



# Denied, Disappeared, and Deported:

The Toll of ICE Operations at New York's Courts in 2019

January 2020



# Summary of Findings

In 2019, ICE continued its expansive courthouse operations: IDP received reports of 203 operations, **a 1700% increase from 2016** (11 operations). Nearly half of these operations occurred after the New York State Unified Court System (UCS) issued a Directive to limit ICE courthouse arrest practices on April 17, 2019—in part, requiring ICE to provide a judicial warrant to make an arrest inside a courthouse. ICE made clear to its agents through [internal communications](#) that “We can enter the courthouses to observe...we are good to make the arrest outside the courthouse with or without a judicial warrant.”<sup>1</sup>

From April 2019 onward, ICE used tactics that skirted the Directive by moving their arrests to court entrances and exits, while still surveilling people inside courthouses. In some cases, ICE violated the Directive outright—refusing to identify themselves as required, failing to wait for a supervising judge to review a warrant, and escorting an individual out of the courthouse to handcuff them outside. ICE’s use of force has resulted in injuries, broken glass doors, and crippling fear of attending court. As New York ICE Field Office Director Thomas Decker [told reporters](#) in September, “if we don’t have the information about where they are at in the community, and then we can pick them up around the court, then that’s what we are going to do.”<sup>2</sup>

The Immigrant Defense Project has been at the forefront of tracking ICE courthouse raids since 2013. IDP issued reports documenting the sharp rise in courthouse arrests in [2017](#) and [2018](#). This report contains information obtained from hundreds of reports collected by IDP staff throughout 2019 and reveals data received from UCS and as a result of Freedom of Information Act (FOIA) litigation against ICE. For more on IDP’s courthouse work, visit [immigrantdefenseproject.org/ice-courts/](https://immigrantdefenseproject.org/ice-courts/).

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1. Email Re: Courthouse Arrests (Apr. 18, 2019). Obtained under FOIA in Immigrant Defense Project v. U.S. Immigration and Customs Enforcement, <https://www.immigrantdefenseproject.org/wp-content/uploads/311.pdf>.

2. Spectrum News Staff and Dean Meminger, ICE Officials Lying About Latest NY Arrests, Spectrum News (Sep. 27, 2019), <https://www.ny1.com/nyc/all-boroughs/news/2019/09/27/ice--new-york-officials-lying-about-recent-arrest-spree>

## Summary of key findings on 2019 ICE courthouse operations in New York

**ICE courthouse operations continued at alarming levels despite state efforts to curtail them,**

**1**

Courthouse operations in 2019 were 1700% higher than in 2016, with nearly half (47%) of total operations occurring after the April 2019 Unified Court System Directive prohibiting warrantless arrests inside courthouses.

**ICE made arrests in the immediate vicinity of courthouses and focused on surveillance inside and around courts**

**2**

ICE made clear its intentions to use courts and courthouse property to surveil and arrest New Yorkers. In response to federal litigation, ICE stated that “if we can pick them up at court then that is what we will do.” Following issuance of the April 2019 directive, ICE told its agents in an internal communication that “we are good to make the arrest outside the courthouse with or without a judicial warrant.” As promised, plainclothes ICE agents stationed themselves in multiple locations in and around courthouses, trailed individuals undercover, and arrested most people outside of courthouses (over 80%).

**ICE skirted the UCS Directive and flouted court protocol**

**3**

IDP received reports of ICE sightings where the Unified Court System did not have any record of ICE making themselves known to court staff as required by the Directive. IDP also received a report of an ICE officer explicitly telling one individual that he could not arrest him inside the courthouse, and then escorted him outside to arrest him there, as well as ICE officers failing to wait for court personnel to review a warrant before carrying out an enforcement operation.



**ICE intensified its courthouse operations in Long Island and in upstate counties**

4

Rockland County experienced a sevenfold increase in ICE courthouse operations. Operations in Nassau County increased eightfold, quadrupled in Suffolk County, and doubled in Westchester County.

**ICE mounted frightening shows of force at courthouses**

5

In 2019, IDP received reports of ICE slamming people on the ground, grabbing them from behind, breaking courthouse doors, physically blocking attorneys, swarming those targeted for arrest, and shackling the ankles and wrists of individuals before driving them away in unmarked vans.

**ICE continued to refuse to provide basic information or documentation, in contravention of its own regulations**

6

In the vast majority of operations, ICE agents refused to identify themselves, explain why an individual was being arrested, or offer proof that they have reason to believe that the individual they're arresting is deportable. This occurred despite the fact that internal agency regulations require them to provide this information.



Left: ICE agent surveilling court in Hudson, NY. Photo courtesy of Columbia County Sanctuary Movement.

