of immigrants at NYC courthouses

Erin Durkin

City Council Speaker Melissa Mark-Viverito and legal aid groups blasted ICE arrests of immigrants at city courthouses, and charged the state court system has not done enough to rein in the federal agents.

"It is offensive and highly inappropriate and dangerous for ICE officials to continue interrogating and apprehending individuals in our courthouses," Mark-Viverito said.

She criticized the state's Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks, saying they "must do better" at finding a way to limit ICE's actions.

"I call on them to defend the integrity of the court system and to take a position, and I don't think they're doing enough," she said, asking the judge to meet with immigrant advocates and devise a plan.

Mark-Viverito did not lay out specific steps the court system should take to block ICE, and their authority is limited because court houses are public buildings that anyone can enter, meaning state courts could not keep ICE agents out.

But there are several steps they could take, advocates said — like prohibiting ICE from making arrests inside courthouses.

"We are inclined to think that OCA has the authority to bar this kind of law enforcement activity in the courthouse entirely," said Councilman Rory Lancman (D-Queens).

"Frankly, we're going to try to push that envelope as far as we can," he said. "ICE is disrupting our court system."

Another proposal would require judges to notify the target's attorney of the presence of ICE agents in a courtroom.



Mark-Viverito said ICE agents arresting immigrants is offensive and inappropriate at city courthouses. (Anthony DelMundo/New York Daily News)

The press conference came after ICE agents showed up at a Queens court for human trafficking victims last week.

There have been 28 arrests of immigrants in or outside courthouses in New York State since the beginning of 2017, and another ten near misses, according to Tina Luongo, attorney in charge of the criminal practice at the Legal Aid Society.

In two cases, legal aid lawyers have even asked for bail to have their own clients locked up so they'd be safe from arrest and deportation by the feds. The city in most cases refuses to turn over people in its jail to immigration authorities.

"Every single day we see the ratcheting up of ICE coming into our courts, disobeying our due process," Luongo said. "It has to stop."

ICE spokeswoman Rachael Yong Yow said the agency does not consider courthouses a sensitive location where it limits

enforcement, like schools, hospitals, and places of worship. But the agency only goes to courts to target a specific person who is expected to be there, and does not deliberately target crime victims or witnesses, she said.

Office of Court Administration spokesman Lucian Chalfen said the agency has "met with federal officials on a local and national level to convey our concerns and request that they treat courthouses as sensitive locations, similar to schools, hospitals and places of worship."

Mayor de Blasio also condemned ICE's visit to the human trafficking court.

"I think it's absolutely unacceptable for ICE to come into court facilities in a way that takes these victims and makes them worry they may be deported," he said on the Brian Lehrer show. "We're going to do everything we can to work with the state to stop that from happening."



IMMIGRATION

Legal Aid Lawyers Stage Walkout After Yet Another ICE Court Arrest

Court officers threaten to arrest any attorneys who don't comply with deportation actions

by NOAH HUROWITZ AND FELIPE DE LA HOZ

NOVEMBER 28, 2017



Legal Aid lawyers protest ICE deportation arrests outside Brooklyn Criminal Court on Tuesday, November 28. NOAH HUROWITZ



prompting a walkout by public defenders and accusations from court officers that Legal Aid attorneys had physically attacked them.

Genaro Rojas Hernandez, thirty, was in court to face charges of violating a restraining order. Just after 11 a.m., after a judge asked him and his court-appointed attorney to step into the hallway with a Spanish interpreter, Hernandez was arrested by ICE agents, according to his lawyer, Rebecca Kavanagh. After the arrest, attorneys with the Legal Aid Society stormed out of the courthouse on Schermerhorn Street and held a noisy picket line outside the building, calling on immigration officials to stay out of the courthouse.

