



ICE OUT OF COURTS CAMPAIGN TOOLKIT



EXECUTIVE SUMMARY

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

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

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INTRODUCTION AND BACKGROUND

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

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

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

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

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

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

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

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

WHY CONSIDER AN ICE OUT OF COURTS CAMPAIGN?

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

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

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

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

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

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

HOW TO USE THIS TOOLKIT

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

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

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



SECTION 1: DOCUMENTING THE PROBLEM AND BUILDING A CASE

Information collecting, case stories, surveys, and infographics

BACKGROUND

How to document and present information about courthouse arrests.

As reports of courthouse arrests and their chilling effect began coming to IDP, we developed a system to record the information. using three primary tools: 1) maintaining a database containing detailed information about each arrest and attempted arrest of a person attending court; 2) working with lawyers, advocates, and directly-impacted people to prepare sworn affidavits regarding arrests, attempted arrests, and the fear of participating in the court process due to fear of ICE arrest; and 3) conducting a statewide survey in New York, asking questions about lawyers' and advocates' experiences with ICE in the courts, and the impact on their clients or members.

It is important to note that some information about courthouse arrests and the dangers they create can be difficult for advocates to obtain. For example, statistically significant information about widespread declines in participation in the court process; decreases in the numbers of orders of protection sought in the family courts; increases in numbers of bench warrants, are all categories of information to which non-governmental actors (specifically, non-court actors) will not have access. Le-

gal services organizations can try to create systems internally to track this information for their client population, but this can be challenging. Courts are better-situated to have access to this kind of information, but may be reluctant to or refuse to release it publicly.

RESOURCES

List of questions asked, and system for gathering information and data. We developed a list of information to try to obtain and questions to ask about every arrest and attempted arrest reported to IDP. We maintained the information fastidiously, assigning one person to oversee volunteers and ensure that the information was verified and accurate statistics were maintained in a database. The reliability of information is crucial to a campaign, giving it a baseline level of legitimacy. Over the course of a year, from 2016 to 2017, we documented a 1200% increase in courthouse arrests in New York State.

Data. Policymakers we have engaged with our campaign have wanted to know the numbers of people arrested, demographic information about them, locations of arrests, and other details. We periodically release data sets about our recorded numbers, and have included some samples here. We have distributed these to judges, elected and appointed officials, and reporters. In our offices, we maintain a broader set of information about each arrest, which we do not publish or make publicly available.

Infographics. We have also used infographics, some included here, to break down and present our data for different audiences. We post these on our website and distribute them to policymakers and reporters.

Affidavits of advocates and community members. We worked with advocates to write sworn affidavits documenting the details of arrests, of client fear, and the harm on individual lives. Included here are 12 affidavits from attorneys and other legal service providers, and community based organizations in New York. They describe the individual circumstances of people arrested in the courts or afraid of attending court. They describe issues affecting housing security, domestic violence, human trafficking, youth exploitation, and mental health.

Case stories. Included are some informational materials we prepared for different audiences that integrate case stories and data to present the facts regarding courthouse arrests.

Survey questions (“how to”) and results. One measure of the impact of courthouse arrests on individual rights and public safety is the chilling effect--the fear and reluctance or unwillingness of individuals to attend court-mandated hearings, seek protection from the courts, or participate in treatment or rehabilitative services through the courts. To illustrate the chilling effect of ICE presence in the courts, in June 2017, IDP developed and conducted a survey of 225 advocates and attorneys across New York State. The questions that we asked in that survey are included here.

Findings include: 75% of attorneys responding worked with clients who expressed fear of going to court; two-thirds of attorneys who work with people affected by violence said they had clients who chose not to seek protection from a court because of potential ICE presence; and nearly half of housing court attorneys reported that their clients refused to bring complaints against abusive landlords for fear of ICE. The survey results are included here.

Additional resources:

- Immigrant Defense Project, [ICEwatch: ICE Raids Tactics Map--raidsmap.immdefense.org](https://www.immdefense.org/raidsmap) (July 2018).
- ACLU, [Report: Freezing Out Justice--How immigration arrests at courthouses are undermining the justice system](#) (2018).
- Make the Road New Jersey, [Report: ICE in the New Jersey Courts--The Impact of Immigration Enforcement on Access to Justice in the Garden State](#) (December 2017).
- Northeastern University School of Law Immigrant Justice Clinic, [Report: Blocking the Courthouse Doors--ICE Enforcement at Massachusetts Courthouses and Its Effects on the Judicial Process](#) (March 2018).



Tracking New York courthouse arrests

For the past four years, IDP has been monitoring immigration enforcement activity in New York communities, including arrests in and around courts. Since early 2017, there has been an increase of ICE arrests and attempted arrests at courts throughout New York State, including in criminal and family courts.

If you know of an arrest or attempted arrest by immigration agents in a NY courthouse, please contact Genia Blaser (genia@immdefense.org) and Lee Wang (lee@immdefense.org). You can also fill out the form on the other side of this sheet and fax it to us at 1-800-391-5713.

Below are some **suggested intake questions** to help you fill out the form.

Basics

- Name of person reporting information
- Organization/18b panel
- Contact information (phone & email)

Description of incident

- Date of incident (if don't have the exact date, please provide approximate month and year)
- Name/type of Court where incident took place (e.g. Bronx Criminal, Kings Family Court, etc.)
- How many ICE officers were there? How were they dressed? How did they identify themselves?
- Did the ICE agents present a warrant or refuse to present a warrant?
- Where in the courthouse did the incident take place? (e.g. courtroom, vestibule, hallway, outside the courthouse)
- Was there anything else notable about the arrest or attempted arrest?

Court staff or District Attorney involvement in the arrest

- Did any court staff (officers, clerks, judges) play any role in the arrest or attempted arrest? If so, please describe.
- Did the district attorney play any role in the arrest or attempted arrest? If so, please describe.

Background of person arrested

- What criminal charges was the individual facing at the time of the arrest/attempted arrest?
- What was the immigration status of the individual at the time of the courthouse incident?
- If you can, please describe the individual's ties to the US (length of time in US, family here).
- If you can, please describe the individual's prior criminal history (if any).



Tracking New York courthouse arrests

COURTHOUSE ARREST INTAKE FORM

BASICS (Name of person reporting, organization, contact info)
DESCRIPTION OF INCIDENT (Date of incident (at least month/yr); name/type of court; location of arrest in courthouse; how ICE agents presented themselves; interaction with ICE agents; anything notable)
COURT STAFF OR DISTRICT ATTORNEY INVOLVEMENT IN ARREST
BACKGROUND OF PERSON ARRESTED (pending charges, immigration status, criminal history, ties to the U.S.)

Email to: Lee Wang (lee@immdefense.org) and Genia Blaser (genia@immdefense.org)

Fax to: 1-800-391-5713



ICE COURTHOUSE ARRESTS 2017

Updated as of 4/13/2019

TOTAL NY State: 146 reports (130 arrests; 16 attempts)

TOTAL NYC: 99 reports (86 arrests; 13 attempts)

TOTAL Upstate & LI: 47 reports (44 arrests; 3 attempts)

Date, if known	Location	Type of Court	Arrest or Attempt
01/04/2017	Brooklyn	Criminal Court	Arrest
01/06/2017	Kingston (Ulster County)	Criminal Court	Arrest
~ Feb. 2017	Manhattan	Criminal Court	Attempt
02/03/2017	Staten Island	Criminal Court	Arrest
02/03/2017	Staten Island	Criminal Court	Arrest
02/06/2017	Nassau County	Criminal Court	Arrest
02/15/2017	Hudson (Columbia County)	Criminal Court	Arrest
02/15/2017	Hudson (Columbia County)	Criminal Court	Arrest
02/15/2017	Hudson (Columbia County)	Criminal Court	Arrest
02/16/2017	Livingston (Columbia County)	Criminal Court	Attempt
02/17/2017	Port Chester (Westchester County)	Criminal Court	Arrest
02/21/2017	Manhattan (New York)	Criminal Court	Arrest
~Mar. 2017	Queens	Criminal Court	Attempt
~Mar. 2017	Queens	Criminal Court	Arrest
~ Mar. 2017	New Rochelle (Westchester County)	Criminal Court	Arrest
~Mar. 2017	Putnam Valley (Putnam County)	Criminal Court	Attempt
~ Mar. 2017	Manhattan	Criminal Court	Arrest
03/01/2017	Suffolk County	Criminal Court	Arrest
03/01/2017	Brooklyn	Criminal Court	Arrest
03/01/2017	Hempstead (Nassau County)	Criminal Court	Arrest
03/16/2017	Brooklyn	Family Court	Arrest
03/23/2017	Bronx	Criminal Court	Attempt
03/31/2017	Port Chester (Westchester County)	Criminal Court	Arrest
04/05/2017	Manhattan (New York)	Criminal Court	Arrest
04/19/2017	Suffolk	Family Court	Arrest
04/20/2017	Hudson (Columbia County)	Criminal Court	Arrest
04/20/2017	Bronx	Criminal Court	Attempt
04/21/2017	Manhattan (New York)	Criminal Court	Arrest
04/25/2017	Millbrook (Dutchess County)	Criminal Court	Arrest
~May 2017	Albany	Criminal Court	Arrest
~May 2017	Albany	Criminal Court	Arrest

05/03/2017	Queens	Criminal Court	Arrest
05/10/2017	Queens	Criminal Court	Arrest
05/15/2017	Suffolk County	Youth Part	Arrest
05/23/2017	Spring Valley (Rockland County)	Criminal Court	Arrest
05/23/2017	Manhattan (New York)	Criminal Court	Arrest
05/30/2017	Brooklyn (Kings)	Criminal Court	Arrest
05/30/2017	Brooklyn (Kings)	Criminal Court	Arrest
05/31/2017	Bronx	Criminal Court	Attempt
~June 2017	Manhattan (New York)	Criminal Court	Arrest
~June 2017	Manhattan (New York)	Criminal Court	Arrest
06/06/2017	Staten Island (Richmond)	Criminal Court	Arrest
06/06/2017	Bronx	Criminal Court	Arrest
06/06/2017	Brooklyn (Kings)	Criminal Court	Arrest
06/07/2017	Manhattan (New York)	Criminal Court	Arrest
06/09/2017	Queens	Criminal Court	Arrest
6/9/2017	Queens	Human Trafficking Intervention Court	Arrest
06/12/2017	Brooklyn (Kings)	Criminal Court	Arrest
06/12/2017	Manhattan (New York)	Criminal Court	Arrest
06/13/2017	Bronx	Criminal Court	Arrest
06/14/2017	Brooklyn (Kings)	Criminal Court	Arrest
06/15/2017	Bronx	Criminal Court	Arrest
06/15/2017	Manhattan (New York)	Criminal Court	Arrest
06/15/2017	Manhattan (New York)	Criminal Court	Arrest
06/16/2017	Bronx	Criminal Court	Arrest
06/16/2017	Queens	Criminal Court	Arrest
06/16/2017	Queens	Human Trafficking Intervention Court	Arrest
06/16/2017	Queens	Human Trafficking Intervention Court	Attempt
06/16/2017	Queens	Criminal Court	Arrest
06/16/2017	Brooklyn (Kings)	Criminal Court	Arrest
06/16/2017	Bronx	Criminal Court	Attempt
06/27/2017	Bronx	Criminal Court	Arrest
06/28/2017	Skaneateles (Onondaga County)	Traffic Court	Arrest
06/29/2017	Bronx	Criminal Court	Arrest
~July 2017	Richfield Springs (Otsego County)	Village Court	Arrest
~July 2017	Kinderhook (Columbia County)	Traffic Court	Arrest
~July 2017	Watervliet (Albany County)	Traffic Court	Arrest
~July 2017	Manhattan	Criminal Court	Arrest
07/03/2017	Kinderhook (Columbia County)	Criminal Court	Arrest
07/05/2017	Broome County	Criminal Court	Arrest
07/07/2017	Brooklyn (Kings)	Criminal Court	Arrest
07/10/2017	Queens	Criminal Court	Arrest

07/10/2017	Manhattan (New York)	Criminal Court	Arrest
07/11/2017	Queens	Criminal Court	Arrest
07/11/2017	Manhattan (New York)	Criminal Court	Arrest
07/11/2017	Manhattan (New York)	Criminal Court	Arrest
07/14/2017	Brooklyn (Kings)	Criminal Court	Arrest
07/17/2017	Queens	Criminal Court	Arrest
07/25/2017	Brooklyn (Kings)	Community Court	Attempt
07/31/2017	Brooklyn (Kings)	Criminal Court	Arrest
~Aug. 2017	Queens	Criminal Court	Arrest
~Aug. 2017	Altamont (Albany County)	Criminal Court	Arrest
~Aug. 2017	Saratoga County	Criminal Court	Arrest
~Aug. 2017	Yonkers (Westchester County)	Criminal Court	Arrest
08/03/2017	Brooklyn (Kings)	Criminal Court	Arrest
08/07/2017	Suffolk	Criminal Court	Arrest
08/10/2017	Brooklyn (Kings)	Criminal Court	Arrest
08/14/2017	Queens	Criminal Court	Arrest
08/14/2017	Bronx	Criminal Court	Attempt
08/17/2017	Brooklyn (Kings)	Criminal Court	Arrest
8/21/2017	Staten Island (Richmond)	Criminal Court	Arrest
~Sept. 2017	Queens	Criminal Court	Arrest
~Sept. 2017	Spring Valley (Rockland County)	Criminal Court	Arrest
~Sept. 2017	Queens	Criminal Court	Arrest
09/11/2017	Bronx	Criminal Court	Arrest
09/12/2017	Brentwood (Suffolk County)	Criminal Court	Arrest
09/14/2017	Brooklyn (Kings)	Criminal Court	Arrest
09/14/2017	Brooklyn (Kings)	Criminal Court	Arrest
09/14/2017	Brooklyn (Kings)	Criminal Court	Arrest
9/14/2017	Brooklyn (Kings)	Criminal Court	Arrest
9/18/2017	Queens	Criminal Court	Arrest
9/19/2017	Bronx	Criminal Court	Arrest
09/19/2017	Bronx	Criminal Court	Arrest
9/19/2017	Bronx	Criminal Court	Arrest
9/19/2017	Brooklyn (Kings)	Criminal Court	Arrest
9/21/2017	Hempstead (Nassau County)	Criminal Court	Arrest
09/21/2017	Brooklyn (Kings)	Criminal Court	Arrest
09/25/2017	Mineola (Nassau)	Criminal Court	Arrest
09/27/2017	Queens	Criminal Court	Arrest
09/27/2017	Rockland County	Criminal Court	Arrest
10/06/2017	Albany	Criminal Court	Arrest
10/10/2017	Queens	Criminal Court	Arrest
10/12/2017	Brooklyn (Kings)	Criminal Court	Arrest
10/16/2017	Brooklyn (Kings)	Criminal Court	Arrest
10/26/2017	Saratoga Springs (Saratoga County)	City Court	Arrest

10/26/2017	Saratoga Springs (Saratoga County)	City Court	Arrest
10/27/2017	Queens	Criminal Court	Arrest
10/31/2017	Bronx	Criminal Court	Attempt
~Nov. 2017	Bronx	Criminal Court	Arrest
~Nov. 2017	Queens	Criminal Court	Arrest
~Nov. 2017	Staten Island (Richmond)	Criminal Court	Arrest
11/01/2017	Brooklyn (Kings)	Criminal Court	Attempt
11/02/2017	Saratoga Springs (Saratoga County)	Criminal Court	Arrest
11/2/2017	Ballston Spa (Saratoga County)	Criminal Court	Arrest
11/8/2017	Port Chester (Westchester County)	Criminal Court	Arrest
11/13/2017	Nassau County	Criminal Court	Arrest
11/13/2017	Brewster (Putnam County)	Criminal Court	Arrest
11/14/2017	Brooklyn (Kings)	Criminal Court	Arrest
11/15/2017	Schenectady (Schenectady County)	Criminal Court	Arrest
11/15/2017	Brooklyn (Kings)	Criminal Court	Arrest
11/15/2017	Brooklyn (Kings)	Criminal Court	Arrest
11/16/2017	Bronx	Criminal Court	Arrest
11/28/2017	Brooklyn (Kings)	Criminal Court	Arrest
~Dec. 2017	Rockland County	Integrated Domestic Violence Court	Arrest
12/5/2017	Bronx	Criminal Court	Attempt
12/7/2017	Suffolk County	Criminal Court	Arrest
12/11/2017	Brooklyn (Kings)	Criminal Court	Arrest
12/12/2017	Queens	Criminal Court	Arrest
12/12/2017	Bronx	Criminal Court	Attempt
12/13/2017	Bronx	Criminal Court	Arrest
12/13/2017	Bronx	Criminal Court	Arrest
12/14/2017	Geneva (Ontario County)	City Court	Attempt
12/21/2017	Brooklyn	Criminal Court	Arrest
12/21/2017	Brooklyn	Criminal Court	Arrest
Unknown	Manhattan (New York)	Criminal Court	Arrest
Unknown	Monroe County	Criminal Court	Arrest

FOR IMMEDIATE RELEASE:



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

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

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

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

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

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

“These arrests plague our clients in every borough and deter immigrants and others from seeking services offered by the court that should always be accessible,” said Tina Luongo, Attorney-In-Charge of the Criminal Defense Practice at The Legal Aid Society. “This report shows that courthouse arrests will only continue to proliferate under this Administration. We hope to work with Albany leaders and the Office of Court Administration next session on a legislative remedy that could address this injustice that’s now truly statewide.”

KEY STATISTICS & TRENDS:

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

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

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

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

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ICE Courthouse Arrests in New York

by the Numbers



There has been a **1200% increase** in reports of ICE arrests and attempted arrests at New York courthouses in 2017 from the previous year. The trend reflects a dangerous new era in enforcement and immigrant rights violations.

Reports of ICE arrests and attempted arrests at New York courthouses are way up.



Documented immigrants are being arrested.

In cases where immigration status was known, at least one out of 5 people targeted were documented. This includes people holding green cards and valid visas.



ICE has expanded arrests to target immigrants with no prior criminal history.

28%

Of the undocumented immigrants targeted had no prior criminal history. The majority were reporting to court on low level offenses, many for traffic violations.



Immigrants are being arrested in a broad range of courts.

- Family courts, including child support and visitation hearings
- Criminal courts
- Traffic courts
- Human Trafficking Intervention Court
- Youth Parts
- Community Courts



ICE has targeted immigrants in particularly vulnerable groups

Including those with documented mental health issues and survivors of family violence.



FACT SHEET: ICE IN NEW YORK STATE COURTS

A coalition of over 100 New York legal services providers and immigrants' rights groups is documenting incidents of Immigration and Customs Enforcement (ICE) activity in the state's courts. The coalition verifies each report through interviews with witnesses including attorneys, family members, and litigants.

- The coalition has seen a significant uptick in ICE's presence in New York's courts since the beginning of 2017. Since January, we have received more reports of ICE arrests or attempted arrests in the courts than we have for the past two years combined.
- For the first time ever, ICE has targeted immigrants in Family Court, arresting parents in visitation, child support and PINS proceedings. In Albany, ICE agents detained a mother who had sought help from the Family Court after her daughter ran away. As a result, both of her teenage children were placed into foster care for several weeks.
- ICE has refused to designate courthouses as "sensitive locations" and has announced publicly that it will not refrain from arresting witnesses and survivors of crime at court appearances. In New York, ICE has increasingly targeted vulnerable immigrants including a woman facing misdemeanor charges who was a sexual assault victim with a history of serious mental health issues.
- Legal and social services providers routinely speak to immigrants and family members of immigrants who are afraid to appear in State courts due to increased ICE presence. In a national survey, 75% of advocates report that immigrant survivors of intimate partner violence are now concerned about going to court; 43% have clients who have dropped a civil or criminal case due to fear of ICE in the courts.
- In a survey of immigrants in NYC, many expressed fear of going to court because of ICE:
 - *I have a disabled child and I fear going to court for custody.*
 - *I won't be safe if I need to go to court for any reason. I will not feel safe reaching out to any agencies in case I need help.*
 - *They could send me to immigration even if my case is pending.*
 - *I should be able to go to court without having to be scared of getting arrested or deported.*
- ICE is now targeting immigrants in the criminal courts at a much early point in criminal proceedings, arresting immigrants as early as arraignments. The agency also routinely refuses to return immigrants to State courts to participate in the resolution of their ongoing criminal proceedings.
- In virtually every instance documented by the coalition, ICE has refused to produce any type of arrest warrant—judicial or administrative. Federal immigration regulations require ICE to produce an administrative warrant, which is signed by an ICE officer and subject only to a "reason to believe" standard, unless there are exigent circumstances. However, ICE still refuses to produce even these bare bones warrants to justify arrests.
- In some cases, OCA staff and judges have assisted ICE arrests by providing personal identifying information about immigrant litigants, delaying the calling of cases, and physically blocking defense attorneys from accessing their clients while ICE conducted an arrest. One defense attorney who witnessed ICE arrest a man said "I was shocked. It seemed like everyone in the court—the interpreter, officers, even the Judge—was working for ICE."

Brooklyn (Adult Criminal)

On June 6, a client of The Legal Aid Society appeared in the Desk Appearance Part of Criminal Court to resolve a charge for misdemeanor possession of marijuana. The case was resolved by adjournment in contemplation of dismissal. This individual had no prior criminal justice contacts. Upon leaving the courtroom, 3 plainclothes ICE agents surrounded and handcuffed him, and removed him from the courthouse. The agents did not reveal their presence to the court or to defense counsel.

New Rochelle City Court (Adult Criminal)

On March 30, plainclothes ICE agents took a man into custody with the assistance of court officers, the court interpreters, and the presiding judge. The man initially appeared with assigned counsel in the morning to face a public drunkenness charge; he pled guilty and the judge sentenced him to 3 days. Later that afternoon, after ICE agents were seen talking with court staff the judge recalled the case. Without counsel present, the judge resentenced the man to time served and ICE promptly took the man into custody.

New York County (Adult Criminal)

On April 5, ICE arrested a rape and sexual assault victim who suffers from mental health issues and has a history of suicide attempts. Despite being informed of this by defense counsel, ICE arrested the woman who had appeared in New York County to face misdemeanor charges. ICE's practice of targeting a domestic violence survivor is consistent with reports about ICE conduct in other jurisdictions; in Texas, for example, ICE arrested a transgender woman at the Family Court where she sought an order of protection against her abusive partner. An investigative report by *The New Yorker* indicates that ICE likely targeted the woman after getting a call from her abuser.

Suffolk County Court (Youth Part-Criminal)

On May 15, three ICE agents arrested a young man facing minor charges in the youth part. ICE agents followed the young man into the court room and asked the presiding judge to call his case so that they could positively identify the young man. While the young man's attorneys contacted his parents so that they could come and say goodbye to him, ICE agents called the Administrative Judge of the Suffolk County Court to warn that the "delay" in calling his case constituted obstruction of justice. After this warning, the presiding judge called the young man's case, enabling ICE to positively identify him. The young man walked out of the courtroom and ICE officers arrested him. He is currently detained and has a pending petition for Special Immigrant Juvenile Status.

Albany Family Court (PINS)

On November 22, ICE arrested a mother who had appeared in Albany Family Court on a PINS petition. The mother had filed the petition after her teenage daughter had run away. While attorneys for the mother and daughter attempted to resolve the PINS petition, ICE agents stood outside of the courtroom, staking out the mother for several hours. At the conclusion of the proceeding, ICE took the mother away and detained her at Albany County Jail. During her month and a half long detention, the mother's teenage daughter and son were both placed in foster care. The mother has since been released from detention.

Suffolk Family Court (Visitation)

On April 19, plainclothes ICE agents arrested the father of two—a 4 and 5 year old—who was appearing for a visitation matter in the Suffolk County Family Court. The father who was targeted had sole custody of the children and the mother was filing for visitation. The ICE agents, who were in plainclothes, arrested the father in the hallway outside of the visitation part. The father came to the U.S. as a toddler when his family fled their native country because of persecution. His parents and 7 siblings are all U.S. citizens or lawful permanent residents. He is now detained in an immigration jail.



FACT SHEET ICE COURTHOUSE ARRESTS

ICE Courthouse Arrest Facts

A coalition of New York State legal services providers and immigrants' rights groups is documenting incidents of ICE activity in the state's courts. Attorneys verify each report through every possible means. We conduct interviews with witnesses to the incident including attorneys, family members, and litigants who were present in court. Whenever possible, attorneys also speak directly with the immigrants who have been arrested and detained by ICE.

- The coalition has received 22 reports of arrests and attempted arrests by ICE in New York State courts from February to May 2017. This compares to 20 arrests and attempted arrests for all of 2015 and 2016 combined.
- ICE has conducted arrests in criminal and family courts. They have also targeted immigrants in mental health courts and the youth part of criminal courts.
- Legal and social services providers daily have conversations with clients who are immigrants and family members of immigrants who have become afraid to appear in State courts due to increased ICE presence. Those afraid to go courts include: survivors of domestic violence and sexual abuse, survivors of other violent crime, exploited tenants and workers, survivors of human trafficking, and people who need to participate in family court proceedings (child custody, child support, divorce, orders of protection, abuse and neglect, adoption, guardianship). Advocates who work in all of these spheres unanimously report this chilling effect on immigrant communities' access to the courts.
- ICE has refused to designate courthouses as "sensitive locations" and has announced publicly that it will not refrain from arresting witnesses and survivors of crime at court appearances.
- ICE regularly arrests people who have ongoing criminal court proceedings, and then refuses to return them to State courts to participate in resolution of those proceedings.
- ICE obtains personal identifying information from OCA staff without a judicial subpoena, and uses the information to identify individuals to arrest. ICE also uses this information and documentation as evidence in subsequent detention and deportation hearings.

ICE's Arrest Authority

- ICE enforces civil immigration law, not criminal law. Under civil immigration law, ICE agents can arrest and detain individuals whom they believe are removable.
- ICE's own regulations require that ICE officers produce an administrative warrant when conducting an arrest, unless they can demonstrate exigent circumstances. However, in every instance reported to this coalition, ICE agents have refused to produce an administrative warrant. Administrative warrants are issued by ICE officers, not neutral magistrates; they are not subject to the "probable cause" standard that governs judicial warrants; instead, they are based on a "reason to believe" that a person is removable.
- Federal law does not require OCA staff to assist or cooperate with ICE enforcement activities. States cannot be forced to participate in federal immigration enforcement, except to communicate information about immigration or citizenship status if known.

FACT SHEET
ICE COURTHOUSE ARRESTS

Accounts of Courthouse Arrests

Suffolk County Court (Youth Part-Criminal)

On May 15th, three ICE agents took a young man into custody after he appeared to face minor charges in the youth part. ICE agents followed the young man as he walked into the youth part. When approached by counsel for the individual, the ICE agents repeatedly refused to identify themselves and would only say that worked for the “federal government.” When the presiding judge did not immediately call the young man’s case, ICE agents called the Administrative Judge of the Suffolk County Court to warn that the presiding judge was obstructing justice by “delaying” his case. After this morning, the presiding judge called the young man’s case; he stood up and ICE was able to positively identify him. The presiding judge was then forced to issue an adjournment in his case. The young man walked out of the courtroom and ICE officers quickly surround him outside and took him to a van waiting outside. He is currently detained in an immigration jail. He also has a pending petition for Special Immigrant Juvenile Status.

New York County (Adult Criminal)

On April 5, ICE arrested a rape and sexual assault victim who suffers from mental health issues and has a history of suicide attempts. Despite being informed of this by defense counsel, ICE arrested the woman who had appeared in New York County to face misdemeanor charges. The ICE agents also repeatedly refused to produce a warrant when asked by defense counsel. ICE’s practice of targeting a domestic violence survivor is consistent with reports about ICE conduct in other jurisdictions; in Texas, for example, ICE followed a transgender woman from a domestic violence shelter to the court appearance where she sought an order of protection against her abusive partner. ICE arrested her in court and detained her in an immigration jail. An investigative report by the New Yorker indicates that ICE likely targeted the woman after getting a call from her abuser.

Albany Family Court (PINS)

On November 22, ICE arrested a mother who had appeared in Albany Family Court on a PINS petition. The mother had filed the petitioner after her teenage daughter had run away. While attorneys for the mother and daughter attempted to resolve the PINS petition, ICE agents stood outside of the courtroom, staking the mother out for several hours. At the conclusion of the proceeding, ICE took the mother away and detained her at Albany County Jail. During her month and a half long detention, the mother’s teenage daughter and son were both placed in foster care.

Brooklyn Family Court (Child Support)

ICE agents arrested the father of a five year old, who is a long-time green card holder, as he waited for a child support appearance in Brooklyn Family Court. Plainclothes ICE agents staked the father out in the waiting area of the child support part. When the court officer outside of the part called the father’s name, he stood up, and ICE agents surrounded him and handcuffed him. The father is now detained in an immigration jail.

Nassau Family Court (Visitation)

ICE agents arrested the father of two a 4 and 5 year-old who was appearing for a visitation matter in the Suffolk County Family Court. The ICE agents, who were in plainclothes, arrested the father in the hallway outside of the visitation part. The father, who came to the U.S. as a toddler when his family fled their native country because of persecution, is now detained in an immigration jail.

PROPOSED JUDICIAL RULES

1) Compliance with Immigration Law Enforcement Activities:

Employees of the Unified Court System shall not:

- i) Assist or cooperate with federal immigration enforcement activities in the course of their employment, in any courthouse of the Unified Court System. This includes, but is not limited to, a prohibition on providing any information to immigration enforcement officers regarding persons appearing before the court, except information regarding citizenship or immigration status, as required by 8 U.S.C. § 1373, and then only if known.
- ii) Inquire into the immigration status of any individual within any courthouse of the Unified Court System unless such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of services.

2) Civil arrests without judicial warrants:

Civil arrests that are not related to a proceeding in New York's Unified Court System may only be executed within a courthouse of the Unified Court System when accompanied by a judicial warrant authorizing them to take into custody the person who is the subject of such warrant. Judicial warrant is defined as a warrant issued by a magistrate sitting in the judicial branch of local, state, or federal government.

RATIONALE SUPPORTING PROPOSED JUDICIAL RULES

- These rules were drafted to ensure safe access to the New York State court system, to restore its proper functioning, and to place little burden on the courts to administer.
- Reducing the role of New York State courthouses in immigration enforcement will generally improve the functioning of the criminal, family, and civil courts. Fewer litigants in ongoing cases will disappear into immigration detention and deportation system. Immigrants and their family members will feel a restored sense of safety in participating in the court process.
- The participation of OCA staff in ICE arrests is showing community members that the State courts are a part of federal immigration enforcement. Prohibiting OCA staff from doing so will insulate them from commandeering and pressure by the federal agency, which cannot constitutionally require State staff to enforce federal immigration law. This will restore the impression in the community that the immigration system is separate from the New York State courts.
- Only in remote circumstances does ICE currently obtain a judicial warrant to conduct an arrest. Requiring them to do so to make an arrest inside a State courthouse will substantially diminish the courthouse arrest practice. Where ICE decides to obtain the warrant, ICE will be functioning consistently with the Fourth Amendment.
- The judicial requirement will enhance the reputation of the New York State courts as protecting communities, as it will expressly require federal agents to comply with the Constitution.
- These two rules are defensible against federal litigation challenges. States cannot be forced to participate in federal immigration enforcement, except to communicate information about immigration or citizenship status if known. The judicial warrant requirement applies to all civil arrests that are not related to the New York State Unified Court system. Both rules regulate conduct inside State courthouses; they do not regulate immigration. Outright banning ICE from State courthouses could be vulnerable to legal challenge.

April 2017

ICE in NY State Courts Survey

The ICE Out of NY Courts Coalition has compiled this survey to document the impact of ICE's presence in the courts on access to justice in immigrant and mixed-status communities. This is a questionnaire that is intended to be completed by attorneys, social workers, and others who work with immigrants as part of their practice. Please answer to the best of your knowledge. If you do not inquire about immigration status specifically, we ask that you use foreign-birth or limited English proficiency as a proxy.

Responses will be kept anonymous but we ask for your name and email for our internal record-keeping purposes.

For more information about the ICE Out of NY Courts Coalition, please visit immdefense.org/ice-out-of-courts/

* Required

1. **Email address ***

2. **Name**

3. **Title**

4. **Organization**

5. **What type of legal services do you provide (check all that apply) ***

Check all that apply.

- Immigration (Affirmative or Defensive)
- Criminal Defense
- Family Court Proceedings
- Housing
- Wage Theft
- Other: _____

6. Since January, 2017, the number of immigrants I have seen at intake has:

Mark only one oval.

- Increased
- Decreased
- No change
- Do not track

7. Since January 2017, immigrants I work with have: (check all that apply) *

Check all that apply.

- Been subjected to arrest by ICE in the courts
- Failed to file petitions for fear of encountering ICE
- Withdrawn petitions for fear of encountering ICE
- Failed to appear in court for fear of encountering ICE
- Expressed fear of calling police due to fear of ICE
- Expressed fear of the courts due to fear of ICE
- Expressed fear of serving as a complaining witness due to fear of ICE
- Other: _____

8. Since January 2017, have you seen ICE agents and/or ICE vehicles in and around the courts where you practice? *

Mark only one oval.

- Yes
- No

9. If yes, please specify the type of court(s) and the location of the court(s) where you have seen ICE agents and/or vehicles?

10. Has your legal office created a policy to provide guidance to immigrants you work with about the possibility of ICE apprehension at court since January of 2017?

Mark only one oval.

- Yes
- No
- Discussed but not yet created

11. **Has your office provided guidance to staff related to the possible arrival of ICE officers at your office since January of 2017?**

Mark only one oval.

- Yes
- No
- Discussed but not yet created

12. **If immigrants you work with have been apprehended by ICE in the courts, please describe the incident. Include the date, type of proceeding, location of the arrest, a description of how the ICE agents were dressed, and any interaction you had with ICE agents.**

SIJS: If you primarily serve immigrants who seek Special Immigrant Juvenile Status for themselves or their children, please answer the following. If not, please skip to the next section.

13. **Since January 2017, have you met with immigrants who have expressed fear of participating in a guardianship or custody proceeding due to fear of encountering ICE?**

Mark only one oval.

- Yes
- No
- Not Applicable

14. **Since January 2017, do you work with immigrants who have withdrawn a guardianship or custody petitions due to fear of encountering ICE?**

Mark only one oval.

- Yes
- No
- Not Applicable

15. **Since January 2017, do you work with immigrants who have expressed fear of submitting fingerprints in connection to a guardianship or custody petition due to fear of ICE?**

Mark only one oval.

- Yes
- No
- Not Applicable

People Affected by Violence: If you primarily serve people affected by violence, please answer the following. If not, please skip to the next section.

16. Since January 2017, have you worked with immigrants who are afraid to go to court because their abusive partners have threatened that ICE will be there?

Mark only one oval.

- Yes
 No
 Not Applicable

17. Since January 2017, do you have immigrant clients who have withdrawn or failed to pursue any of the following due to fear of ICE. Check all that apply.

Check all that apply.

- Orders of Protection
 Custody
 Visitation
 Child Support
 Divorce
 U certification through a court proceeding
 U certification through the police
 U certification through a DA's office
 Not Applicable
 Other: _____

18. Since January 2017, have you worked with immigrants who have withdrawn or failed to pursue any of the following immigration relief due to fear of ICE. Check all that apply.

Check all that apply.

- U nonimmigrant status
 T nonimmigrant status
 VAWA
 Battered Spouse Waiver
 Not Applicable

Housing, Wage Theft, and Other: if you primarily serve clients in housing, wage theft, or other civil proceedings please answer the following. If not, please skip.

19. **Since January 2017, have you worked with immigrants who have expressed fear of filing a complaint in housing court due to fear of ICE?**

Mark only one oval.

- Yes
- No
- Not Applicable

20. **Since January 2017, have you worked with immigrants who have expressed fear of filing a wage theft complaint due to fear of ICE?**

Mark only one oval.

- Yes
- No
- Not Applicable

21. **If you have immigrants clients who have expressed fear of filing other types of complaints, please explain below.**

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Key Findings

ICE in NYS Courts Legal Service and Advocates Survey

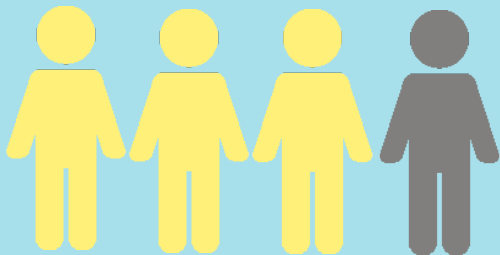
Since the election, Immigration and Customs Enforcement (ICE) has substantially increased the number of immigrants it targets in New York State Courts. In the first six months of 2017, advocates have reported three times as many arrests or attempted arrests than were reported for all of 2016.

As a result, many advocates are hearing from immigrants that they have a profound fear of going to court. This includes immigrants who need access to the courts for orders of protection, to defend against criminal charges, and to vindicate their rights as tenants.