**ICE denied access to courthouses, derailed proceedings, and drained available resources**

7

Multiple reports described individuals arriving early for their court appearances, only to be denied access and arrested by ICE on their way into court. When court officials or family members asked if the individual could speak to a judge or an attorney before their arrest, ICE frequently denied these requests. Public defenders and other professionals working with court-involved parties lost time and resources due to ICE courthouse operations.

**ICE arrested survivors of gender-based violence, a pregnant mother, and individuals with disabilities**

8

ICE arrested individuals with particular safety and medical needs persisted in 2019, with disturbing details provided below.

**ICE courthouse arrests caused a pervasive chilling effect on survivors, victims, and witnesses, as documented by a nationwide survey**

9

A 2019 survey conducted by Ceres Policy Research revealed that 60% of respondents avoided attending court when they had been a victim of a crime, among other [findings](#).<sup>3</sup>

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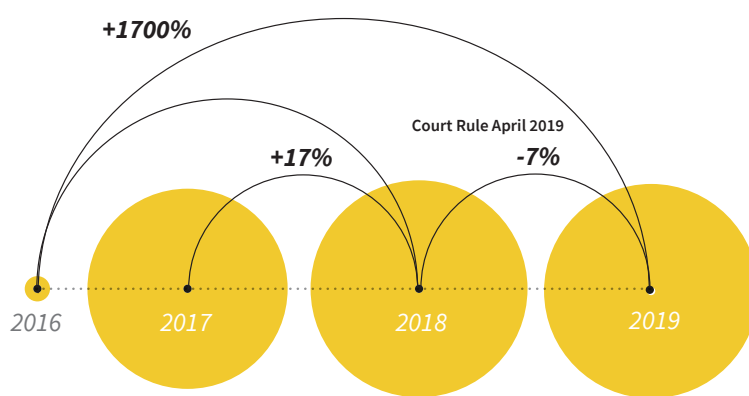
3. Angela Irvine et al., Ceres Policy Research, The Chilling Effect of ICE Courthouse Arrests: How Immigration and Customs Enforcement Raids Deter Immigrants from Attending Child Welfare, Domestic Violence, Adult Criminal, and Youth Court Hearings, 8 (Oct. 2019), Executive Summary available at <https://www.immigrantdefenseproject.org/wp-content/uploads/ice.report.exec.summ.5nov2019.pdf>

# The findings

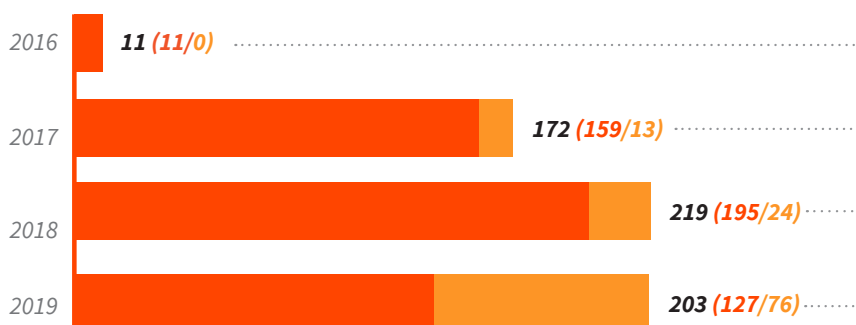
## ICE Courthouse Operations in New York State

Despite state efforts to curtail them, ICE courthouse operations continued at alarming levels

ICE courthouse operations increased by 1700% in 2019 compared to 2016.



### Total (Arrests/Sightings)



### Breakdown of 2019 Arrest/Sightings



ICE continued its courthouse operations despite the April 17 NYS Unified Court System Directive

### Why have the numbers from 2018 changed?

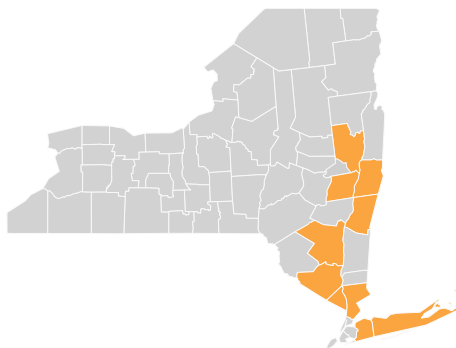
IDP revised its figures for 2018 from 202 (1736% increase over 2016) to 219 (1890% increase over 2016). IDP routinely revises its annual figures because as individuals spend months in detention before they have a chance to see an immigration judge, we may not hear about arrests until the following year when the individual resurfaces in immigration court

## ICE Arrests Outside of Courthouses

ICE operations targeting individuals on their way into court or on their way out resulted in over 80% of total arrests (102 arrests) taking place outside of the courthouse building in 2019.