The arrest makes Hernandez the fortieth individual taken into custody by immigration enforcement agents inside a New York City courthouse, according to official statistics maintained by the state Office of Court Administration, which operates the courts. That estimate is conservative: The Immigrant Defense Project, an immigrant rights and legal assistance group, keeps its own tally that includes arrests made just outside courthouses. This count puts the number at seventy, with Hernandez the first arrest since two weeks ago when the *Voice* covered allegations that court officers were unfairly aiding ICE agents.

Immigration arrests in courthouses have skyrocketed since the inauguration of President Donald Trump in January. ICE's internal policies tightly regulate agent behavior in certain locations designated as "sensitive," such as schools and hospitals, but the agency has so far refused to place courthouses into this category. OCA guidelines permit immigration enforcement agents to conduct operations in courthouses' public areas so long as they identify themselves upon entry and stay out of courtrooms.



Hernandez with a Spanish interpreter in the hallway, she said.

Kavanagh had spotted a man she suspected was with ICE sitting in the hallway, but said he denied being an agent twice when asked. But as she walked out of the eighth-floor courtroom to explain the situation to Hernandez, the man followed them, she said. As Kavanagh and her client walked up the hallway to speak in private, another agent burst out of a set of double doors, and the two ICE officials grabbed Hernandez.

As the agents hustled Hernandez into a restricted area, a court officer sergeant and at least two other court officers assisted in the arrest, and held Kavanagh back as she attempted to take photos of the arrest and to urge Hernandez not to speak to the arresting officers, according to Kavanagh and several witnesses to the incident.

“ICE agents pounced on my client, and because I was still attempting to speak to my client, I got carried with them to the doors,” Kavanagh said. “My client was pushed through the doors, and the sergeant of the court part pushed me back.”

This is where the accounts of the attorneys present and court personnel diverge. According to Lucian Chalfen, a spokesman for the OCA, Legal Aid attorneys “tried to yank the defendant away.” He said the incident “was predicated on four Legal Aid attorneys purposely interfering in an arrest situation, and only for the professionalism and restraint of the court officers involved, there were no injuries and the attorneys were not arrested for obstructing governmental administration.”

Dennis Quirk, the president of the New York State Court Officers Association, expanded on that account: “The judge tells the Legal Aid lawyer, ‘ICE is outside the courtroom to take your client.’ Legal Aid walks the client to the door of the courtroom and tells the client to run.” Quirk alleged that Hernandez began to run and was



people,” said Quirk, who alleged attorneys “pushed court officers, they struck court officers, they hit court officers. They did the same thing to the ICE agents.”

Kavanagh scoffed at the accusation that she tried to interfere with the arrest. “I am an officer of the court,” she said. “The idea that I was attempting to interfere is crazy. We would never interfere with an arrest.”

Another Legal Aid attorney, Jane Sampeur, was standing a few yards away when the scuffle broke out, and said she saw no interference by Kavanagh.

“The whole thing was quite frightening,” Sampeur said. “You are your client’s last line of defense, and so the most you can do is stand there and say, ‘I have a right to speak with my client,’ and that’s what I saw her do. She just kept insisting on speaking with her client, but there were a number of very strong agents, and no matter how many times Ms. Kavanagh went to the gym, I assure you there’s nothing she would have been able to do to interfere with that arrest.”

“No one said, ‘Run,’ ” Sampeur added. “The idea isn’t to help someone evade the law, the idea is to be able to protect and ensure their rights. And quite frankly, our clients’ due-process rights are being violated.”

After finally catching up with Hernandez a few minutes later, Kavanagh was able to speak with him briefly in the presence of another Legal Aid lawyer and the two ICE agents, but all she could do was warn him not to speak to the agents any further, as she didn’t have a chance to have a confidential conversation. By that time, said Kavanagh, Hernandez had already made several statements to the arresting ICE officers, who had not identified themselves to him.



taking place during the apprehension.

The arrest also drew the ire of acting Brooklyn District Attorney Eric Gonzalez, who has spoken out against courthouse detentions in the past.