To better understand these concerns, a coalition of legal services and community based organizations sent out a survey to the field from June 12 - June 23. Two hundred twenty five (225) advocates and attorneys from 31 counties across New York State participated. The participants practice in criminal, family, and civil courts. View more results at www.immdefense.org/ice-courts-survey

1/3
have seen ICE agents
or vehicles in and
around the courts

IMMIGRANTS SCARED TO GO TO COURT



3 OUT OF 4

legal service providers report that clients have expressed **fear of going to court because of ICE**

29%

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

WHEN I TOLD MY CLIENT **ICE WAS PRESENT TO ARREST HIM...** TEARS STREAMED DOWN HIS FACE AND HIS HANDS SHOOK WITH FEAR. HE SAID, **“MY CHILDREN, WHAT WILL THEY DO WITHOUT ME?”**

I EXPLAINED TO [MY CLIENT] THAT ICE WAS THERE. SHE BEGAN CRYING AND TREMBLING AND HAD TO BE CALMED BY A FRIEND... **AN INDIVIDUAL SEATED BEHIND US SAID SHE WOULD TELL HER FRIENDS TO NOT COME TO COURT** BECAUSE THEY WOULD BE DEPORTED.



IMMIGRANT
DEFENSE
PROJECT



Sanctuary
for Families



CHILLING EFFECT ON SURVIVORS OF VIOLENCE

A third of the survey participants work with survivors of violence

67% have had clients who decided not to seek help from the courts due to fear of ICE

37% have worked with immigrants who have failed to pursue an order of protection due to fear of ICE

“[ONE] CLIENT’S **HUSBAND THREATENED TO CALL IMMIGRATION OFFICIALS SO THAT THEY WOULD “TAKE HER AWAY” ON THE DATE OF HER NEXT COURT APPEARANCE** AND HAVE HER DEPORTED... NOT APPEARING FOR THE NEXT COURT DATE WOULD RESULT IN HER ABUSIVE HUSBAND GAINING CUSTODY OF HER CHILDREN.”

48% have worked with immigrants who have failed to seek custody or visitation due to fear of ICE

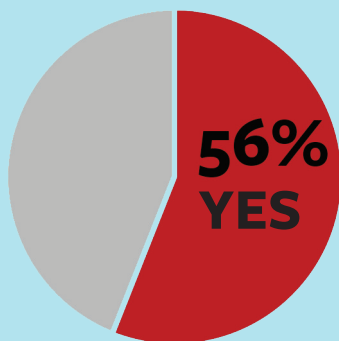
“[MY CLIENT] IS **AFRAID TO GO TO COURT TO SEEK AN ORDER OF PROTECTION** AGAINST HER HUSBAND, WHO ABUSED HER FOR MANY YEARS AND KIDNAPPED THEIR 8 YEAR OLD SON... SHE IS **TERRIFIED THAT BEING IN COURT PUTS HER AND HER FAMILY AT GREATER RISK OF BEING DEPORTED.**”

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

TENANTS AFRAID TO GO TO HOUSING COURT

A sixth of the respondents work with tenants in Housing Court

Have clients expressed fear of filing a housing court complaint due to fear of ICE?



“TENANTS REGARDLESS OF STATUS ARE TYPICALLY EXTREMELY SCARED AND SKEPTICAL ABOUT FIGHTING FOR THEIR RIGHTS IN COURT PROCEEDINGS. THIS **FEAR HAS TRANSFORMED INTO CRIPPLING PARALYSIS IN THE WAKE OF ICE ACTIVITY IN NEW YORK STATE COURTS.**”

225 Respondents participated in this survey conducted June 12 - June 23, 2017. They include attorneys and advocates who work with immigrants and family members. The respondents work in criminal, family, housing, employment, education, and immigration law, and practice in criminal, family, and civil courts in New York State. They work in 31 counties from across New York State including all five counties of NYC; Long Island; Westchester; the Capitol Region; Western and Central New York.

For more information contact Lee Wang at lee@immdefense.org or go to www.immdefense.org/ice-courts-survey

SECTION 2:

RESEARCHING LOCAL AND STATE LEGAL SOLUTIONS

Information collecting, case stories, surveys, and infographics

BACKGROUND

Identifying Key Decisionmakers.

As a first step, we researched which local and state actors have the legal authority to regulate behavior in state courts. In New York, we ultimately concluded that the state constitution and statutes most clearly vest the Chief Judge and legislature with the necessary authority to regulate the court system. Other actors we considered--which are options that may be available in certain states--are mid-level judges, particularly those who hold an administrative title; city legislative bodies; governors; mayors; and states attorneys general.

Our research and work with campaigns in other states has also shown that some of these actors are interconnected. For instance, a legislature might be empowered to enact legislation that delegates to the attorney general or to an agency the responsibility to enact policies that regulate courthouses, as is the case in California.

One additional issue you may encounter is that the court system and the physical courthouses themselves are distinct, and so you will need to consider who controls the buildings themselves, and who controls

the way in which the court system functions. For example, it could be the case that the state owns the physical property of the courthouse and leases it to a city; in such a circumstance, the terms of the lease could confer upon the city some authority to regulate the terms of entry into the courthouse, and what happens inside. If actors in your local government are supportive of campaigns to limit ICE enforcement in the courts, you may approach them for assistance in making your legal assessment of which policy routes are possible in your state or locality.

Producing a Foundational Legal Memorandum. In New York, having identified New York's Chief Judge and legislature as the actors best-situated to enact policy interventions, we researched what kinds of restrictions a state judiciary or legislature could impose to restore nondiscriminatory courthouse access. We produced a versatile legal memo--one to advise state and local campaigns around the country about potential state and local policy interventions in the courthouse arrest crisis, and to explain to New York policymakers why they can and should impose the kinds of regulations that we are recommending. In that memo, we laid out a factual account of the courthouse arrest crisis and its relationship to federal immigration enforcement practices under the Trump Administration, and included a set of rules to be promulgated by a state court system or legislature. Part of developing these rules included assessing compatibility with federal law through the lens of Trump DOJ anti-sanctuary efforts. We also took into consideration potential litigation against any state or local policy that might limit cooperation with ICE (see, e.g., *U.S. v. California*, No. 2:18-at-00264 (E.D. Cal. 2018, pending)).

We circulated our memo to a group of advocates and legal scholars working on courthouse arrest campaigns in New York and in other states, to help create a platform for people thinking about how to position the problem of courthouse arrests and how to think toward a solution. Since then, we have written various position papers on the

legal questions surrounding courthouse arrests and state and local policies, including judicial rules and legislation. For technical assistance on these issues in a state campaign, please reach out to IDP. Additional legal resources are included in this toolkit in Section 8.

RESOURCES

State and Local Judicial Rules and Legislation

Sample state and local judicial rules. This Section includes the proposed judicial rules the ICE Out of Courts Coalition has asked the Chief Judge of New York State to promulgate to restrict federal civil immigration arrests in courthouses. The New York rules prohibit the employees of the Office of Court Administration from expending resources that assist with federal immigration enforcement within state courthouses; from inquiring into immigration status, absent specific circumstances; and from sharing identifying information with federal immigration agents, absent specific circumstances. They also prohibit civil arrests inside courthouses absent a judicial warrant or order. This section also includes judicial rules implemented in New Mexico and in King County, Washington.

[Application for a Proposed Rule of Court Prohibiting Civil Arrests at California Courthouses](#) (submitted August 1, 2018). On August 1, 2018, stakeholders in California led by Legal Aid at Work—National Origin and Immigrants' Rights

Program submitted an application to California's Judicial Council for the promulgation of judicial rules that would restrict federal civil immigration arrests in courthouses. That application incorporates legal theories and resources generated by advocates and academics across the country in response to the courthouse arrest crisis.

[Immigrant Defense Project, The New York State Protect Our Courts Act: Model Legislation to Regulate ICE Arrests at State Courts](#) (June 2018). In June 2018, IDP released the precursor to this toolkit (available [here](#)), which focuses on the campaign in New York to enact the Protect Our Courts Act (A.11013/S.08925), one of the most protective pieces of state or local legislation in the country to respond to and impose legal restrictions on federal civil immigration arrests of individuals who are attending court. The New York State legislature introduced this bill in both the Assembly and Senate in June 2018, drawing from IDP's legal research and analysis. Though this legislation was created to become law in New York, it can serve as a useful template for legislators and advocates in other jurisdictions to take similar action, using New York's bill for guidance. Some of the resources included are:

- Summary of the Protect Our Courts Act.
- Text of the Protect Our Courts Act.
- FAQ about the Protect Our Courts Act.
- List of Additional Resources.

Additional examples of state and local legislation. Here we

include sample legislation that has been introduced or enacted by state or local legislative bodies around the country. These examples show other theories that legislators and other policymakers can consider if trying to stage a meaningful policy intervention in the courthouse arrest crisis. It is IDP's assessment, though, that New York's Protect Our Courts Act is one of the most protective piece of model legislation that has been developed so far on this issue.



Proposed Judicial Rules

1) Expenditure of Resources to Assist with Immigration Law Enforcement Activities: Employees of the Unified Court System shall not:

- i) Expend resources to assist with federal immigration enforcement activities in the course of their employment, in any courthouse of the New York State Unified Court System except to the extent they are described in Section (2).
- ii) Inquire into the immigration status of any individual within any courthouse of the Unified Court System unless such information about a person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of services.
- iii) Provide any information to immigration enforcement officers regarding persons appearing before the court, except information regarding citizenship or immigration status, as required by 8 U.S.C. § 1373, and then only if known.

2) Civil arrests without judicial warrants: Civil arrests may only be executed within a courthouse of the Unified Court System when accompanied by a judicial warrant or judicial order authorizing them to take into custody the person who is the subject of such warrant. "Judicial warrant" is defined as a warrant issued by a magistrate sitting in the judicial branch of local, state, or federal government. "Judicial order" is defined as an order issued by a magistrate sitting in the judicial branch of local, state, or federal government.

Superior Court Policy on Immigration Enforcement in Courtrooms

The King County Superior Court judges affirm the principle that our courts must remain open and accessible for all individuals and families to resolve disputes under the rule of law. It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public's safety is at immediate risk. Each judicial officer remains responsible for enforcing this policy within his or her courtroom. This policy does not prohibit law enforcement from executing warrants when public safety is at immediate risk.



**NEW MEXICO JUDICIAL BRANCH
Second Judicial District Court**

Reference Article III of the New Mexico Constitution

Reference NMSA 1978, § 34-6-28

Reference New Mexico Loss Control and Prevention Rule 1.6.4 NMAC

Reference Second Judicial District Court Loss Prevention and Control Plan

Bernalillo County Sheriff's Department Rules and Regulations, Sect. 239

Albuquerque Police Department Procedural Orders, SOP 2-8, Use of on-Body Recording
Devices

SJDC Policy No. 2017-SJDC-010

COURTHOUSE ACCESS POLICY

PURPOSE

The Second Judicial District Court is dedicated to serving the community by providing equal access to justice through the fair, timely and efficient resolution of all cases. This policy is to establish guidelines for Courthouse access, which respects the dignity of the courtroom and the proceedings occurring in the Courthouse. The Second Judicial District Court (SJDC) is committed to ensure that SJDC facilities remain open and accessible to individuals, families, and business entities to resolve disputes under the rule of law. To that end, SJDC must ensure that independent and internal operation of the Court is conducted safely, transparently, without undue interruption or interference, and with no impediment to open public access.

APPLICABILITY

This policy applies to the Bernalillo County Courthouse (BCC), the Juvenile Justice Center (JJC) and Pretrial Services located at the Bernalillo County Public Safety Building (BCPSB).

BERNALILLO COUNTY COURTHOUSE AFTER HOURS 6PM- 6AM

Authorized SJDC personnel may access SJDC facilities after business hours and over weekends and holidays. After business hours consists of after 6 P.M. through 6 A.M. Monday through Friday and during weekends and holidays. Each of the three Court locations has one or more established after-hours entrances with sign-in and out sheets. Court employees and officials are to use these sign-in and out sheets upon entrance and exit of the facilities.

BCC After-Hours Entrances:

There are three established after-hours entrance locations for the BCC, consisting of the main public entrance, the Purchasing Division entrance, and the underground parking entrance. At each of these locations is an after-hours sign-in sheet, which court employees and officials are to use to register their presence at the court outside of normal business hours. These registries are intended to assist emergency personnel and law enforcement in the event of an emergency arises after-hours or over weekends or holidays. Authorized employees and officials should use the same sign-in sheet and sign-out sheet, providing name, date, time, and other required information upon arrival and departure.

JJC After-Hours Entrance:

There are two established after-hours entrance locations for the JJC, consisting of the main public entrance, and the secured judges entrances on the south side of the facility. At each of these locations is an after-hours sign-in sheet, which court employees and officials are to use to register their presence at JJC outside of normal business hours. These registries are intended to assist emergency personnel and law enforcement in the event of an emergency arises after-hours or over weekends or holidays. Authorized employees and officials should use the same sign-in sheet and sign-out sheet, providing name, date, time, and other required information upon arrival and departure.

BCPSB After-Hours Entrance:

There is one established after-hours entrance location for the BCPSB, consisting of the main public entrance. At this location is an after-hours sign-in sheet, which court employees and officials are to use to register their presence within the facility outside of normal business hours. This registry is intended to assist emergency personnel and law enforcement in the event of an emergency arises after-hours or over weekends or holidays. Authorized employees and officials should use the same sign-in sheet and sign-out sheet, providing name, date, time, and other required information upon arrival and departure.

EMERGENCY/NON-EMERGENCY CONTACTS

Contact information is attached hereto as **Addendum 1**, which will be updated as personal and contact information changes.

IN CASE OF AN EMERGENCY ALARM AFTER BUSINESS HOURS, OVER WEEKENDS OR ON HOLIDAYS

Court employees and officials should gather personal belongings and exit through the nearest emergency exit. Any such court employees or officials should remain within a safe distance of the court facility in order to advise emergency personnel of their individual knowledge of the situation. Court employees and officials should advise the Court Executive Officer, the Deputy Court Executive Officer responsible for court facilities, and the Support Services Manager at the

contact numbers provided in **Addendum 1**, when an emergency alarm activation occurs after business hours and on weekends.

MEDIA ACCESS POLICY

The SJDC has established Guidelines for Media Video & Photo, which are attached to this policy as **Addendum 2**. The guidelines were developed by the SJDC consistent with Supreme Court Rule 23-107, which governs broadcasting, televising, photographing and recording of proceedings. Pursuant to Rule 23-107(A)(1), all news media coverage is subject at all times to the authority of the Judge. Please comply with all directives issued by the Judge.

COURTHOUSE ACCESS BY LAW ENFORCEMENT OFFICERS

The SJDC affirms the principle that the courts should remain open and accessible to the public. Recognizing the important role the courts fulfill in our democracy, access to the courthouse should be free of restriction that hinders or impedes the proper administration of justice. To this end, the Court:

1. Seeks to maintain an open and safe environment in which parties, witnesses, jurors, staff and others (“participants”) in the justice system can exercise their role in a manner that is free of harassment or threats to their security or freedom, unless founded upon a lawful court order or arrest warrant;
2. Finds that allowing law enforcement officers, agents, or others to arrest, detain, interrogate, hold, or restrict the freedom of individuals in the courthouse without the protection of due process, based on any ground other than immediate public safety concerns, creates an environment of fear, confusion and mistrust among courthouse participants;
3. Finds that a reasonable courthouse access policy and rule is necessary and appropriate for the court’s proper functioning;
4. Finds that local, state or federal law enforcement officers should not hinder or impede individuals in the courthouse conducting court business unless founded upon a lawful arrest warrant;
5. For purposes of this rule, “hinder” or “impede” shall mean to stop, detain, hold, question, interrogate, arrest or delay individuals while in the courthouse conducting business.

Law Enforcement to Identify. All on-duty local, state and federal law enforcement agents/officers shall present and display appropriate badge/credentials or other identifying documents to BCSO deputies upon entering the courthouse.

Identification Rule. Law enforcement officers may not randomly interrogate individuals about their identity or their purpose for being in the courthouse unless necessary: (1) to protect the safety and security of Judges, Special Commissioners, Hearing Officers, other Court personnel, or the public; or (2) to enforce a lawful court order/warrant under these rules.

Courthouse Arrests.

- A. **Public Space.** Law enforcement officers, agents, or other persons shall not arrest any person, or otherwise take them into custody, in or around the courthouse unless:
1. The arrest is performed by a BCSO deputy assigned to the courthouse security detail and engaged in the performance of the deputy's duties; or
 2. In the case of non-BCSO law enforcement officers or agents, they display a lawful warrant or lawful court order to BCSO deputies upon entering the courthouse; and
 3. If BCSO personnel is available, a deputy may accompany the outside law enforcement officer at the time of arrest to secure public safety.
- B. **Courtroom/Hearing Room.** With regard to an active trial/hearing, arrests shall generally occur outside the court/hearing room, unless the judicial officer presiding over the legal proceeding authorizes an arrest or immediate arrest is necessary to secure public safety.
- C. Nothing in this policy shall limit the authority of a law enforcement officer to make a lawful arrest for criminal conduct occurring in the courthouse or other grounds.

PROHIBITION OF WEAPONS

No firearms or other weapons shall be taken into the BCC, JJC, BCPSB, or in any other building, facility or space used, in whole or in part, for official Court business except by authorized BCSO deputies. The BCC and JJC have storage lockers for law enforcement weapons. With prior approval of the BCSO and in concurrence with the Court, law enforcement officers may be permitted to carry firearms when exigent circumstances warrant such action.

ELECTRONIC DEVICES

The Second Judicial District Court bans all persons from bringing electronic devices, including cellphones (excluding the Children's Court location), lap top computers, tablets, any device that is capable of recording audio or video or taking photos and other communication devices, into the Bernalillo County Courthouse and the Juvenile Justice Center unless specifically authorized below. The following persons shall have specific authorization to bring their electronic devices into the Bernalillo County Courthouse and the Juvenile Justice Center:

Second Judicial District Court Employees
Court Employees from other districts
District Attorney's Employees
Public Defender's Employees
Bernalillo County Youth Services Center Employees
Metropolitan Detention Center Employees
Law Enforcement Office Employees
i.e.: Sherriff's Officers, NM State Police, and Albuquerque Police Department Officers etc.

Attorneys and their Staff
Children Youth and Families Department Employees
Department of Corrections Employees
Bernalillo County Facility Staff
Mediation Contract Employees
Contract Interpreters
Vendors
US Postal Service
Jurors
Credentialed Members of the Media

These specifically authorized persons must be able to identify themselves and the entity they work for by carrying their employee-issued badge, bar card and/or business card or their juror "ticket" to gain entry with their electronic device.

USE OF ON-BODY RECORDING DEVICES

Active use of on-body recording devices is prohibited within court facilities except in exigent circumstances in which law enforcement officers other than BCSO are called upon to assist BCSO, court staff or officials in emergency situations.

SOLICITATIONS

- A. It is the policy of SJDC that solicitors are not permitted in either the BCC, JJC or BCPSB to solicit for business or personal reasons. Solicitation is not permitted by SJDC employees or officials while engaged in the assigned duties of their positions to include, but are not limited to, doorways, employee offices, conference rooms, and meeting rooms, except as permitted by federal or state law.
- B. Solicitors are permitted to conduct solicitations, so long as such solicitations are peaceable, lawful, and are not reasonably anticipated to pose a threat to the safety, health, and welfare of the citizens or employees of the SJDC only by obtaining approval in advance by SJDC Court Administration.
- C. Solicitors may be permitted to conduct solicitations within certain specifically identified areas of the Bernalillo County Courthouse, the Juvenile Justice Center or Pretrial Services only upon obtaining approval in advance from the Chief Judge, Presiding Judge at the Juvenile Justice Center or the Court Executive Officer. Such approval shall be limited, or confined, to specifically identified areas.

D. Approval Guidelines:


1. Any restrictions or limitations imposed on such approvals, shall be made with reasonable, and equally applied, standards of time, place and manner.
2. Under no circumstances, should approvals, restrictions, or limitations imposed on such approvals, be based on the content or subject matter of a solicitor's speech.

EXCLUSIONS TO SOLICITATION POLICY

All persons, companies, vendors, corporations, business entities, non-profit organizations or for profit organizations who currently conduct business or provide services in conjunction with the SJDC, provide commodities or services to the SJDC, or any such entity who has been invited to provide commodities or services to the SJDC are excluded from this policy when such entities are operating in the scope of the business relationship.

A copy of this policy will be distributed to all local, county state and federal law enforcement agencies who regularly appear in the Second Judicial District Court.

Effective Date: November 20, 2017



James A. Noel, Court Executive Officer
Second Judicial District Court

11.20.17
Date



NEW MEXICO JUDICIAL BRANCH
Second Judicial District Court
Addendum 1
COURTHOUSE ACCESS POLICY
SJDC Policy No. 2017-SJDC-010

LIFE THREATENING SITUATIONS.

Life threatening situations call 911.

NON-EMERGENCY PERSONAL SAFETY SITUATIONS

Call the Albuquerque Police Department at 505-242-2677 or Bernalillo County Sheriff Office Communication Center at 505-798-7000 to advise them of the situation. Be specific with what is occurring and the location of the occurrence.

NON-EMERGENCY BUILDING SITUATIONS

Call Bernalillo County Facility Management at 505-314-0110. Provide a detailed description of the non-emergence situation, including the location and time of the occurrence.

COURT CONTACTS

Lt. Van Eldredge, BCSO.....505-263-1285
Sgt. Edward Vigil, BCSO Security, BCC.....505-980-2489
Sgt. Charles Holmes, BCSO Security, JJC.....505-269-6803
James A Noel, Court Executive Officer.....505-239-1184
Arthur Gallegos, Deputy Court Executive Officer.....505-249-4574
Danny Smith, Support Services Manager.....505-301-4177



NEW MEXICO JUDICIAL BRANCH
Second Judicial District Court
Addendum 2
COURTHOUSE ACCESS POLICY
SJDC Policy No. 2017-SJDC-010

GUIDELINES FOR MEDIA VIDEO & PHOTO

- **Do not** film or take photos of jurors or prospective jurors at any time or in any area of the Courthouse.
- **Do not** film or take photos of faces of juvenile defendants in Children's Court.
- **Do not** record audio of bench conferences. Any microphones that are positioned beyond the rail must be turned off during bench conferences.
- **Do not** set up or take down equipment until a recess.
- **Do not** go in front of or take your equipment in front of the rail.
- **Do** follow all rules set forth by the judge in the courtroom, including any rules prohibiting filming or photographing certain witnesses.
- **Do** set up all equipment 15 minutes before the start of a proceeding.
- **Do** tape wires or cables securely to the floor.
- **Do** be aware of images that are being captured. For example, a tight shot of a defendant may show graphic images of evidence on a nearby computer monitor in the background.
- **Do** dress appropriately for a courthouse setting:
 - No shorts, T-shirts, sweatshirts, hats, sunglasses or flip-flops.
- **Do** use only natural light for video and still photography.
- **Do** coordinate with the Court administration and the Judge's bailiff on permissible locations for a TV camera and any microphones, the use of social media (Twitter, etc.), the use of laptops or texting during proceedings and any live coverage including an internet stream.
- **Do** limit movement in the Courtroom. Still photographers must remain seated in the same location but may relocate during a recess.
- **Do** minimize distractions and wait for a recess before switching out tapes, connecting cables, unpacking or storing gear or performing other noisy activities.
- **Do** use a noise-reduction device, if possible.
- Only one TV camera and two still cameras are permitted in a courtroom. Although the Court administration may facilitate, journalists are ultimately responsible for organizing and complying with pool agreements.

Note: These guidelines were developed by the Second Judicial District Court consistent with Supreme Court Rule 23-107, which governs broadcasting, televising, photographing and recording of proceedings. Pursuant to Rule 23-107(A)(1), all news media coverage is subject at all times to the authority of the Judge. Please comply with all directives issued by the Judge.



NEW MEXICO JUDICIAL BRANCH
Second Judicial District Court
Addendum 3
COURTHOUSE ACCESS POLICY
SJDC Policy No. 2017-SJDC-010

**QUESTION AND ANSWER SHEET
AFTER BUSINESS HOURS AND WEEKENDS POLICY**

What if I see smoke in the building or have a medical emergency? Call 911.

What do I do if I notice a water leak or another similar building issue?

Call Bernalillo County Facility Management at the number identified in **Addendum 1** to this policy.

What do I do when I need to take a break outside the building?

Exit using only the designated doors. At the BCC, if you use the main public entrance, only use the accessibility front door as use of the other front doors will sound the alarms and activate an emergency response.

What do I do if I see someone I am unfamiliar with or do not know?

Politely ask who they are. If they are not an employee of the Court, an employee of the County, or an authorized individual, contractor or delivery personnel/vendor, call the Albuquerque Police Department or Bernalillo County Sheriff Office Communications at the numbers identified in **Addendum 1**. If the person is a direct personal safety threat, call 911.

How do 911 personnel get into the building and how do they find me?

Emergency personnel have a designated access card to enter into the building and will find you by the instructions given to the 911 operator and/or the sign/in out sheet located at the entrances to the BCC, JJC or BCPSB.

What if the elevator breaks down and I am in it?

Pick up the phone in the elevator and the elevator company will dispatch someone to the building.

What do I do if there is a power outage? Will I be able to get out of the building?

Yes, the emergency generator will kick on allowing you to exit. Please call Bernalillo County Facility Management, the Court's CEO, DCEO and SSM at the numbers identified in **Addendum 1**.

STATE AND FEDERAL LEGISLATION

In addition to the New York Protect Our Courts Act, there are currently multiple legislative proposals at the state and federal level that would limit ICE enforcement action in courthouses.

As of July 2018, California is the only state that has passed legislation directly related to ICE arrests in courts. The [California Trust Act](#) requires the courts to adopt “model policies limiting assistance with immigrant enforcement to the fullest extent possible consistent with federal and state law.” The Trust Act tasks the state’s Attorney General with creating those model policies, something he has until October of 2018 to do.¹

Seven other state legislatures have introduced legislation that aims to curb ICE enforcement in courts. California also has additional legislation pending on this issue. The proposed bills are available here: California [SB 183](#), Maryland [HB 1362/SB 835](#), Minnesota [HF1576 / SF 1110](#), New Jersey [AB 4611](#), Oregon [HB 3464](#), Rhode Island [HB 6021](#), Texas [SB 997](#), and Washington [HB 1985/SB 5689](#).

Most of the state bills focus on two provisions: 1) prohibiting court employees from providing assistance to ICE; and 2) requiring courts to adopt model policies for courts that would limit ICE enforcement activity (this is modeled on the California Trust Act). Two of the bills would require ICE to show a valid judicial warrant before they can execute an arrest in a courthouse. See [California SB 183](#) and [Rhode Island H 2061](#).

Federal legislation which aims to stop ICE courthouse arrests has also been introduced in the House and Senate. See [HR1815/S.845](#). The "Protecting Sensitive Locations Act" instructs ICE to designate Federal, State, and local courthouses as “sensitive locations,” which currently does not include courthouses. The proposals would prohibit “enforcement actions” at courthouses and the prohibition would extend to the area 1,000 feet from the courthouse. **Note that the [ABA](#) and [NYSBA](#) have both passed resolutions endorsing the sensitive locations designation for courthouses.**

¹ It should be noted that in May of 2018, California also signed into law [SB 785](#), which prohibits parties from asking an individual about their immigration status in court. Although this has been touted in the [press](#) as a bill about courthouse arrests, this legislation is not squarely on point since ICE does not typically rely on the disclosure of status in court to target people for arrests. Instead, ICE is believed to use public and private databases that allow them to easily track individuals to our court appearances who are fingerprinted in connection with arrests. For more on ICE’s use of databases, see the National Immigrant Law Center’s report “[Untangling the Immigration Enforcement Web](#).”

The Undersigned Organizations Comprise the ICE Out of Courts Coalition and Support the Protect Our Courts Act

As members of the ICE Out of Courts Coalition, we write today in support of the Protect Our Courts Act ([A.11013/S.08925](#)), a bill that will ensure access to state court proceedings for all regardless of immigration status. For the past year, we have seen an unprecedented escalation in Immigration and Customs Enforcement (ICE) using the New York State courts to effectuate civil immigration arrests. Squads of federal immigration officers have preyed on our clients, members, and community as they attend state court proceedings, undermining the effective functioning and constitutional underpinnings of the courts, and threatening public health and safety of all New Yorkers. We applaud the Assembly and Senate for taking this first step towards ending this unlawful practice and restoring nondiscriminatory access to legal proceedings.

Our coalition is comprised of more than 100 organizations and entities from across New York State. We are community-based organizations, unions, civil legal services providers, public defenders, family defenders, victim rights advocates, law schools, and civil rights and liberties groups. Together, the legal service providers in the coalition provide the bulk of indigent legal representation and advocacy in New York State. We practice in criminal, family, civil, and administrative courts. Our clients include adults, children, and families; citizens and noncitizens; workers; survivors of violent crime; people accused of crime; and people experiencing discrimination. Our clients are citizens, noncitizens, and mixed-status families and communities. Many of us represent immigrants in federal immigration proceedings relating to deportation, detention, and applications for immigration benefits.

Since January 2017, we have watched federal immigration officers stalk our immigrant clients to their state court dates, where they arrest them, and then either place them in civil immigration detention and civil deportation proceedings, or immediately deport them. These arrests mark the resurgence of a long-defunct practice of civil arrests in courthouses—a practice legislatures and courts have regulated for more than a century. The recent spate of civil arrests started immediately after President Trump’s inauguration and has escalated dramatically over the past 18 months. It is now a daily phenomenon in New York State courts that groups of plainclothes ICE agents roam courthouses looking for immigrants to arrest. Members of our coalition documented a 1200% increase in courthouse arrests from 2016 to 2017; in 2018, the pace of arrest is already higher than in 2017.

There are no boundaries or limits to the categories of immigrants ICE will target for arrest at a state court appearance. Our clients disappeared from court have been survivors of violence, youth, people who are mentally ill or homeless, guardians to U.S. citizen children,

people who are LGBT, victims of human trafficking, and asylum seekers. We have stood in hallways as ICE agents have physically separated us from our clients, thrown our clients to the ground, ignored our requests to invoke our clients' rights, ignored our requests for voluntary surrender, and refused to show us warrants or share information about where they are taking our clients. We have watched ICE agents pressure courthouse staff to supply them with information, to give them access to nonpublic areas of courthouses, and to adjust court schedules to facilitate their arrests. For the community-based and membership organizations that are part of our coalition, we have seen the devastating impact on valued members of our community resulting from these courthouse raids.

ICE's courthouse arrest practice is not only an affront to fundamental constitutional rights to due process and to petition the courts, but these raids also have a chilling effect on people's sense of safety in accessing courts. We surveyed 225 legal services providers across New York State to understand and document the extent of the impact of ICE practices on courthouse access. We found a widespread chilling effect due to fear of ICE at the courts: 75% of legal service providers reported that clients have expressed fear of going to court, 48% of providers reported clients have expressed fear of calling the police, and 29% of providers have worked with immigrants who have failed to appear in court due to fear of ICE. For those who work with survivors of violence, fear of ICE has resulted in 67% of their clients deciding not to seek help from the courts and 46% of clients now have a fear of serving as a complaining witness. Those who work with tenants in housing court reported that 56% of clients fear filing a housing court complaint because of ICE presence in the courts.

The Protect Our Courts Act (A.11013) is a crucial step toward restoring courthouse access for noncitizen and mixed-status communities and families across New York State. The bill modernizes New York's Civil Rights Law and Judiciary Law to clarify that warrantless civil arrests of individuals attending state court proceedings as a party or a potential witness, or as a family or household member of a party or potential witness, are unlawful and creates legal mechanisms for enforcing the law if it is violated. This bill will ensure that if federal immigration agents appear at a courthouse to make an arrest for a civil immigration violation that would result in civil detention and deportation proceedings, they will have presented sufficient evidence to a federal judge to authorize such an arrest. The bill also requires New York's Office of Court Administration to put in place procedures for reviewing any judicial warrants and court orders required under the bill. This process would bring civil arrests in and around state courthouses into sync with law enforcement norms that are constitutionally mandated and complied with by criminal law enforcement agencies such as local police and the FBI. Finally, this bill will communicate to immigrant and mixed-status families and communities that the New York State courts are not a part of the federal immigration enforcement regime.

The Protect Our Courts Act (A.11013/S.08925) is a substantial step toward restoring confidence that New York will ensure that access to the courts and justice is available to all.

For more information on the Protect Our Courts Act, please visit

<https://www.immigrantdefenseproject.org/ice-courts/>

Respectfully signed,

Asian American Legal Defense and Education Fund (National)

LatinoJustice PRLDEF (National; Statewide)

Safe Horizon Immigration Law Project (National; Statewide)

Kathryn O. Greenberg Immigration Justice Clinic (National; Statewide)

Immigrant Defense Project (National; Statewide)

New York State Coalition Against Domestic Violence (Statewide)

New York Immigration Coalition (Statewide)

Empire Justice Center (Statewide)

32BJ SEIU (Statewide)

Anti-Defamation League New York (Statewide)

Association of Legal Aid Attorneys – UAW Local 2325 (Statewide)

Prisoners' Legal Services of New York (Statewide)

Rural and Migrant Ministry (Statewide)

New York Coalition Against Sexual Assault (Statewide)

Legal Aid Society of Rochester (multiple counties Statewide)

Mobilization for Justice, Inc. (multiple counties Statewide)

Sylvia Rivera Law Project (multiple counties Statewide)

Central American Legal Assistance (multiple counties Statewide)

Make the Road New York (multiple counties Statewide)

The Door Legal Services (multiple counties Statewide)

CDWBA Legal Project (Capital Region)

Hofstra Law Clinic (Queens, Nassau, Suffolk Counties)

The Legal Aid Society (New York City—all five counties)

New York Lawyers for the Public Interest (New York City—all five counties)

Her Justice (New York City—all five counties)

Sanctuary for Families (New York City—all five counties)

Legal Services Staff Association, NOLSW/UAW 2320 (New York City—all five counties)

New York Legal Assistance Group (New York City—all five counties)

Emerald Isle Immigration Center (New York City—all five counties)

Peter Cicchino Youth Project at the Urban Justice Center (New York City—all five counties)

Youth Represent (New York City—all five counties)

Appellate Advocates (New York City—Kings, Queens, Richmond Counties)

Center for Appellate Litigation (New York City—Bronx and New York Counties)

UnLocal, Inc. (New York, Kings, Bronx, Queens Counties)

The Bronx Defenders (Bronx County)

Neighborhood Defender Service (New York County)

New York County Defender Services (New York County)

Worker Justice Center of New York, Inc. (New York County)

Nassau Legal Aid Society (Nassau County)

Rockland Immigration Coalition (Rockland County)

Brooklyn Defender Services (Kings County)

Wayne County Public Defender (Wayne County)

Safe Against Violence (Delaware County)

Safe Homes of Orange County (Orange and Sullivan Counties)

Columbia County Sanctuary Movement (Columbia and Greene Counties)

Statement of Anti-Violence Organizations in Support of the Protect Our Courts Act

The Undersigned Anti-Violence Organizations Support the Protect Our Courts Act

As advocates of survivors of domestic violence, we write today in support of the Protect Our Courts Act ([A.11013/S.08925](#)), a bill that will ensure access to state court proceedings for all regardless of immigration status. As a matter of public policy, New York State has historically engaged in various reforms to make the courts increasingly accessible to survivors, with the understanding that the relief available there, such as civil orders of protection, custody, and child and spousal support, are crucial to ensuring survivors' safety and security.

Given nearly 22% of our population who are foreign born¹, any efforts to ensure survivor safety by maintaining accessibility to the courts for survivors of domestic violence must take into account the overwhelming anxiety of potential interaction with immigration authorities. These efforts are all the more urgent as it is those immigrant women, men, and children, who are at greatest risk, and who are most likely to be harmed or killed by their partners and abusive family members.² Survivors of domestic violence may seek out civil relief as an alternative to the police or criminal courts believing that civil courts are safer alternative.³ However, the lack of current clear limitations on ICE means we cannot comfortably advise immigrant survivors of violence to seek any court remedy. We have also observed a chilling effect with respect to immigrant parents and family members seeking custody or guardianship for their children or immigrant survivors of domestic violence seeking orders of protection specifically because of fear of ICE enforcement.

The Protect Our Courts Act (A.11013) is the next step New York can take to provide meaningful support and access for immigrant survivors of domestic violence and their families to our courts.

For more information on the Protect Our Courts Act, please visit

<https://www.immigrantdefenseproject.org/ice-courts/>

¹ Out of an estimated 19.65 million New York State residents, approximately 4.4 million are immigrants, and 775,000-850,000 lack immigration status. See DiNapoli, T. (2016). *A Portrait of Immigrants in New York*. P. 1. Retrieved from the Office of the New York State Comptroller website at https://www.osc.state.ny.us/reports/immigration/immigration_2016.pdf. See also Pew Research Center (2017). Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009. Retrieved from the Pew Research Center website at: <http://www.pewhispanic.org/2016/09/20/overall-number-of-u-s-unauthorized-immigrants-holds-steady-since-2009/>.