## ICE Arrests Outside of New York City (2019)

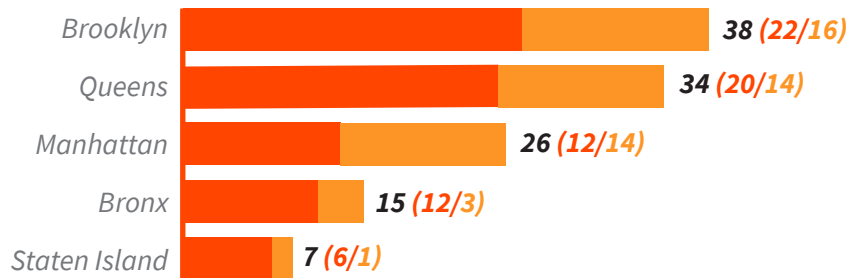


|                       |                     |
|-----------------------|---------------------|
| <b>24</b> Suffolk     | <b>2</b> Saratoga   |
| <b>21</b> Westchester | <b>3</b> Ulster     |
| <b>15</b> Rockland    | <b>2</b> Columbia   |
| <b>8</b> Nassau       | <b>1</b> Albany     |
| <b>5</b> Orange       | <b>1</b> Rensselaer |

Based on reports collected by IDP, ICE intensified its courthouse operations in Long Island and across upstate counties. ICE presence in Rockland County skyrocketed in 2019, with seven times as many reports of courthouse operations than 2018. Nassau and Suffolk Counties saw huge spikes as well, with operations increasing eightfold and quadrupling, respectively. Courthouse operations in Westchester doubled.

## ICE Operations Within New York City (2019)

### Total (Arrests/Sightings)



New York City continued to account for the majority of ICE operations statewide, with Queens and Brooklyn reporting the largest number of operations.

### Note on Data Collection

IDP collects reports of ICE courthouse raids through collaborations with community-based and legal services organizations throughout New York State, and reports received on our hotline. In particular, New York State's Regional Immigrant Assistance Centers (RIAC), which serve every county in the state, and the New York Immigrant Family Unity Project (NYIFUP) provide a mechanism for IDP to collect firsthand accounts of raids from individuals arrested by ICE, their family members, and their attorneys. IDP verifies raids reports by speaking with eyewitnesses and those with direct knowledge; the individuals arrested by ICE themselves or their attorneys.

In 2019, IDP also collected reports of courthouse operations directly from ICE, via Freedom of Information Act (FOIA) litigation, and Unusual Occurrence Reports (UORs) from the New York State Unified Court System (UCS).

### What's the difference between an ICE arrest and an ICE sighting?

**Arrest:** "Arrest" refers to an incident where IDP verified that ICE took someone into custody during a courthouse operation.

**Sighting:** "Sighting" refers to an incident where verified witnesses saw ICE agents or ICE vehicles, but no known arrest was identified. This could include incidents where:

- ICE attempted to surveil an individual at the courthouse but could not identify them
- ICE was present to make an arrest that was not recorded or witnessed by the reporting party
- ICE conducted surveillance or collected court records on individuals



# Trends

## Surveilling the Courts, Arresting Outside



Before and after the Court Directive prohibiting warrantless arrests inside the courthouse, ICE continued to arrest people in the immediate vicinity of courthouses—often on the court steps or adjacent sidewalks. ICE surveillance inside courthouses and courtrooms also continued in full force even after the Court Directive. Plain-clothes ICE agents trailed individuals through courthouses (even into the bathroom), surveilled them inside courtrooms, and followed people just outside where they could arrest them where they are not bound by the Directive. ICE agents also loitered by security lines at courthouse entrances and stood directly outside of the courthouse doors.

### Swarmed in Rockland

Eight individuals—including a domestic violence survivor with no criminal history—were arrested en masse outside a town court in Rockland County. Approximately 20 plainclothes ICE agents were seen in the parking lot and stationed outside of the entrance to the court (January 2019)

### Targeting Columbia County

ICE was parked outside of the Hudson City Court and followed two individuals as they were driving away following a court appearance. ICE pulled over the individuals, who were being driven by Columbia County Sanctuary Movement's Executive Director, Bryan MacCormack. As [captured on video](#), they asserted their rights to remain in the car absent a warrant.<sup>4</sup> The following month, ICE was again waiting outside the Hudson City Court in an unmarked vehicle when MacCormack positively identified them from a home raid the week before. An ICE agent took photographs of MacCormack before driving off. (March 2019)

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4. NowThis, Local Immigrant Rights Advocate Stops ICE Agents (Mar. 29, 2019), <https://nowthisnews.com/videos/politics/local-immigrant-rights-advocate-stops-ice-agents>.