“Today’s ICE arrest during a hearing on a serious domestic violence case denied due process for both victim and defendant,” Gonzalez wrote in a statement. “Such actions deter victims from reporting abuse and threaten public safety. I join our public defenders in calling on ICE to reconsider their misguided policy and stop conducting enforcement raids in courthouses.”

Hernandez, a married father with two children under the ages of ten, was in court Tuesday to face charges stemming from an incident on November 6, in which he was accused of going to a Mexican restaurant in Midwood and getting into a fight with an employee there in violation of an earlier restraining order preventing Hernandez from contacting that person, according to court documents.

Prosecutors said Hernandez punched a woman, whom prosecutors identified only as his “ex,” several times before following her into the restaurant and knocking a television to the ground, police said. He was arrested that day and bailed out two days later, records show.

A native of Mexico who has been in the country for about fifteen years and has worked as a laborer at the same job for the past seven years, Hernandez was back in court despite risking arrest by immigration officials. His arrest could have a chilling effect on other immigrants — defendants and victims alike — showing their faces in court, according to Scott Hechinger, a senior staff attorney with Brooklyn Defender Services.



how our clients are feeling when they come to court, whether undocumented or documented. There's that fear in their eyes that really makes the court experience and representation even tougher."

In the wake of the arrest and the ensuing walkout, the scene inside the courthouse was chaotic, as clients stood around in confusion and defense attorneys with other organizations scrambled to figure out what was going on. Ultimately, the courts adjourned for lunch about an hour earlier than normal.

The competing versions of what went down in the courthouse hallway is the latest and most acute example of increasingly hostile relations between defense attorneys and court personnel. Quirk, the court officer union president, has called Legal Aid's activities irresponsible, and warned legal trouble for any attorney accused of interference in future ICE arrests.

"I gave direct orders to my people, the next time Legal Aid puts their hands on them, arrest them," he said. "They're getting a warning today. They'll get no more. They do it again, we will lock them up."

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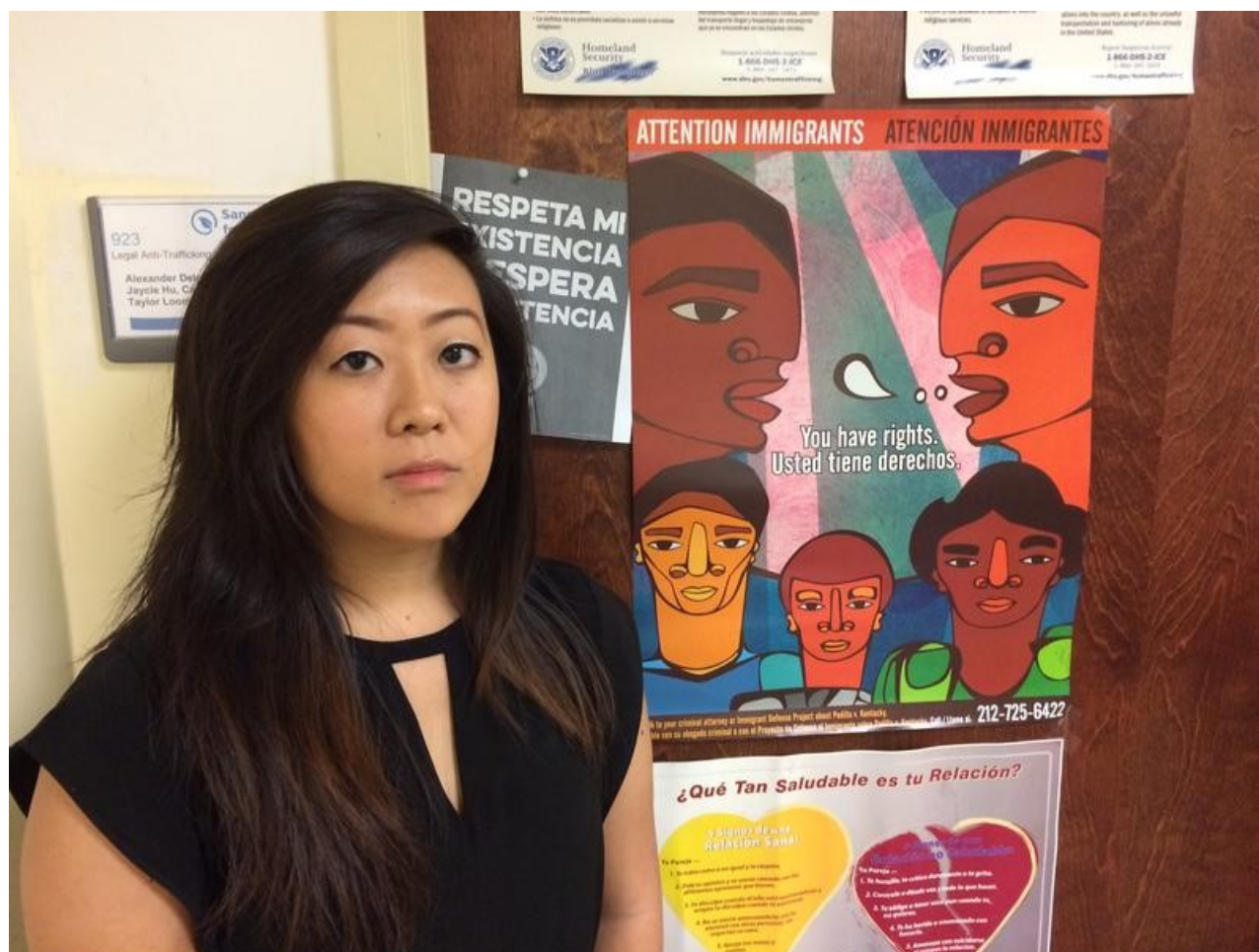
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When ICE Shows Up in Human Trafficking Court