² New York City Domestic Violence Fatality Review Committee: 2016 Annual Report, available at <http://www1.nyc.gov/assets/ocdv/downloads/pdf/2016-frc-report.pdf>.

³ Engelbrecht, C. (June 4, 2018) *Fewer Immigrants Are Reporting Domestic Violence. Police Blame Fear of Deportation* available at <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>

Respectfully signed,

Asylum Seeker Advocacy Project at the Urban Justice Center (New York City—all five counties)

Carter Burden Network (New York County)

Children's Aid (New York City—all five counties)

CONNECT (New York City—all five counties)

Her Justice (New York City—all five counties)

Law Offices of Katie E. Kehrig (New York City)

New York City Anti-Violence Project (New York City—all five counties)

New York State Youth Leadership Council (New York State)

Northern Manhattan Improvement Corporation (Bronx, Kings, New York and Queens Counties)

STEPS to End Family Violence (New York City—all five counties)

Violence Intervention Program (Bronx, New York and Queens Counties)

YWCA Brooklyn (Statewide)

Memorandum in Support

NYSBA #38

June 5, 2018

S. 8925
A. 11013-A

By: Senator Alcantara
By: M. of A. Solages
Senate Committee: Rules
Assembly Committee: Codes
Effective Date: Immediately

This bill would, inter alia, protect individuals from civil arrests in New York courthouses, unless a specific judicial warrant or judicial order authorizing such arrest has been issued, and allow courts to issue orders designed to protect the prohibition on such civil arrests.

The New York State Bar Association (NYSBA) has long supported and encouraged equal access to justice and to our courts of law for all, including immigrants residing in New York State. NYSBA has actively promoted and participated in efforts to provide immigrants in New York with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose.

Since the beginning of 2017 advocates have noticed an increase in the presence of U.S. Immigration and Customs Enforcement (ICE) agents in New York's courthouses, with a study by the Immigrant Defense Project (IDP) showing a significant increase in arrests of immigrants on civil immigration charges within our State's courthouses.

ICE is the agency within the U.S. Department of Homeland Security (DHS) charged with internal enforcement immigration laws and other laws relating to national security. ICE is divided into multiple sub-agencies. Those relevant to this report are Enforcement and Removal Operations (ERO), which is tasked with administrative enforcement of the Immigration and Nationality Act (INA), and Homeland Security Investigations (HSI), which handles criminal investigations of crimes threatening national security, including related immigration enforcement actions that have a criminal component.

The provisions of the INA that ICE enforces are civil in nature. These include: being present in the United States without lawful status, violating the conditions attached to immigration status, or being removable from the United States based on a criminal conviction.

The incidents highlighted by this memorandum relate to civil arrests either by ERO, or by HSI using their administrative authority to enforce civil immigration laws. The INA mandates that, absent exigent circumstances, ICE civil arrests be made pursuant to administrative warrants signed by the arresting agent's supervisor.

These warrants are not reviewed or issued by a judge or other neutral party to determine whether probable cause or reasonable suspicion has been objectively established, or to review the accuracy of the charges contained within.

According to the Sponsor's Memorandum in Support of this legislation, "the Immigrant Defense Project, from 2016 to 2017, arrests by federal Immigration and Customs Enforcement ("ICE") agents at courthouses in New York State increased by 1200%. Fear of being targeted, either due to a lack of legal immigration status or concern about the uncertain status of a family member, have dissuaded many individuals from contacting law enforcement or following through with court proceedings."

ICE's presence in New York State's courthouses has created a devastating and chilling impact on immigrant New Yorkers' ability to access the judicial system to defend themselves against criminal charges, participate in the prosecution of crimes, and obtain remedies, including sometimes life-saving protections, from our courts. These actions seriously and significantly undermine access to justice in New York's courts, something that is antithetical to the Association's mission and the commitment we have made to our immigrant communities.

Enactment of this legislation would help restore access to justice for members of the immigrant community.

For the foregoing reasons, the New York State Bar Association **SUPPORTS** this legislation.

SECTION 3:

BUILDING A STATEWIDE CAMPAIGN

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

BACKGROUND

Forming the ICE Out of Courts Coalition and Initiating a Campaign.

As the courthouse arrest crisis hit New York, IDP, legal services providers, and public defenders came together and formed what eventually became the ICE Out of Courts Coalition, a broad-based campaign to counteract courthouse arrests in New York. On April 10, 2017, we sent our first joint letter to New York State Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks identifying ICE courthouse arrests trends and requesting that they take action to end unlawful ICE arrests at New York courts. (See April 10, 2017 Letter to Judges DiFiore and Marks). This letter was signed by close to 100 organizations that provide legal counsel and services to immigrant and mixed-status communities in New York's criminal, family, and civil courts, on a wide range of issues, including *family courts* (orders of protection, custody and visitation, abuse and neglect, child support, and guardianship); *criminal courts* (defending against criminal charges, advocating for crime victims, pursuing criminal appeals and post-conviction relief); and *civil and housing courts* (wage theft, employment exploitation, landlord exploitation and other unsafe living conditions, public assistance, divorce).

The Political Foundations of Our Campaign.

To buttress against the political reflex to protect only those regarded as “victims” or witnesses, and because we did not want to privilege the rights of certain immigrants or those attending certain types of court over others, we intentionally built a broad-based coalition of stakeholders working with clients and members at all different points in the system. We have structured our demands and messaging to protect the rights of all immigrants attending criminal, family, and civil courts regardless of whether they are defendants, witnesses, or survivors of violence.

We have also been careful to situate our campaign in the context of a broader fight against criminalization, and to not present the courts or the criminal legal system as a source of “justice” for all. We recognize that for many, participation is mandated by the state or is the only form of mediation available for a wide range of conflicts. Some of our key messaging guidelines include:

- To not privilege the rights of victims and witnesses, or those attending certain courts, over those answering a criminal charge.
- To complicate the narrative around victims, including that many victims also face criminal charges.
- To not privilege the rights of those with valid status over those who are undocumented.
- To not feed into narratives that criminal defendants present a risk to society.
- To be careful to not play into assumptions that courts always provide “justice.”
- To frame courthouse raids as part of a larger system of ICE’s abusive actions that undermine rights and safety and feed its mass deportation mandate.

Approaching and Advocating with Decisionmakers in New York State.

As our coalition mobilized, we approached key policymakers in New York to educate them about the courthouse arrest crisis and to engage them about possible state and local interventions. In different configurations of advocates, we met with New York's Chief Judge, Chief Administrative Judge, and their counsel, and advocated for them to promulgate rules on behalf of the court system to ensure that access to the courts and to legal proceedings would not become dependent on immigration status, country of birth, or indigence.

Our advocacy campaign initially focused on New York's Chief Judge, and grew to include a parallel track with the state legislature. In furtherance of both efforts, we and our Coalition partners identified and met with key influencers in the state who would be persuasive to the Chief Judge and/or to the legislature. These influencers included employees of the governor's office and other state executive branch cabinet members; state and city lawmakers; district attorneys; lower and mid-level judges; and offices that administer various programs in the courts.

For these meetings, we developed FAQs, fact sheets, and compilations of compelling anecdotal evidence, each one engineered toward the particular interests or constituencies of the stakeholder with whom we were advocating. We did so because, for example, a district attorney's interests are likely to be slightly different in focus than a state legislator or the chief defender of a public defender's office. But given the baseline politics of our coalition, we were always careful to highlight that no one court and no one constituency is more or most deserving of unfettered access to legal proceedings. This is true because of basic notions of fairness and due process, but also because the same communities that are

overrepresented in the criminal legal system are overrepresented in family and other courts. Survivors of violence are often complaining witnesses and also criminal defendants, which we were able to document through attorney affidavits.

Community Resistance and Actions.

The ICE Out of Courts campaign has drawn strength from a broad-based coalition that unites community-based organizations and unions with the legal advocates who represent immigrants in court. It has involved powerful acts of protest and resistance by advocates and membership organizations have been crucial toward building power around this issue. Rallies and press conferences have been convened by the ICE Out of Courts Coalition, unions, immigrant rights groups, public defenders, anti-violence advocates, and legal services lawyers. Public defenders in New York City staged a powerful series of walk-outs in protest of the systemic violation of their clients' constitutional rights to participate in the court process without the threat of disappearance. These walk-outs garnered significant press and attention on the issue.

Role of Local Elected Officials.

Local municipal elected officials have been vocal in the chorus of voices speaking out against courthouse arrests and calling for them to stop. In New York, members of the City Council, including the Speaker, have publicly called on ICE to end the courthouse arrest practice and on New York's Chief Judge to promulgate the rules that the ICE Out of Courts Coalition have proposed.

In some places, municipal legislators and policymakers may have the legal authority and jurisdiction to promulgate policies that restrict court-

house arrests. Looking into these options should be a priority for any campaign in a place where municipal leaders are sympathetic, want to take action, and are able to do so.

In New York, for example, the centralization of the court system and the terms of tenancy for the courthouses between the state and New York City limit the power of local governments to impose the kinds of policies in the Proposed Judicial Rules and the Protect Our Courts Act. However, members of the City Council have held hearings, participated in rallies and press conferences, and given public statements and interviews against ICE and in support of the ICE Out of Courts Campaign and the Protect Our Courts Act. These actions have proved crucial to raising opposition to courthouse raids, and garnering media attention and exposure.

RESOURCES

Talking points and primers for meetings with judges district attorneys, and state legislators.

Letters sent by ICE Out of Courts Coalition and other stakeholders to the Chief Judge of New York State.

New York City Council hearings. In June 2017, the City Council's committees on immigration and the judiciary held joint hearings on ICE's conduct in the courts. Many advocates active in the ICE Out of Courts Campaign testified

including Andrew Wachtenheim from IDP. We have provided a copy of his testimony and the committee's report.

Walk outs and other actions by public defenders. Public defenders have been at the forefront of organizing direct actions to protest how ICE undermines access to justice. Since the fall of 2017, public defenders have begun to stage impromptu walk outs at courthouses across New York City. Attorneys walk out of court in direct response to an arrest and the actions are mobilized via social media within a matter of minutes. The actions have inspired public outcry and also been a powerful display of how attorneys can use creative means to stand up for the rights of their clients. See Section 10 on Media for examples of social media. Here is an example of a tweet from the Association of Legal Aid Attorneys announcing a walkout: <https://twitter.com/ala2325/status/983724168754663424>

Rally Announcements:

- Flyer for ICE Out of the Courts Rally organized by the Association of Legal Aid Attorneys <https://twitter.com/ala2325/status/971774471106433026>
- Flyer for Protect Our Courts Act Rally organized by the Immigrant Defense Project <https://twitter.com/ImmDefense/status/1003758225014099968>

Press conferences and rallies with local elected officials.

Over the course of the campaign, the ICE Out of Courts Coalition and allies has worked closely with elected officials on several press conferences and rallies. In some cases, the

events were put together in response to an egregious ICE courthouse raid. For example, in June 2017, in collaboration with the chair of the New York City Council, the Coalition organized a press conference on the steps of City Hall to condemn courthouse arrests broadly after an ICE operation that targeted immigrants in a court for victims of human trafficking. The Coalition also worked with state and local elected officials to host a press conference announcing the introduction of the Protect Our Courts Act. These events were often most successful when we were able to secure participation from elected officials.



ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL

TO:**FROM:** Andrew Wachtenheim, Lee Wang**DATE:** April 25, 2018**RE:** Resources for Memorandum of Support on Courthouse Arrests Legislation**Introduction**

Per your request, we've compiled a list of resources that may be helpful as you prepare a memorandum to support the courthouse arrests legislation. In addition to the materials provided here, the Center for State Courts has compiled a list of statements and other resources on courthouse arrests on their [website](#). IDP also has collected press stories and other background information on our [website](#).

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1) Courthouse Arrest Data

For more data, please see IDP's [press release on 2017 arrests](#).

- In 2017, the Immigrant Defense Project (IDP) received 144 reports of ICE arrests and attempted arrests at courthouses around New York State, up from 11 reports in all of 2016. This represents a more than 1200% increase from 2016 to 2017.
- Since the beginning of 2018, IDP has received 41 reports of arrests and attempted arrests. This represents a 70% increase from the same time period last year.

- Courthouse arrests have been reported from across the state. Incidents have been spread across 17 counties including Westchester, Nassau, Suffolk, Ulster, Columbia, Putnam, Rockland, Onondaga, Albany, Saratoga, Monroe, and Fulton.
- Both documented and undocumented immigrants are being arrested. According to IDP’s data, at least 20% of the arrests targeted green-card holders.
- Immigrants are being arrested in a broad range of courts—including criminal courts, family courts, traffic courts, and specialized courts designed for victims of human trafficking.

2) **Statewide Survey on Chilling Effect of ICE arrests**

A coalition of legal service providers surveyed practitioners more than 220 practitioners statewide last June on the chilling effect of ICE courthouse operations on access to the courts. The full survey results are available [here](#). Some of the key findings include:

- Three out of four legal service providers report that clients have expressed fear of going to court because of ICE.
- Two-thirds of advocates working with survivors of violence have clients who decided NOT to seek help from the courts due to fear of ICE. One-third have had clients who have DECLINED to seek an order of protection because of ICE’s presence in the courts.
- More than half of housing rights advocates said they had clients who were afraid to go file a complaint in housing court due to fear of ICE.

3) **Statements by District Attorneys, Attorneys General, and Elected Officials**

- [Attorney General Schneiderman](#): If the Trump Administration continues to arrest people in the heart of our justice system, immigrants will be less likely to serve as witnesses or report crimes—and that leaves us all at risk.
- In a [joint press conference](#), three NYC DAs and Public Advocate Letitia James also condemned ICE courthouse arrests.
 - **Manhattan DA Cyrus Vance**: “[Immigrants] can’t go [to courts] without fear of getting arrested. That means critical witnesses and victims in cases don’t proceed with important prosecutions, and New Yorkers are less safe because of it.”
 - **Bronx DA Darcel Clark**: “This enforcement is having a chilling effect on our witnesses.”
 - **Brooklyn DA Eric Gonzalez**: “We’re appealing to them as law enforcement officers not to make these arrests. It does not keep us safe. It jeopardizes public safety.”

- **NYC Public Advocate Letitia James:** “Not only is this new policy an attack on our immigrants, but it is an attack on our justice system. We cannot pursue justice when injustice prevails.”

4) Statements by ABA, NYSBA, U.S. Commission on Civil Rights

- **American Bar Association Resolution:** urging ICE to add courthouses to its “sensitive locations” list and urging Congress to amend the Immigration and Nationality Act to designate courthouses as “sensitive locations.”
- **New York State Bar Association Resolution** (same as ABA)
- **U.S. Commission on Civil Rights Statement:** expressing concern that ICE courthouse arrests hinders access to justice for most vulnerable immigrants.

5) Letters from Chief Judges

Five State Chief Judges have sent letters to Attorney General Jefferson Sessions and Department of Homeland Security Secretary John Kelly expressing grave concerns regarding reports of ICE arrests conducted at courthouses and the risk of such arrests eroding public trust in the state court system. Chief Judge DiFiore has not issued a letter, but she [publicly said she was “greatly concerned”](#) about ICE operations at the courts after they targeted several women at the Queens Human Trafficking Court. Chief Judge DiFiore has also called on ICE to treat courts as sensitive locations.

Below are excerpts from letters sent by various Chief Judges. The Center for State Courts has compiled all of the letters [here](#).

California:

On March 16, 2017, the Chief Justice of the California Supreme Court sent a letter to Attorney General Sessions and Secretary Kelly, requesting the following:

“[E]nforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair. ...I respectfully request that you refrain from this sort of enforcement in California’s courthouses”.¹

¹ Letter from Hon. Tani G. Cantil-Sakauye, Chief Justice of Cal., to Jeff Sessions, Attorney General, and John F. Kelly, Sec’y of Homeland Sec. (Mar. 16, 2017) (on file with author).

On March 29, 2017, Attorney General Sessions and Secretary Kelly sent a response letter.² In their letter, they emphasized that courthouse arrests are targeted arrests, not sweeps.³ They additionally reply that local detainer laws limit ICE officers' ability to arrest immigrants at secure jail facilities, resulting in the need to conduct an arrest inside a courthouse as the next safest location.⁴ In response to Hon. Cantil-Sakauye's accusation of ICE officers "stalking" immigrants in court⁵, Attorney General Sessions and Secretary Kelly noted the legality of ICE officers conducting arrests of aliens where probable cause exists to believe such individuals are in violation of immigration laws (*citing* 8 U.S.C. § 1357).⁶

On April 4, 2017, twelve state prosecutors wrote to Sessions and Kelly in support of Justice Cantil-Sakauye's letter, urging ICE to "include areas in and around courthouses among the sensitive sites where immigration enforcement actions are discouraged".⁷

Connecticut:

On May 15, 2017, the Chief Justice of the Connecticut Supreme Court sent a letter to Attorney General Sessions and Secretary Kelly requesting that:

"[Y]ou designate public areas of state courthouses as "sensitive locations" pursuant to your Policy 10019.2 and not have [ICE] officers take custody of individuals inside the public areas of our state courthouses."⁸

The letter further noted "I am fully cognizant of the authority the ICE officers have to detain someone", asking for ICE discretion in conducting arrests in the courthouses.⁹

New Jersey:

On April 19, 2017, the Chief Justice of the New Jersey Supreme Court sent a letter to Secretary Kelly regarding reports of two recent courthouse arrests, stating:

"I write to urge that arrests of this type not take place in courthouses." ... "I respectfully request that courthouses be added to the list of sensitive locations".¹⁰

² Letter from Jefferson B. Sessions III, Attorney General, and John F. Kelly, Sec'y of Homeland Sec., to Hon. Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of Cal. (Mar. 29, 2017) (on file with author).

³ Id.

⁴ Id.

⁵ Letter from Hon. Tani G. Cantil-Sakauye, Chief Justice of Cal., to Jeff Sessions, Attorney General, and John F. Kelly, Sec'y of Homeland Sec. (Mar. 16, 2017) (on file with author).

⁶ Letter from Jefferson B. Sessions III, Attorney General, and John F. Kelly, Sec'y of Homeland Sec., to Hon. Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of Cal. (Mar. 29, 2017) (on file with author).

⁷ Letter from Mike Feuer, L.A. City Attorney, et al., to Jeffrey Sessions, Attorney General, and John Kelly, Sec'y of Homeland Sec. (Apr. 4, 2017) (on file with author).

⁸ Letter from Hon. Chase T. Rogers, Chief Justice, Supreme Court of Conn., to Jefferson B. Sessions III, Attorney General, and John F. Kelly, Sec'y of Homeland Sec. (May 15, 2017) (on file with author).

⁹ Id.

Oregon:

On April 6, 2017, the Chief Justice of the Oregon Supreme Court sent a letter to Attorney General Sessions and Secretary Kelly urging the following:

“I...urge you to direct federal law enforcement agencies, including ICE, not to arrest individuals inside or in the immediate vicinity of Oregon’s county courthouses. If you are unwilling to adopt that policy, then at a minimum, I request that you formally expand the definition of “sensitive locations” in the Homeland Security Policy to include these areas.”¹¹

Washington:

On March 22, 2017, the Chief Justice of the Washington Supreme Court sent a letter to Secretary Kelly expressing concerns regarding courthouse arrests. He requested the following:

“[C]onsider taking the necessary and appropriate steps to address these concerns. For example, I encourage you to designate courthouses as “sensitive locations”.”¹²

The Chief Justice distinguished between state courts’ cooperation with detainer requests, and “carrying out a public arrest in a courthouse for a civil immigration violation, which sends a chilling message”, adding that “the same sensible approach that bars ICE enforcement actions in schools and houses of worship should apply to courthouses”.¹³

6) Excerpts from Legal Service Provider Affidavits**Declaration of Carmen Maria Rey, Deputy Director of Immigration Intervention Project, Sanctuary For Families**

- “One client named Maria (pseudonym), has declined to seek an order of custody and visitation in Family Court against her daughter’s father, who has beaten Maria for a decade and recently kidnapped their daughter.” Maria was also the victim of rape in her home country and fled to the United States after she was unable to get support from her family.

Declaration of Andrea Panjwani, Immigration Practice Managing Attorney, My Sister’s Place

¹⁰ Letter from Hon. Stuart Rabner, Chief Justice, Supreme Court of N.J., to John F. Kelly, Sec’y of Homeland Sec. (Apr. 19, 2017) (on file with author).

¹¹ Letter from Hon. Thomas A. Balmer, Chief Justice, Or. Supreme Court, to Jeff Sessions, Attorney General, and John F. Kelly, Sec’y of Homeland Sec. (Apr. 6, 2017) (on file with author).

¹² Letter from Hon. Mary E. Fairhurst, Chief Justice, Supreme Court of Wash., to John F. Kelly, Sec’y of Homeland Sec. (Mar. 22, 2017) (on file with author).

¹³ Id.

- “[C]lients who have survived horrific crimes, including child rape and aggravated assault are asking me to help them get the charges dropped against the defendants because they are afraid that one of the ways the defendants would retaliate would be by alerting ICE to the court dates.”
- “In the example that most stands out to me, my client came in with her head bandaged. When I asked what happened, she reported that the father of her children raped in a parking lot and then severely beat her about the head with his fists and ‘metal things.’ She has neurological damage and what appears to be permanent vision loss as a result. When I asked her why she did not report it or ask us to help her get a restraining order at Family Court, she told me she was afraid of being picked up by ICE. She is also the defendant in a case that is based upon false allegations from the same person- a common scenario- and feels even more vulnerable for that reason.”

Declaration of Terry D. Lawson, Director, Family and Immigration Unit, Bronx Legal Services

- “Ms.D is afraid to go to court and to seek an order of protection against her husband, who abused her for many years and kidnapped their eight year old son because she, her husband, and their four children are all undocumented. she is terrified that being in court, and asking the court to sign a U certification request puts her and her family, including her husband, at greater risk of being deported.”

Declaration of Atossa Movahedi, Director of Legal Services & Development at the Urban Justice Center-Domestic Violence Project

- “One specific example of a client who decided not to seek help due to recent ICE presence is a client who was in the middle of her affirmative VAWA application with our organization. We had met with the client for various sessions and put in hours of work with her, going through her history of domestic violence and reliving much of the trauma she endured to be able to prepare her application. Despite our attempts to counsel her fears of sudden deportation, she became so overwhelmed with warnings from her family that she left the country without letting us know. This client would have had a strong case for relief[.]”

Declaration of Alexandra Drimal, Staff Attorney, Brooklyn Legal Services Corporation A

- “Tenants regardless of status are typically extremely scared and skeptical about fighting for their rights in court proceedings. This fear has transformed into crippling paralysis in the wake of ICE activity in New York State courts.”
- “Soon after the first reports of arrests in New York State Courts, I had one particularly concerning interaction with a long-term client. This client, a green card holder, who is married to an undocumented man from Mexico, was a long-time member of a tenant

association in Cypress Hills. We had been preparing for a jury trial to enforce her succession rights in her apartment, a trial I believe we would have won. Suddenly, our client informed us that her husband- a key witness in the case- would not feel comfortable going to court.”

Declaration of Tiffany Gordon, Staff Attorney, The Legal Aid Society

- My client is in his late thirties, works full time, is married to a United States Citizen, and has two children that were born in the United States. When I went to court to check the status of his case it was brought to my attention that Immigration and Customs Enforcement (ICE) was present to arrest him. When I shared this information with him tears streamed down his face and his hands shook with fear. He said, “My children, what will they do without me? How will they eat? Who will care for them?”

Declaration of Katherine LeGeros Bajuk, Mental Health Specialist, New York County Defender Services

- “I explained to [ICE agents] that J.P had cognitive and mental health issues, a history of suicide attempts, was a rape and sexual assault victim, was under the care of a psychiatrist now and prescribed medications as part of her mental health treatment...I asked if J.P. could be taken to a hospital after her arrest, advising that this situation was destabilizing enough that she risked a psychotic break. One of the ICE officers shrugged...I asked to see the paperwork they had for her arrest and they refused to show me.”
- “I noted that an individual seated behind us said she would tell her friends to not come to court because they would be deported.”

7) List of Organizations Participating in the ICE Out of Courts Coalition

Organization	Geographic Area
Adhikaar	Statewide
African Communities Together	Statewide
African Services Committee	Bronx County
Anti-Defamation League	Statewide
Appellate Advocates	Kings, Queens, and Richmond Counties
Asian American Legal Defense and Education Fund	Statewide

(AALDEF)	
Atlas: DIY	New York City
Brehon Law Society	New York City
Brooklyn Bar Association Volunteer Lawyers Project	Kings County
Brooklyn Defender Services	Kings County
Catholic Migration Services	Kings and Queens Counties
Center Against Domestic Violence	New York City
Center for Appellate Litigation	New York and Bronx Counties
Center on Latino/a Rights and Equality	New York City
Center for Safety and Change	Rockland County
Central American Legal Assistance	Statewide
Columbia County Public Defender	Columbia County
Columbia County Sanctuary Movement	Columbia County
Common Justice	Statewide
Community Development Project of the Urban Justice Center	New York City
Community Legal Advocates of New York	New York City, Suffolk, Nassau
Community Service Society of New York	New York City
Crime Victim and Sexual Violence Center	Albany County
Day One	New York City
Downstate Coalition for Crime Victims / Crime Victims Treatment Center	NYC, Rockland, Suffolk, Nassau, and Westchester Counties
DRUM - Desis Rising Up & Moving	New York City
Emerald Isle Immigration Center	Queens and Bronx Counties
Empire Justice Center	Statewide
Genesee County Public Defender	Genesee County

Greater Rochester Coalition for Immigration Justice	Monroe County
Harlem Independent Living Center	Greater Harlem area
Her Justice	New York City
HIV Law Project	New York City
Housing Court Answers, Inc.	New York City
ICE-Free Capital District	Statewide Capital District
Immigrant and Noncitizen Rights Clinics, CUNY School of Law	New York City, Nassau, Suffolk
Immigrant Defense Project	Statewide
Immigrant Justice Corps	New York City, Long Island, and the Lower Hudson Valley
Immigration Equality	Statewide
Immigration Law Clinic, Albany Law Clinic & Justice Center	Capital Region
Journey's End Refugee Services	Buffalo
Kathryn O. Greenberg Immigration Justice Clinic, Cardozo School of Law	New York City
Kids for College	Statewide
KIND, Inc. (Kids in Need of Defense)	Statewide
Kite's Nest	Hudson Valley
Korean Community Services of Metropolitan New York	Greater NYC Metro area
La Colmena	Richmond County
Labor-Religion Coalition of NYS	Statewide
LatinoJustice PRLDEF	Statewide
Latinos Unidos of the Hudson Valley	Hudson Valley
Lawyers For Children, Inc.	New York City

LeGaL (LGBT Bar Association of Greater New York)	Greater NYC Metro area
Legal Action Center	Statewide
Legal Aid Society of Nassau County	Nassau County
Legal Services NYC	New York City
Legal Services of the Hudson Valley	Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, and Sullivan Counties
Legal Services Staff Association, NOLSW/UAW 2320	New York City
Levy Davis & Maher LLP	New York City
LifeWay Network, Inc.	
Long Island Immigrant Alliance	Long Island
Long Island Wins	Long Island
Lutheran Social Services of New York	Statewide
Make the Road New York	New York City and Long Island
Masa	Bronx County
MFY Legal Services, Inc.	New York City
MinKwon Center for Community Action	New York City
Mobilization for Justice	New York City
Monroe County Conflict Defender Office	Monroe County
Mount Sinai Beth Israel Victim Services	New York City
My Sister's Place	Westchester County, Rockland County, Lower Hudson Valley
National Organization for Women New York	New York City
Neighborhood Defender Service of Harlem	Harlem
New York City Anti-Violence Project (AVP)	New York City
New York County Defender Services	New York County

New York Law School Asylum Clinic	New York City
New York Lawyers for the Public Interest	New York City
New York Legal Assistance Group	New York City, Long Island, and Westchester and Rockland Counties
New York State Coalition Against Sexual Assault	Statewide
Nixon Peabody LLP	New York City
Northeast NY Coalition for Occupational Safety and Health (NENYCOSH)	Statewide
Northern Manhattan Coalition for Immigrant Rights	Statewide
NY- NELA	Statewide
NYCLU-Suffolk Chapter	Suffolk County
Office of the Appellate Defender	New York City
Organización Latino-Americana of Eastern Long Island	Suffolk County
Prisoner Legal Services	Statewide
Queens Law Associates	Queens County
Regional Immigration Assistance Center, Hudson Valley Region	Hudson Valley
Regional Immigration Assistance Center, Region 2	Oneida County
Rockland Immigration Coalition	Rockland County
Rural and Migrant Ministry	Statewide
Safe Against Violence	Delaware County
Safe Horizon	Statewide
Safe Passage Project	Statewide
Sanctuary for Families	New York City
Sauti Yetu Center for African Women and Families	New York City
SBK Social Justice Center Inc	Columbia County

South Bronx United	New York City
St. Vincent de Paul Legal Program, St. John's University School of Law	Queens County
Statewide Coalition Against Domestic Violence	Statewide
Statewide Coalition Against Sexual Assault	Statewide
Statewide Youth Leadership Council	Statewide
STEPS to End Family Violence	New York City
Sylvia Rivera Law Project	New York City
The Bronx Defenders	Bronx County
The Door's Legal Services Center	New York City
The Hispanic Coalition NY, Inc.	Statewide
The Legal Aid Society	New York City
The Legal Aid Society of Rochester	Rochester County
The Legal Project	Capital District
UAW Region 9A	Statewide
Ulster County Defender	Ulster County
UnLocal, Inc.	New York City
Urban Justice Center	New York City
Violence Intervention Program	New York City
Volunteers of Legal Service	New York City
Wayne Action for Racial Equality	Wayne County
Wayne County Public Defender	Wayne County
WESPAC Foundation	Westchester County
Worker Justice Center of NY, Inc.	Kingston, Rochester, and Albany Counties
Youth Represent	New York City

PROTECT OUR COURTS ACT STATISTICS

A.11013/S.08925

CHILLING EFFECT ON SURVIVORS OF VIOLENCE

The Immigrant Defense Project conducted a statewide survey of advocates who work with immigrant survivors of violence and found the following. For complete results, see bit.ly/2sPu4mv

One-third of advocates in New York State had clients who failed to seek an order of protection due to fear of ICE in the courts.

Nearly half worked with clients who expressed fear of serving as a complaining witness because of ICE's presence in the courts.

Nearly half had clients who failed to seek custody or visitation due to fear of ICE in the courts.

PROSECUTORS SEE DROP IN CRIME REPORTING

The ACLU and the National Immigrant Woman's Advocacy Project conducted a national survey of prosecutors and found the following. For the full survey, see bit.ly/2xYy6yu

82% of prosecutors surveyed nationwide reported that since President Trump took office, domestic violence is now underreported and harder to investigate and/or prosecute.

55% of said sexual assault was harder to investigate and prosecute.

48% reported that child abuse was harder to investigate and prosecute.

COURT CASES INTERRUPTED

The ACLU and the National Immigrant Woman's Advocacy Project conducted a national survey of judges and found the following. For complete results, see bit.ly/2xYy6yu

54% of judges reported that court cases were interrupted due to an immigrant crime survivor's fear of coming to court.

1. Since the beginning of 2017, there's been an unprecedented increase in ICE courthouse arrests across New York State.

- The Immigrant Defense Project documented a 1200% increase in ICE courthouse operations from 2016 to 2017.
- Arrests have been reported from every region of the state.

2. Immigrants and their families are now afraid to go to court.

- In a statewide survey by the Immigrant Defense Project, three out of four attorneys said their immigrants clients expressed fear of going to court.
- This means children aren't getting child support, domestic violence survivors aren't getting orders of protection, tenants aren't bringing complaints against abusive landlords, and people facing criminal charges are denied their fair day in court.

3. Prosecutors and police say that ICE's courthouse arrests undermine public safety.

- Several district attorneys across New York State have said that ICE arrests jeopardize public safety by making it harder for victims and witnesses to come forward.
- Law enforcement officers from across the country have also reported a drop in crime reporting from immigrant communities.

4. Courthouse arrests tear families apart.

- Family separations aren't just happening at the border; they're happening in New York, in our courthouses and communities.
- ICE courthouse arrests routinely target parents in court. These arrests separate families and inflict trauma on the children who are left behind.
- Numerous studies, including one from the Urban Institute, show that ICE arrests targeting parents subject children to depression and post-traumatic stress, and deprive them of critical financial support.

5. This bill will help ensure access to courts for ALL New Yorkers regardless of immigration status.

- Our constitution guarantees access to the courts to ALL New Yorkers, regardless of immigration status.
- Equal access to our courts is vital to our democracy and central to everything that New York stands for.

6. This bill will help protect the fundamental constitutional rights of all New Yorkers to have their fair day in court.

- ICE snatches immigrants from court when they're in the middle of defending themselves against criminal charges.
- Once ICE detains someone, they can refuse to send them back to state court, meaning that the person never gets their fair day in court.
- This not only violates basic constitutional rights, it derails our state's criminal justice system.

PROTECT OUR COURTS ACT

Ensuring that ALL New Yorkers can access our courts
without fear of being arrested by ICE.

Prosecutors from around the country--including in New York, Massachusetts, Colorado, and California--have condemned ICE courthouse operations.

Albany DA David Soares

"Courthouses should be safe spaces for everyone. Prosecutors, advocates and police have spent decades researching and applying best practices in an effort to encourage the reporting of violent crimes, including sexual assaults and domestic violence crimes. Demagoguery of the issue has caused fear and concern in many citizens and has led to decreased reporting. **The activities of Immigration and Customs Enforcement is compromising our ability to hold accountable perpetrators who prey upon victims from vulnerable immigrant communities.**"

Bronx DA Darcel D. Clark

"I endorse the Protect Our Courts Act because, as the Bronx District Attorney, I encourage people to report crimes... If a victim or witness who is essential to the prosecution of a heinous case is arrested by Immigration and Customs Enforcement when he or she shows up at the courthouse, we cannot go forward with the case, resulting in cases being dismissed and dangerous individuals being released back into the community. **This could have a chilling effect on getting witnesses to assist in our cases, potentially resulting in a threat to public safety.**"

Brooklyn DA Eric Gonzalez

"**These actions jeopardize public safety by instilling fear in immigrant communities, which makes victims and witnesses afraid to come forward to report crimes, and unable to get justice.** Keeping Brooklyn safe and strengthening community trust in law enforcement are my top priorities as Brooklyn DA, and ICE's actions undermine those important goals. I support the efforts to end this misguided practice."

Manhattan DA Cyrus Vance, Jr.

"**Deporting New Yorkers who show up to court is antithetical to our values and detrimental to our public safety.** The fear of unjust deportation stops crime victims from coming forward, and stops defendants from responsibly attending their court dates. I thank Assembly Member Solages for her work on this bill and urge the legislature to pass it immediately, because all New Yorkers have the right to safely access our courts, whether they are documented or undocumented under federal law."

Joint Statement of 12 California District Attorneys

"ICE courthouse arrests make all Californians less safe. These practices deter residents concerned about their immigration status from appearing in court including as crime victims and witnesses--jeopardizing effective prosecution of criminals who may then re-offend... No one should fear that their immigration status prevents them from seeking justice, whether as a crime victim or otherwise. **ICE's practice is antithetical to a fair system of justice that must protect all of us.**"

Joint Statement of Denver DA, City Attorney, and Other Elected Officials

"We believe this practice has and will increasingly lead to an environment of fear for victims and witnesses. **Already, we have victims of domestic violence refusing to come to court for fear of immigration consequences** which results in violent criminal being released into the community. Unless ICE has a criminal warrant, we respectfully request you consider courthouses sensitive locations..."

PROTECT OUR COURTS ACT

Ensuring that ALL New Yorkers can access our courts without fear of being arrested by ICE.

Maine Attorney General Janet T. Mills

"In investigating matters of human trafficking, domestic violence and the like, it is critical to us that all individuals have free and open access to Maine courts, regardless of their immigration status. The recent action of ICE Agents at the Cumberland County Courthouse will have an unnecessary chilling effect on our efforts to obtain the cooperation of victims and our successful prosecution of crimes."

Maryland Attorney General Brian E. Frosh

"[M]y first priority is the safety of Marylanders who turn to the courts for protection against domestic violence and other crimes...I am concerned that the Administration's aggressive new policies will discourage the most vulnerable immigrants from seeking judicial protection...I seek the Department of Homeland Security's commitment that it will take steps that ensure that Maryland's courthouses remain open to all victims of crime and violence[.]"

Massachusetts Attorney General Maura Healey

"We've already seen reports that sexual assault and domestic violence reporting are down. This is why we think the Trump administration's approach is ultimately ineffective, because it undercuts local law enforcement's ability to develop the critical trust needed to keep communities safe."