A man was arrested by ICE outside the back entrance of Queens Criminal Court. An ICE agent told his wife that they “had all entrances covered” and had watched him in the court and followed him out. When his wife asked if they had a warrant, the agent said, “You will see one alright” but never showed it to her. (June 2019)

In its Unusual Occurrence Reports, UCS officials repeatedly reported how ICE was using the courts to surveil New Yorkers.<sup>5</sup>

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ICE officer entered court “to use the restroom”  
(Kings, April 2019)

“Agents made it known that they would not be taking any law enforcement action in the courthouse and that they were waiting for the individual to drive away before they would be taking law enforcement action.” (Suffolk, January 2019)

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## Skirting the NYS Unified Court System (UCS) Directive



ICE continues to have a presence at courthouse sites that violates the spirit and letter of the Directive. Following issuance of the April 2019 UCS directive, ICE told its agents in an internal communication that “we are good to make the arrest outside the courthouse with or without a judicial warrant.” As promised, plainclothes ICE agents stationed themselves in multiple locations in and around courthouses, and trailed individuals while undercover, lying in wait until people were just past the courthouse door to apprehend them. The Directive requires ICE officers who enter the courthouse to present themselves to court staff, prompting the filing of an official Unusual Occurrence Report (UOR). However, IDP recorded at least 30 courthouse operations (15% of total operations) following the Directive for which no UOR was recorded. Operations outside the courthouse may not always result in a UOR, but at least three of these incidents involved arrests inside the court.

### **Taken Into Custody Inside the Courthouse Without a Warrant**

While inside Rockland County Court, ICE agents confronted a man following his court hearing. The agents told the man that they could not handcuff him inside the court so they escorted him outside, where they handcuffed him. No judicial warrant was presented and the ICE officers did not report their presence in the courthouse to UCS officials, in violation of the April 2019 UCS directive. (November 2019)

### **Rules Don’t Apply**

Plainclothes ICE officers attempted to arrest a U.S. citizen immediately outside the Red Hook Community Justice Center, a problem-solving court in Brooklyn. When told that they needed a judicial warrant, the ICE officers responded that the warrant requirement only applied inside the courthouse building. (August 2019)

### **Refusing to Wait**

UCS officials reported that ICE ignored the April 2019 UCS directive requiring that the supervising judge review the paperwork they presented before arresting a man inside the courthouse. (December 2019)

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## Frightening Show of Force



Plainclothes ICE agents often swarm people in parking lots, on sidewalks, and on the steps of a courthouse. ICE agents operate in large teams, with as many as 10 agents involved in a single arrest. In 2019, IDP received reports of ICE agents slamming people on the ground and against courthouse walls and fences, snatching people's phones, and arresting them without explanation. Plainclothes ICE agents would call out an individual's name and then abruptly grab them by the shoulders, without identifying themselves.

### Tackled and Pinned

Plainclothes ICE agents tackled a man leaving Kings County Criminal Court and pinned him to the sidewalk, scraping and bruising his arm. Six officers handcuffed him, put him in an unmarked van and drove away, one week before the UCS directive. (April 2019)

### ICE Shatters the Glass Courthouse Door

An ICE agent broke the glass of a Yonkers City Court door with his foot when a man tried to open the door of the courthouse. As ICE officers arrested the man, court officers were forced to restrict access to the court, call in a police report, and contact building maintenance, according to the UCS Unusual Occurrence Report. (July 2019)

### Desk Appearance = Ankle Shackles

Three black vans surrounded a woman's car when she appeared for a desk appearance ticket at Woodbury Justice Court. Six or seven ICE officers emerged from the unmarked vans, handcuffed her ankles and wrists, and took her away. (Jan. 2019)

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*"He was going for a court appearance on some driving infraction ticket...Walking up to the court, my client and I were four feet away from each other and suddenly two huge guys jump on him, grab his arms, pull them behind his back. I'm yelling, 'What's going on? Where's the warrant?' and the guy laughed at me. And then there's four other people coming up because, the way these arrests work, they have the muscle to jump on your person and pull them into an unmarked van. They're walking fast and they have a couple people to talk to you to distract you...Nobody had a uniform and it was dark."* Karin Anderson-Ponzer, an attorney with Neighbor's Link, describes an arrest of her client in Mt. Kisco at a February 2019 forum on the Impact of ICE Arrests at NYS Courts, Dec. 19, 2019. View at [bit.ly/3840X1P](https://bit.ly/3840X1P)

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## Denying Access, Derailing Court Proceedings, and Draining Resources:



Throughout 2019, ICE denied courthouse access and derailed court proceedings by arresting individuals before they could attend required hearings. Further, ICE courthouse operations required attorneys to direct resources toward advising clients of the risk of ICE arrest and detention and assessing how that risk may impact a client's case in court. Attorneys were also forced to monitor the court for ICE presence as part of their representation—constantly scanning the courthouse for ICE officers detracts from limited time with clients. ICE further disrupted legal representation of clients by failing to produce detained individuals for their court dates, or transferring detained individuals to far-away detention facilities.