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Yvonne Chen of Sanctuary for Families worries victims of trafficking will not come to court if immigration officers are present. (Beth Fertig/WNYC)

Jun 22, 2017 · by [Beth Fertig](#)

Ever since President Donald Trump took office, immigration advocates from [Los Angeles](#) to New York have claimed there are more sightings of Immigration and Customs Enforcement agents in courthouses looking to detain people.

They became more alarmed recently after WNYC [reported on an](#)

Queue

incident in a city court where defendants are supposed to be treated as victims, not criminals. They are worried that immigrant defendants will not come to court if they now have to fear the presence of deportation officers.

It all began on Friday, June 16 in the Human Trafficking Intervention Court in Queens. It's one of 11 such courtrooms throughout the state where those arrested for prostitution-related offenses can have their charges dropped if they agree to attend counseling sessions with advocates who can try to help them with their problems.

At around 10:45 a.m., a Chinese woman with long hair wearing a blue and red sweatshirt and jeans was about to have her case adjourned in contemplation of dismissal — meaning her record would be wiped clean if she stayed out of trouble for six months. According to her Legal Aid lawyer, she had been charged in February by an undercover police officer with offering to give an illegal type of full body massage (a misdemeanor prostitution offense) and with not having a massage license.

But instead of leaving the court after a brief check-in, she wound up playing cat-and-mouse with immigration officers.

The judge, Toko Serita, told the woman's attorney that immigration agents were in the building and wanted to detain her.

Kate Mogulescu, a supervising attorney at the Legal Aid Society, said lawyers knew something was going on that morning in the Queens criminal courthouse. "There were three deportation officers circling the courtroom," she said.

Mogulescu was in the hallway outside the human trafficking court. She and her fellow supervising attorney, Leigh Latimer, approached a young man dressed in dark clothes and a black baseball cap standing just outside the doors of the courtroom. They questioned him and he showed them the ICE badge under his T-shirt.

The client's cousin also tried to talk to the agent. He said she was innocent, and had been picked up in a raid. But the officer couldn't tell him much. He shrugged and said, "it is what it is."

With agents outside the courtroom, Latimer said the client's attorney didn't



have a lot of options. "In that moment she asked the judge to set bail so that the client would be held in custody and give us time," Latimer explained, adding that they needed to figure out their options.