Middlesex County DA Marian T. Ryan (Massachusetts)

"I am deeply concerned that the prospect of ICE conducting civil arrests in courthouses across the Commonwealth will have a hugely detrimental effect on law enforcement and on the ability of prosecutors to seek justice on behalf of the Commonwealth...Justice is harmed when victims and witnesses, who are essential to our prosecutions, are afraid to even set foot in a courthouse because of the possibility of facing arrest for civil immigration infractions."

Essex County DA Jonathan W. Blodgett (Massachusetts)

"Immigration and Customs Enforcement (ICE) arrests at courthouses in our county have impacted witnesses appearing for trial, victims of crime (especially those of domestic violence), and criminal defendants we are seeking to prosecute. This practice often impedes access to justice for victims as well as our ability to prosecute cases, including, most recently, a defendant set to be tried for multiple counts of aggravated rape of a child."

Kings County DA Dan Satterberg (Washington)

"... ICE actions are undermining trust in the neutrality of the court system, where 'justice for all' has been our hallmark. We are not safer when victims of crime fear being deported if they call 911, talk to police, or come to the house to get protection. We are not safer when a victim of abuse thinks she must choose between deportation or suffering more violence at the hands of her abuser. Unpunished violent crime threatens us all."



ACTIONS JUDGES CAN TAKE TO RESPOND TO ICE PRESENCE INSIDE STATE AND MUNICIPAL COURTHOUSES

1. Permit attorneys to resolve a case off-calendar so ICE cannot anticipate when a defendant/litigant/witness is in court.
2. Notify attorneys whenever ICE is seen in the courtroom, in the hallways, or other parts of the courthouse so that they can properly advise their clients and witnesses.
3. Consider excusing appearances for defendant/litigants if ICE is present in the courthouse.
4. Consider permitting defendants to offer pleas by affidavit.
5. Ask clerks and other court staff not to share any identifying information about defendant/litigant/witness with ICE agents.
6. Ask clerks and court staff not to call names aloud in the hallways. ICE may use this to identify and detain clients before they appear on a case.
7. If ICE arrests a defendant, consider granting a bench warrant stay.
8. If ICE arrests a defendant, notify the ADA of their obligation to produce the client from ICE custody for future appearances.
9. Encourage defense attorneys who have questions about ICE targeting their clients in the courts to contact Robert Horne, managing attorney of the Regional Immigration Assistance Center.
10. Advocate for the Chief Judge and Chief Administrative Judge of the New York State Court of Appeals to implement a pair of protocols that will prohibit information sharing between court staff and ICE, and require ICE (and other non-New York civil law enforcement agencies) to obtain judicial warrants to make arrests inside courthouses.

Talking Points for Press

A coalition of over 120 organizations from around the state calls on the Chief Judge to take immediate steps to stop ICE from targeting immigrants in the courts.

1. ICE practice in the courts is reprehensible – ICE has exhibited extreme disregard for the integrity of the court system:

- a. ICE has sunk to a new low by targeting a young woman in the Human Trafficking Intervention Court, a court dedicated to helping trafficking victims.
- b. The young woman targeted had no prior criminal history and was facing misdemeanor charges when ICE came to arrest her.
- c. ICE's operation in trafficking court is consistent with their public pledges that agents will not refrain from arresting witnesses and survivors of crime at court appearances.
- d. ICE has refused to designate courthouses as "sensitive locations" despite multiple requests from elected officials and those who work in the State courts.
- e. ICE has targeted other vulnerable immigrants in family courts, special courts designed for youthful offenders, and adult criminal courts.

2. Since President Trump took office, ICE has significantly increased arrests in our State courts

- a. Under President Trump, Secretary Kelly, and AG Sessions, ICE is increasingly exploiting state courts to trap and arrest immigrants.
- b. In New York, advocates have seen more arrests in the last six months than the past two years combined.
- c. The pace of arrests has sharply increased in recent weeks, with at least 10 arrests or attempted arrests last week alone.
- d. ICE arrests have occurred throughout New York State: in every borough of New York City, on Long Island, and Upstate.

3. Chilling effect on access to the courts is profound.

- a. Immigrants and their families are increasingly afraid of appearing in State courts due to fear of ICE.
- b. Fear of the courts is preventing people from going to court to obtain protective orders, defend against criminal charges, or seek protection against abusive employers and landlords.
- c. In a national survey, 75% of advocates report that immigrant survivors of intimate partner violence are now concerned about going to court; 43%

have clients who have dropped a civil or criminal case due to fear of ICE in the courts.

- d. Our coalition of over 120 legal services organizations and community groups have collected sworn attorney declarations, which document the fear of the courts in communities throughout the State.

4. Statistics on courthouse arrests and attempted arrests

- a. Since the beginning of 2017, there have been 38 total arrests and attempted arrests statewide.
- b. 28 were arrests.
- c. 10 were attempted arrests.
- d. 26 of the incidents occurred in NYC; 12 happened outside of NYC.
- e. Of the 26 incidents in NYC, 19 people were arrested.
- f. Arrests and attempted have occurred in every borough of NYC.
The breakdown of arrests and attempted arrests is 7 in Manhattan; 6 in Queens; 7 in Brooklyn; 4 in the Bronx and 2 on Staten Island.

FACT SHEET: ICE IN NEW YORK STATE COURTS

A coalition of over 100 New York legal services providers and immigrants' rights groups is documenting incidents of Immigration and Customs Enforcement (ICE) activity in the state's courts. The coalition verifies each report through interviews with witnesses including attorneys, family members, and litigants.

- Since January of 2017, we have received 57 reports of ICE arrests or attempted arrests in courts throughout New York State. *See the attached chart for the dates and locations of the incidents.*
 - 48 were arrests; 9 were attempted arrests.
 - The pace of arrests appears to be accelerating with nearly half of the incidents occurring in the last two months.
 - The 57 incidents represent a significant increase from the prior two years for which we have data. In 2015, we received reports of 14 arrests statewide; in 2016, we received reports of 11 arrests statewide.
- ICE has expanded its operation in New York's courts arresting individuals in Human Trafficking Intervention Court, Family Court, the Youth Part of a Criminal Court, and Mental Health Treatment Court.
- Under the current administration's new "priorities," ICE has vastly expanded who they are targeting in court. ICE is currently pursuing both undocumented and documented individuals, including people who are long-term lawful permanent residents. They are also targeting undocumented individuals with no prior criminal history
- ICE has refused to designate courthouses as "sensitive locations" and has announced publicly that it will not refrain from arresting witnesses and survivors of crime at court appearances. In New York, ICE has increasingly targeted vulnerable immigrants including a woman in Human Trafficking Intervention Court and another woman facing misdemeanor charges who was a sexual assault victim with a history of serious mental health issues.
- ICE is now targeting immigrants in the criminal courts at a much early point in criminal proceedings, arresting immigrants as early as arraignments. The agency also routinely refuses to return immigrants to State courts to participate in the resolution of their ongoing criminal proceedings.
- In virtually every instance documented by the coalition, ICE has refused to produce any type of arrest warrant—judicial or administrative. Federal immigration regulations require ICE to produce an administrative warrant, which is signed by an ICE officer and subject only to a "reason to believe" standard, unless there are exigent circumstances. However, ICE still refuses to produce even these bare bones warrants to justify arrests.
- In some cases, OCA staff and judges have assisted ICE arrests by providing personal identifying information about immigrant litigants, delaying the calling of cases, and physically blocking defense attorneys from accessing their clients while ICE conducted an arrest.

Summaries of a few ICE Courthouse Arrests:

Kings County (Adult Criminal)

On July 7, multiple ICE agents targeted a father appearing in the Kings County Supreme Court. After his case was called and adjourned, the father exited the courtroom and was then met by ICE agents who arrested him and took him to a car outside of the courthouse. The father, who is now detained in an immigration jail, has a concurrent Family Court case in Kings County.

Kings County (Family Court)

On March 16, plainclothes ICE agents arrested a father in the waiting area outside of a child support part. The father, who has a five year old son, was making his second child support appearance. The plainclothes ICE agents waited for a court officer to call his name in the hall. When the father stood up, to enter the court part, the officers quickly surrounded him and arrested him. He is currently detained and facing deportation from a New Jersey jail.

Queens County (Human Trafficking Intervention Court)

On June 16, three ICE agents targeted a young East Asian woman who was facing misdemeanor charges in the Human Trafficking Intervention Court. After being notified that ICE was there to arrest their client, the attorneys representing the woman sought to have bail set on her case. It was only after she was taken into custody that ICE agents eventually left the court room. They subsequently arrested three other individuals at the Queens Criminal Court that day.

New York County (Adult Criminal)

On April 5, ICE arrested a rape and sexual assault victim who suffers from mental health issues and has a history of suicide attempts. Despite being informed of this by defense counsel, ICE arrested the woman who had appeared in New York County to face misdemeanor charges. ICE's practice of targeting a domestic violence survivor is consistent with reports about ICE conduct in other jurisdictions; in Texas, for example, ICE arrested a transgender woman at the Family Court where she sought an order of protection against her abusive partner. An investigative report by *The New Yorker* indicates that ICE likely targeted the woman after getting a call from her abuser.

Bronx County (Adult Criminal)

On March 27, plainclothes ICE officers waited in hallway outside of the court part in the Bronx County Hall of Justice. They then entered and waited in the courtroom vestibule, blocking the courtroom exit. ICE approached a criminal defense lawyer in the court part, showed a badge, and asked that she call the case of the individual they were looking for. When another lawyer tried to come into the vestibule to observe an arrest or invoke the individual's rights, she was told to leave. Reports indicate that court staff tried to facilitate the arrest by asking the individual to step out of the courtroom, but this individual did not. The criminal court judge set bail on this individual, and so ICE was unable to make the arrest.

Suffolk County Court (Youth Part-Criminal)

On May 15th, three ICE agents took a young man into custody after he appeared to face minor charges in the youth part. ICE agents followed the young man as he walked into the youth part. When approached by counsel for the individual, the ICE agents repeatedly refused to identify themselves and would only say that worked for the "federal government." The presiding judge called the young man's case. When he stood up, ICE was able to positively identify him. The presiding judge was then forced to issue an adjournment in his case. The young man walked out of the courtroom and ICE officers quickly surround him outside and took him to a van waiting outside. He is currently detained in an immigration jail. He also has a pending petition for Special Immigrant Juvenile Status.

February 15, 2018

Via E-mail

Hon. Janet DiFiore
Chief Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

Hon. Lawrence K. Marks
Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

RE: Immigration and Customs Enforcement Directive Number 11072.1

Dear Judges DiFiore and Marks:

We write as a coalition of legal service providers, good governance groups, and advocacy organizations to thank you for all that you have done to raise concerns with the Department of Homeland Security (DHS) about the impact of Immigration and Customs Enforcement (ICE) arrests on our State courts and to discuss how best to ensure that all New Yorkers are able to access the courts.

From press accounts¹, we understand that input from the National Conference of Chief Justices helped to prompt the publication of ICE Directive Number 11072.1.² We appreciate your leadership and your strong advocacy in seeking to have DHS designate courthouses as sensitive locations. We are heartened by your commitment to ensuring that the New York State court system is accessible to all.

Respectfully, we request an in-person meeting to discuss the Directive and our ongoing concerns about ICE enforcement operations in our State courts. We believe that the recommendations previously requested by numerous groups, including those that would clarify court policies and procedures, are needed now more than ever. We believe that it is imperative for the court system and the stakeholders to collaborate on pragmatic and practical means of cooperation to strengthen the role of state courts, ensure efficiencies and standards, promote equal access and to diminish the opportunities of unfair and improper actions by ICE. The essential power of state courts to manage their courthouses should not be undermined.

For those of us across the state who represent immigrants, monitor ICE actions and believe in the importance of efficiency, standards, public safety and the rights of all who

¹ Andrew Denney, *Amid Spike in Courthouse Arrests, ICE Issues Formal Policy*, NEW YORK LAW

² ICE Directive No. 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses* (Jan. 10, 2018)[henceforth "Directive"].

use the courts, we know the Directive falls far short of meaningfully addressing the havoc that ICE enforcement actions continue to wreak on our justice system. It also fails to address the profound sense of fear that ICE's operations have lodged in our immigrant communities.

Our concern is that ICE's policy guidance offers no safeguards against the unconstitutional, indiscriminate and disruptive practices that we have seen thus far. Instead, the Directive "formally codif[ies]" the agency's practices and puts into writing what we have observed over more than a year of monitoring ICE conduct in New York's courts: ICE targets people without regard for who they are or why they are in court.³ One day it is a trafficking victim appearing to face prostitution-related charges⁴ and the next it is a college student who came to the U.S. at the age of three and has no prior criminal history.⁵ Tomorrow, it may well be a DACA recipient appearing in traffic court.⁶

The current federal administration has instructed ICE agents to exercise their authority to enforce immigration law to the "greatest extent practicable."⁷ This means that anyone who is in the country without authorization is a potential target. As ICE Director Thomas Homan put it, if you're undocumented, "you should look over your shoulder."⁸ Even those with legal authorization who have contributed to their communities for decades and raised generations of U.S. citizens may be targets based on involvement with the criminal justice system or untested allegations of dangerousness.

ICE's policy on courthouse arrests is built on a deeply troubling premise, namely, that some members of our community deserve access to justice through the courts while others do not. As legal professionals who serve and represent litigants across a broad array of courts, we strongly believe that the immigrants we work with will only be safe when all of our State courts are safe. It is a bedrock principle of our judicial system that access to justice cannot be selective. Our courts must be equally open to noncitizens and citizens; to individuals seeking protection from the courts and those exercising their constitutional rights to defend themselves against criminal charges. Our democracy requires this, and our Constitution demands it.

We again commend you for your continued attention to these difficult issues and look forward to further discussion.

³ See *FAQ on Sensitive Locations and Courthouse Arrests*, U.S. Immigration and Customs Enforcement (last updated Jan. 31, 2018).

⁴ Beth Fertig, *When ICE Shows Up at Human Trafficking Court*, WNYC (June 22, 2017) available at <https://www.wnyc.org/story/when-ice-shows-court/>.

⁵ Noah Manskar, *ICE Arrests NYC Immigrant, 27, at Bronx Courthouse*, PATCH (Feb. 8, 2018) available at <https://patch.com/new-york/new-york-city/ice-arrests-nyc-immigrant-27-bronx-courthouse>.

⁶ *ICE agents arrest "Dreamer" at traffic court, jail him for 3 days*, CBS News (Feb. 2, 2018) available at <https://www.cbsnews.com/news/christian-gomez-garcia-ice-agents-arrest-dreamer-at-traffic-court-chicago/>.

⁷ See Memorandum from John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017).

⁸ Maria Sacchetti, "ICE chief tells lawmakers agency needs much more money for immigration arrests," THE WASHINGTON POST (June 13, 2017).

Sincerely,

AALDEF- Asian American Legal Defense and Education Fund (National)
Adhikaar (NYC)
African Communities Together (National)
African Services Committee (NYC)
Anti-Defamation League New York (Statewide and National)
Appellate Advocates (Kings, Queens, and Richmond Counties)
Atlas: DIY (NYC)
Brehon Law Society of New York (NYC)
Brooklyn Defender Services (Kings County)
The Bronx Defenders (Bronx County)
Center for Appellate Litigation (New York and Bronx Counties)
Center for Safety and Change (Rockland County)
Church World Service (Tri-State Area)
Common Justice (Statewide)
Community Legal Advocates of New York (NYC; Nassau and Suffolk Counties)
Community Service Society of New York (NYC)
Day One (Statewide and National)
The Door's Legal Services Center (NYC)
Downstate Coalition for Crime Victims (Downstate)
DRUM- Desis Rising Up & Moving (New York, Queens, Kings, and Bronx Counties)
Emerald Isle Immigration Center (NYC)
Empire Justice Center (Statewide)
GMHC- Gay Men's Health Crisis (NYC)
Greater Rochester Coalition for Immigration Justice (Fingerlakes Region)
Harlem Independent Living Center (NYC)
Housing Court Answers (NYC)
Human Rights First (NYC; Suffolk, Nassau, Westchester, and Rockland Counties)
ICE-Free Capital District (Albany, Schenectady, Rensselaer, and Saratoga Counties)
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law (NYC; Nassau and Suffolk Counties)
Immigrant Defense Project (Statewide)
Immigration Equality (National)
Kids for College (Wayne and Surrounding Counties)
KIND- Kids in Need of Defense (NYC; Suffolk, Nassau and Westchester Counties)
Lambda Legal (National)
Latino Justice (National)
Lawyers For Children (NYC; Nassau, Suffolk, Westchester, and Rockland Counties)
The Legal Aid Society of Nassau County (Nassau)
LeGal- The LGBT Bar Association of Greater New York (Statewide)
Legal Services NYC (NYC)

Make the Road New York (Statewide)
Mobilization for Justice, Inc. (NYC)
Neighborhood Defender Service (New York County)
New York Immigration Coalition (Statewide)
New York Law School Asylum Clinic (NYC)
New York Lawyers for the Public Interest (Statewide)
New York Legal Assistance Group (NYC)
New York Legal Services Coalition (NYC)
New York State Coalition Against Sexual Assault (Statewide)
Northern Manhattan Coalition for Immigrant Rights (Statewide)
Office of the Appellate Defender (New York and Bronx Counties)
Organización Latino-Americana of Eastern Long Island (Suffolk)
Rockland Immigration Coalition (Rockland County)
Rural and Migrant Ministry (Statewide)
Safe Horizon (Statewide and National)
Safe Passage Project (NYC; Nassau and Suffolk Counties)
Sanctuary for Families (NYC)
SEIU 32BJ (Statewide)
Sosa Law (New York, Queens, Kings, and Bronx Counties)
South Bronx United (Bronx, New York, and Kings Counties)
Sylvia Rivera Law Project (NYC; Nassau, Westchester and Rockland Counties)
UnLocal, Inc. (NYC)
Violence Intervention Program (New York, Queens, Kings, and Bronx Counties)
Volunteers of Legal Service (NYC)
Wayne Action for Racial Equality (Wayne County)
WESPAC Foundation, Inc (Westchester County)
Worker Justice Center of New York (All Upstate Counties)
Youth Represent (NYC)



40 West 39th Street, Fifth Floor, New York, NY 10018

Tel: 212.725.6422 • Fax: 800.391.5713

www.ImmigrantDefenseProject.org

June 22, 2017

Via E-Mail and First Class Mail

Hon. Janet DiFiore
Chief Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

RE: Escalation in ICE Arrests in New York State Courts

Dear Judge DiFiore:

We are a group of 110 legal services organizations, domestic violence and victims services groups, and community based organizations that work with immigrant and citizen New Yorkers who depend on access to our state courts. We write to express our outrage at last Friday's events, where agents from U.S. Immigration and Customs Enforcement (ICE) came to a Human Trafficking Intervention Court to arrest a young woman who was appearing before the court. By doing so, ICE has again shown disregard for the functioning of the courts. It also reinforces the message that no immigrant is safe in the New York State court system, a feeling that is deepening in the communities we serve. As the Chief Judge of the New York State Courts, we ask that you take immediate steps to protect immigrant New Yorkers and their families, and restore trust in the State court system.

As a coalition, we last wrote to you on April 10 to express our concerns about ICE's increased presence in and around the courts, which we have witnessed since the beginning of 2017, when President Trump took office. In the intervening months, the problem of ICE arrests in our courts has only worsened. We have now confirmed 38 arrests or attempted arrests in courts around the State since the beginning of the year. In recent weeks, the pace of arrests has significantly increased, with at least 10 arrests or attempted arrests occurring last week alone. ICE has also expanded its courthouse raid practice to target immigrants appearing in our family courts, in the youth parts of our criminal courts designed to help youthful offenders rehabilitate, and our problem-solving courts.

Last Friday, ICE exhibited extreme disregard for the integrity of the court system by targeting a young woman in the Human Trafficking Intervention Court in Queens, a court that has been hailed as a national model for trafficking victims. The young woman had no prior criminal history and was facing misdemeanor charges stemming from her status as a victim of

human trafficking. Nevertheless, three plainclothes ICE agents targeted her for arrest at her court appearance while her family waited in the courtroom. This squad of agents then moved on to arrest three other people appearing for criminal court in Queens that day.

We regularly work with immigrants, and the family members of immigrants, who need access to the New York State court system for critical reasons, including obtaining orders of protection, defending against criminal charges, and seeking protection against abusive employers and landlords. ICE's exploitation of the court system has made it increasingly difficult to tell the individuals and families that we work with that our courts are a safe space. The immigrants who we work with now often express fear of going to court, of filing petitions seeking protection from the court, and of testifying as complaining witnesses.

Far from backing down from the courthouse arrest practice, in response to widespread criticism and requests to desist, ICE's leadership in the Department of Homeland Security (DHS) has doubled down. After public outcry over the arrest of a transgender woman, a survivor of domestic violence who sought an order of protection in a Texas court, DHS officials publicly declared that even the victims and witnesses of crimes were fair game in the courts. Friday's attempted arrest brings DHS's promise into sharp focus. And despite requests from other state chief justices and state and local elected officials, federal immigration authorities have refused to designate state courts as "sensitive locations" that would be protected from federal immigration enforcement.

In the face of ICE's reckless disregard for public safety and access to justice, as Chief Judge, it is imperative that you take all the steps necessary to stop federal immigration agents from using our court system to trap immigrants for arrest, detention, and deportation. As organizations that work daily with immigrant communities throughout New York State, we are witnessing ICE's presence erode trust in the court system and undermine equal access to justice. Without your intervention, this phenomenon will only worsen, endangering all New Yorkers and the integrity of our court system itself.

Thank you for your attention to this important issue.

Sincerely,

Adhikaar (Statewide)
African Communities Together (Statewide)
African Services Committee (Bronx County)
AIDS Health Care Foundation (NYC)
Albany Law Clinic & Justice Center, Immigration Law Clinic (Capital Region)
Appellate Advocates (Kings, Queens, and Richmond Counties)
Asian American Legal Defense and Education Fund (AALDEF)(Statewide)
Atlas: DIY (NYC)
Brooklyn Bar Association Volunteer Lawyers Project (Kings County)
Brooklyn Defender Services (Kings County)
Bronx Defenders (Bronx County)

Cardozo School of Law, Kathryn O. Greenberg Immigration Justice Clinic (NYC)
Catholic Migration Services (Kings and Queens Counties)
Center Against Domestic Violence (NYC)
Center for Appellate Litigation (New York and Bronx Counties)
Center on Latino/a Rights and Equality(NYC)
Central American Legal Assistance (NYC)
Columbia County Public Defender (Columbia County)
Columbia County Sanctuary Movement (Columbia County)
Common Justice (Statewide)
Community Development Project of the Urban Justice Center (NYC)
Crime Victim and Sexual Violence Center (Albany County)
Crime Victims Treatment Center (NYC)
Day One (NYC)
Desis Rising Up & Moving (DRUM)(NYC)
Door's Legal Services Center (NYC)
Downstate Coalition for Crime Victims (NYC)
Emerald Isle Immigration Center (NYC)
Empire Justice Center (Statewide)
Genesee County Public Defender (Genesee County)
Greater Rochester Coalition for Immigration Justice (Monroe County)
Harlem Independent Living Center (Manhattan)
HIV Law Project (NYC)
Hispanic Coalition NY, Inc. (Statewide)
Housing Court Answers, Inc. (NYC)
ICE-Free Capital District (Capital Region)
Immigrant Defense Project (Statewide)
Immigrant Justice Corps (Statewide)
Immigration Equality (Statewide)
Journey's End Refugee Services (Erie County)
Kids for College (Statewide)
KIND, Inc. (Kids in Need of Defense (Statewide)
Kite's Nest (Columbia County)
Korean Community Services of Metropolitan New York (Greater NYC Metro Area)
La Colmena (Richmond County)
Labor-Religion Coalition of New York State (Statewide)
LatinoJustice PRLDEF (Statewide)
Latinos Unidos of the Hudson Valley (Hudson Valley)
Lawyers For Children, Inc. (NYC)
LGBT Bar Association of Greater New York (LeGaL)(Greater NYC Metro Area)
Legal Aid Society (NYC)
Legal Aid Society of Nassau County (Nassau County)
Legal Aid Society of Rochester (Rochester County)
Legal Project (Albany)
Legal Services NYC (NYC)
Legal Services of the Hudson Valley (Hudson Valley)
Legal Services Staff Association, NOLSW/UAW 2320 (NYC)

Levy Davis & Maher LLP (NYC)
LifeWay Network, Inc.(Greater NYC Metro Area)
Long Island Immigrant Alliance (Long Island)
Long Island Wins (Long Island)
Lutheran Social Services of New York (Statewide)
Make the Road New York (NYC and Long Island)
Masa (Bronx County)
MFY Legal Services, Inc. (NYC)
MinKwon Center for Community Action (NYC)
Monroe County Conflict Defender Office (Monroe County)
Mount Sinai Beth Israel Victim Services (NYC)
Mount Sinai Human Rights Program (NYC)
My Sister's Place (Westchester County)
National Organization for Women New York (NYC)
Neighborhood Defender Service of Harlem (Manhattan)
New York City Anti-Violence Project (AVP) (NYC)
New York City Refugee and Asylee Health Coalition (NYC)
New York County Defender Services (NYC)
New York Lawyers for the Public Interest (NYC)
New York Legal Assistance Group (NYC)
Nixon Peabody LLP (NYC)
Northeast NY Coalition for Occupational Safety and Health (Statewide)
Northern Manhattan Coalition for Immigrant Rights (NYC)
NY- NELA (Statewide)
NYCLU-Suffolk Chapter (Suffolk County)
Office of the Appellate Defender (NYC)
OLA of Eastern Long Island (Long Island)
Prisoner Legal Services (Statewide)
Queens Law Associates (Queens County)
Regional Immigration Assistance Center, Hudson Valley Region (Hudson Valley)
Regional Immigration Assistance Center, Region 2 (Central New York)
Rockland Immigration Coalition (Rockland County)
Rural and Migrant Ministry (Statewide)
Safe Against Violence (Delaware County)
Safe Horizon (NYC)
Safe Passage Project (NYC)
Sanctuary for Families (NYC)
Sauti Yetu Center for African Women and Families (NYC)
SBK Social Justice Center Inc. (Columbia County)
Sosa Law (NYC)
St. Vincent de Paul Legal Program, St. John's University School of Law (Queens County)
Statewide Coalition Against Domestic Violence (Statewide)
Statewide Coalition Against Sexual Assault (Statewide)
Statewide Youth Leadership Council (Statewide)
STEPS to End Family Violence (NYC)
Sylvia Rivera Law Project (NYC)

Ulster County Defender (Ulster County)
UnLocal, Inc. (NYC)
Urban Justice Center (NYC)
Violence Intervention Program (NYC)
Wayne Action for Racial Equality (Wayne County)
WESPAC Foundation (Westchester County)
Worker Justice Center of NY, Inc. (Kingston, Rochester, and Albany Counties)
Youth Represent (NYC)

cc: Hon. Lawrence K. Marks

June 19, 2017

Via Email and First Class Mail

Hon. Janet DiFiore
Chief Judge
NYS Unified Court System
25 Beaver Street
New York, NY 10004

Re: Request for Meeting to further discuss the presence and impact of ICE in the NYS Unified Court System

Dear Judge DiFiore,

Thank you and Judge Marks for your response to our prior letter. We, as a group of organizations, agencies, and private practitioners who work with people affected by intimate partner violence, trafficking, elder abuse, and other forms of violence, appreciate your efforts to ensure the optimal operation of the NYS Unified Court System. However, we remain concerned that the current immigration climate has negatively impacted both court operations and access to justice for NYS immigrant survivors of domestic violence. We therefore request an opportunity to meet with you in person to discuss our concerns and discuss the development of protocols relating to ICE enforcement in the courts.

The NYS Unified Court System has long acknowledged that its family courts exist as a form of practical help for survivors of domestic violence seeking legal assistance to escape abusive situations,¹ and has worked to ensure that the courts are accessible to all New Yorkers. As a matter of public policy, New York State has historically engaged in various reforms to make the family courts increasingly accessible to survivors, with the understanding that the relief available there, such as civil orders of protection, custody, and child and spousal support, are crucial to ensuring survivors' safety and security. For example, the NYS Unified Court System has provided more streamlined filing processes, worked to improve language access, and supported initiatives to increase civil legal services funding with the understanding that support and knowledge of litigants' rights are essential when promoting access to the family courts.²

¹ See F.C.A. § 811.

² See Hon. Jonathan Lippman, *Ensuring Victim Safety and Abuser Accountability: Reforms and Revisions in the New York Courts' Response to Domestic Violence*, 76 Albany L. Rev. 1417 (2013) Republished with Permission on the New York Courts website at: <https://www.nycourts.gov/courts/family-violence/idv/pdfs/2016/Material%20to%20Post/SES%204%20ADD%20Ensuring%20Victim%20Safety.pdf>

In New York State, on average, 1 out of 3 women and men are victims of rape, physical violence, and/or stalking by an intimate partner in their lifetime.³ Importantly, also, 1 in 4-5 New Yorkers is foreign born, and nearly 1 in 20 lacks any immigration status.⁴ Consequently, any efforts to ensure survivor safety by maintaining accessibility to the courts for survivors of domestic violence must necessarily take into account the realities faced by the nearly 22% of our population who are foreign born,⁵ and for whom potential interaction with immigration authorities is of overwhelming concern.

As legal service providers that often represent immigrant survivors of domestic violence, we have noted that increased ICE activity in New York, including increased ICE enforcement in NY Courts and the media attention enforcement efforts have received in both the English and non-English-language press,⁶ have had a markedly negative impact on our clients. In part, this is because this climate has also emboldened offenders who use a survivor's lack of immigration status to threaten and control victims.⁷ Even as recently as last week, ICE agents pursued arrests in Queens Human Trafficking Court.⁸ Your honor was quoted as saying that you were "greatly concerned" and City Council Speaker Melissa Mark-Viverito expressed that immigration agents "sunk to new lows of moral depravity" seeking a woman in human trafficking court. The presence of ICE agents in Queens Human Trafficking Court where countless survivors of violence seek assistance underscores just how urgent this issue has become.⁹

We attach here several affidavits from legal service providers all over New York in which attorneys describe how the current climate has circumscribed their clients' access to the courts. These affidavits confirm that immigrant New Yorkers are choosing to avoid the courts for

³ See The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report The National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, (November 2011), available at: https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf

⁴ Out of an estimated 19.65 million New York State residents, approximately 4.4 million are immigrants, and 775,000-850,000 lack immigration status. See DiNapoli, T. (2016). *A Portrait of Immigrants in New York*. P. 1. Retrieved from the Office of the New York State Comptroller website at https://www.osc.state.ny.us/reports/immigration/immigration_2016.pdf. See also Pew Research Center (2017). Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009. Retrieved from the Pew Research Center website at: <http://www.pewhispanic.org/2016/09/20/overall-number-of-u-s-unauthorized-immigrants-holds-steady-since-2009/>.

⁵ Id.

⁶ See media coverage, inter alia: <http://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>, <http://www.univision.com/los-angeles/kmex/noticias/redadas/ice-comienzo-a-arrestar-indocumentados-en-las-cortes-como-respuesta-a-las-ciudades-santuario> <http://www.nydailynews.com/new-york/federal-immigration-agents-showing-nyc-courts-article-1.3010003> <http://observer.com/2017/02/immigration-agents-arresting-undocumented-immigrants-in-nyc-misdemeanor-court-advocates-report/> <http://www.politico.com/states/new-york/albany/story/2017/03/for-now-ice-operating-freely-in-nyc-courthouses-110791>, https://www.nytimes.com/2017/02/10/us/immigration-raids-enforcement.html?_r=0 <http://freebeacon.com/issues/nypd-alerts-ice-illegal-immigrant-court-dates-despite-new-york-sanctuary-city/>

⁷ See Immigrant Power and Control Wheel, available at: <http://www.thehotline.org/wp-content/uploads/2016/08/Power-Control-Wheel.pdf>

⁸ <http://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>

⁹ Id.

fear of encountering ICE. Their fears are real and should not be ignored. These affidavits, *inter alia*, describe immigrant parents and adult relatives that decided not to pursue custody or guardianship of children for fear of immigration enforcement, and immigrant clients who were afraid to report recent incidents of severe physical abuse and obtain orders of protection for fear of contact with ICE and potential deportation. In addition, these affidavits, and the results of a recent survey administered to immigration providers,¹⁰ confirm that attorneys have noted an increased level of fear in their communications and meetings with clients, and that, as part of their ethical duties, they have had to advise clients at risk of immigration enforcement of the risk of encountering ICE in the courts. They confirm that the current immigration climate, coupled with the presence of ICE in the courts, now means that civil attorneys cannot comfortably encourage any court remedy to immigrant survivors of domestic violence. Unfortunately, it is those immigrant women, men, and children, who are at greatest risk, and who are most likely to be harmed or killed by their partners and abusive family members.¹¹

In closing, we remain very concerned that the lack of clear limitations on ICE access to NYS Courts will prevent increasing numbers of immigrant survivors of domestic violence from seeking the protections available to them in our Family Courts, and request the opportunity to address these concerns and any future protocols with you in person.

Yours truly,

African Services Committee
Battered Women's Resource Center, Voices of Women - VOW
BOOM!Health
Day One
Emerald Isle Immigration Center
GMHC
Her Justice
Immigrant Defense Project
Immigration Equality
Kohan Law Group
Lawyers Committee Against Domestic Violence
Legal Services NYC
Legal Services of the Hudson Valley
Lutheran Social Services of New York
MFY Legal Services, Inc.
My Sisters' Place

¹⁰ On May 18th, 2017, seven national organizations working to end domestic violence and sexual assault-- Asian Pacific Institute on Gender-Based Violence (API-GBV), ASISTA, Casa de Esperanza: National Latin@ Network, National Alliance to End Sexual Violence (NAESV), National Domestic Violence Hotline (NDVH), National Network to End Domestic Violence (NNEDV), and Tahirih, collected data to assess concerns voiced by advocates about the potential impact of immigration enforcement on survivors. Their key findings are available here: <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>

¹¹ [1] New York City Domestic Violence Fatality Review Committee: 2016 Annual Report, *available at* <http://www1.nyc.gov/assets/ocdv/downloads/pdf/2016-frc-report.pdf>.

Nancy Erickson, Esq., Private Practitioner
Nazareth Housing
New York City Anti-Violence Project
New York Legal Assistance Group
Safe Horizon
Safe Passage
Sanctuary for Families
Sauti Yetu Center for African Women & Families
Sosa Law
Stella Justice Center, Inc.
The Legal Aid Society
The Safe Center LI
UnLocal
Urban Justice Center Domestic Violence Project
Urban Justice Center Sex Workers Project
Urban Resource Institute
Volunteers of Legal Service
Violence Intervention Program
WomanKind (formerly New York Asian Women's Center)
Women's Prison Association

cc: Hon. Lawrence K. Marks



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www.ImmigrantDefenseProject.org

April 10, 2017

Via E-Mail and First Class Mail

Hon. Janet DiFiore
Chief Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

Hon. Lawrence K. Marks
Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

RE: Immigration and Custom's Enforcement Actions in the New York State Courts

Dear Judge DiFiore and Judge Marks:

We are a group of organizations that provide counsel, services, and support to immigrant communities who use the New York State courts. We work with individuals who need safe access to the New York State court system for critical reasons, including: obtaining orders of protection, vindicating child custody rights, defending against criminal charges, seeking protection against exploitative employers and landlords, participating in family court proceedings, and maintaining public assistance.

We write to express our serious concern about the impact of Immigration and Customs Enforcement's (ICE) activities in and around the State's courts. ICE's looming presence is quickly eroding the public's trust in the State court system, undermining access to justice and threatening public safety for all New Yorkers. We respectfully request that as Chief Judge and Chief Administrative Judge of the Unified Court System you take all steps necessary to prevent ICE from apprehending immigrants in the State's courts.

There has been a sharp increase in ICE's presence throughout the New York State court system. Since February, advocates can verify that, at a minimum, ICE has arrested or attempted to arrest 17 individuals in New York's courts. This compares to reports of 20 arrests over the past two years. The arrests have occurred in Westchester, Putnam, Columbia and all five counties of New York City. ICE agents did not present a valid judicial warrant in

any of these cases, skirting the constitutionally-mandated rules that generally order the State court system.¹

For the first time, in early March, ICE arrested an individual in New York's Family Courts. This follows reports from El Paso, Texas, of ICE arresting a transgender domestic violence survivor who was seeking an order of protection.² Federal immigration authorities have publicly stood by such arrests declaring that victims of crime and witnesses will be targets for deportation under the new administration.³

With each new report of an immigration arrest, mistrust of the court system grows and access to justice withers. This has troubling civil rights implications, impeding constitutional rights to due process, equal protection, and the right to petition the government for redress of grievances. Immigrants from communities that already face difficulty with access to courts for different reasons, such as fear of identity-based discrimination, language barriers, or age, are likely to be multiply deterred in their efforts to meaningfully access the courts. Survivors of domestic violence and sexual assault will increasingly be too fearful to seek protection from the courts; and children's access to support, protection, and permanency will be diminished.