According to its [own reporting](#), ICE deported hundreds of immigrants with open court cases in New York City.<sup>7</sup> In 2019, ICE arrested 592 individuals and removed 374 individuals, all with pending criminal charges.

### **A Mother's Plea to Allow Son to See Judge Ignored**

ICE officers arrested a man in the lobby of the Middletown City Court in Orange County without revealing who they were, even though his mother pled with them, explaining that he had to see the judge. They left with him before he could appear on his case. (February 2019)

### **Taken Before Courtroom Opened**

Two months after the UCS rule was issued, five plainclothes ICE agents handcuffed a man standing outside of a courtroom in Queens with his fiancée. They told him they had a warrant, which they did not show him, and took him away before he could appear on his case. (June 2019)

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7. Immigration and Customs Enforcement Enforcement and Removal Operations, ERO FY19 Local Statistics, [www.ice.gov/sites/default/files/documents/Report/2019/ero-fy19-localstatistics.pdf](https://www.ice.gov/sites/default/files/documents/Report/2019/ero-fy19-localstatistics.pdf).



Lexington Center for Recovery (LCR) is the largest provider of alcoholism and substance abuse treatment in the Hudson Valley. ICE surveilled the probation office and arrested people who were complying with probation and were on the road to recovery through court-mandated substance treatment. ICE arrest in the middle of treatment forces people out of compliance with court orders and derails their treatment plan. Clients are left with an impossible choice between following court orders and potentially being detained and deported, or violating probation and forgoing treatment, resulting in new criminal charges and a potential ICE arrest at the local jail.

According to a staff member at the Lexington Center for Recovery, the risk of an ICE arrest makes clients feel that they are in a lose-lose situation. If they don't comply with their mandated treatment and probation, they may risk being re-arrested and may encounter ICE at the jail. But if they comply with the terms of their probation by adhering to their mandated appearances, they risk not coming home at the end of the day. When this staffer went out on leave and returned eight weeks later, she had lost seven clients to ICE detention. When clients are unable to return to treatment within thirty days, staff members are forced to close their cases, which both interrupts their recovery and their ability to comply with the court's orders.

**In its 2019 Unusual Occurrence Reports, Unified Court Systems officials described incidents of ICE derailing court appearances:**

“R/O asked if they were going to let the individual conduct his court business and was advised no, they would be picking him up outside facility prior to entering” (Westchester) (3/25/19)

[illegible]

Arrest before the courthouse opened (Peekskill, March 2019)

“Arrested outside the courtroom prior to his case being called” (Bronx, March 2019)

“Defendant was arrested on the ground floor hallway before the courtroom opened” (Queens, June 2019)

One individual arrested at magnetometers before case was called (Bronx, January 2019)

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## ICE Arresting Survivors, Pregnant Mothers, and Individuals with Disabilities:



ICE agents continued to aggressively target and exploit individuals, with no regard for personal, medical, or emotional circumstance, visibly pregnant women, and survivors of violence: in 2019, IDP received reports of ICE arresting a man who requires daily dialysis, a man walking with a cane, a pregnant mother of two, and survivors of intimate partner violence.

### **ICE Arrests Survivor of Violence and Prohibits Phone Call**

A mother of two young children was on her way into court in Rockland County to contest charges filed by her abusive ex-husband when she was stopped by ICE. The agents took her phone, refused to let her call her child care provider, and drove her to a holding facility over an hour away. They refused to let her go until she gave them the information they asked for and when she complied, they finally released her with a Notice to Appear in removal proceedings. (January 2019)

### **Pregnant Mother Detained at Court**

One week before the UCS Directive, ICE arrested Alma Ceteno-Santiago, a pregnant mother of two, outside Queens Criminal Court after she appeared in court to resolve a dispute with her ex-partner. Ms. Ceteno-Santiago developed a severe stomach illness while in ICE detention, and after she complained about the conditions of her detention, her deportation was fast-tracked. When a federal district judge blocked her immediate deportation and ordered her released, a family friend and spokesperson for Ms. Ceteno-Santiago said, “[w]e have lived the nightmare that every immigrant family fears.” (April 2019)

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## Pervasive Chilling Effect



ICE courthouse arrests cause a chilling effect that leads survivors, victims, and witnesses to avoid court hearings of all types because they fear that they or their family members will be arrested. In 2019, Ceres Policy Research conducted a [nationwide survey](#) of 1000 people in mixed immigration status families, finding that 60% of respondents avoided attending court as witnesses when they had been a victim of a crime.<sup>8</sup> In addition, 41% of respondents had avoided a domestic-violence-related hearing when they had been a victim, and 37% of respondents had avoided appearing in child welfare hearings. Notably, 48% of respondents who were court-involved believed that judges helped ICE conduct arrests, and 49% of respondents who were court-involved believed that prosecutors helped ICE arrest people.