The client was handcuffed and brought into another room with her attorney, Catherine Carbonaro. Meanwhile, other attorneys and clients in the hallway began to panic. A large number of defendants in the Queens human trafficking court are immigrants. A paralegal from Legal Aid handed out forms they could sign in case they were detained, telling federal officials how to contact their lawyers.

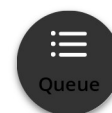
At around noon, word got out that the immigration agents were gone. ICE later acknowledged its deportation officers arrested three people outside the Queens criminal courthouse that same day. Carbonaro asked the judge to release her client and they left with her cousin and her boyfriend. The young woman looked pale and shaken; she declined to be interviewed. She consulted with her attorney and then went home in a taxi.

Should ICE Officers Be Allowed in Courts?

ICE maintains courthouses are public buildings and that its enforcement is targeted at specific individuals. The agency also claims it's necessary to find people in court if police and jails won't turn them over in so-called sanctuary cities like New York. Spokeswoman Rachael Young Yow said officers will consider if an individual is the "immediate victim or witness to a crime" in determining whether to take enforcement action, and "particular attention is paid to victims of domestic violence, human trafficking or other serious crimes."

After the incident, the state's 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. Immigration agents have been spotted in courts before. But nobody had ever seen them in the human trafficking part. A spokesman for the Office of Court Administration said officials have a continuing dialogue with ICE.

Tina Luongo of the Legal Aid Society (center) and City Council Speaker Melissa Mark-Viverito (right) want the state court system to limit the presence of federal immigration officers. (Beth Fertig/WNYC)





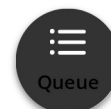
But many immigrant advocates and elected officials say that's insufficient. On Thursday, they held a press conference at City Hall asking DiFiore and other court officials to take concrete actions to stop ICE from entering courts. "I call on them to defend the integrity of the court system and to take a position, and I don't think they're doing enough," said City Council Speaker Melissa Mark-Viverito.

The Legal Aid Society said there have been 38 arrests and attempted arrests both in and outside New York State courts since January, more than in the previous two years combined.

"There is a tremendous heightened fear and courts should really be a safe place for people to go, whether they are defendants or victims — and certainly our clients are victims," said Judy Harris Kluger, who started the first Human Trafficking Intervention Court in Queens and is now executive director of [Sanctuary for Families](#).

Yvonne Chen agreed. She works for Sanctuary for Families and does outreach at massage parlors where Asian women are often forced into the sex trade. She said they'll be more afraid than ever to come to court, because their employers can always say things like, "Don't you need to make money to send back home to your sick parents? For your child? For some sort of debt that you need to pay?"

"So I think there's a lot of psychological coercion," she explained. She said one woman at a massage parlor told her about a baseball bat being kept




near the door, presumably to keep everyone in line.

Defense lawyers believe one solution is for judges to tell them whenever immigration agents have come for their clients. It happened last week in the human trafficking case Judge Toko Serita was presiding over, but the court system only requires that judges are notified, not attorneys. Mogulescu of Legal Aid said she hopes the Office of Court Administration will consider the consequences.

"Can it just be that ICE officials are going to come in, not provide any information and start plucking people out of the audience in court rooms, out of the hallways?" she asked. "People need to be able to appear on court dates. Victims of crimes need to be able to come to court to participate in the criminal legal process."

If defendants don't feel safe going to court, advocates fear there will be warrants for their arrest. And those who are considered victims will be criminalized even further.

CORRECTION: An earlier version of this article incorrectly described Yvonne Chen's work at Sanctuary for Families. She manages outreach for the anti-trafficking initiative. The text was updated 12:50 p.m., June 23, 2017.

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Outcry After Immigration Agents Seen at Queens Human Trafficking Court

New York State's Chief Judge Janet DiFiore said she's greatly concerned that federal immigration agents were in a human trafficking court in Queens. Jun 16, 2017

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