We appreciate that the court system is monitoring the presence of ICE, but would like to highlight the trends that we have observed over the past few months.

- **ICE is now making arrests in Family Court:** On March 16th, ICE arrested a father appearing for a child support hearing in Kings County Family Court. The father, a lawful permanent resident from Jamaica, was seated in the waiting area when he heard the court clerk call his name. He stood up and was immediately surrounded by plain clothed agents who handcuffed him and shackled his ankles. The father is now detained in an immigration jail in New Jersey and his ability to support his nine year-old son has been significantly impeded.⁴
- **Survivors of domestic violence are often too fearful to seek protection from the courts.** Legal Services NYC reports that one mother, who suffered severe domestic violence and

¹See Betsy Woodruff, *Legal Residents Fear Getting Arrested in Court by ICE*, Mar. 30, 2017, THE DAILY BEAST <http://www.thedailybeast.com/articles/2017/03/30/legal-immigrants-fear-getting-arrested-in-court-by-ice.html>; Additional data on file with the Immigrant Defense Project.

² ICE subsequently detained the woman in an immigration jail and has denied her the hormones that she requires. See Jonathan Blazer, *The Woman Arrested by ICE in a Courthouse Speaks Out*, Feb.23, 2007, THE NEW YORKER, <http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>; See also *Undocumented transgender woman filing domestic violence claim arrested at El Paso courthouse by ICE, official says*, Feb. 16, 2017, CBS NEWS <http://www.cbsnews.com/news/undocumented-transgender-woman-filing-domesticviolence-claim-arrested-at-el-paso-courthouse-by-ice-official-says/>.

³ Devlin Barrett, *DHS: Immigration agents may arrest crime victims, witnesses, at courthouses*, Apr. 4, 2017, THE WASHINGTON POST https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.870f28d41d4d

⁴ Based on interviews conducted by the Immigrant Defense Project.

the kidnapping of her son by her partner, is now too scared to ask the Family Court to sign a U visa certification. In another case, a Sanctuary for Families attorney urged a client who is a rape survivor to seek custody of her daughter after her abusive partner took the child and refused to allow her any contact. The woman, who is undocumented, was too terrified of the prospect of deportation to file the petition.

- **In the Criminal Courts, ICE is targeting a wide range of individuals including documented and undocumented individuals, people facing both misdemeanor and felony charges, and apprehending defendants as early in the court process as the arraignment.** Per President Trump’s executive orders, ICE agents are targeting both documented and undocumented immigrants. This includes documented immigrants, who have certain criminal convictions, and undocumented immigrants who have simply been “charged with a criminal offense” or who have “committed acts that constitute criminal conduct.”⁵ Advocates have seen ICE agents follow through on these sweeping new priorities by showing up at arraignment parts and arresting undocumented immigrants appearing to face misdemeanor charges.⁶
- **Public defenders are reporting significant increases in the number of clients who are failing to appear for court.** Brooklyn Defender Services has seen double the number of warrants issued for clients facing misdemeanor charges.⁷ One public defender from New York County reports that even after he negotiated the dismissal of all charges for an undocumented client, the immigrant, who had no criminal record, declined to show up to get the charges dismissed.⁸
- **In some instances, OCA employees are assisting ICE enforcement actions.** In Hudson City Court, the court clerk has called ICE agents to share docket information so that they can identify immigrants for apprehension.⁹ In Brooklyn Criminal Court, a private defense attorney reports that court officers physically blocked him from accompanying his client into the vestibule of a courtroom where ICE agents were waiting. As a result, ICE agents were able to surround his client and arrest him.¹⁰

⁵ Executive Order 13,768 directs the Secretary of Homeland Security to prioritize removal of several categories of immigrants including lawfully admitted residents who are deportable due to criminal convictions described in 8 U.S.C. § 1227(a)(2)(A). It also prioritizes the removal of undocumented immigrants who have “been charged with a criminal offense, where such charge has not been resolved,” and those who have “committed acts that constitute criminal conduct.” EXEC. ORDER NO. 13,768, 82 C.F.R. 8799 § 9 (2016), *available at* <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>.

⁶ Roger Wilson, *Immigration officers detain 3 men in Hudson, defense attorneys say*, REGISTER-STAR, Feb. 15, 2017, http://www.registerstar.com/news/article_10d31df2-f3da-11e6-b865-475c549b1644.html.

⁷ Data on file with Brooklyn Defender Services. *See also* Woodruff, *supra* note 1.

⁸ Woodruff, *supra* note 1.

⁹ Wilson, *supra* note 7.

¹⁰ Based on interviews conducted by the Immigrant Defense Project.

Given the grave threat to access to justice and public safety, we ask that as Chief Judge and Chief Administrative Judge of the Unified Court System you take steps to stop ICE enforcement actions at State courthouses.

Thank you for your consideration of this important issue. Please contact Lee Wang of the Immigrant Defense Project to arrange a meeting. She can be reached at (646) 760-0590 or lwang@immigrantdefenseproject.org.

Sincerely,

Adhikaar
African Communities Together
African Services Committee
Appellate Advocates
Asian American Legal Defense and Education Fund (AALDEF)
Atlas: DIY
Brooklyn Bar Association Volunteer Lawyers Project
Brooklyn Defender Services
Catholic Migration Services
Center Against Domestic Violence
Center for Appellate Litigation
Central American Legal Assistance
Columbia County Public Defender
Columbia County Sanctuary Movement
Common Justice
Community Development Project of the Urban Justice Center
Crime Victim and Sexual Violence Center
Crime Victims Treatment Center
Day One
Downstate Coalition for Crime Victims
DRUM - Desis Rising Up & Moving
Emerald Isle Immigration Center
Empire Justice Center
Genesee County Public Defender
Greater Rochester Coalition for Immigration Justice
Harlem independent living center
Her Justice
HIV Law Project
Housing Court Answers, Inc.
ICE-Free Capital District
Immigrant Defense Project
Immigrant Justice Corps

Immigration Equality
Immigration Law Clinic, Albany Law Clinic &a Justice Center
Kathryn O. Greenberg Immigration Justice Clinic, Cardozo School of Law
Kids for College
KIND, Inc. (Kids in Need of Defense)
Kite's Nest
Korean Community Services of Metropolitan New York
Labor-Religion Coalition of NYS
LatinoJustice PRLDEF
Latinos Unidos of the Hudson Valley
Lawyers For Children, Inc.
Legal Aid Society of Nassau County
Legal Services NYC
Legal Services of the Hudson Valley
Legal Services Staff Association, NOLSW/UAW 2320
Long Island Immigrant Alliance
Long Island Wins
Lutheran Social Services of New York
Make the Road New York
Masa
MFY Legal Services, Inc.
MinKwon Center for Community Action
Monroe County Conflict Defender Office
Mount Sinai Beth Israel Victim Services
My Sister's Place
National Organization for Women New York
Neighborhood Defender Service of Harlem
New York City Anti-Violence Project (AVP)
New York County Defender Services
New York Legal Assistance Group
New York State Coalition Against Domestic Violence
New York State Youth Leadership Council
Northeast NY Coalition for Occupational Safety and Health (NENYCOSH)
NYCLU-Suffolk Chapter
Office of the Appellate Defender
OLA of Eastern Long Island
Prisoner Legal Services
Queens Law Associates
Regional Immigration Assistance Center, Hudson Valley Region
Regional Immigration Assistance Center, Region 2
Rockland Immigration Coalition

Rural and Migrant Ministry
Safe Against Violence
Safe Horizon
Safe Passage Project
Sanctuary for Families
Sauti Yetu Center for African Women and Families
SBK Social Justice Center Inc
Sosa Law
St. Vincent de Paul Legal Program, St. John's University School of Law
STEPS to End Family Violence
Sylvia Rivera Law Project
The Bronx Defenders
The Door's Legal Services Center
The Hispanic Coalition NY, Inc.
The Legal Aid Society
The Legal Aid Society of Rochester
The Legal Project
UAW Region 9A
Ulster County Defender
UnLocal, Inc.
Urban Justice Center
Violence Intervention Program
Wayne Action for Racial Equality
Wayne County Public Defender
WESPAC Foundation
Worker Justice Center of NY, Inc.
Youth Represent

June 29, 2017 New York City Council Committee on Courts and Legal Services jointly with the
Committee on Immigration
Testimony of Andrew Wachtenheim, Supervising Attorney

RE: Oversight—ICE Enforcement in New York City Courts

Thank you to the Committee for the opportunity to speak on this critical issue of ICE arrests in New York City Courts. I am a Supervising Attorney with the Immigrant Defense Project, which works to protect and expand the rights of those caught at the intersection of the criminal justice system and the immigration system. The Immigrant Defense Project (“IDP”) is a not-for-profit organization based in New York State. IDP is an expert in the intersection between federal immigration law and State criminal and family law, has been tracking and documenting federal immigration enforcement operations inside State courthouses. In addition to collecting detailed information on individual arrests and attempted arrests, IDP is a repository of information from a diverse coalition of organizations offering legal services and support to immigrant communities throughout the State.

Summary

Under President Trump, U.S. Immigration and Customs Enforcement (“ICE”) has begun to target State courthouses and scheduled court appearances for immigration arrests and enforcement operations. In the first six months of 2017, advocates have reported three times as many arrests or attempted arrests by ICE than were reported for all of 2016.

ICE uses the courts in several ways: to obtain information and otherwise confidential documents without subpoena, to identify individuals to arrest, and to ask State court staff to offer assistance. The consequence is widespread fear of accessing the courts in immigrant and mixed-status families and communities, as the testimony of many of today’s panelists will further illustrate. This chilling effect is also confirmed by statistics gathered through a recent statewide survey conducted by IDP of lawyers who work in the New York State court system (see immdefense.org/ice-courts-survey).

Because of ICE’s increased presence in New York State courts, a wide range of people are afraid to enter the courts. Survivors of domestic violence and other crime, witnesses, criminal defendants, people living in unsafe housing, people experiencing employment discrimination and exploitation, people who need to access the family courts for custody, visitation, child support, abuse and neglect, and PINS proceedings, This chilling effect on people’s confidence to safely participate in the court system is a serious threat to public safety and to the integrity of the New

York State court system. ICE has stated openly that it will not reduce arrests inside State courthouses, and will continue to arrest people attending court regardless if they are victims and witnesses.

To maintain safe access to and confidence in the court system, the State government must implement policies that restrict federal immigration enforcement inside the courts. Part of this response must include rules promulgated by the Chief Judge of the New York State Court of Appeals (“Chief Judge”). The New York State Constitution and Judiciary Law vest the Chief Judge with rulemaking authority to establish standard and administrative policies relating to the dispatch of judicial business. In addition, the Chief Judge holds an inherent authority to issue rules governing her court system, particularly when they concern the proper administration of justice. Examples of existing rules promulgated by a Chief Judge govern the prohibition on the disclosure of confidential information, issues of discrimination based on race and national origin, prohibitions on smoking, decorum, and behavior of the press. Rules also govern access to the courts, including grounds for excluding the public from a court proceeding.

Immigrant Defense Project (“IDP”) appreciates Chief Judge DiFiore’s public expression of concern over ICE’s presence in the New York State courts, and openness to productive conversation and exchange of information with those who are working directly with impacted communities. IDP is confident that Chief Judge DiFiore will take appropriate steps to protect access to justice for all New Yorkers, regardless of citizenship status.

Information Regarding ICE Operations

ICE is one of the country’s largest and best-funded federal law enforcement agencies. President Trump has now ordered ICE to almost triple its staff from 5,800 agents to nearly 16,000. He has also dramatically expanded the number of people targeted for deportation, largely abandoning the priority systems employed by past presidents in favor of a system that makes virtually any removable immigrant a target. This includes people who are undocumented, green card holders, asylees, and refugees.

Within New York State, ICE has vast access to State and local law enforcement databases and the information they maintain--data and identifying information submitted to New York’s Division of Criminal Justice Services in connection with background checks for a range of purposes (including job licenses), and fingerprint and biometric information obtained by local police and departments of correction. Even where State or local governments have enacted “sanctuary” policies that limit cooperation with federal immigration enforcement, ICE retains virtually unfettered access to fingerprints and biometric information, and the information collected by local law enforcement agencies.

To effectuate arrests, ICE agents may go to almost any location within the State, provided they comply with the restrictions imposed by the Constitution and the governing statutes and regulations. Courthouses are just one of many locations where ICE agents regularly conduct enforcement. In fact, courthouses represent a small fraction of ICE’s arrests in New York State, and their public statements that they depend on the practice to enforce the immigration laws is a

fallacy. Agents more frequently arrest people in their homes, workplaces, public spaces like sidewalks and outside airports. IDP has received reports of ICE arresting people at homeless shelters and supportive housing facilities. While official ICE policy “advises against” enforcement actions at a short list of specified “sensitive locations,” courthouses are not included, and ICE has outright rejected requests to add courthouses to its list of sensitive locations. Even at places ICE designates as “sensitive locations,” such as schools and churches, protection from arrest is uncertain. ICE has recently arrested individuals leaving a church-run hypothermia center and targeted a father who was dropping his children off at school. ICE has publicly stated that it will not hesitate to arrest crime victims and witnesses at court appearances, as confirmed by many of the stories you will hear today.

How Trump’s ICE Uses State Courthouses

To apprehend people who are generally regarded as vulnerable and protected by law and policy from apprehension in certain places. For example, ICE agents in Texas tracked a transgender woman from a domestic violence shelter to the court where she sought an order of protection against her abusive partner. In Manhattan, ICE agents tracked a defendant to criminal court, where they arrested her despite the substantial evidence offered by her lawyers (which ICE refused to accept) showing her to be a survivor of multiple incidents of rape and sexual assault, and suffering from significant mental health issues fully before the criminal court. In Queens, ICE attempted the arrest of a woman identified as a victim of human trafficking when she appeared in a human trafficking intervention court part.

To obtain personal, often sensitive identifying information and documents from OCA court staff. Prior to making an arrest, ICE often has an individual’s name but no photograph or evidence of immigration status. ICE may rely on OCA staff to pair names with faces. This was the case in multiple incidents reported to IDP. ICE depends on OCA staff to delay arraignments and other court appearances to facilitate an arrest, which happened in several cases. In a recent incident in Suffolk County, ICE called a State criminal court judge and directed him when to call a defendant’s case. ICE also relies on OCA to obtain information about court appearances that is not publicly available or in the law enforcement databases to which ICE has access. This is particularly true of the arrests in family court, where docket information is not publicly available in the same way as in criminal court.

To physically restrain people attending court. ICE relies on the cooperation of OCA staff to restrain people they seek to arrest. In several cases reported to IDP, OCA staff blocked a court litigant in a courtroom vestibule to enable ICE to take that person into custody. Court staff have also physically prevented defense counsel from accessing their clients while ICE questioned them.

ICE’s Practices Inside the State Courts Undermine Access to the Courts and Threaten Public Safety

A national survey documenting the threat to public safety created by ICE's presence in the State courts shows that 75% of advocates report that immigrant survivors of intimate partner violence are now concerned about going to court, and 43% of advocates have worked with clients who have dropped a civil or criminal case because of fear of ICE presence in courts. That survey is available at <http://www.tahirih.org/pubs/key-findings-2017-advocate-and-legal-service-survey-regarding-immigrant-survivors/>. This is consistent with a New York-specific survey of 255 lawyers and advocates working in 31 counties in New York State (available at immdefense.org/ice-courts-survey), which shows that, for example:

- 44 of the 255 advocates surveyed worked with immigrants arrested by ICE in New York State courts.
- 75% have worked with immigrants who have expressed fear of the courts because of ICE.
- Of those who work with survivors of violence:
 - 67% have had clients who decided not to seek help from the courts due to fear of ICE;
 - 37% have worked with immigrants who have failed to pursue an order of protection due to fear of ICE; and
 - 48% have worked with immigrants who have failed to seek custody or visitation due to fear of ICE.
- 56% of housing court advocates have clients who have expressed fear of filing a housing court complaint due to fear of ICE.

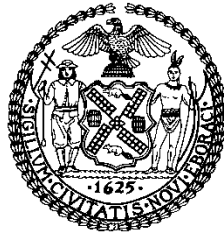
This chilling effect is reflected in data released by the police departments in Los Angeles and Houston showing dramatic decreases in the numbers of reported rapes and other violent crimes in among Latinos and Latinas. Attorneys General from five states, including New York, and the District of Columbia have spoken publicly about the diminished trust between community members, law enforcement, and the courts, and increased exposure to violence and other harm that results from the integration of federal immigration enforcement into the state law enforcement system.

Conclusion

ICE's enhanced presence in New York State courts and public promise that it will continue to track and apprehend even the most vulnerable litigants at their court appearances is a direct threat to public safety and to the integrity of the New York State court system. The New York State government, including the Chief Judge, must intervene to restore access to the courts for all New Yorkers, regardless of immigration status.

Courts and Legal Services Staff
Ze-Emanuel Hailu, Counsel
Casie Addison, Policy Analyst
Sheila Johnson, Finance Analyst

Immigration Staff:
Indiana Porta, Counsel



THE COUNCIL OF THE CITY OF NEW YORK

BRIEFING PAPER OF THE
GOVERNMENTAL AFFAIRS DIVISION

Matt Gewolb, Legislative Director
Rachel Cordero, Deputy Director, Governmental Affairs Division

COMMITTEE ON COURTS & LEGAL SERVICES

Hon. Rory Lancman, Chair

COMMITTEE ON IMMIGRATION

Hon. Carlos Menchaca, Chair

June 29, 2017

Oversight: ICE Enforcement in New York City Courts

I. Introduction

On June 29, 2017 the Committee on Courts and Legal Services, chaired by Council Member Rory Lancman and the Committee on Immigration, chaired by Council Member Carlos Menchaca, will hold a joint hearing to examine ICE enforcement in New York City courts. The Committees have invited representatives from Mayor's Office and various advocates, stakeholders and the public to testify.

II. Background

On February 9, 2017, Irvin Gonzalez, a transgender woman seeking a protective order against her abusive partner, was arrested by U.S. Immigration and Customs Enforcement ("ICE") agents in the El Paso County Courthouse.¹ Eyewitnesses, including Ms. Gonzalez's attorney, reported that there were up to six ICE agents inside the courthouse, and that the agents were likely acting on a tip from Ms. Gonzalez's abuser himself.² Ms. Gonzalez is not the only individual who ICE has recently apprehended in a courthouse. In February 2017, a 24 year old participant in the Deferred Action for Childhood Arrivals ("DACA") program, was arrested by ICE agents in a Phoenix, Arizona courthouse while awaiting retrial;³ in March 2017, a man in Austin, Texas was arrested by ICE agents when he showed up for a court appearance for two misdemeanor charges;⁴ and on June 16th, three ICE agents appeared at the Human Trafficking

¹ Slate, Is ICE Out of Control?, February 17, 2017, http://www.slate.com/articles/news_and_politics/jurisprudence/2017/02/ice_s_crackdown_is_beyond_aggressive_it_s_illegal.html.

² El Paso Times, ICE detains alleged domestic violence victim, February 15, 2017, <http://www.elpasotimes.com/story/news/2017/02/15/ice-detains-domestic-violence-victim-court/97965624/>.

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

⁴ My Statesman, ICE in Austin: Sheriff had released immigrant arrested at courthouse, March 3, 2017, <http://www.mystatesman.com/news/crime--law/ice-austin-sheriff-had-released-immigrant-arrested-courthouse/yMUgUP68VSFbgCxRdgG5uL/>.

Intervention Court in Queens, New York, where they arrested a woman who had come to the courthouse to check-in with a judge about her case.⁵

In New York, according to the Legal Aid Society, there have been 38 arrests and attempted arrests statewide since the beginning of 2017;⁶ in comparison, for the entirety of 2015 and 2016, the Immigrant Defense Project (“IDP”) recorded 20 arrests and attempted arrests statewide. Many of these arrests have targeted parents and minors, appearing in court for family matters or minor criminal charges. In Albany Family Court, for example, ICE staked out a mother who had appeared on a Persons in Need of Supervision petition for hours, arresting her after her proceeding finished. In Suffolk County, three ICE agents arrested a young man facing minor charges in the youth part of criminal court, while other agents arrested a father appearing in the Suffolk County Family Court for a visitation matter concerning his two young children. In New York City, ICE has made arrests in courthouses in all five boroughs, targeting immigrants in criminal court as early in a criminal court case as the arraignment process. Recently, ICE agents in plainclothes targeted immigrants in family court arresting a father waiting to appear for a child support hearing in Kings County Family Court.⁷ According to IDP, ICE agents are usually dressed in plainclothes, and in almost every reported instance, the agents refused to produce a judicial warrant, or even an administrative warrant, when defense counsel inquired about either.

⁵ WNYC, When ICE Shows Up in Human Trafficking Court, June 22, 2017, <http://www.wnyc.org/story/when-ice-shows-court/>.

⁶ Spectrum News NY1, Advocates Call for Federal Immigration to Get Out of State Courthouses, June 23, 2017, <http://www.ny1.com/nyc/all-boroughs/news/2017/06/22/immigration-advocates-push-back-against-ice-raids-after-queens-courthouse-incident.html>.

⁷ Immigrant Defense Project, Letter to Judges DiFiore and Marks, May 4, 2017, <https://www.immigrantdefenseproject.org/wp-content/uploads/Letter-to-Judges-DiFiore-and-Marks-05042017.pdf>.

III. Impact of ICE’s Presence in Courthouses

Both locally and nationally, immigrants’ rights groups and local law enforcement have seen immediate negative consequences as a result of this more aggressive ICE enforcement activity in courthouses. In a national survey, conducted by a coalition of national organizations, 78% of advocates report that immigrant survivors of intimate partner violence are now concerned about contacting law enforcement, while 43% have clients who have dropped a civil or criminal case due to fear of ICE arrests in courts.⁸ In Los Angeles, the city police chief has reported that sexual assault reports from the Latino community have dropped by a quarter in 2017, compared to the same period in 2016, and reports of domestic violence have decreased by almost 10%.⁹

In a NYC survey of immigrants, many expressed distinct fears of going to court because of ICE, including: “I have a disabled child and I fear going to court for custody,” “I won’t be safe if I need to go to court for any reason. I will not feel safe reaching out to any agencies in case I need help,” “They could send me to immigration even if my case is pending,” and “I should be able to go to court without having to be scared of getting arrested or deported.” These fears may be well founded. On April 4, 2017, the Department of Homeland Security (“DHS”) formally announced that it would use State courthouses to find and arrest immigrants who are witnesses and victims of crimes.¹⁰ “Just because they’re a victim in a certain case does not mean

⁸ Tahirih Justice Center, 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors, <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>

⁹ The Guardian, Fearing deportation, undocumented immigrants wary of reporting crimes, March 23, 2017, <https://www.theguardian.com/us-news/2017/mar/23/undocumented-immigrants-wary-report-crimes-deportation>; <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

¹⁰ The Washington Post, DHS: Immigration agents may arrest crime victims, witnesses at courthouses, April 4, 2017, https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.aa56d6652ada.

there's not something in their background that could cause them to be a removable alien," David Lapan, a Department of Homeland Security spokesman, has said.¹¹

The immigrant community's fears have been echoed by judges, attorneys, and local law enforcement officials nationwide. The most common concern has been that ICE's presence in courthouses not only generates fear of deportation, which dissuades voluntarily participation and cooperation in the justice system, but it also erodes trust and cooperation between the City's immigrant population and local law enforcement. Both, officials say, jeopardize public safety. The outcry against the presence of ICE in courthouses has been widespread, as have efforts by jurisdictions across the country to put a stop to this policy.

On March 16, 2017, Justice Cantil-Sakauye wrote a letter to Attorney General Jeff Sessions and DHS Secretary John F. Kelly requesting that ICE agents stop arresting immigrants at courthouses.¹² In the letter, Justice Cantil-Sakauye explained that courthouses are a vital forum for ensuring access to justice and protecting public safety, and that they should not be used as bait in the enforcement of immigration laws. Specifically, crime victims, victims of sexual abuse and domestic violence, witnesses who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families all depend on courts to seek justice and protect their due process rights. By "stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety," the Justice wrote, ICE is endangering public trust and confidence in the California court system. In Los Angeles, for example, City Attorney Mike Feuer has made strong efforts to end ICE presence in courthouses, by joining the mayor of Los Angeles and the president of the Los Angeles City Council in

¹¹ *Id.*

¹² Chief Justice Tani G. Cantil-Sakauye, Supreme Court of California, March 16, 2017, http://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20172/Chief%20Justice%20Cantil-Sakauye%20Letter_AG%20Sessions-Secretary%20Kelly_3-16-17.pdf.

writing a letter to ICE and by offering public support to California Chief Justice Tani Cantil-Sakauye. In Orange County, Superior Court Presiding Judge Charles Margines took action by calling the deputy field officer at ICE's Southern California office to find out what ICE agents will and will not do in local courts.¹³

On April 6, 2017, the Mayor of Denver, Presiding Judge of the Denver County Court, City Attorney, District Attorney, and various Denver City Council members wrote a letter to ICE, urging ICE to make courthouses a "sensitive location." On that same day, Chief Justice Thomas A. Blamer of the Oregon Supreme Court wrote a letter to Attorney General Sessions and DHS Secretary Kelly, asking ICE to immediately cease immigration enforcement actions inside and in the immediate vicinity of Oregon's courthouses. On April 19, 2017, New Jersey Supreme Court Chief Justice Stuart Rabner wrote a letter to DHS Secretary Kelly, raising objections to the recent arrests of two individuals making routine appearances in New Jersey Superior Court.¹⁴ In his letter, the Chief Justice requested that ICE agents stop conducting these types of arrests, because courthouses must be viewed as a safe forum for all.¹⁵ On May 15, 2017, Chase Rogers, the Chief Justice of the Connecticut Supreme Court, wrote a letter to U.S. Attorney General Jeff Sessions and DHS Secretary John F. Kelly, denouncing ICE arrests taking place in courthouses.¹⁶ Specifically, he asked ICE agents to refrain from taking custody of individuals and expressed concerns that such arrests may cause litigants, witnesses and interested parties to view courthouses as places to avoid. Finally, on June 16, 2017, Rhode Island Chief Justice Paul

¹³ The Orange County Register, Some Orange County judges worry ICE presence might scare undocumented immigrants away from court, May 8, 2017, <http://www.ocregister.com/2017/05/08/some-orange-county-judges-court-workers-worry-that-courthouse-presence-of-immigration-agents-is-steering-some-people-away/>.

¹⁴ NJ.com, N.J.'s chief justice asks ICE to stop arresting immigrants at courthouses, April 20, 2017, http://www.nj.com/politics/index.ssf/2017/04/nj_top_judge_asks_ice_to_stop_arresting_immigrants.html.

¹⁵ Chief Justice Stuart Rabner, Supreme Court of New Jersey, April 19, 2017, <https://www.documentcloud.org/documents/3673664-Letter-from-Chief-Justice-Rabner-to-Homeland.html#document/p1>.

¹⁶ <http://www.ncsc.org/Topics/Courthouse-Facilities/Improving-Relationships-with-ICE/ICE.aspx>

A. Suttell issued a public statement stressing that courts are places where everyone should be treated with respect, dignity and fairness and went on to say that, when immigrant communities fear going to court, the court’s mission of justice is compromised.¹⁷

Each of these letters echoes similar concerns and content, namely, that ICE’s presence in courthouses creates heightened fear in immigrant communities, and negatively impacts the justice system by discouraging victims from reporting crimes, witnesses from coming forward, and individuals from appearing in court. By effectively denying immigrants access to justice, judges, attorneys, and officials fear that ICE’s presence in courthouses is eroding the public’s confidence in the justice system, and impeding due process for these individuals and communities.

IV. The New York State Office of the Court Administrator (“OCA”)

The New York State Office of the Court Administrator (“OCA”) is the administrative arm of the New York State Unified Court System (“UCS”), and falls under the direction of the Chief Judge of the State of New York, the Hon. Janet DiFiore. The Chief Judge serves as both Chief Judicial Officer of the State, and the Chief Judge of the Court of Appeals.¹⁸ The Chief Judge establishes Statewide standards and administrative policies, after consulting with the Administrative Board of the Courts and receiving approval by the Court of Appeals. Executive officers of the OCA are responsible for the day-to-day operations of courts, including trial-level and specialty courts, and work with Administrative Judges in New York’s courts to allocate resources and meet their needs and goals.¹⁹

OCA’s current policy is “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

¹⁷ <http://www.ncsc.org/Topics/Courthouse-Facilities/Improving-Relationships-with-ICE/ICE.aspx>

¹⁸ NYCourts.gov, Office of Court Administration, <https://www.nycourts.gov/Admin/oca.shtml>.

¹⁹ NYCourts.gov, Office of Court Administration, <https://www.nycourts.gov/admin/execofficers.shtml#younklin.s>.

or delays court operations, or compromises public safety or court decorum.”²⁰ In furtherance of this policy, OCA protocols require representatives of law enforcement agencies who enter a New York State Courthouse to take a person into custody, without a warrant,²¹ to identify themselves to court personnel and disclose any enforcement actions they may take inside the courthouse. Court personnel are required to immediately pass this information to their supervisor, who must inform the judge that such representatives are in the courthouse and intend to arrest a participant in a case before the judge. Every arrest made in the courthouse under these circumstances must be documented and reported by court personnel.²²

V. Conclusion

The escalation of ICE enforcement at courthouses nationally breaks the hard earned-trust between immigrant communities and local law enforcement and courts. Without this trust, immigrant defendants may forego their right to a fair and impartial hearing, crime victims may chose not to report crimes or withdraw complaints, and witnesses may decline to assist in the investigation or prosecution of a crime – all out of fear that their mere presence in the courthouse puts them at increased risk of being arrested by ICE and deported. Through this oversight hearing, the Committees hope to learn more about ICE’s disruptive enforcement in New York City courts and community recommendations on how to minimize their presence in courts, as well as maintaining the immigrant community’s trust in the judiciary.

²⁰ OCA Memorandum, Policy and Protocol Governing Activities in Courthouses by Law Enforcement Agencies, April 26, 2017.

²¹ Issued by a UCS judge, authorizing them to take such person into custody.

²² OCA Memorandum, Policy and Protocol Governing Activities in Courthouses by Law Enforcement Agencies, April 26, 2017.



MEMORANDUM

TO: All Chiefs and Majors

FROM: Chief Michael Magliano *mm*

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.

FOR IMMEDIATE RELEASE:

***** PRESS RELEASE *****



Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses

The Protect Our Courts Act would prohibit federal immigration agents from making arrests without a judicial warrant and is the first-of-its-kind nationally

NEW YORK – June 5, 2018 – New York Assemblymembers Michaelle Solages, Carmen De La Rosa, Inez Dickens, Councilmember Carlos Menchaca, District Attorney Cy Vance Jr., advocates, and public defenders convened today in NYC and Albany to support the introduction of the Protect Our Courts Act ([A11013](#)). The groundbreaking new bill would prohibit Immigration & Customs Enforcement (ICE) agents from making civil arrests at New York State courthouses without a judicial warrant or court order. The protection extends beyond courthouse walls, and applies to arrests of individuals going to or leaving a court as well. To date, the bill offers the most comprehensive regulations on ICE courthouse arrests in the U.S.

Sponsored by Assemblymember Michaelle Solages, the Protect Our Courts Act upholds a pillar of our democracy – equal access to our judicial system, regardless of immigration status – and will protect any party in a court proceeding in New York State, including victims, witnesses, and defendants attending a variety of courts, such as family and housing court.

Since the beginning of 2017, there has been an unprecedented 1200% increase in ICE courthouse arrests across New York State, effectively disrupting court functions, sowing fear in immigrant communities seeking justice, and undermining public safety. In fact, a statewide [survey](#) conducted by the Immigrant Defense Project found that more than two-thirds of advocates working with survivors of violence said they have clients who have decided not to seek help from the courts due to fear of ICE. Another [report](#) from the ACLU found that courthouse arrests were deterring immigrants from reporting crimes.

New York is leading the way in providing meaningful protection to its immigrant communities. In April, Governor Andrew Cuomo signed an Executive Order banning ICE arrests in state-run buildings without a judicial order. The Protect Our Courts Act follows suit by helping ensure access to courts for all New Yorkers.

To learn more about courthouse raids, visit www.immigrantdefenseproject.org/ice-courts/. For an FAQ on the bill and stories of people impacted, visit <https://www.immigrantdefenseproject.org/ice-courts-nys/>. Photos available upon request.

Assemblymember Michaelle C. Solages, said:

“Residents of our State rely on the court system to address important legal issues that affect our communities. All New Yorkers regardless of income, race, religion or immigration status should have the opportunity to use the court system to advocate for themselves and their interests. Federal immigration agents searching and detaining immigrants inside our courts, deters individuals from interacting with the court system which in turns has a chilling effect on our rights. I join the Immigrant Defense Project, SEIU 32BJ and all other advocates to ensure that our courts remain safe for all New Yorkers.”

Assemblymember Ron Kim, said:

“While President Donald Trump and ICE continue to target and punish law abiding immigrants, here in New York, we stand strong together to protect all New Yorkers. I look forward to working closely with my colleagues to get ICE out of our courts. I applaud the Immigrant Defense Project, and Assemblymember Michaelle Solages efforts to bring this timely and meaningful legislation to protect the integrity of our court system in New York.”

Assemblymember Harvey Epstein, said:

“Emboldened by Donald Trump’s xenophobia, ICE has accelerated the contemptible tactic of courthouse arrests, which pervert the course of justice for immigrant and undocumented New Yorkers and have a chilling effect on victims and witnesses attending proceedings. New Yorkers, regardless of immigration status, should not be afraid to seek justice.”

Assemblymember Dan Quart, said:

“ICE has no place in our courts -- their presence severely threatens equal access to justice,” said Assemblymember Dan Quart. “Everyone, regardless of their immigration status, should feel safe to seek help from the legal system. New York’s state court system should not be used as a tool by ICE agents to arrest and deport people. As federal authorities ramp up their enforcement of deportation orders, we must work together on the state level to ensure immigrants are not fearful of entering a courtroom.”

Senator Marisol Alcantara, said:

“The use of ICE agents to engage in courthouse arrests is a damaging and dreadful act. It is damaging and dangerous to our immigrant communities, as local law enforcement needs the cooperation and engagement of those immigrant communities to keep us all safe. The federal governments attacks on immigrants does not reflect New York values, which are embodied by the Statue of Liberty, which calls for America to be a welcoming beacon for those yearning to breathe free. ICE agents who have neither a judicial warrant, nor court order, should not be permitted to make court house arrests in New York State.”

Public Advocate Letitia James, said:

“Safe and universal access to the court of law is key to a fair, democratic society and a basic requirement in the vindication of individual rights. ICE’s indiscriminate campaign of courthouse arrests puts all New Yorkers at risk and goes against everything we stand for. The Protect Our Courts Act is a thoughtful and commonsense update of longstanding Civil Rights Law, made necessary by an unprecedented attack on our immigrant communities and our judicial system. I thank Assembly Member Solanges and the Immigrant Defense Project for their leadership, and look forward to working with them as we continue this fight against unjust courthouse arrests.”

NYC Councilmember, Chair Immigration Committee Carlos Menchaca, said:

“I stand in support of the Protect Our Courts Act and the leadership of Assemblywoman Michaelle Solages and community groups to ban ICE out of our courthouses. ICE must go through the rigorous process of obtaining a judicial warrant as required under our Constitution. In a dangerous move, our New York City Mayor Deblasio has decided that some immigrants are worthy of legal representation and some are not and Chief Judge Janet Difiore has refused to act even though she has the authority to ban ICE from disrupting

judicial proceedings. Both need to understand that they are standing in the way of justice and facilitating the emerging deportation machine President Trump has been setting up since day one in office.”

Manhattan District Attorney Cy Vance, Jr. said:

“Deporting New Yorkers who show up to court is antithetical to our values and detrimental to our public safety. The fear of unjust deportation stops crime victims from coming forward, and stops defendants from responsibly attending their court dates. I thank Assembly Member Solages for her work on this bill and urge the legislature to pass it immediately, because all New Yorkers have the right to safely access our courts, whether they are documented or undocumented under federal law.”

Brooklyn District Attorney Eric Gonzalez, said:

“I have been calling on ICE for months to treat our courthouses as sensitive locations and to stop arresting people inside those buildings. These actions jeopardize public safety by instilling fear in immigrant communities, which makes victims and witnesses afraid to come forward to report crimes, and unable to get justice. Keeping Brooklyn safe and strengthening community trust in law enforcement are my top priorities as Brooklyn DA, and ICE’s actions undermine those important goals. I support the efforts to end this misguided practice.”