### Crippling Fear of Fighting Against Fraud in Westchester

When an out-of-state man was charged with grand larceny for allegedly defrauding 40 Yonkers families, the affected individuals were afraid to testify in Westchester County Court because of ICE courthouse arrests. The families, having lost more than \$300,000 in the alleged scam, struggled with the decision to testify before the grand jury, and at least one family declined specifically due to fear of an ICE courthouse arrest. (November 2019)

### ICE in Integrated Domestic Violence Court

ICE was questioning people inside the Rockland County Courthouse about a man scheduled to appear in the Integrated Domestic Violence (IDV) part. When the case was called, the judge asked where the individual was and the court officer announced publicly that he had been arrested outside. The ICE arrest on the courthouse steps was later confirmed by the individual and his attorney. News of the arrest at the IDV part circulated throughout the community. (November 2019)

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8. Angela Irvine et al., Ceres Policy Research, The Chilling Effect of ICE Courthouse Arrests: How Immigration and Customs Enforcement Raids Deter Immigrants from Attending Child Welfare, Domestic Violence, Adult Criminal, and Youth Court Hearings, 8 (Oct. 2019, Full report here: <https://static1.squarespace.com/static/58ba8c479f7456dff8fb4e29/t/5dae6ba65642ea5d1cef9705/1571711914510/ice.report.final.21oct2019.pdf>)

# Findings From ICE's Documents

**“We are good to make the arrest outside the court”:** ICE’s internal communications, received via FOIA litigation, documented the agency’s response to the April 17, 2019 Directive. Supervisors flagged the warrant requirement and court protocol, but otherwise directed business as usual for arrests outside the courthouse and surveillance inside.

Superiors **told agents**:

“We can enter the courthouse to observe, we just have to announce ourselves upon entry. To make an arrest inside the courthouse, we will need a judicial warrant. However, we are good to make the arrest outside the courthouse with or without a judicial warrant.”<sup>9</sup>

“For clarity, this is only for municipal, county, and state courts; federal courts are still on the table.”<sup>10</sup>

Superiors **later clarified**:

“We are good to make the arrest outside the courthouse with or without a judicial warrant”

“We can no longer go in the court undercover for the purpose of surveillance.”

“Keep all your equipment as normal, identify the target and make the arrest outside the court as we have been doing.”<sup>11</sup>

In its **annual report**, ICE reported that it made 2,477 administrative arrests in New York City in FY2019, claiming that 592 of these arrests were of individuals with pending criminal charges (i.e. open court cases).<sup>12</sup> ICE reported that it deported 374 individuals with pending criminal charges in the same year.

**FOIA documents** revealed that in March 2019, a man was deported during a pending case, prompting the Queens assistant district attorney to seek a bench warrant on an open matter for the deported individual.<sup>13</sup>

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9. Email, FW: NY Court arrests (Apr. 18, 2019). Obtained under FOIA from U.S. Immigration and Customs Enforcement in *IDP v. U.S. ICE*, 1:19-cv-02520-PKC, 603-04 (S.D.N.Y. 2019), <https://www.immigrantdefenseproject.org/idp-ice-courthouses-foia-602-606/>

10. Email, FW: NY Court arrests (Apr. 18, 2019 10:06 AM). Obtained under FOIA from U.S. Immigration and Customs Enforcement in *IDP v. U.S. ICE*, 1:19-cv-02520-PKC, 618 (S.D.N.Y. 2019), <https://www.immigrantdefenseproject.org/idp-ice-courthouses-foia-617-619/>

11. Email, Re: Courthouse Arrests (Apr. 18, 2019 14:43:22). Obtained under FOIA from U.S. Immigration and Customs Enforcement in *IDP v. U.S. ICE*, 1:19-cv-02520-PKC, 1153-54 (S.D.N.Y. 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/311.pdf>.

12. ERO FY19 Local Statistics, *supra* n. 6.

13. Email, Memo of Deportation for [Redacted] (Mar. 21, 2019 15:19:25). Obtained under FOIA from U.S. Immigration and Customs Enforcement in *Immigrant Defense Project v. U.S. ICE*, 1:19-cv-02520-PKC, 2090 (S.D.N.Y. 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/508.pdf>.