Bronx District Attorney Darcel D. Clark, said,

“I endorse the Protect Our Courts Act because, as the Bronx District Attorney, I encourage people to report crimes so that they can be processed through the criminal justice system. If a victim or witness who is essential to the prosecution of a heinous case is arrested by Immigration and Customs Enforcement when he or she shows up at the courthouse, we cannot go forward with the case, resulting in cases being dismissed and dangerous individuals being released back into the community. This could have a chilling effect on getting witnesses to assist in our cases, potentially resulting in a threat to public safety. We need everyone to cooperate in our fight to keep the streets of the Bronx safe.”

Brooklyn Borough President Eric L. Adams, said:

“ICE’s overaggressive behavior in and around our courts has been counterproductive to public safety in our city and our state. I am grateful to Assembly Member Solages, our public defenders, and the broad coalition of community advocates who are putting the public’s safety first as they put the Protect Our Courts Act forward.”

Bronx Borough President Ruben Diaz Jr., said:

“ICE’s presence in the New York State Court System has a chilling effect on justice. The agency’s presence in our courts is preventing the fair adjudication of cases within our system, and is an affront to the concept of impartial justice. I support Assembly Member Solages efforts to remove ICE from the New York State Court System, and I will continue to work with immigration advocates, attorneys and others to protect our immigrant community from needlessly splitting up families through detention and deportation.”

Alisa Wellek, Executive Director of the Immigrant Defense Project, said:

“For too long, ICE has been allowed to roam free in our courthouses and use them as hunting grounds for immigrants. The Protect Our Courts Act is a groundbreaking bill that will help ensure equal access to courts and protect the constitutional rights of all New Yorkers. We applaud Assembly Member Solages for taking this courageous stance in defense of our courts.”

Héctor Figueroa, President of 32BJ SEIU, said:

“We are heartened by the bill introduced by Assemblymember Michaëlle Solages to put an end to the presence of ICE agents in courthouses. Instead of serving justice, increased and aggressive ICE enforcement in and near courtrooms denies justice to victims of domestic violence and of violent crimes, and terrorizes

witnesses of crimes into staying silent. This doesn't just hurt immigrants, it hurts all of us and makes us less safe."

Judge Judy Harris Kluger, Executive Director of Sanctuary for Families, said:

"At Sanctuary for Families 75% of the gender violence and sex trafficking survivors we serve are immigrants. Our vulnerable clients rely on the courts for orders of protection, child custody and support and are often witnesses in criminal cases against their abusers. Yet, the very presence of ICE in our courthouses and the threat of detention and deportation deters many of them from ever coming to court and seeking the protections that are rightfully theirs. We applaud Assemblywoman Solages for crafting this measure and urge all of our legislators and Governor Cuomo to make sure this measure becomes law before end of session."

Juan Cartagena, President and General Counsel of LatinoJustice PRLDEF, said:

"The sanctity of our courts must be maintained in order to ensure that our justice system is not hijacked by fear. ICE officers lurking in the shadows of our courts are like vultures seeking prey who will pounce at the sight of dark skin complexion. LatinoJustice has been fighting for immigrants' rights in the courts and in the streets for decades. We applaud the bill introduced by Assembly Member Solanges and call upon the State Senate and the Governor to join their State Assembly colleagues to take prompt legislative action to ensure that ICE is barred from making arrests in our courts unless they have a judicial warrant. The safety of our communities depends on every individual's ability to access our judicial system."

Steven Choi, Executive Director of the New York Immigration Coalition, said:

"ICE's increasing presence in our courthouses is a Trump tactic to instill fear in immigrant communities - and it undermines the very integrity of our justice system. America will not be safer or greater if people cannot come forward to report crimes, bear witness at trial, and seek the protection of the law, for fear of deportation. New York State should require ICE to get nothing less than a full judicial warrant before they try to use our courts to do ICE's dirty work. I applaud Assemblywoman Michaelle Solages for introducing this vital bill and urge the Legislature to take action to ensure every New Yorker has equal access to justice."

Tina Luongo, Attorney-in-Charge of the Criminal Defense Practice at The Legal Aid Society, said:

"ICE's presence in our courts undermines our ability to represent our clients and safeguard their constitutional rights," "Immigrants, both people who are accused and witnesses, are terrified to appear in court knowing that ICE is indiscriminately targeting anyone who's not a U.S. citizen. Enough is enough. We laud Assembly Member Michaelle C. Solages for introducing this important legislation that addresses a crisis that has plagued our courts since January 2017."

Lisa Schreibersdorf, Executive Director of Brooklyn Defender Services, said:

"ICE's increasing arrests and intimidation of our immigrant clients in and around our courthouses has compromised the administration of justice. If the people we represent, as well as witnesses and victims of crimes, cannot safely appear in court to participate in the legal process then the integrity of the whole system is undermined. We strongly support the Protect Our Courts Act, legislation introduced by Assembly Member Michelle Solages to end ICE arrests without judicial warrants in our courts."

Sarah Deri Oshiro, Managing Director of the Immigration Practice of The Bronx Defenders, said:

"The presence of Immigration Customs Enforcement (ICE) officers in our courthouses has had a chilling effect on the ability of people to seek justice in our courts. We applaud Assemblywoman Solages for introducing this piece of legislation, which will be an important step towards ensuring that our immigrant communities can enjoy the full protections of our judicial system."

Anne Erickson, President and CEO of Empire Justice Center, said:

“Empire Justice Center applauds bill sponsor, Assemblymember Michaelle Solages, and the many co-sponsors of the Protect our Courts Act for taking steps to ensure that immigrant families in New York have their day in court. Everyday, our attorneys represent undocumented immigrants who must balance the fear of being torn away from their families, without due process, with the responsibility of showing up in court like any other New Yorker. It is in every New Yorker’s interest to protect the integrity of our state’s court processes and guarantee access to justice for all, as required in our state constitution. Passage of this bill will send a message that New York cares for its people and for our values.”

Luis Bautista, Staff Attorney at Make the Road New York, said:

“ICE is seeking every tool at its disposal to tear apart immigrant families, including stalking them in and around courthouses. We support the Protect Our Courts Act because it will protect and safeguard communities across New York State from ICE's reckless practices at the courts, while guaranteeing equal and safe access to New York State Courts for all.”

Evan Bernstein, New York Regional Director of the Anti-Defamation League, said:

“ADL welcomes the introduction of the Protect Our Courts Act (A11013), which would ensure equal access to our state courthouses, regardless of immigration status. We remain deeply concerned about the escalation of Immigration and Customs Enforcement (ICE) enforcement in New York state courthouses. The practice has a chilling effect and denies vulnerable victims and individuals access to justice by deterring them from contacting authorities and accessing courts when needed, such as in the event of a hate crime. This legislation would represent a significant step in ensuring that all community members, regardless of immigration status, can access the justice system without fear of deportation.”

Karen Freedman, Executive Director, Lawyers For Children, said:

“Every day thousands of vulnerable children seek justice in our courts and depend on them to provide safety from violence and abuse. This bill is critical in ensuring that all New Yorkers can access justice without fear. We join a wide coalition of advocates in calling on the New York State Legislature to demonstrate our state’s leadership and values, and pass the Protect our Courts Act.”

Andrea Callan, Program Director at Worker Justice Center of New York, said:

“New York’s courthouses should not be a place where our immigrant residents fear going because they are concerned that they will be arrested by federal immigration authorities as a consequence. It is crucial that we ensure that courthouses are safe and accessible for all New Yorkers to conduct their judicial business, whether that be serving as a witness, securing a court order for one’s own protection, or utilizing our court system to remedy any number of other grievances for which a person may petition the court. Threats of federal immigration enforcement action at our state’s courthouses serves to further push our immigrant neighbors into the shadows and deny access to the services and protections only our courts can provide. WJCNY fully supports and encourages the passage of Assembly bill 11013.”

Khalil A. Cumberbatch, Associate Vice President of Policy of The Fortune Society, said:

“The Fortune Society applauds the courageous actions of immigrant advocates, public defenders, and elected officials, especially Assembly Member Michaelle Solages, who seek to protect immigrants in state court buildings from warrantless arrest by Immigration and Customs Enforcement officers. At the very least, ICE in the courthouse interrupts the legal and due processes. At worst, it becomes an out-and-out threat to justice. Immigrants seeking protection from the court, those who are victims or witnesses, and those who go to court to prove their innocence should be able to enter the courthouse without fear of immigration-related jeopardy. Knowing first-hand the harm that immigration detention and the threat of deportation can do to a family, I am proud to stand with this coalition and demand an end to this injustice.”

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FOR IMMEDIATE RELEASE

May 9, 2018

Contact:
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***NYC Councilmembers Lancman, Menchaca, and Moya Join
Public Defenders and Advocates to Demand Chief Judge
DiFiore Eject ICE from New York's Courthouses***

***Participants Called on DiFiore to Follow Gov. Cuomo's Lead and
Prohibit ICE Arrests Without Judicial Warrants***

(New York, NY) – Today, NYC Council Criminal Justice System Committee Chair Rory Lancman, Immigration Committee Chair Carlos Menchaca and Councilmember Francisco Moya joined public defenders, the Immigrant Defense Project (IDP), and other advocates on the steps of City Hall to call on New York State Chief Judge Janet DiFiore to prohibit civil immigration arrests in all courthouses unless agents present judicial warrants.

Last week, Governor Cuomo issued an Executive Order prohibiting warrantless arrests in all buildings owned or leased by agencies and authorities under his executive control, but courthouses are governed by the judicial branch and justice requires urgent action from Chief Judge DiFiore. In the midst of a sharp uptick in State courthouse arrests, each passing week of silence by the Chief Judge means New Yorkers are deprived of their day in court. **According to IDP, there have been 52 incidents of courthouse arrests and attempted arrests this year alone, a 60% increase over the previous year.** Chief Judge DiFiore must act to show the immigrant community that New York's courts are a safe place for all New Yorkers, including people accused of crimes, victims, and witnesses.

Rory Lancman, NYC Council Criminal Justice System Committee Chair, said:

"ICE's enforcement activity in our courts is frightening victims, litigants, witnesses, and defendants away from participating in the peaceful and orderly resolution of civil disputes and criminal charges. Our system of justice is being undermined, making all of us less safe, and our society less fair. We must ensure that our justice system is accessible to all, and that begins with getting ICE out of our courts."

Lisa Schreibersdorf, Executive Director of Brooklyn Defender Services, said:

"ICE's increasing use of unlawful arrests and intimidation of our immigrant clients in and around our courthouses have compromised the administration of justice. If the people we represent, as well as witnesses and victims of crimes, cannot safely appear in court to participate in the legal process then the integrity of the whole system is undermined. This situation is intolerable. Something must change, and it must change now. We join in Governor Cuomo's call to get ICE out of state buildings and urge Chief

Judge Janet DiFiore and the Office of Court Administration to act to ensure the fair administration of justice in all of our state courts.”

Tina Luongo, Attorney-In-Charge of the Criminal Defense Practice at The Legal Aid Society, said:

“ICE’s presence in our courts undermines our ability to represent our clients and safeguard their Constitutional rights. Immigrants, both people who are accused and witnesses are terrified to appear in court, knowing that ICE is indiscriminately targeting anyone who’s not a US citizen. After detaining our clients through warrantless arrests, ICE has a pattern and practice of failing to produce these individuals for subsequent criminal court hearings. And having an open criminal case prejudices our clients’ ability to seek relief from removal immigration court.”

Lee Wang, Senior Staff Attorney at Immigrant Defense Project, said:

“So far in 2018, we've had 52 reports of ICE arrests and attempted arrests across New York State courthouses. That's a 60% increase from the same time period last year. This alarming proliferation of arrests continue the trampling of immigrants’ rights and undermining the promise of sanctuary in NY. Immigrants seeking justice in the criminal, family, and civil courts should not have to fear for their freedom when doing so. We look forward to working with the Chief Judge and state legislators to end ICE's interference with our judicial system and work towards a true vision of safety and justice.”

Natalia Aristizabal, Co-Director of Organizing of Make the Road New York, said:

"The presence of federal immigration agents (ICE) in the courts over the past few months has made our community feel unsafe when they attend their court appointments. It is not fair for our community to be attacked outside of state courts, and that a place of justice becomes a place of family separation."

Steven Choi, Executive Director of the New York Immigration Coalition, said:

“ICE's increasing presence in our courthouses is a Trump tactic to instill fear in immigrant communities - and it undermines the very integrity of our justice system. America will not be safer or greater if people cannot come forward to report crimes, bear witness at trial, and seek the protection of the law, for fear of deportation. New York State should require ICE to get nothing less than a full judicial warrant before they try to use our courts to do ICE's dirty work. Chief Judge DiFiore must take action to ensure every New Yorker has equal access to justice.”

Susanna Saul, Managing Attorney of the Immigration Practice at Her Justice, said:

“Her Justice represents undocumented immigrant survivors of intimate partner violence and other forms of gender-based violence seeking safety through the courts and immigration systems. Our clients seek custody, child support and orders of protection for themselves and their children. ICE presence in the courts has caused a nationwide decrease in undocumented immigrant victims coming forward to report crimes or seek relief in the court system. We support all efforts to remove ICE presence in the courts without a judicial warrant.”

Evangeline M. Chan, Director, Safe Horizon Immigration Law Project, said:

“Forty years ago, Safe Horizon got its start by creating safe, supportive settings in the Brooklyn Criminal Court for victims and witnesses to receive assistance and guidance. Today, we continue to work to remove obstacles to justice for New Yorkers impacted by violence and abuse. Unfortunately, the steady presence of ICE officers within courthouses has had a chilling effect on victims and witnesses, deterring

them from seeking justice, and sends the message that participating in the judicial system could place them at risk of detention or deportation. We strongly urge the Chief Judge to prohibit ICE from conducting immigration enforcement actions within our courthouses.”

Karen Freedman, Executive Director, Lawyers For Children, said:

“The number of courthouse arrests should be alarming to anyone who cares about public safety, our rule of law and access to justice. Every day thousands of vulnerable children seek justice in our courts and depend on them to provide safety from violence and abuse. We call on the Chief Judge to demonstrate her leadership and ensure that all New Yorkers can freely access our justice system by prohibiting ICE from making courthouse arrests without a judicial warrant.”

Beth Goldman, President and Attorney-in-Charge of the New York Legal Assistance Group, said:

“As advocates who work to protect and defend the rights of New Yorkers in courts across the City, NYLAG believes that it is vital for our clients to feel safe when they walk through the courthouse door. The presence of ICE in the courtroom silences immigrant communities, depriving them of due process under the law and undermining the sanctity of our court system. Requiring ICE to obtain judicial warrants prior to engaging in enforcement activities in our courthouses is necessary to ensure that the power of our laws and systems are not degraded and that our courts remain a safe place for individuals to come forward and be heard.”

###

June 29, 2017

Contact:

*****FOR IMMEDIATE RELEASE*****

IDP Unveils Survey Detailing Statewide Impact of ICE Courthouse Raids on Immigrants Seeking Justice

ICE Raids Deterring Domestic Violence Survivors, Tenants and others from Securing Protection and Services Provided by NYS Courts

NEW YORK – The Immigrant Defense Project (IDP) released the results of a statewide survey this morning detailing the impact of Immigration and Customs Enforcement (ICE) raids at courthouses on immigrants seeking justice, protections and services provided by New York State’s court system. IDP collected 225 responses from attorneys and advocates who work with immigrants and family members of immigrants as part of their practice over a two-week period.

The respondents work in criminal, family, housing, employment education and immigration law, and practice in criminal, family, and civil courts in New York State. They work in 31 counties from across the state including all five counties of New York City; Westchester, the Capitol Region, Western and Central New York.

This survey comes in response to recent ICE courthouse raids that have proliferated under President Donald Trump and escalated in recent weeks including the arrest of three individuals in Queens on June 16, 2016 and the attempted arrest of a young woman appearing in Queens Human Trafficking Intervention Court.

KEY FINDINGS:

- 74% have worked with immigrants who have expressed fear of the courts because of ICE
- 45% have worked with immigrants who have either failed to file a petition or withdrawn a petition due to fear of encountering ICE in the courts
- 29% have worked with immigrants who have failed to appear in court due to fear of ICE

- 67% of advocates working with survivors of violence have had client who decided not to seek help from the courts due to fear of ICE

- 50% have worked with immigrants who are afraid to go to court because their abusive partners have threatened that ICE will be there
- 56% have clients who have expressed fear in filing a housing court complaint due to fear of ICE

“The sobering results of a recent survey of attorneys and advocates that serve New York’s immigrant communities reveal a clear truth – for the safety of our city as a whole, ICE must cease immigration enforcement operations in state courthouses,” said **New York City Council Speaker Melissa Mark-Viverito**. “The distrust created by ICE presence in the courts has a detrimental impact on immigrant New Yorkers’ ability to access justice. When service providers report that three-quarters of their clients fear appearing in court – in any capacity - due to the risk of ICE arrests, and almost seventy percent of domestic violence survivors chose not to seek justice in the courts for the same reason, it undeniably proves that ICE involvement in the court system has a devastating impact on public safety. I thank the coalition of community organizations who organized this survey, and will certainly look to it for insight as we work toward addressing this pressing issue.”

"Everyone who cares about the integrity of our justice system should be alarmed by these findings. ICE's enforcement activity in our courts is frightening victims, litigants, witnesses, and defendants away from participating in the peaceful and orderly resolution of civil disputes and criminal charges. Our system of justice is being undermined, making all of us less safe, and our society less fair. ICE must immediately designate our courts as 'sensitive locations' where people can come and go without fear of deportation," said **Council Member Rory Lancman, Chair of the Council’s Committee on Courts and Legal Services**.

“Public trust in our justice system is broken when immigration enforcement operates in or near court locations. People who fear for their personal safety avoid reporting crimes, participating in investigations, and entering courts. A recent Immigrant Defense Project survey of immigration attorneys and advocates proves how justice and public safety are degraded when ICE targets vulnerable people at courthouses. The New York State Office of Court Administration should take immediate steps to prohibit access by ICE enforcement agents. This is especially important for survivors of human trafficking, domestic violence, and sexual assault who should never face the threat of immigration detention as they seek justice,” said **Council Member Carlos Menchaca, Chair of the Council’s Committee on Immigration**.

“These findings show that ICE courthouse raids are depriving people from accessing justice, protections and services afforded by the courts,” said **Tina Luongo, Attorney-In-Charge of the Criminal Practice at The Legal Aid Society**. “Courthouses must be safe locations where people, especially immigrants, can exercise basic and fundamental legal rights. Freewheeling ICE courthouse raids threaten these principles, and they obstruct our laws and due process. We need a statewide solution to these raids immediately.”

“At Her Justice, we know that the presence of ICE in the courts has a chilling and rippling effect on the most vulnerable of our clients, said Executive Director Amy Barasch. The results of this survey unfortunately confirm what our attorneys have heard from clients. In one recent example,

a client whose order of protection had just expired, was burglarized but she was afraid to go to court to file for a new order of protection. No one should be afraid to seek help,” **said Amy Barasch, Executive Director of Her Justice.**

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

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

BACKGROUND

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

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

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

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

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

RESOURCES

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

- [Chief Justice Cantil-Sakauye of California](#): “enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair.”
- [Chief Justice Rogers of Connecticut](#): “I believe that having ICE officers detain individuals in public areas of our courthouses may cause litigants, witnesses, and interested parties to view our courthouses as places to avoid, rather than as institutions of fair and impartial justice.”
- [Chief Justice Rabner of New Jersey](#): “To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum. Enforcement actions by ICE agents inside courthouses would produce the opposite result and effectively deny access to the courts.”
- [Chief Justice Balmer of Oregon](#): “ICE’s increasingly visible practice of arresting or detaining individuals in or near courthouses for possible violations of immigration laws is developing into a strong deterrent to access the courts for many Oregon residents.”
- [Chief Justice Fairhurst of Washington](#): When people are afraid to access our courts, it undermines our fundamental mission. I am concerned at the reports that the fear now present in our immigrant communities is impeding their access to justice. These developments risk making our communities less safe.

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

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

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

Additional resources:

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





Supreme Court of California

350 McALLISTER STREET
SAN FRANCISCO, CA 94102-4797

TANI G. CANTIL-SAKAUYE
CHIEF JUSTICE OF CALIFORNIA

415-865-7000

March 16, 2017

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

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

RE: Immigration Enforcement Tactics at State Courthouses

Dear Attorney General Sessions and Secretary Kelly:

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

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

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

March 16, 2017

Page 2


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

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

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

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

Sincerely,



TANI G. CANTIL-SAKAUYE

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



STATE OF CONNECTICUT
SUPREME COURT

Chambers of
CHASE T. ROGERS
Chief Justice

May 15, 2017

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

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

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

Dear Attorney General Sessions and Secretary Kelly:

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

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

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

Very truly yours,

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

Chase T. Rogers
Chief Justice

SUPREME COURT OF NEW JERSEY

STUART RABNER
CHIEF JUSTICE



RICHARD J. HUGHES JUSTICE COMPLEX
PO Box 023
TRENTON, NEW JERSEY 08625-0023

April 19, 2017

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

Dear Secretary Kelly:

In recent weeks, agents from the Immigration and Customs Enforcement agency arrested two individuals who showed up for court appearances in state court. As Chief Justice of the New Jersey Supreme Court and the administrative head of the state court system, I write to urge that arrests of this type not take place in courthouses.

ICE recognizes that arrests, searches, and surveillance only for immigration enforcement should not happen in "sensitive locations." Policy Number 10029.2 extends that principle to schools, hospitals, houses of worship, public demonstrations, and other events. I respectfully request that courthouses be added to the list of sensitive locations.

A true system of justice must have the public's confidence. When individuals fear that they will be arrested for a civil immigration violation if they set foot in a courthouse, serious consequences are likely to follow. Witnesses to violent crimes may decide to stay away from court and remain silent. Victims of domestic violence and other offenses may choose not to testify against their attackers. Children and families in need of court assistance may likewise avoid the courthouse. And defendants in state criminal matters may simply not appear.

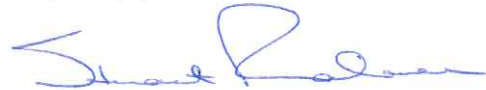
To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum. Enforcement actions by ICE agents inside courthouses would produce the opposite result and effectively deny access to the courts.

For years, state courts and corrections officials have cooperated with detainer requests from ICE and other agencies for the surrender of defendants who are held in custody. That practice is different from carrying out a public arrest in a courthouse for a civil immigration violation, which sends a chilling message. Instead, the same sensible approach that bars ICE enforcement actions in schools and houses of worship should apply to courthouses.

I worked closely with ICE and Customs agents when I served in the United States Attorney's Office for the District of New Jersey and, later, as the State's Attorney General. Like you, I believe in the rule of law. But I respectfully urge that we find a thoughtful path to further that aim in a way that does not compromise our system of justice.

Thank you for your attention to this matter. I would be pleased to discuss the issue further.

Very truly yours,



Stuart Rabner
Chief Justice

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

Thomas A. Balmer
Chief Justice



OREGON SUPREME COURT

1163 State Street
Salem, OR 97301-2563
Phone: 503.986.5717
Fax: 503.986.5730
Oregon Relay Service: 711
Thomas.Balmer@ojd.state.or.us

April 6, 2017

Attorney General Jeff Sessions
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

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

Dear Attorney General Sessions and Secretary Kelly:

On behalf of the Oregon Judicial Department, I write to urge you to direct federal law enforcement agencies, including Immigration and Customs Enforcement (ICE), not to arrest individuals inside or in the immediate vicinity of Oregon's county courthouses. If you are unwilling to adopt that policy, then at a minimum, I request that you formally expand the definition of "sensitive locations" in the Homeland Security Policy to include these areas.

Let me explain. Our courthouses are open to the public, as a matter of tradition and as required by the Oregon Constitution, which provides that "justice shall be administered openly." ICE agents and other law enforcement officers have the same access to the public areas of our courthouses as all members of the public.

I fully recognize the scope of the statutory authority of ICE and other federal law enforcement agencies. OJD's policy is scrupulous neutrality -- just as we will not hinder federal, state, or local law enforcement agencies, including ICE, in the exercise of their enforcement authority, neither can we assist federal (or other) law enforcement in apprehending those who may have violated the law. As you know, the courts strive to be -- and must be -- impartial and neutral forums for the resolution of criminal and other cases.

To help the Oregon courts preserve their mandated impartial and neutral role, I respectfully request that you exercise your broad discretion in enforcing federal immigration and criminal laws, and *not* detain or arrest individuals in or in the immediate vicinity of the Oregon courthouses.

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

As I am sure you appreciate, the Oregon courts must be accessible to all members of the public. The safety of individuals and families, the protection of economic and other rights, and the integrity of the criminal justice system all depend on individuals being willing and able to attend court proceedings: a witness who is subpoenaed to testify in a criminal case; a victim seeking a restraining order against an abusive former spouse; a driver paying a traffic fine; a landlord seeking an eviction or a tenant defending against one; or a small claims court plaintiff in a dispute with a neighbor.

The State of Oregon needs to encourage, not discourage, court appearances by parties and witnesses, regardless of their immigration status. However, ICE's increasingly visible practice of arresting or detaining individuals in or near courthouses for possible violations of immigration laws is developing into a strong deterrent to access to the courts for many Oregon residents. A number of our trial courts report that even attendance at scheduled hearings has been adversely affected because parties or witnesses fear the presence of ICE agents. The chilling effect of ICE's actions deters not only undocumented residents, but also those who are uncertain about the implications of their immigration or residency status or are close family, friends, or neighbors of undocumented residents. ICE's actions also deter appearances in court by those who are legal residents or citizens, but who do not want to face the prospect of what they see as hostile questioning based on perceived ethnicity, cases of misidentification, or other intrusive interactions with ICE agents.

I understand and appreciate the difficulty of the law enforcement work that you do. I trust that you understand as well the central role that the Oregon courts play in our state's criminal justice system, our efforts to protect children and families, and our daily work to ensure the rule of law for all Oregon residents. ICE's detention or arrest of undocumented residents in and near Oregon's courthouses seriously impedes those efforts. It deters individuals, some undocumented and some not, from coming to court when they should. For that reason, I urge you to adopt a policy of *not* arresting individuals for alleged immigration violations in or near Oregon's courthouses, or, at a minimum, to formally include courthouses in your definition of "sensitive locations" where ICE will thoroughly review the implications of and alternatives to making such arrests.

Letter to Attorney General Sessions
and Secretary Kelly
April 6, 2017
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We appreciate the discussions that our judges and staff have had with ICE officials in Oregon about their policies and practices, but believe this current and prospective interference with the administration of justice in Oregon calls for policy changes that only you can direct.

Thank you for your attention to this serious problem for the Oregon courts.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas A. Balmer". The signature is fluid and cursive, with the first name "Thomas" being the most prominent part.

Thomas A. Balmer
Chief Justice

cc: Governor Kate Brown
Attorney General Ellen Rosenblum
Senator Ron Wyden
Senator Jeff Merkley
Oregon Congressional Delegation
Oregon Presiding Judges

News Advisory

From the Rhode Island Judiciary



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

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

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

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

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

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

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

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

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

#

The Supreme Court
State of Washington

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



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

March 22, 2017

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

Dear Secretary Kelly,

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

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

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

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

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

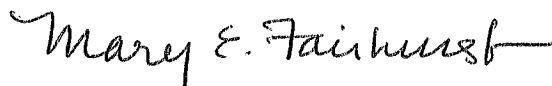
justice is compromised. Their absence curtails the capacity of our judges, clerks and court personnel to function effectively.

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

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

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

Very truly yours,

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

MARY E. FAIRHURST
Chief Justice

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

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
410-576-7036

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

March 2, 2017

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

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

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

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

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

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

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

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

March 2, 2017

Page 2

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

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

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

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

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

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

Sincerely,

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

Brian E. Frosh

Attorney General of Maryland



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

MAURA HEALEY
ATTORNEY GENERAL

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

June 29, 2017

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

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

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

To whom it may concern:

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

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

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

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

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

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

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

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

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

“DACA” – Deferred Action for Childhood Arrivals.

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

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

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

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

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

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

1. Records related to DACA, specifically:

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

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

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

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

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

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

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

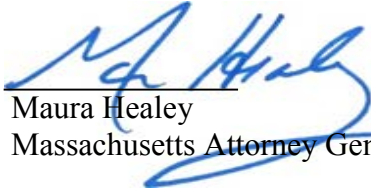
- v. All ICE or CBP detainer requests issued in our respective states that were later determined to be based on the mistaken identity of the subject;
 - vi. For each individual in our respective states for which ICE or CBP issued a detainer request, the individual's criminal history, or, any indication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

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

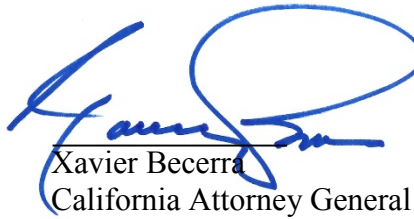
We also request that all fees be waived as these requests are in the public interest. In the event that there are fees, please inform us of the total charges in advance of fulfilling these requests. We request that your responses be fulfilled electronically.

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

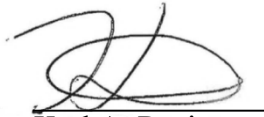
Sincerely,



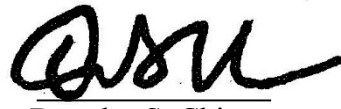
Maura Healey
Massachusetts Attorney General



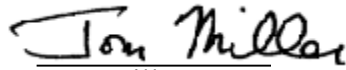
Xavier Becerra
California Attorney General



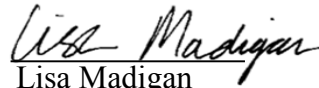
Karl A. Racine
District of Columbia Attorney General




Douglas S. Chin
Hawaii Attorney General



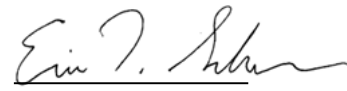
Tom Miller
Iowa Attorney General



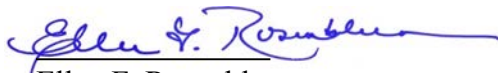
Lisa Madigan
Illinois Attorney General




Brian E. Frosh
Maryland Attorney General



Eric T. Schneiderman
New York Attorney General



Ellen F. Rosenblum
Oregon Attorney General



Bob Ferguson
Washington Attorney General

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



April 4, 2017

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

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

Dear Attorney General Sessions and Secretary Kelly:

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

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

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

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

Thank you.

Mike Feuer
Los Angeles City Attorney

Jackie Lacey
Los Angeles County District Attorney

Bonnie Dumanis
San Diego County District Attorney

Joyce E. Dudley
Santa Barbara County District Attorney

Nancy E. O'Malley
Alameda County District Attorney

Russell I. Miyahira
Hawthorne City Attorney

Amy Albano
Burbank City Attorney

Maria Elliott
San Diego City Attorney

Doug Haubert
Long Beach City Prosecutor

Joseph Lawrence
Santa Monica City Attorney

George Gascon
San Francisco District Attorney

Jill Ravitch
Sonoma County District Attorney

Crackdown on immigrants undermines public safety

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



GABRIEL CAMPANARIO / THE SEATTLE TIMES

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

By

[Dan Satterberg](#)

Special to The Times

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



***Dan Satterberg** is King County's prosecuting attorney.*

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

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

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

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

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

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

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

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

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

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

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

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

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

Michael B. Hancock
Mayor



City and County of Denver

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

April 6, 2017

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

Mr. Lynch:

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

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

- The admonition to ICE officers and agents to "make substantial efforts to avoid unnecessarily alarming local communities" when carrying out enforcement actions.
- The direction to ICE supervisors to "take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing a significant disruption to the normal operations of the sensitive location."
- The direction to all ICE employees to take "particular care" when taking enforcement actions that might affect any organization that assists victims of crime or abuse.

We are writing today to express our concerns about recent ICE enforcement actions in Denver which we believe may be inconsistent with the letter and the spirit of your sensitive locations policy.

ICE enforcement actions in Denver Courthouses

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

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

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

ICE enforcement actions at or near Denver schools

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

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

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

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

Respectfully,



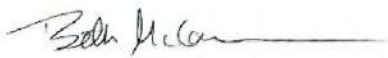
Michael B. Hancock
Mayor



Tom Boasberg
Superintendent, Denver Public
Schools



Judge Theresa Spahn
Presiding Judge, Denver County
Court



Beth McCann
Denver District Attorney



Kristin Bronson
City Attorney, City and County of
Denver



Albus Brooks
City Council President, District 9



Rafael G. Espinoza
City Council, District 1



Kevin Flynn
City Council, District 2

Paul D. López
City Council, District 3




Kendra Black
City Council, District 4



Mary Beth Susman
City Council, District 5



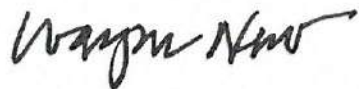
Paul Kashmann
City Council, District 6



Jolon Clark
City Council, District 7



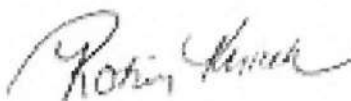
Christopher J. Herndon
City Council, District 8



Wayne New
City Council, District 10



Stacie Gilmore
City Council, District 11



Robin Kniech
City Council, At Large



Deborah "Debbie" Ortega
City Council, At Large

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

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

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

REPORT

I. Introduction

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

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

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

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

- Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;
- Medical treatment and health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;
- Places of worship, such as churches, synagogues, mosques, and temples;
- Religious or civil ceremonies or observances, such as funerals and weddings; and
- During a public demonstration, such as a march, rally, or parade.¹

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

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

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

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

III. The Escalation Of Immigration Enforcement Actions in Our Courthouses

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

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

² *Id.*, at pp. 2-3

³ *Id.*

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

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

⁶ *Id.*

⁷ *Id.*

⁸ Maria Cramer, *ICE courthouse arrests worry attorneys, prosecutors*, BOSTON GLOBE, June 16, 2017, <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMi8gl/story.html>.

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

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

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

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

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

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

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

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

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

¹⁷ *Id.*

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

¹⁹ *Id.*

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

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

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

²¹ *Id.*

²² *Id.*

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

²⁴ Johnson, *supra* note 8.

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

²⁶ *Id.*

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

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

²⁹ *Id.*

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

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

IV. The Protecting Sensitive Locations Act

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

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

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

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

³² *Id.*

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

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

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

³⁶ H.R. 1815, § 2; S. 845, § 2.

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

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

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

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

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

³⁸ H.R. 1815, § 2(i)(7)(B).

³⁹ S. 845, § 2(i)(1)(B)(i).

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

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

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

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

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

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

⁴⁶ H.R. 1815, § 2(i)(7)(E)(xi).

⁴⁷ H.R. 1815, § 2(i)(7)(E)(xii).

⁴⁸ H.R. 1815, § 2(i)(7)(E)(xiii).

⁴⁹ H.R. 1815, § 2(i)(7)(E)(xiv).

⁵⁰ H.R. 1815, § 2(i)(7)(E)(x).

⁵¹ S. 845, § 2(i)(1)(E)(vii).

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

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

Conclusion

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

Respectfully submitted,

Jeffrey N. Catalano
President, Massachusetts Bar Association

August 2017

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

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

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GENERAL INFORMATION FORM

Submitting Entities: Massachusetts Bar Association, ABA Criminal Justice Section

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

1. Summary of Resolution(s).

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

2. Approval by Submitting Entity.

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

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

No.

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

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

2002 (AY) 115B: Protection of Rights of Immigration Detainees
Opposing incommunicado detention of foreign nationals and urging immigration authorities to adopt certain detention standards, including access to counsel and legal information.

2006 (MY) 107A: Due Process Right to Counsel in Immigration Related Matters:
Supporting the due process right to counsel for all persons in removal proceedings, and the availability of legal

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

2006 (MY) 107B:

Immigration Reform

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

2006 (MY) 107C:

Due Process and Judicial Review in Immigration Related Matters:

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

2006 (MY) 107D:

Administration of Immigration Laws

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

2006 (MY) 107E:

Detention in Immigration Removal Proceedings

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

2006 (MY) 107G:

Crime Victims in Immigration Related Matters

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

2008 (MY) 111B:

Immigration Detention Standards

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

10C

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

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

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

6. Status of Legislation.

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

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

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

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

None.

9. Disclosure of Interest. (If applicable)

N/A

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

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

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

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10C

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

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EXECUTIVE SUMMARY

1. Summary of the Resolution

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

2. Summary of the Issue that the Resolution Addresses

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

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

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

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

None known.

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

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

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

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

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

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

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

NOW, THEREFORE, IT IS

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

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

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

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

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

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

SENSITIVE LOCATIONS POLICY

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

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

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

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

³ INA § 212.