# ICE Out of Courts Campaigns Across the United States

## California

**To date, California is the only state that has passed legislation related to ICE arrests in courts.** On October 12, 2019, Governor Newsom signed [Assembly Bill 668](#) into law, which amends California’s Civil Code to state that “A person shall not be subject to civil arrest in a courthouse while attending a court proceeding or having legal business in the courthouse” without a judicial warrant.<sup>14</sup> The law also gives judicial officers the power to “prohibit activities that threaten access to state courthouses and court proceedings, and to prohibit interruption of judicial administration, including protecting the privilege from civil arrest at courthouses and court proceedings.”

In addition, the [California Trust Act](#), passed in 2017, requires the courts to adopt “model policies limiting assistance with immigrant enforcement to the fullest extent possible consistent with federal and state law.” The state legislature tasked the California Attorney General with issuing model policies for the state’s courts, which he did in October.<sup>15</sup> The [model policy](#) prohibits ICE from making arrests in juvenile courts; it also prohibits court staff from permitting ICE to access non-public areas of the court unless they present a valid federal judicial warrant, and requires training for court staff on how to read federal warrants.<sup>16</sup>

## Massachusetts

On June 20, 2019, Massachusetts District Court Judge Indira Talwani issued a [preliminary injunction](#) enjoining ICE and DHS from implementing the 2018 ICE Courthouse Directive “in Massachusetts and from civilly arresting parties, witnesses, and others attending Massachusetts courthouses on official business while they are going to, attending, or leaving the courthouse.”<sup>17</sup>

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14. Cal. Civ. Code § 43.54 (2020).

15. Cal. Gov’t Code § 7284.8 (2020).

16. See California Attorney General, Securing Equal Access to Justice for All: Guidance and Model Policies to Assist California’s Superior Courts in Responding to Immigration Issues (Oct. 2018), <https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/court.pdf>.

17. Ryan v. U.S. Immigration & Customs Enf’t, 382 F. Supp. 3d 142, 144 (D. Mass. 2019).



## Oregon

On November 14, 2019, Oregon’s Chief Justice Martha Walters issued [Uniform Trial Court Rule 3.190](#), which states that “No person may subject an individual to civil arrest without a judicial warrant or judicial order when the individual is in a courthouse or within the environs of a courthouse” and the order defines “environs of a courthouse” to mean “the vicinity around a courthouse, including all public entryways, driveways, sidewalks, and parking areas intended to serve a courthouse.”<sup>18</sup> In a [press release](#), Justice Walters explained that “arrests in courthouses have interfered with judicial proceedings and removed criminal defendants before they have been sentenced or completed their sentences. We are adopting this rule to maintain the integrity of our courts and provide access to justice--not to advance or oppose any political or policy agenda.”<sup>19</sup>

## Washington

On December 17, 2019, the Washington State Attorney General [filed a complaint](#) against ICE for its courthouse arrests policy.<sup>20</sup> In addition, advocates [filed a petition](#) requesting adoption of a court rule prohibiting civil arrests, which would include ICE arrests, which has been published for comment on an expedited calendar.<sup>21</sup> Advocates also [filed a petition](#) for a change to the state’s Rules of Professional Conduct, which would prohibit prosecutors from collaborating with ICE and Customs and Border Patrol (CBP), which is currently pending.<sup>22</sup>

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18. Order Approving Out-Of-Cycle Adoption of New Uniform Trial Court Rule 3.190, Order No. 19-095 (Nov. 14, 2019), [https://www.courts.oregon.gov/rules/UTCR/CJO\\_2019-095.pdf](https://www.courts.oregon.gov/rules/UTCR/CJO_2019-095.pdf).

19. Press Release: State of Oregon Judicial Department, Oregon Chief Justice Issues Rule Limiting Courthouse Arrests (Nov. 14, 2019), <https://www.courts.oregon.gov/news/Lists/ArticleNews/Attachments/1213/acd3fb79befadf4982b20ceba127ffd0-Media-Release-New-UTCR-Limiting-Civil-Arrests-in-Court-Facilities-effective-2019-11-14.pdf>

20. Complaint, State of Washington v. U.S. Dep’t of Homeland Security et. al., No. 2:19-cv-02043-TSZ (W.D. Wash. 2019).

21. Washington Courts, GR 38 - New General Rule, Proposal (Dec. 2019), [https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplay&ruleId=2718](https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2718).

22. Washington Courts, RPC 4.4 - Respect for Rights of Third Person, Proposal (Dec. 2019), [https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplay&ruleId=2721](https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2721).