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

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

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

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

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

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

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

⁵ *Id.*

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

⁷ *Id.*

⁸ *Id.*

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

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

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

The results of the survey were startling:

- A third of respondents have seen ICE agents in courthouses;
- ICE agents were seen at courthouses in the 5 boroughs of New York City as well as Nassau, Suffolk, Westchester, Columbia, Dutchess, Saratoga, and Putnam Counties¹³;
- 74% of respondents have worked with immigrants who have expressed fear of the courts because of ICE;
- 45% have worked with immigrants who have either failed to file a petition or withdrawn a petition due to fear of encountering ICE in the courts;
- 48% say their clients have expressed fear of calling police for fear of ICE; and
- 29% have worked with immigrants who failed to appear in court due to fear of ICE.¹⁴

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

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

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

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

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

¹⁴ *Id.*

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

- 67% of advocates working with survivors of violence have had clients who decided not to seek help from the courts due to fear of ICE;
- 50% have worked with immigrants who are afraid to go to court because their abusive partners have threatened that ICE will be there;
- 37% have worked with immigrants who have failed to pursue an order of protection due to fear of ICE;
- 48% have worked with immigrants who have failed to seek custody or visitation due to fear of ICE;
- 37% have worked with immigrants who have failed to seek a U certification verifying that they are a victim of violence (through the courts, from police, or from a District Attorney's office); and
- 46% have worked with immigrants who have expressed fear of serving as a complaining witness.¹⁸

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

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

¹⁶ *Id.*

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

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

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

NEW YORK'S RESPONSE TO DATE

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

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

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

²¹ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁰ H.R. 1815, § 2(i)(7)(E)(x).

³¹ S. 845, § 2(i)(1)(E)(vii).

³² *Id.*

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

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

CONCLUSION

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

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



April 24, 2017

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

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

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

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

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

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

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

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

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

⁵ *Supra* note 3.

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

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

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

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

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

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

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

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

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

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

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

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

Freezing Out Justice

How immigration arrests at courthouses
are undermining the justice system



ACLU

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

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

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

The Impact of Fear on Public Safety

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

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

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

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

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

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

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

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

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

Closing the Courthouse Doors

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

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

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

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

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

The Chief Justice of California, Tani G. Cantil-Sakauye, [wrote](#) to Attorney General Jeff Sessions and then-Secretary of Homeland Security John Kelly, “[E]nforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair. They not only compromise our core value of fairness but they undermine the judiciary's ability to provide equal access to justice.” In New Jersey, Chief Justice Stuart Rabner [wrote](#) to then-Secretary Kelly that “A true system of justice must have the public's confidence. When individuals fear that they will be arrested for a civil immigration violation if they set foot in a courthouse, serious consequences are likely to follow. . . . I believe in the rule of law. But I respectfully urge that we find a thoughtful path to further that aim in a way that does not compromise our system of justice.”

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

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

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

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

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

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

Federal Policies on Immigration Arrests in Courthouses

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

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

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

Turning Our Back on Immigrant Crime Survivors

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

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

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

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

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

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

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

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

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

Recommendations on Immigration Enforcement in Courthouses

To the Department of Homeland Security:

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

To Congress:

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

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

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

To State and Local Court Officials:

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

SECTION 5:

ICE POLICIES AND PUBLIC STATEMENTS

BACKGROUND

ICE's position on courthouse arrests, and how it can help persuade local policymakers to intervene on behalf of the state courts

Since Trump's inauguration, ICE has made clear that it views courthouses as a preferred location for arrests, and that no immigrant is immune from arrest while attending court. ICE has consistently used the same rhetoric in its legal memoranda and public statements regarding courthouse arrests: they reflect this administration's "zero tolerance" immigration policy, disrespect of the Constitution and law enforcement norms, and disregard for factors that make individuals, families, and communities particularly vulnerable.

ICE's narrative regarding courthouse arrests relies on the criminalization of immigrant communities that is at the core of the Trump deportation agenda. Though the raids take place in states throughout the country, ICE uses the false narrative that courthouse arrests are required in jurisdictions that have passed sanctuary policies that limit local law enforcement collusion with ICE for individuals who have had contact in some way with the criminal legal system. In actuality, Trump's ICE manipulates this notion to use courthouse raids as a mechanism for retaliation against jurisdictions that resist its mass deportation program and put the safety and well-being of their residents first.

On January 10, 2018, ICE issued [Directive Number I 1072.1, “Civil Immigration Enforcement Inside Courthouses,”](#) its first formal, public policy on immigration enforcement actions inside courthouses and subsequently updated its [FAQ on Sensitive Locations and Courthouse Arrests](#). IDP and the NYU Immigrant Rights Clinic have published an annotated version of the memo, that can be useful toward understanding its factual context. (See Annotated Directive I 1072.1). This annotated version may also be useful in your advocacy campaigns, to answer questions that policymakers have about ICE’s legal position on courthouse arrests. For example, in New York we often had policymakers and judges ask if ICE regards family courts as sensitive locations, and if ICE will arrest crime victims. The Directive clearly states that ICE assumes the discretion to decide to go into family courts if it so chooses, with no additional process or internal review required for them to do so. It further creates no exception for crime victims. The Directive, which cross-references two of Trump’s most significant immigration-related Executive Orders, lays bare exactly how the Trump administration intends to use the state courts against immigrants.

*For more information on ICE raid practices more broadly, visit immdefense.org/raids and immdefense.org/icewatch/

RESOURCES

U.S. Immigration and Customs Enforcement, [Directive Number I 1072.1, “Civil Immigration Enforcement Inside Court-houses.”](#) January 10, 2018.

U.S. Immigration and Customs Enforcement, [FAQ on Sensitive Locations and Courthouse Arrests](#), last updated January 31, 2018.

[IDP/NYU annotated version of Directive I 1072.1](#) (2018).

The White House, [Executive Order 13678, “Enhancing Public Safety in the Interior of the United States.”](#) January 25, 2017.

U.S. Department of Homeland Security, Memorandum, [“Enforcement of the Immigration Laws to Serve the National Interest.”](#) February 20, 2017.

U.S. Department of Homeland Security, Memorandum, [“Implementing the President’s Border Security and Immigration Enforcement Improvements Policies.”](#) February 20, 2017.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses

Issue Date: January 10, 2018

Effective Date: January 10, 2018

Superseded: None

Federal Enterprise Architecture Number: 306-112-002b

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

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

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

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

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

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

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

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

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

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

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

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

5. Procedures/Requirements.

5.1. Reporting Requirements.

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

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

7. Authorities/References.

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

8. Attachments. None.

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

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

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



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

 Official Website of the Department of Homeland Security



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Enforcement and Removal Operations

[Enforcement and Removal Operations](#)

FAQ on Sensitive Locations and Courthouse Arrests

ERO

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

Sensitive Locations

[Expand All](#) [Collapse All](#)

Does ICE's policy sensitive locations policy remain in effect?

Yes. ICE has previously issued and implemented a policy concerning enforcement actions at sensitive locations. These FAQs are intended to clarify what types of locations are covered by those policies.

How does ICE decide where a specific enforcement action will take place? What factors are considered when making such a decision?

Determinations regarding the manner and location of arrests are made on a case-by-case basis, taking into consideration all aspects of the situation, including the target's criminal history, safety considerations, the viability of the leads on the individual's whereabouts, and the nature of the prospective arrest location.

What does ICE policy require for enforcement actions to be carried out at sensitive locations?

Pursuant to ICE policy, enforcement actions are not to occur at or be focused on sensitive locations such as schools, places of worship, unless;

1. exigent circumstances exist;
2. other law enforcement actions have led officers to a sensitive location, or
3. prior approval is obtained from a designated supervisory official.

The policy is intended to guide ICE officers and agents' actions when enforcing federal law at or focused on sensitive locations, to enhance the public understanding and trust, and to ensure that people seeking to participate in activities or utilize services provided at any sensitive location are free to do so, without fear or hesitation.

What does ICE mean by the term "sensitive location"?

Locations treated as sensitive locations under ICE policy would include, but are not be limited to:

- Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;

- Medical treatment and health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;
- Places of worship, such as churches, synagogues, mosques, and temples;
- Religious or civil ceremonies or observances, such as funerals and weddings; and
- During a public demonstration, such as a march, rally, or parade.

What is considered an enforcement action as it relates to sensitive locations?

Enforcement actions covered by this policy are apprehensions, arrests, interviews, or searches, and for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include activities such as obtaining records, documents, and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, guarding or securing detainees, or participating in official functions or community meetings.

Are sensitive locations located along the international border also protected?

The sensitive locations policy does not apply to operations that are conducted within the immediate vicinity of the international border, including the functional equivalent of the border. However, when situations arise that call for enforcement actions at or near a sensitive location within the immediate vicinity of the international border, including its functional equivalent, agents and officers are expected to exercise sound judgment and common sense while taking appropriate action, consistent with the goals of this policy.

Examples of operations within the immediate vicinity of the border are, but are not limited to, searches at ports of entry, activities undertaken where there is reasonable certainty that an individual just crossed the border, circumstances where ICE has maintained surveillance of a subject since crossing the border, and circumstances where ICE is operating in a location that is geographically further from the border but separated from the border by rugged and remote terrain.

Will enforcement actions ever occur at sensitive locations?

Enforcement actions may occur at sensitive locations in limited circumstances, but will generally be avoided. ICE officers and agents may conduct an enforcement action at a sensitive location if there are exigent circumstances, if other law enforcement actions have led officers to a sensitive location, or with prior approval from an appropriate supervisory official.

When may an enforcement action be carried out at a sensitive location without prior approval?

ICE officers and agents may carry out an enforcement action at a sensitive location without prior approval from a supervisor in exigent circumstances related to national security, terrorism, or public safety, or where there is an imminent risk of destruction of evidence material to an ongoing criminal case. When proceeding with an enforcement action under exigent circumstances, officers and agents must conduct themselves as discreetly as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

Are court houses considered a sensitive location and covered by the sensitive locations policy?

No. ICE does not view courthouses as a sensitive location.

Where should I report an ICE enforcement action that I believe may be inconsistent with these policies?

There are a number of locations where an individual may lodge a complaint about a particular ICE enforcement action that may have taken place in violation of the sensitive locations policy. You may find

information about these locations, and information about how to file a complaint, on the DHS or ICE websites. You may contact ICE Enforcement and Removal Operations (ERO) through the Detention Reporting and Information Line at (888) 351-4024 or through the ERO information email address at ERO.INFO@ice.dhs.gov, also available at <https://www.ice.gov/webform/ero-contact-form>. The Civil Liberties Division of the ICE Office of Diversity and Civil Rights may be contacted at (202) 732-0092 or ICE.Civil.Liberties@ice.dhs.gov.

Court House Arrests

[Expand All](#) [Collapse All](#)

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

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

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

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

Will all aliens be subject to arrest inside courthouses?

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

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

ICE officers and agents will generally avoid enforcement actions in courthouses, or areas within courthouses, that are dedicated to non-criminal (e.g., family court, small claims court) proceedings. In those instances in which an enforcement action in such locations is operationally necessary, the approval

of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

Is it legal to arrest suspected immigration violators at a courthouse?

Yes. The arrest of persons in a public place based upon probable cause is legally permissible. ICE officers and agents are expressly authorized by statute to make arrests of aliens where probable cause exists to believe that such aliens are removable from the United States.

Why does ICE make arrests at courthouses? Are these planned ahead of time?

ICE, like other federal, state, and local law enforcement agencies, makes arrests at courthouses to ensure the laws within the agency's jurisdiction are enforced in a safe and efficient manner. ICE arrests at courthouses are the result of targeted enforcement actions against specific aliens. As with all planned enforcement actions, ICE officers exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. Consistent with officer and public safety, ICE officers also make every effort to limit the time spent at the planned place of arrest.

Why do courthouse arrests seem to be occurring more frequently?

In years past, most individuals arrested at a courthouse would have been turned over to ICE by local authorities upon their release from a prison or jail based on an ICE detainer. When criminal custody transfers occur inside the secure confines of a jail or prison, it is far safer for everyone involved, including officers and the person being arrested. Now that some law enforcement agencies no longer honor ICE detainers or limit ICE's access to their detention facilities, these aliens, many of whom have serious criminal histories, are released to the street, threatening public safety. Because courthouse visitors are typically screened upon entry to search for weapons and other contraband, the safety risks for the arresting officers, the arrestee, and members of the community are substantially diminished. In such instances, ICE officers and agents make every effort to take the person into custody in a secure area, out of public view, but this is not always possible. Further, when these arrests do occur, ICE makes every effort to ensure that the arrest occurs after the matter for which the alien was appearing in court has concluded.

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

Yes, when ICE officers and agents have to go out into the community to proactively locate these aliens, regardless of the precautions taken, it puts personnel and potentially innocent bystanders at risk. Moreover, tracking down priority targets is highly resource-intensive. It is not uncommon for criminal aliens and fugitives to utilize multiple aliases, provide authorities with false addresses, and be working illegally with fraudulent documentation or "off the books." Absent a viable residential address or place of employment, a courthouse may afford the most likely opportunity to locate a target and take him or her into custody.

Last Reviewed/Updated: 01/31/2018

ICE Directive 11072.1: Civil Immigration Enforcement Inside Courthouses

Annotations by the Immigrant Defense Project and the NYU Immigrant Rights Clinic

On January 10, 2018, ICE issued its first formal, public policy [memo](#) on immigration enforcement actions inside courthouses and subsequently updated its [FAQ on Sensitive Locations and Courthouse Arrests](#). The Immigrant Defense Project and NYU Immigrant Rights Clinic have published this annotated document in order to provide legal and factual context for ICE's new directive. [Several chief justices](#) and the [American Bar Association](#) called on ICE to add courthouses to its list of "[sensitive locations](#)." This directive indicates that ICE is ignoring those requests and will continue to target immigrants in courthouses regardless of their impact on access to justice, public safety, or the operation of state courts.

For additional resources, including a sample amicus brief that can be used to defend immigrants in deportation proceedings see [IDP's ICE Out of the Courts page](#).

- 1. Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding civil immigration enforcement actions inside federal, state, and local courthouses.

"Civil immigration enforcement" presumably refers to courthouse arrests by ICE agents to begin deportation proceedings. This unlawful practice has been on the rise under the Trump administration. [Several jurisdictions](#) have reported spikes in courthouse arrests, including New York, which saw an [1100% increase from 2016 to 2017](#).

[As legal scholars have noted](#), these arrests are not only bad policy, they are against the law. ICE's courthouse arrests interfere with the [constitutional right to access courts](#), and encroach on state courthouses in [violation of the 10th Amendment](#). These courthouse arrests also violate a [long-standing common law tradition](#) against civil arrests in courthouses. For more on why these arrests are unlawful, visit [IDP's Legal Resources page](#).

Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents.

ICE's view of safety is self-serving. [Under the Trump administration, the vast majority of noncitizens are viewed as a potential threat to public safety](#). Courthouse arrests do not increase safety, but clearly increase fear and confusion, and interfere with the effective administration of state courts. Findings from a [national survey](#), as well as surveys in [New York](#), [New Jersey](#), and [California](#), demonstrate that these arrests make victims of violence feel less safe and cut them off from the protections they need from courts. As numerous [District Attorneys](#) and [State Attorneys General](#) have warned, when noncitizens are afraid to attend court, the entire community is less safe.

When practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.

Multiple accounts, including [videos of ICE courthouse arrests](#), often reflect excessive force and a clear lack of discretion. Moreover, what ICE describes as “discreet” contrasts with commonly held understandings of that term. ICE officers secretly patrol courthouses [in plain clothes, hide their badges, and often refuse to answer questions from attorneys or press about who they are or why they’re there](#). This only magnifies the impact on court proceedings by creating widespread confusion and fear.

Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country because many individuals appearing in courthouses for one matter are wanted for unrelated criminal or civil violations. ICE’s enforcement activities in these same courthouses are wholly consistent with longstanding law enforcement practices, nationwide.

ICE’s civil arrests are entirely different from arrests carried out by criminal law enforcement agencies. It is not routine for civil arrests to be made in courthouses. In fact, they violate a [centuries old common law tradition against civil arrests in courthouses](#). It is particularly unusual for a federal civil enforcement agency to encroach on the administration of state courts—a core state function. This ICE practice violates the [basic principle of federalism](#).

In addition, [ICE operates pursuant to “administrative warrants”](#) which can be issued by a wide range of ICE officers, in comparison to criminal warrants which are reviewed or issued by a judge. [Administrative warrants do not satisfy the requirements of the 4th Amendment](#).

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

ICE openly frames this issue as [retaliation against localities](#) which have opposed the entanglement between immigration and local law enforcement. The Trump administration’s intention to undermine efforts to protect immigrant rights must not impede the functioning of state courthouses. ICE’s reasoning also falls flat because [ICE makes courthouse arrests in jurisdictions that fully cooperate with ICE detainees](#).

Courthouse arrests are not “necessary” – they just make it easier for ICE to arrest immigrants. ICE can easily track individuals to their court appearances through the [many databases they have access to](#). Even though doing so endangers the administration of justice, ICE is taking advantage of the fact that immigrants are either required to go to court or are seeking protection from the court.

- 2. Policy.** ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety

threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed, when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location.

ICE makes this policy vague and open-ended by using the term “include,” leaving the door open to actions against a much bigger group of immigrants. A few of the “specific, targeted aliens” that ICE has gone after in courts include a [U.S. citizen who is a county employee](#), a [DACA recipient with no criminal charges](#) who was in traffic court, [victims of human trafficking](#), a [father asking for custody of his three children](#), and a [woman seeking a protective order](#) against her abusive ex-boyfriend.

This policy only addresses ICE arrests inside courthouses – [arrests targeting noncitizens who are entering or leaving courthouses are also common](#), and not addressed by this policy. [As centuries of common law establish](#), these arrests are just as impermissible as those that take place inside the courthouse doors – they do just as much to instill fear in the immigrant community and interfere with the court’s administration of justice.

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

ICE could have issued a bright line rule protecting witnesses and family members, but instead this policy allows arrests under “special circumstances” which are illustrated by examples but not fully defined. This does not do enough to ensure the safety of witnesses and family and friends attending court. To make matters worse, DHS officials have previously explicitly announced that [victims and witnesses are not safe from arrest](#) in courthouses. The chilling effect on victims and witnesses who are fearful to appear in court has led prosecutors across the country, including [NY’s Attorney General](#), [NYC District Attorneys](#), the [Denver City Attorney](#), and a dozen [California prosecutors](#), to speak out against ICE’s courthouse arrests.

¹ ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security (DHS) policy. See Memorandum from John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017); Memorandum from John Kelly, Secretary of Homeland Security, *Implementing the President’s Border Security and Immigration Enforcement Improvements Policies* (Feb. 20, 2017). *Reliance on these memos contradicts ICE’s purported commitment to avoiding collateral arrests. The cited documents are the Department of Homeland Security’s blueprints for carrying out President Trump’s Executive Orders. Reflecting the President’s commitment to sweeping immigration enforcement, these memos pledge to no longer “exempt classes or categories of removable aliens from potential enforcement.” By citing these broadly worded memos, ICE is giving itself complete discretion in making “case-by-case” determinations about arresting witnesses, family or friends at courthouses.*

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

Under this policy, arrests in family court and other civil courts will be allowed to continue when it is deemed ‘operationally necessary,’ a completely vague standard to be determined at will by ICE. Practically speaking, this policy is also misguided because different courts are often housed in the same or adjacent courthouses. When an immigrant parent seeking child support sees ICE outside of a courthouse housing both family and criminal courts, this Directive isn’t going to quell her fears.

More fundamentally, this provision is based on a troubling misunderstanding of the constitution. The right to access courts applies to both criminal and civil court proceedings – it is not more permissible to target people in criminal court. ICE mischaracterizes people appearing in criminal court as “criminals and fugitives.” In fact, the noncitizens ICE is targeting are those who face criminal charges and choose to appear in court to defend themselves against these charges. They have a constitutional right to be in the courthouse.

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

Using non-public areas of the court allows ICE to hide its actions from the public, interfere with attorney-client communications, and pull a veil over its unlawful practices. In one Brooklyn operation, ICE agents arrested a man in a courthouse and quickly led him to a restricted area where his attorney was denied access.

ICE also affirms that it depends on court staff collusion. This means that ICE is taking advantage of state resources to do their dirty work. This violates the anti-commandeering principle, which says that the federal government cannot force states to enforce its policies. Immigration law does not and cannot authorize this kind of federal overstepping. And when immigrants see court officers helping ICE, it damages the community’s trust in the state court system.

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

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions. This policy does not apply to criminal immigration enforcement actions inside courthouses, nor does it prohibit civil immigration enforcement actions inside courthouses.

Most immigration offenses are civil offenses, but some, such as unlawful reentry, are considered criminal offenses. [The Trump Administration has announced its intention to widely prosecute criminal immigration offenses](#). This directive is focused solely on civil offenses, and makes clear that ICE feels justified in entering courthouses even where the arrest is not based on any violation of criminal law.

3. Definition The following definitions apply for the purposes of this Directive only.

3.1. Civil immigration enforcement action. Action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations.

4. Responsibilities.

4.1. The **Executive Associate Directors** for **ERO** and **HSI** are responsible for ensuring compliance with the provisions of this Directive within his or her program office.

4.2. **ERO FODs** and **HSI SACs** are responsible for:

- 1) Providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions at courthouses in their area of responsibility beyond those outlined in this Directive; and
- 2) Ensuring civil immigration enforcement actions at courthouses are properly documented and reported, as prescribed in Section 5.1 of this Directive.

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

5. Procedures/Requirements.

5.1. Reporting Requirements.

² See also ICE Directive No. 10036.1, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007), for additional requirements regarding civil immigration enforcement actions against certain victims and witnesses conducted at courthouses. *This memo references the statutory requirement in [8 U.S.C. § 1229\(e\)\(2\)](#) that for certain arrests, including some courthouse arrests, DHS must issue a written certification that it did not rely on a tip from a domestic abuser. [DHS rarely, if ever, complies with this legal requirement.](#)*

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

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

7. Authorities/References.

7.1. DHS Directive 034-06, *Department Reporting Requirements*, October 23, 2015.

7.2. DHS Instruction 034-06-001, Rev. 1, *Department Reporting Requirements*, March 28, 2017.

8. Attachments. None.

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

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



Homeland Security

February 20, 2017

MEMORANDUM FOR:

Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

A handwritten signature in black ink, appearing to read "John Kelly", written over the printed name and title.

SUBJECT:

**Implementing the President's Border Security and
Immigration Enforcement Improvements Policies**

This memorandum implements the Executive Order entitled "Border Security and Immigration Enforcement Improvements," issued by the President on January 25, 2017, which establishes the President's policy regarding effective border security and immigration enforcement through faithful execution of the laws of the United States. It implements new policies designed to stem illegal immigration and facilitate the detection, apprehension, detention, and removal of aliens who have no lawful basis to enter or remain in the United States. It constitutes guidance to all Department personnel, and supersedes all existing conflicting policy, directives, memoranda, and other guidance regarding this subject matter—to the extent of the conflict—except as otherwise expressly stated in this memorandum.

A. Policies Regarding the Apprehension and Detention of Aliens Described in Section 235 of the Immigration and Nationality Act.

The President has determined that the lawful detention of aliens arriving in the United States and deemed inadmissible or otherwise described in section 235(b) of the Immigration and Nationality Act (INA) pending a final determination of whether to order them removed, including determining eligibility for immigration relief, is the most efficient means by which to enforce the immigration laws at our borders. Detention also prevents such aliens from committing crimes while at large in the United States, ensures that aliens will appear for their removal proceedings, and substantially increases the likelihood that aliens lawfully ordered removed will be removed.

These policies are consistent with INA provisions that mandate detention of such aliens and allow me or my designee to exercise discretionary parole authority pursuant to section 212(d)(5) of the INA only on a case-by-case basis, and only for urgent humanitarian reasons or significant public benefit. Policies that facilitate the release of removable aliens apprehended at and between the ports of entry, which allow them to abscond and fail to appear at their removal hearings, undermine the border security mission. Such policies, collectively referred to as “catch-and-release,” shall end.

Accordingly, effective upon my determination of (1) the establishment and deployment of a joint plan with the Department of Justice to surge the deployment of immigration judges and asylum officers to interview and adjudicate claims asserted by recent border entrants; and, (2) the establishment of appropriate processing and detention facilities, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) personnel should only release from detention an alien detained pursuant to section 235(b) of the INA, who was apprehended or encountered after illegally entering or attempting to illegally enter the United States, in the following situations on a case-by-case basis, to the extent consistent with applicable statutes and regulations:

1. When removing the alien from the United States pursuant to statute or regulation;
2. When the alien obtains an order granting relief or protection from removal or the Department of Homeland Security (DHS) determines that the individual is a U.S. citizen, national of the United States, or an alien who is a lawful permanent resident, refugee, asylee, holds temporary protected status, or holds a valid immigration status in the United States;
3. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director consents to the alien’s withdrawal of an application for admission, and the alien contemporaneously departs from the United States;
4. When required to do so by statute, or to comply with a binding settlement agreement or order issued by a competent judicial or administrative authority;

5. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director authorizes the alien's parole pursuant to section 212(d)(5) of the INA with the written concurrence of the Deputy Director of ICE or the Deputy Commissioner of CBP, except in exigent circumstances such as medical emergencies where seeking prior approval is not practicable. In those exceptional instances, any such parole will be reported to the Deputy Director or Deputy Commissioner as expeditiously as possible; or
6. When an arriving alien processed under the expedited removal provisions of section 235(b) has been found to have established a "credible fear" of persecution or torture by an asylum officer or an immigration judge, provided that such an alien affirmatively establishes to the satisfaction of an ICE immigration officer his or her identity, that he or she presents neither a security risk nor a risk of absconding, and provided that he or she agrees to comply with any additional conditions of release imposed by ICE to ensure public safety and appearance at any removal hearings.

To the extent current regulations are inconsistent with this guidance, components will develop or revise regulations as appropriate. Until such regulations are revised or removed, Department officials shall continue to operate according to regulations currently in place.

As the Department works to expand detention capabilities, detention of all such individuals may not be immediately possible, and detention resources should be prioritized based upon potential danger and risk of flight if an individual alien is not detained, and parole determinations will be made in accordance with current regulations and guidance. *See* 8 C.F.R. §§ 212.5, 235.3. This guidance does not prohibit the return of an alien who is arriving on land to the foreign territory contiguous to the United States from which the alien is arriving pending a removal proceeding under section 240 of the INA consistent with the direction of an ICE Field Office Director, ICE Special Agent-in-Charge, CBP Chief Patrol Agent, or CBP Director of Field Operations.

B. Hiring More CBP Agents/Officers

CBP has insufficient agents/officers to effectively detect, track, and apprehend all aliens illegally entering the United States. The United States needs additional agents and officers to ensure complete operational control of the border. Accordingly, the Commissioner of CBP shall—while ensuring consistency in training and standards—immediately begin the process of hiring 5,000 additional Border Patrol agents, as well as 500 Air & Marine Agents/Officers, subject to the availability of resources, and take all actions necessary to ensure that such agents/officers enter on duty and are assigned to appropriate duty stations, including providing for the attendant resources and additional personnel necessary to support such agents, as soon as practicable.

Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for

Management, Chief Financial Officer, and Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

C. Identifying and Quantifying Sources of Aid to Mexico

The President has directed the heads of all executive departments to identify and quantify all sources of direct and indirect Federal aid or assistance to the Government of Mexico. Accordingly, the Under Secretary for Management shall identify all sources of direct or indirect aid and assistance, excluding intelligence activities, from every departmental component to the Government of Mexico on an annual basis, for the last five fiscal years, and quantify such aid or assistance. The Under Secretary for Management shall submit a report to me reflecting historic levels of such aid or assistance provided annually within 30 days of the date of this memorandum.

D. Expansion of the 287(g) Program in the Border Region

Section 287(g) of the INA authorizes me to enter into a written agreement with a state or political subdivision thereof, for the purpose of authorizing qualified officers or employees of the state or subdivision to perform the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. This grant of authority, known as the 287(g) Program, has been a highly successful force multiplier that authorizes state or local law enforcement personnel to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, transport and conduct searches of an alien for the purposes of enforcing the immigration laws. From January 2006 through September 2015, the 287(g) Program led to the identification of more than 402,000 removable aliens, primarily through encounters at local jails.

Empowering state and local law enforcement agencies to assist in the enforcement of federal immigration law is critical to an effective enforcement strategy. Aliens who engage in criminal conduct are priorities for arrest and removal and will often be encountered by state and local law enforcement officers during the course of their routine duties. It is in the interest of the Department to partner with those state and local jurisdictions through 287(g) agreements to assist in the arrest and removal of criminal aliens.

To maximize participation by state and local jurisdictions in the enforcement of federal immigration law near the southern border, I am directing the Director of ICE and the Commissioner of CBP to engage immediately with all willing and qualified law enforcement jurisdictions that meet all program requirements for the purpose of entering into agreements under 287(g) of the INA.

The Commissioner of CBP and the Director of ICE should consider the operational functions and capabilities of the jurisdictions willing to enter into 287(g) agreements and structure such agreements in a manner that employs the most effective enforcement model for that jurisdiction, including the jail enforcement model, task force officer model, or joint jail enforcement-task force officer model. In furtherance of my direction herein, the Commissioner of

CBP is authorized, in addition to the Director of ICE, to accept state services and take other actions as appropriate to carry out immigration enforcement pursuant to 287(g).

E. Commissioning a Comprehensive Study of Border Security

The Under Secretary for Management, in consultation with the Commissioner of CBP, Joint Task Force (Border), and Commandant of the Coast Guard, is directed to commission an immediate, comprehensive study of the security of the southern border (air, land and maritime) to identify vulnerabilities and provide recommendations to enhance border security. The study should include all aspects of the current border security environment, including the availability of federal and state resources to develop and implement an effective border security strategy that will achieve complete operational control of the border.

F. Border Wall Construction and Funding

A wall along the southern border is necessary to deter and prevent the illegal entry of aliens and is a critical component of the President's overall border security strategy. Congress has authorized the construction of physical barriers and roads at the border to prevent illegal immigration in several statutory provisions, including section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, 8 U.S.C. § 1103 note.

Consistent with the President's Executive Order, the will of Congress and the need to secure the border in the national interest, CBP, in consultation with the appropriate executive departments and agencies, and nongovernmental entities having relevant expertise—and using materials originating in the United States to the maximum extent permitted by law—shall immediately begin planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, along the land border with Mexico in accordance with existing law, in the most appropriate locations and utilizing appropriate materials and technology to most effectively achieve operational control of the border.

The Under Secretary for Management, in consultation with the Commissioner of CBP shall immediately identify and allocate all sources of available funding for the planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, and develop requirements for total ownership cost of this project, including preparing Congressional budget requests for the current fiscal year (e.g., supplemental budget requests) and subsequent fiscal years.

G. Expanding Expedited Removal Pursuant to Section 235(b)(1)(A)(iii)(I) of the INA

It is in the national interest to detain and expeditiously remove from the United States aliens apprehended at the border, who have been ordered removed after consideration and denial of their claims for relief or protection. Pursuant to section 235(b)(1)(A)(i) of the INA, if an immigration officer determines that an arriving alien is inadmissible to the United States under

section 212(a)(6)(C) or section 212(a)(7) of the INA, the officer shall, consistent with all applicable laws, order the alien removed from the United States without further hearing or review, unless the alien is an unaccompanied alien child as defined in 6 U.S.C. § 279(g)(2), indicates an intention to apply for asylum or a fear of persecution or torture or a fear of return to his or her country, or claims to have a valid immigration status within the United States or to be a citizen or national of the United States.

Pursuant to section 235(b)(1)(A)(iii)(I) of the INA and other provisions of law, I have been granted the authority to apply, by designation in my sole and unreviewable discretion, the expedited removal provisions in section 235(b)(1)(A)(i) and (ii) of the INA to aliens who have not been admitted or paroled into the United States, who are inadmissible to the United States under section 212(a)(6)(C) or section 212(a)(7) of the INA, and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been continuously physically present in the United States for the two-year period immediately prior to the determination of their inadmissibility. To date, this authority has only been exercised to designate for application of expedited removal, aliens encountered within 100 air miles of the border and 14 days of entry, and aliens who arrived in the United States by sea other than at a port of entry.¹

The surge of illegal immigration at the southern border has overwhelmed federal agencies and resources and has created a significant national security vulnerability to the United States. Thousands of aliens apprehended at the border, placed in removal proceedings, and released from custody have absconded and failed to appear at their removal hearings. Immigration courts are experiencing a historic backlog of removal cases, primarily proceedings under section 240 of the INA for individuals who are not currently detained.

During October 2016 and November 2016, there were 46,184 and 47,215 apprehensions, respectively, between ports of entry on our southern border. In comparison, during October 2015 and November 2015 there were 32,724 and 32,838 apprehensions, respectively, between ports of entry on our southern border. This increase of 10,000–15,000 apprehensions per month has significantly strained DHS resources.

Furthermore, according to EOIR information provided to DHS, there are more than 534,000 cases currently pending on immigration court dockets nationwide—a record high. By contrast, according to some reports, there were nearly 168,000 cases pending at the end of fiscal year (FY) 2004 when section 235(b)(1)(A)(i) was last expanded.² This represents an increase of more than 200% in the number of cases pending completion. The average removal case for an alien who is not detained has been pending for more than two years before an immigration judge.³ In some immigration courts, aliens who are not detained will not have their cases heard by an

¹ Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004); Eliminating Exception to Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 Fed. Reg. 4902 (Jan. 17, 2017).

² Syracuse University, *Transactional Records Access Clearinghouse (TRAC) Data Research*; available at http://trac.syr.edu/phptools/immigration/court_backlog/.

³ *Id.*

immigration judge for as long as five years. This unacceptable delay affords removable aliens with no plausible claim for relief to remain unlawfully in the United States for many years.

To ensure the prompt removal of aliens apprehended soon after crossing the border illegally, the Department will publish in the *Federal Register* a new Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, which may, to the extent I determine is appropriate, depart from the limitations set forth in the designation currently in force. I direct the Commissioner of CBP and the Director of ICE to conform the use of expedited removal procedures to the designations made in this notice upon its publication.

H. Implementing the Provisions of Section 235(b)(2)(C) of the INA to Return Aliens to Contiguous Countries

Section 235(b)(2)(C) of the INA authorizes the Department to return aliens arriving on land from a foreign territory contiguous to the United States, to the territory from which they arrived, pending a formal removal proceeding under section 240 of the INA. When aliens so apprehended do not pose a risk of a subsequent illegal entry or attempted illegal entry, returning them to the foreign contiguous territory from which they arrived, pending the outcome of removal proceedings saves the Department's detention and adjudication resources for other priority aliens.

Accordingly, subject to the requirements of section 1232, Title 8, United States Code, related to unaccompanied alien children and to the extent otherwise consistent with the law and U.S. international treaty obligations, CBP and ICE personnel shall, to the extent appropriate and reasonably practicable, return aliens described in section 235(b)(2)(A) of the INA, who are placed in removal proceedings under section 240 of the INA—and who, consistent with the guidance of an ICE Field Office Director, CBP Chief Patrol Agent, or CBP Director of Field Operations, pose no risk of recidivism—to the territory of the foreign contiguous country from which they arrived pending such removal proceedings.

To facilitate the completion of removal proceedings for aliens so returned to the contiguous country, ICE Field Office Directors, ICE Special Agents-in-Charge, CBP Chief Patrol Agent, and CBP Directors of Field Operations shall make available facilities for such aliens to appear via video teleconference. The Director of ICE and the Commissioner of CBP shall consult with the Director of EOIR to establish a functional, interoperable video teleconference system to ensure maximum capability to conduct video teleconference removal hearings for those aliens so returned to the contiguous country.

I. Enhancing Asylum Referrals and Credible Fear Determinations Pursuant to Section 235(b)(1) of the INA

With certain exceptions, any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum. For those aliens who are subject

to expedited removal under section 235(b) of the INA, aliens who claim a fear of return must be referred to an asylum officer to determine whether they have established a credible fear of persecution or torture.⁴ To establish a credible fear of persecution, an alien must demonstrate that there is a “significant possibility” that the alien could establish eligibility for asylum, taking into account the credibility of the statements made by the alien in support of the claim and such other facts as are known to the officer.⁵

The Director of USCIS shall ensure that asylum officers conduct credible fear interviews in a manner that allows the interviewing officer to elicit all relevant information from the alien as is necessary to make a legally sufficient determination. In determining whether the alien has demonstrated a significant possibility that the alien could establish eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, the asylum officer shall consider the statements of the alien and determine the credibility of the alien’s statements made in support of his or her claim and shall consider other facts known to the officer, as required by statute.⁶

The asylum officer shall make a positive credible fear finding only after the officer has considered all relevant evidence and determined, based on credible evidence, that the alien has a significant possibility of establishing eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, based on established legal authority.⁷

The Director of USCIS shall also increase the operational capacity of the Fraud Detection and National Security (FDNS) Directorate and continue to strengthen the integration of its operations to support the Field Operations, Refugee, Asylum, and International Operations, and Service Center Operations Directorate, to detect and prevent fraud in the asylum and benefits adjudication processes, and in consultation with the USCIS Office of Policy and Strategy as operationally appropriate.