## New York

### Unified Court System Rules

On April 17, 2019, the New York State Unified Court System (UCS) issued a new “[Protocol Governing Activities in Courthouses by Law Enforcement Agencies](https://www.immigrantdefenseproject.org/wp-content/uploads/OCA-ICE-Directive.pdf)” applicable to “representatives of law enforcement agencies who, while acting in their official capacity, enter a New York State courthouse to observe an individual or take an individual into custody but do not have a warrant issued by a judge of the Unified Court System authorizing them to do so.”<sup>23</sup>

- Upon entry to a courthouse, law enforcement officials covered by this protocol shall identify themselves to uniformed UCS [Unified Court System] uniformed personnel and state their specific law enforcement purpose and the proposed enforcement action to be taken. Uniformed UCS personnel shall immediately transmit this information to an appropriate supervisor.
- The uniformed 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. Email notification to the Department of Public Safety should be made as soon as possible.
- Arrests by agents of U.S. Immigration and Customs Enforcement may be executed inside a New York State courthouse only pursuant to a judicial warrant or judicial order authorizing the arrest. A ‘judicial warrant’ or ‘judicial order’ is a warrant or order issued by a federal judge or federal magistrate judge. AUCS judge or court attorney shall review the warrant or order to confirm compliance with this requirement prior to any such arrest.
- 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 court security 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. For purposes of this protocol, ‘law enforcement action’ shall include observation of court proceedings by law enforcement agents acting in their official capacity.
- UCS court security 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.”

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23. Office of the Chief Admin. Judge, N.Y. State Unified Court Sys., Protocol Governing Activities in Courthouses by Law Enforcement Agencies (Apr. 17, 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/OCA-ICE-Directive.pdf>.

## Protect Our Courts Act

The New York State Legislature has introduced legislation that would protect court attendees from civil arrest, including ICE arrests. The [Protect Our Courts Act](#) (S425A/A2176A) would deter ICE from conducting arrests both inside the courts and in the immediate vicinity of the courts by codifying a long-established common law privilege that forbids civil arrests while an individual is going to, attending, or returning from court; and by requiring ICE to present a federal judicial warrant or court order before entering a courthouse to make a civil arrest.<sup>24</sup> The bill is pending as of January 2020.

## Two Federal Lawsuits

In September 2019, New York Attorney General James and Kings County District Attorney Eric Gonzalez filed a lawsuit challenging the January 2018 ICE Courthouse Arrest Directive, claiming “that (1) the Directive exceeds ICE’s statutory authority, in violation of the Administrative Procedures Act (APA), because Congress never intended to authorize ICE to interfere with state judicial proceedings or to disregard the well-settled common-law privilege against civil arrests in or near courthouses; (2) that the Directive is arbitrary and capricious because [ICE] issued it without considering the severe impact that arrests in or near courthouses would have on state judiciaries and prosecutors; and (3) that the Directive’s interference with core sovereign functions violates the Tenth Amendment.”<sup>25</sup> On the same day, the Legal Aid Society and Cleary Gottlieb filed a lawsuit on behalf of an individual plaintiff and five organizational plaintiffs (Sanctuary for Families, Make the Road New York, New York Immigration Coalition, Urban Justice Center, and The Door) alleging that the Directive violates the First, Fifth, and Sixth Amendments, in addition to the APA.<sup>26</sup> The lawsuits are pending before two different judges in the Southern District of New York.

On December 19, 2019, Judge Rakoff issued a [decision](#) denying ICE’s motion to dismiss the lawsuit filed by Attorney General James and District Attorney Gonzalez, allowing them to move forward, stating that: “Courts cannot be expected to function properly if third parties (not least the executive branch of the government) feel free to disrupt the proceedings and intimidate the parties and witnesses by staging arrests for unrelated civil violations in the courthouse, on court property, or while the witnesses or parties are in transit to or from their court proceedings.”<sup>27</sup> The case is set for trial in Spring 2020.

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24. <https://www.nysenate.gov/legislation/bills/2019/s425>

25. Plaintiffs’ Memorandum of Law in Opposition to Defendants’ Motion to Dismiss, *State of New York, et. al., v U.S. Immigration Customs & Enf’t, et. al.*, 1:19-cv-08876-JSR, 10 (S.D.N.Y. Nov. 5, 2019).

26. *Doe et. al. v. U.S. ICE, et. al.*, 19-cv-08892-AJN (S.D.N.Y.).

27. *New York v. U.S. ICE*, 19-cv-08876-JSR, 2019 WL 6906274 (S.D.N.Y. Dec. 19, 2019).



The Immigrant Defense Project (IDP) was founded 20 years ago to combat an emerging human rights crisis: the targeting of immigrants for mass imprisonment and deportation. As this crisis has continued to escalate, IDP has remained steadfast in fighting for fairness and justice for all immigrants caught at the intersection of the racially biased U.S. criminal and immigration systems. IDP fights to end the current era of unprecedented mass criminalization, detention and deportation through a multipronged strategy including advocacy, litigation, legal advice and training, community defense, grassroots alliances, and strategic communications.

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