The Director of USCIS, the Commissioner of CBP, and the Director of ICE shall review fraud detection, deterrence, and prevention measures throughout their respective agencies and provide me with a consolidated report within 90 days of the date of this memorandum regarding fraud vulnerabilities in the asylum and benefits adjudication processes, and propose measures to enhance fraud detection, deterrence, and prevention in these processes.

J. Allocation of Resources and Personnel to the Southern Border for Detention of Aliens and Adjudication of Claims

The detention of aliens apprehended at the border is critical to the effective enforcement of the immigration laws. Aliens who are released from custody pending a determination of their removability are highly likely to abscond and fail to attend their removal hearings. Moreover, the screening of credible fear claims by USCIS and adjudication of asylum claims by EOIR at

⁴ See INA § 235(b)(1)(A)-(B); 8 C.F.R. §§ 235.3, 208.30.

⁵ See INA § 235(b)(1)(B)(v).

⁶ See *id.*

⁷ *Id.*

detention facilities located at or near the point of apprehension will facilitate an expedited resolution of those claims and result in lower detention and transportation costs.

Accordingly, the Director of ICE and the Commissioner of CBP should take all necessary action and allocate all available resources to expand their detention capabilities and capacities at or near the border with Mexico to the greatest extent practicable. CBP shall focus these actions on expansion of “short-term detention” (defined as 72 hours or less under 6 U.S.C. § 211(m)) capability, and ICE will focus these actions on expansion of all other detention capabilities. CBP and ICE should also explore options for joint temporary structures that meet appropriate standards for detention given the length of stay in those facilities.

In addition, to the greatest extent practicable, the Director of USCIS is directed to increase the number of asylum officers and FDNS officers assigned to detention facilities located at or near the border with Mexico to properly and efficiently adjudicate credible fear and reasonable fear claims and to counter asylum-related fraud.

K. Proper Use of Parole Authority Pursuant to Section 212(d)(5) of the INA

The authority to parole aliens into the United States is set forth in section 212(d)(5) of the INA, which provides that the Secretary may, in his discretion and on a case-by-case basis, temporarily parole into the United States any alien who is an applicant for admission for urgent humanitarian reasons or significant public benefit. The statutory language authorizes parole in individual cases only where, after careful consideration of the circumstances, it is necessary because of demonstrated urgent humanitarian reasons or significant public benefit. In my judgment, such authority should be exercised sparingly.

The practice of granting parole to certain aliens in pre-designated categories in order to create immigration programs not established by Congress, has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for additional illegal immigration.

Therefore, the Director of USCIS, the Commissioner of CBP, and the Director of ICE shall ensure that, pending the issuance of final regulations clarifying the appropriate use of the parole power, appropriate written policy guidance and training is provided to employees within those agencies exercising parole authority, including advance parole, so that such employees are familiar with the proper exercise of parole under section 212(d)(5) of the INA and exercise such parole authority only on a case-by-case basis, consistent with the law and written policy guidance.

Notwithstanding any other provision of this memorandum, pending my further review and evaluation of the impact of operational changes to implement the Executive Order, and additional guidance on the issue by the Director of ICE, the ICE policy directive establishing standards and procedures for the parole of certain arriving aliens found to have a credible fear of persecution or

torture shall remain in full force and effect.⁸ The ICE policy directive shall be implemented in a manner consistent with its plain language. In every case, the burden to establish that his or her release would neither pose a danger to the community, nor a risk of flight remains on the individual alien, and ICE retains ultimate discretion whether it grants parole in a particular case.

L. Proper Processing and Treatment of Unaccompanied Alien Minors Encountered at the Border

In accordance with section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (codified in part at 8 U.S.C. § 1232) and section 462 of the Homeland Security Act of 2002 (6 U.S.C. § 279), unaccompanied alien children are provided special protections to ensure that they are properly processed and receive the appropriate care and placement when they are encountered by an immigration officer. An unaccompanied alien child, as defined in section 279(g)(2), Title 6, United States Code, is an alien who has no lawful immigration status in the United States, has not attained 18 years of age; and with respect to whom, (1) there is no parent or legal guardian in the United States, or (2) no parent of legal guardian in the United States is available to provide care and physical custody.

Approximately 155,000 unaccompanied alien children have been apprehended at the southern border in the last three years. Most of these minors are from El Salvador, Honduras, and Guatemala, many of whom travel overland to the southern border with the assistance of a smuggler who is paid several thousand dollars by one or both parents, who reside illegally in the United States.

With limited exceptions, upon apprehension, CBP or ICE must promptly determine if a child meets the definition of an “unaccompanied alien child” and, if so, the child must be transferred to the custody of the Office of Refugee Resettlement within the Department of Health and Human Services (HHS) within 72 hours, absent exceptional circumstances.⁹ The determination that the child is an “unaccompanied alien child” entitles the child to special protections, including placement in a suitable care facility, access to social services, removal proceedings before an immigration judge under section 240 of the INA, rather than expedited removal proceedings under section 235(b) of the INA, and initial adjudication of any asylum claim by USCIS.¹⁰

Approximately 60% of minors initially determined to be “unaccompanied alien children” are placed in the care of one or more parents illegally residing in the United States. However, by Department policy and practice, such minors maintained their status as “unaccompanied alien children,” notwithstanding that they may no longer meet the statutory definition once they have been placed by HHS in the custody of a parent in the United States who can care for the minor. Exploitation of that policy led to abuses by many of the parents and legal guardians of those minors and has contributed to significant administrative delays in adjudications by immigration

⁸ ICE Policy No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009).

⁹ See 8 U.S.C. § 1232(b)(3).

¹⁰ See generally 8 U.S.C. § 1232; INA § 208(b)(3)(C).

courts and USCIS.

To ensure identification of abuses and the processing of unaccompanied alien children consistent with the statutory framework and any applicable court order, the Director of USCIS, the Commissioner of CBP, and the Director of ICE are directed to develop uniform written guidance and training for all employees and contractors of those agencies regarding the proper processing of unaccompanied alien children, the timely and fair adjudication of their claims for relief from removal, and, if appropriate, their safe repatriation at the conclusion of removal proceedings. In developing such guidance and training, they shall establish standardized review procedures to confirm that alien children who are initially determined to be “unaccompanied alien child[ren],” as defined in section 279(g)(2), Title 6, United States Code, continue to fall within the statutory definition when being considered for the legal protections afforded to such children as they go through the removal process.

M. Accountability Measures to Protect Alien Children from Exploitation and Prevent Abuses of Our Immigration Laws

Although the Department’s personnel must process unaccompanied alien children pursuant to the requirements described above, we have an obligation to ensure that those who conspire to violate our immigration laws do not do so with impunity—particularly in light of the unique vulnerabilities of alien children who are smuggled or trafficked into the United States.

The parents and family members of these children, who are often illegally present in the United States, often pay smugglers several thousand dollars to bring their children into this country. Tragically, many of these children fall victim to robbery, extortion, kidnapping, sexual assault, and other crimes of violence by the smugglers and other criminal elements along the dangerous journey through Mexico to the United States. Regardless of the desires for family reunification, or conditions in other countries, the smuggling or trafficking of alien children is intolerable.

Accordingly, the Director of ICE and the Commissioner of CBP shall ensure the proper enforcement of our immigration laws against any individual who—directly or indirectly—facilitates the illegal smuggling or trafficking of an alien child into the United States. In appropriate cases, taking into account the risk of harm to the child from the specific smuggling or trafficking activity that the individual facilitated and other factors relevant to the individual’s culpability and the child’s welfare, proper enforcement includes (but is not limited to) placing any such individual who is a removable alien into removal proceedings, or referring the individual for criminal prosecution.

N. Prioritizing Criminal Prosecutions for Immigration Offenses Committed at the Border

The surge of illegal immigration at the southern border has produced a significant increase in organized criminal activity in the border region. Mexican drug cartels, Central American gangs, and other violent transnational criminal organizations have established sophisticated criminal

enterprises on both sides of the border. The large-scale movement of Central Americans, Mexicans, and other foreign nationals into the border area has significantly strained federal agencies and resources dedicated to border security. These criminal organizations have monopolized the human trafficking, human smuggling, and drug trafficking trades in the border region.

It is in the national interest of the United States to prevent criminals and criminal organizations from destabilizing border security through the proliferation of illicit transactions and violence perpetrated by criminal organizations.

To counter this substantial and ongoing threat to the security of the southern border—including threats to our maritime border and the approaches—the Directors of the Joint Task Forces-West, -East, and -Investigations, as well as the ICE-led Border Enforcement Security Task Forces (BESTs), are directed to plan and implement enhanced counternetwork operations directed at disrupting transnational criminal organizations, focused on those involved in human smuggling. The Department will support this work through the Office of Intelligence and Analysis, CBP's National Targeting Center, and the DHS Human Smuggling Cell.

In addition, the task forces should include participants from other federal, state, and local agencies, and should target individuals and organizations whose criminal conduct undermines border security or the integrity of the immigration system, including offenses related to alien smuggling or trafficking, drug trafficking, illegal entry and reentry, visa fraud, identity theft, unlawful possession or use of official documents, and acts of violence committed against persons or property at or near the border.

In order to support the efforts of the BESTs and counter network operations of the Joint Task Forces, the Director of ICE shall increase the number of special agents and analysts in the Northern Triangle ICE Attaché Offices and increase the number of vetted Transnational Criminal Investigative Unit international partners. This expansion of ICE's international footprint will focus both domestic and international efforts to dismantle transnational criminal organizations that are facilitating and profiting from the smuggling routes to the United States.

O. Public Reporting of Border Apprehensions Data

The Department has an obligation to perform its mission in a transparent and forthright manner. The public is entitled to know, with a reasonable degree of detail, information pertaining to the aliens unlawfully entering at our borders.

Therefore, consistent with law, in an effort to promote transparency and renew confidence in the Department's border security mission, the Commissioner of CBP and the Director of ICE shall develop a standardized method for public reporting of statistical data regarding aliens apprehended at or near the border for violating the immigration law. The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public in a medium that can be readily accessed.

At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following information must be included: the number of convicted criminals and the nature of their offenses; the prevalence of gang members and prior immigration violators; the custody status of aliens and, if released, the reason for release and location of that release; and the number of aliens ordered removed and those aliens physically removed.

P. No Private Right of Action

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

In implementing this guidance, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.



Homeland Security

February 20, 2017

MEMORANDUM FOR:

Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

A handwritten signature in black ink, appearing to read "John Kelly", written over the printed name and title.

SUBJECT:

**Enforcement of the Immigration Laws to Serve the National
Interest**

This memorandum implements the Executive Order entitled “Enhancing Public Safety in the Interior of the United States,” issued by the President on January 25, 2017. It constitutes guidance for all Department personnel regarding the enforcement of the immigration laws of the United States, and is applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). As such, it should inform enforcement and removal activities, detention decisions, administrative litigation, budget requests and execution, and strategic planning.

With the exception of the June 15, 2012, memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” and the November 20, 2014 memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents,”¹ all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded—to the extent of the conflict—including, but not limited to, the November 20, 2014, memoranda entitled “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” and “Secure Communities.”

A. The Department’s Enforcement Priorities

Congress has defined the Department’s role and responsibilities regarding the enforcement of the immigration laws of the United States. Effective immediately, and consistent with Article II, Section 3 of the United States Constitution and Section 3331 of Title 5, United States Code, Department personnel shall faithfully execute the immigration laws of the United States against all removable aliens.

Except as specifically noted above, the Department no longer will exempt classes or categories of removable aliens from potential enforcement. In faithfully executing the immigration laws, Department personnel should take enforcement actions in accordance with applicable law. In order to achieve this goal, as noted below, I have directed ICE to hire 10,000 officers and agents expeditiously, subject to available resources, and to take enforcement actions consistent with available resources. However, in order to maximize the benefit to public safety, to stem unlawful migration and to prevent fraud and misrepresentation, Department personnel should prioritize for removal those aliens described by Congress in Sections 212(a)(2), (a)(3), and (a)(6)(C), 235(b) and (c), and 237(a)(2) and (4) of the Immigration and Nationality Act (INA).

Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Director of ICE, the Commissioner of CBP, and the Director of USCIS may, as they determine is appropriate, issue further guidance to allocate appropriate resources to prioritize enforcement activities within these categories—for example, by prioritizing enforcement activities against removable aliens who are convicted felons or who are involved in gang activity or drug trafficking.

¹ The November 20, 2014, memorandum will be addressed in future guidance.

B. Strengthening Programs to Facilitate the Efficient and Faithful Execution of the Immigration Laws of the United States

Facilitating the efficient and faithful execution of the immigration laws of the United States—and prioritizing the Department’s resources—requires the use of all available systems and enforcement tools by Department personnel.

Through passage of the immigration laws, Congress established a comprehensive statutory regime to remove aliens expeditiously from the United States in accordance with all applicable due process of law. I determine that the faithful execution of our immigration laws is best achieved by using all these statutory authorities to the greatest extent practicable. Accordingly, Department personnel shall make full use of these authorities.

Criminal aliens have demonstrated their disregard for the rule of law and pose a threat to persons residing in the United States. As such, criminal aliens are a priority for removal. The Priority Enforcement Program failed to achieve its stated objectives, added an unnecessary layer of uncertainty for the Department’s personnel, and hampered the Department’s enforcement of the immigration laws in the interior of the United States. Effective immediately, the Priority Enforcement Program is terminated and the Secure Communities Program shall be restored. To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Department shall eliminate the existing Forms I-247D, I-247N, and I-247X, and replace them with a new form to more effectively communicate with recipient law enforcement agencies. However, until such forms are updated they may be used as an interim measure to ensure that detainers may still be issued, as appropriate.

ICE’s Criminal Alien Program is an effective tool to facilitate the removal of criminal aliens from the United States, while also protecting our communities and conserving the Department’s detention resources. Accordingly, ICE should devote available resources to expanding the use of the Criminal Alien Program in any willing jurisdiction in the United States. To the maximum extent possible, in coordination with the Executive Office for Immigration Review (EOIR), removal proceedings shall be initiated against aliens incarcerated in federal, state, and local correctional facilities under the Institutional Hearing and Removal Program pursuant to section 238(a) of the INA, and administrative removal processes, such as those under section 238(b) of the INA, shall be used in all eligible cases.

The INA § 287(g) Program has been a highly successful force multiplier that allows a qualified state or local law enforcement officer to be designated as an “immigration officer” for purposes of enforcing federal immigration law. Such officers have the authority to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, and conduct searches authorized under the INA, under the direction and supervision of the Department.

There are currently 32 law enforcement agencies in 16 states participating in the 287(g)

Program. In previous years, there were significantly more law enforcement agencies participating in the 287(g) Program. To the greatest extent practicable, the Director of ICE and Commissioner of CBP shall expand the 287(g) Program to include all qualified law enforcement agencies that request to participate and meet all program requirements. In furtherance of this direction and the guidance memorandum, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies" (Feb. 20, 2017), the Commissioner of CBP is authorized, in addition to the Director of ICE, to accept State services and take other actions as appropriate to carry out immigration enforcement pursuant to section 287(g) of the INA.

C. Exercise of Prosecutorial Discretion

Unless otherwise directed, Department personnel may initiate enforcement actions against removable aliens encountered during the performance of their official duties and should act consistently with the President's enforcement priorities identified in his Executive Order and any further guidance issued pursuant to this memorandum. Department personnel have full authority to arrest or apprehend an alien whom an immigration officer has probable cause to believe is in violation of the immigration laws. They also have full authority to initiate removal proceedings against any alien who is subject to removal under any provision of the INA, and to refer appropriate cases for criminal prosecution. The Department shall prioritize aliens described in the Department's Enforcement Priorities (Section A) for arrest and removal. This is not intended to remove the individual, case-by-case decisions of immigration officers.

The exercise of prosecutorial discretion with regard to any alien who is subject to arrest, criminal prosecution, or removal in accordance with law shall be made on a case-by-case basis in consultation with the head of the field office component, where appropriate, of CBP, ICE, or USCIS that initiated or will initiate the enforcement action, regardless of which entity actually files any applicable charging documents: CBP Chief Patrol Agent, CBP Director of Field Operations, ICE Field Office Director, ICE Special Agent-in-Charge, or the USCIS Field Office Director, Asylum Office Director or Service Center Director.

Except as specifically provided in this memorandum, prosecutorial discretion shall not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws. The General Counsel shall issue guidance consistent with these principles to all attorneys involved in immigration proceedings.

D. Establishing the Victims of Immigration Crime Engagement (VOICE) Office

Criminal aliens routinely victimize Americans and other legal residents. Often, these victims are not provided adequate information about the offender, the offender's immigration status, or any enforcement action taken by ICE against the offender. Efforts by ICE to engage these victims have been hampered by prior Department of Homeland Security (DHS) policy extending certain Privacy Act protections to persons other than U.S. citizens and lawful permanent residents, leaving victims feeling marginalized and without a voice. Accordingly, I am establishing the Victims of Immigration Crime Engagement (VOICE) Office within the Office of

the Director of ICE, which will create a programmatic liaison between ICE and the known victims of crimes committed by removable aliens. The liaison will facilitate engagement with the victims and their families to ensure, to the extent permitted by law, that they are provided information about the offender, including the offender's immigration status and custody status, and that their questions and concerns regarding immigration enforcement efforts are addressed.

To that end, I direct the Director of ICE to immediately reallocate any and all resources that are currently used to advocate on behalf of illegal aliens (except as necessary to comply with a judicial order) to the new VOICE Office, and to immediately terminate the provision of such outreach or advocacy services to illegal aliens.

Nothing herein may be construed to authorize disclosures that are prohibited by law or may relate to information that is Classified, Sensitive but Unclassified (SBU), Law Enforcement Sensitive (LES), For Official Use Only (FOUO), or similarly designated information that may relate to national security, law enforcement, or intelligence programs or operations, or disclosures that are reasonably likely to cause harm to any person.

E. Hiring Additional ICE Officers and Agents

To enforce the immigration laws effectively in the interior of the United States in accordance with the President's directives, additional ICE agents and officers are necessary. The Director of ICE shall—while ensuring consistency in training and standards—take all appropriate action to expeditiously hire 10,000 agents and officers, as well as additional operational and mission support and legal staff necessary to hire and support their activities. Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for Management and the Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

F. Establishment of Programs to Collect Authorized Civil Fines and Penalties

As soon as practicable, the Director of ICE, the Commissioner of CBP, and the Director of USCIS shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties which the Department is authorized under the law to assess and collect from aliens and from those who facilitate their unlawful presence in the United States.

G. Aligning the Department's Privacy Policies With the Law

The Department will no longer afford Privacy Act rights and protections to persons who are neither U.S. citizens nor lawful permanent residents. The DHS Privacy Office will rescind the DHS *Privacy Policy Guidance memorandum*, dated January 7, 2009, which implemented the DHS "mixed systems" policy of administratively treating all personal information contained in DHS record systems as being subject to the Privacy Act regardless of the subject's immigration status. The DHS Privacy Office, with the assistance of the Office of the General Counsel, will

develop new guidance specifying the appropriate treatment of personal information DHS maintains in its record systems.

H. Collecting and Reporting Data on Alien Apprehensions and Releases

The collection of data regarding aliens apprehended by ICE and the disposition of their cases will assist in the development of agency performance metrics and provide transparency in the immigration enforcement mission. Accordingly, to the extent permitted by law, the Director of ICE shall develop a standardized method of reporting statistical data regarding aliens apprehended by ICE and, at the earliest practicable time, provide monthly reports of such data to the public without charge.

The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public and a medium that can be readily accessed. At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following categories of information must be included: country of citizenship, convicted criminals and the nature of their offenses, gang members, prior immigration violators, custody status of aliens and, if released, the reason for release and location of their release, aliens ordered removed, and aliens physically removed or returned.

The ICE Director shall also develop and provide a weekly report to the public, utilizing a medium that can be readily accessed without charge, of non-Federal jurisdictions that release aliens from their custody, notwithstanding that such aliens are subject to a detainer or similar request for custody issued by ICE to that jurisdiction. In addition to other relevant information, to the extent that such information is readily available, the report shall reflect the name of the jurisdiction, the citizenship and immigration status of the alien, the arrest, charge, or conviction for which each alien was in the custody of that jurisdiction, the date on which the ICE detainer or similar request for custody was served on the jurisdiction by ICE, the date of the alien's release from the custody of that jurisdiction and the reason for the release, an explanation concerning why the detainer or similar request for custody was not honored, and all arrests, charges, or convictions occurring after the alien's release from the custody of that jurisdiction.

I. No Private Right of Action

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

In implementing these policies, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

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 *mm*

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

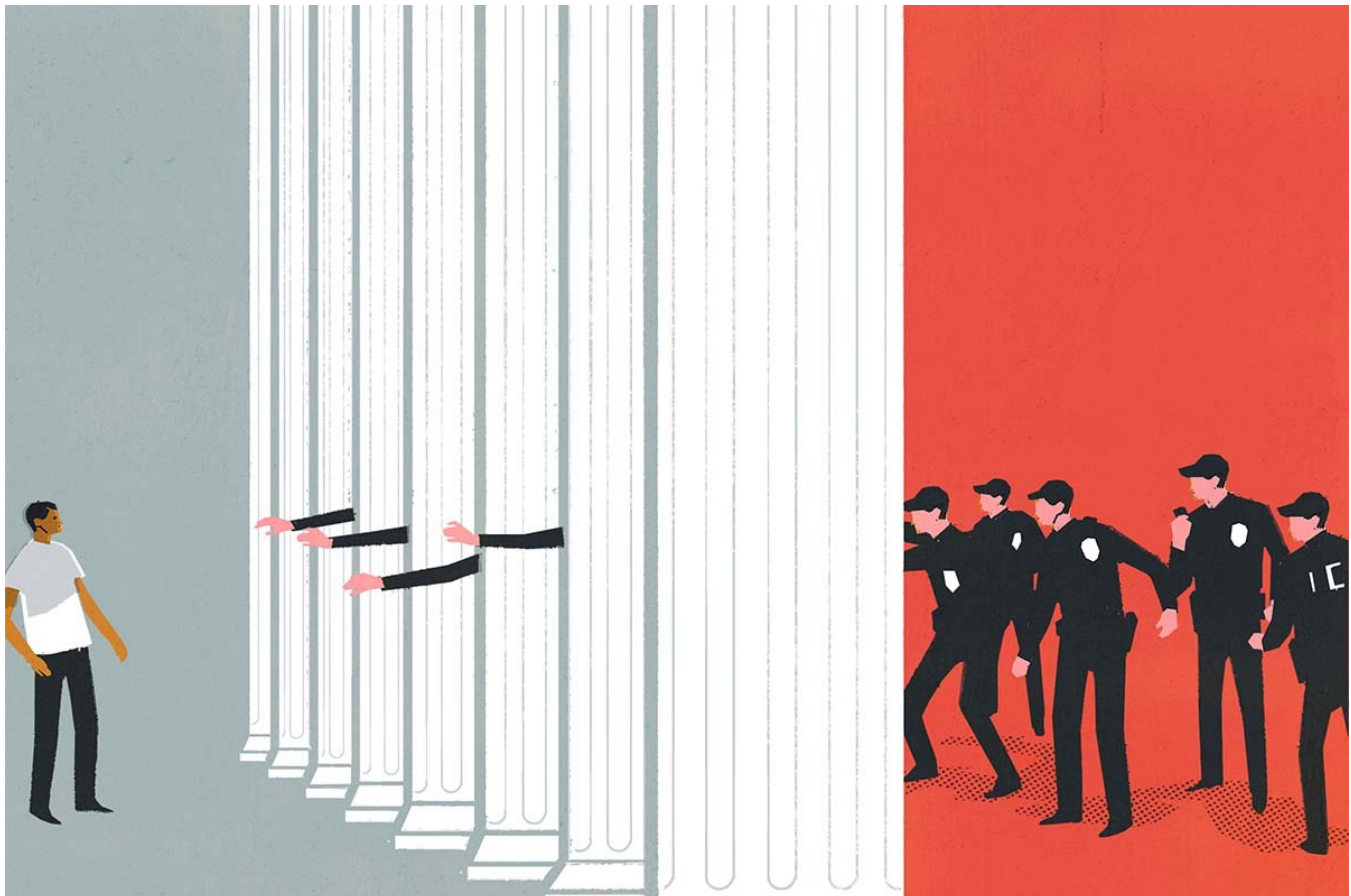


ILLUSTRATION BY CHRIS GASH

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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NEWS & POLITICS

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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When ICE Shows Up in Human Trafficking Court

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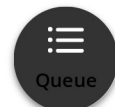


Yvonne Chen of Sanctuary for Families worries victims of trafficking will not come to court if immigration officers are present. (Beth Fertig/WNYC)

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](#)



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.

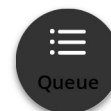
The judge, Toko Serita, told the woman's attorney that immigration agents were in the building and wanted to detain her.

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.

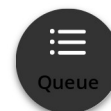
At around noon, word got out that the immigration agents were gone. ICE later acknowledged its deportation officers arrested three people outside the Queens criminal courthouse that same day. Carbonaro asked the judge to release her client and they left with her cousin and her boyfriend. The young woman 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)





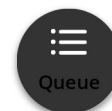
But many immigrant advocates and elected officials say that's insufficient. On Thursday, they held a press conference at City Hall asking DiFiore and other court officials to take concrete actions to stop ICE from entering courts. "I call on them to defend the integrity of the court system and to take 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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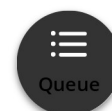
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Outcry After Immigration Agents Seen at Queens Human Trafficking Court

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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SECTION 7:

LEGAL RESOURCES

BACKGROUND

In this section we include legal resources that have supported various parts of our advocacy around courthouse arrests. They include an amicus brief prepared by the NYU School of Law Immigrant Rights Clinic and IDP; and a petition filed in the Massachusetts Supreme Judicial Court seeking a declaratory judgment that courthouse arrests are unlawful.

RESOURCES

Amicus brief. In collaboration with the NYU School of Law Immigrant Rights Clinic, IDP has written and filed a “Brief of Amicus Curiae in Support of Respondent’s Motion to Terminate Removal Proceedings” in cases before the New York Immigration Court where the individual noncitizen was arrested by ICE in the course of attending a state court proceeding. The brief, available here, argues that ICE’s courthouse arrest policy and practice violates the constitutional and common right to participate in court proceedings.

The brief can be used to provide the legal foundation for a “Motion to Terminate Removal Proceedings (and/or to Suppress Evidence)” in Immigration Courts nationally (though the brief is written under Second Circuit law, much of the argument is adaptable for filing in other Circuits). It can also provide the legal foundation for briefs submitted to the BIA and Circuit Courts. It can be attached as an exhibit in support of a motion to terminate removal proceedings. In certain cases, IDP and the Clinic may be available to formally file the brief in an individual case.

The brief may also be useful in the context of an ICE Out of Courts campaign because it explains how ICE’s courthouse arrests are, in fact, unlawful and violate the Constitution. These constitutional arguments can be adapted and included in advocacy materials, including in legal memoranda in support of judicial rules or legislation.

Petition filed in Massachusetts Supreme Judicial Court. A team of attorneys from the Committee for Public Counsel Services, the Lawyers Committee for Civil Rights and Economic Justice, and Greater Boston Legal Services have filed a petition with the highest court in Massachusetts requesting a declaratory judgment that ICE’s courthouse arrests violate Massachusetts common law protections against civil arrest while attending court. The petition has been included here.

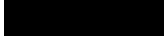
Additional resources:

- Christopher Lasch, Yale Law Journal, [“A Common Law Privilege to Protect State and Local Courts During the](#)

Crimmigration Crisis” (Oct. 24, 2017).

- IDP/NYU annotated version of ICE Directive I 1072.1 (see Section 5).
- Please contact IDP if interested in our legal memorandum in support of judicial rules or legislation.





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UNITED STATES DEPARTMENT OF JUSTICE
 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
 OFFICE OF THE IMMIGRATION JUDGE
 NEW YORK, NEW YORK

In the Matter of:)
)
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) File No: A# 
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 In removal proceedings)

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

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PRELIMINARY STATEMENT

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

STATEMENT OF INTEREST

Amicus curiae Immigrant Defense Project (“IDP”) is a nonprofit legal resource and training center dedicated to promoting fundamental fairness for immigrants accused or convicted

of crimes. IDP is a leading national expert on issues that arise from the interplay of immigration and criminal law. Since 1997, IDP has provided expert legal advice, training and publications on such issues to criminal defense, family defense, and immigration lawyers; criminal court, family court, and Immigration Court judges; and noncitizens. As such, IDP has a keen interest in this case and the fair and just administration of the nation's criminal and immigration laws.

Furthering its mission, IDP frequently appears as amicus curiae in cases involving both the immigration and criminal justice systems. It has filed briefs or other amicus submissions in many key cases involving important criminal, family, and immigration matters before the U.S. Supreme Court, the U.S. Court of Appeals, the Board of Immigration Appeals, and Immigration Court. *See, e.g.*, Brief for Americans for Immigrant Justice & IDP et al. Supporting Petitioner in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); Brief for IDP et al. Supporting Petitioner in *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017); Brief of Amicus Curiae IDP Supporting Petitioner in *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018); Brief of Amicus Curiae IDP et al. Supporting Petitioner in *Richards v. Sessions*, 711 F. App'x 50 (2d Cir. 2017); Brief of Amicus Curiae IDP in *Alsol v. Mukasey*, 548 F.3d 207 (2d Cir. 2009); Brief of Amicus Curiae New York State Defenders Association (IDP) for Respondent in *Matter of Carachuri-Rosendo*, 24 I&N Dec. 382 (BIA 2007); Brief of Amicus Curiae New York State Defenders Association (IDP) et al. for Respondent in *Matter of Devison-Charles*, 22 I&N Dec. 1362 (BIA 2001); Brief of Amicus Curiae IDP in *In re. E-A-C-O-*, AXXXXXX123 (filed in Immigration Court Feb. 24, 2016); Brief of Amicus Curiae IDP in *In re. R-L-B-*, AXXXXXX463 (filed in Immigration Court Feb. 24, 2016).

Through daily conversations, exchanges, and interviews with criminal and family defense lawyers and directly-impacted immigrant community members throughout New York State, IDP

has developed unique insight into the sharp spike in immigration arrests in New York State courthouses, and has documented the widespread violation of noncitizens' fundamental rights by ICE courthouse arrests. IDP has been widely cited about this trend of ICE enforcement, and has testified about this issue before the New York City Council. *See* Stephen Rex Brown, *ICE Courthouse Arrests of Immigrants up 900% Across N.Y. in 2017*, N.Y. Daily News (Nov. 15, 2017), attached as Exhibit B (Exhibit p. 3). *See also* Leon Neyfakh, *Secret Police: ICE agents dressed in plainclothes staked out a courthouse in Brooklyn and refused to identify themselves*, Slate (Sep. 15, 2017), attached as Exhibit C (Exhibit p. 5). *See also* Priscilla DeGregory, *New York authorities demand ICE stop hunting immigrants in courthouses*, N.Y. Post (Aug. 3, 2017), attached as Exhibit D (Exhibit p. 9); Liz Robbins, *A Game of Cat and Mouse With High Stakes: Deportation*, N.Y. Times (Aug. 3, 2017), attached as Exhibit E (Exhibit p. 11).

As an organization committed to fair treatment for immigrants involved in the criminal justice, family court, and child welfare systems, IDP is concerned that the fundamental right to access to the courts, whether as a victim, defendant, witness, supportive family member, or otherwise, is being impaired. This chilling effect on people's ability to participate in the court system is, in turn, a serious threat to public safety and to the integrity of the New York State court system.

IDP respectfully submits this brief to assist the Court with resolving the important question of the remedial role of Immigration Courts in responding to ICE courthouse arrests.

BACKGROUND

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

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

This common law principle dates back to the common law of England, predating the 18th century, and was a right extended not only to case parties and witnesses but rather to all people “necessarily attending” the courts on business. 3 William Blackstone, *Commentaries on the Laws of England* 289 (1769) (“Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning”). This rule against civil arrests in connection with court proceedings has remained a fundamental one within American jurisprudence. States and federal courts have upheld this tradition throughout American history, and the Supreme Court has explicitly noted it in several cases, even emphasizing that immunity extends also to civil service of process in courthouses, which is inherently less disruptive than civil arrest in courthouses. *Lamb v. Schmitt*, 283 U.S. 222, 225 (1932) (noting “the general rule that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit are immune from service of process in another”).

The practice of civil arrests, and thereby civil arrests at courthouses, had long faded from the American legal landscape until it was recently resurrected through ICE’s practice of courthouse arrests. As deportation proceedings are civil actions, ICE’s courthouse arrests of noncitizens, for the purpose of commencing deportation proceedings, are civil arrests. *INS v.*

Lopez-Mendoza, 468 U.S. 1032, 1038 (1984) (“A deportation proceeding is a purely civil action to determine eligibility to remain in this country”). When ICE arrests an individual, it is because of a suspected violation of civil immigration law. By contrast, when local, state, or federal police officers arrest an individual, it is because they have probable cause to believe the individual is committing or has committed a crime, and there are procedures in place to assess whether this belief justifies the arrest. This fundamental distinction creates a clear difference between ICE civil arrests and criminal arrests. Under the common law, civil arrests are not allowed at courthouses, while criminal arrests are, demonstrating that this crucial distinction has long historical roots.

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

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

Across the board, immigrants who are going to court for any reason – as defendants, witnesses, victims, family supporters, and members of the public obtaining records – are fearful of going to court due to ICE’s persistent presence and the threat of arrest. Out of concern for the chilling effects on access to justice as a result of this growing use of ICE courthouse arrests, IDP, as part of a coalition of legal services and community-based organizations, conducted and

published the results of a survey on ICE courthouse arrests in June 2017. Immigrant Defense Project, *ICE in New York State Courts Survey*, attached as Exhibit F (Exhibit p. 15). Two hundred and twenty five (225) advocates and attorneys, practicing in criminal, family, and civil courts and spanning 31 counties across the State of New York, participated in the survey. The statistics from the survey show that immigrants are experiencing pervasive fear of going to court out of fear of encountering ICE: three of four legal service providers reported that clients have expressed fear of going to court because of ICE, 48% of providers reported clients have expressed fear of calling the police out of fear of ICE, and 29% of providers have worked with immigrants who have failed to appear in court due to fear of ICE. Of survey participants who work with survivors of violence, 67% have clients who decided not to seek help from the courts out of fear of ICE, and 46% reported clients have fear of serving as a complaining witness in court out of fear of ICE. Of survey participants who work with tenants in housing court, 56% reported clients have fear of filing a housing court complaint out of fear of ICE. Victoria Bekiempis, *Immigrant Violence Victims Fear N.Y. Courts as ICE Lingers Nearby*, N.Y. Daily News (Jun. 29, 2017), attached as Exhibit G (Exhibit p. 18).

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

Because ICE’s courthouse arrest policy leaves no immigrant immune from being an arrest target, there is no group of immigrants—not even the most vulnerable in our communities—that is able to feel safe at the courthouse. In Los Angeles, San Francisco, and San Diego, for example, reports of domestic violence among Latino victims in the first half of 2017 dropped by 3.5%, 18%, and 13% respectively, “a retreat that crisis professionals say is driven by a fear that interacting with police or entering a courthouse could make immigrants easy targets for deportation.” James Queally, *Fearing deportation, many domestic violence victims are steering clear of police and courts*, Los Angeles Times (Oct 9, 2017), attached as Exhibit I (Exhibit p. 23). Further, a new survey by the National Immigrant Women’s Advocacy Project, partnering with the American Civil Liberties Union, found that of the prosecutors they interviewed across 19 states, “82 percent of prosecutors reported that since President Trump took office [in 2017], domestic violence is now underreported and harder to investigate and/or prosecute [compared to in 2016]. Seventy percent of prosecutors reported the same for sexual assault, while 55 percent state the same difficulties for human trafficking and 48 percent for child abuse.” American Civil Liberties Union, *Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system* (2018), attached as Exhibit J (Exhibit p. 32).

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

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

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

ICE courthouse arrests are also rife with examples of officer misconduct, violating basic law enforcement norms and, in many instances, ICE's own internal regulations and policies. The squads of ICE agents who come to courthouses to effectuate arrests and conduct other surveillance often dress in plain clothes, refuse to identify themselves as immigration officers, refuse to present warrants, refuse to answer questions, and refuse to acknowledge when a non-citizen's criminal defense attorney invokes his or her rights. Exhibit C (Exhibit p. 5); Exhibit D (Exhibit p. 9). In an April 4, 2018 arrest, an individual was arrested after an ICE agent eavesdropped on a private attorney-client conversation in the courthouse hallway, hearing the individual tell his attorney that he was born in Mexico. Sydney Brownstone, *Vancouver Immigrant Claims ICE Arrested Him After Eavesdropping on Him and His Lawyer*, The Stranger (Apr 4, 2018), attached as Exhibit O (Exhibit p. 59).

Further, IDP has received reports of excessive force by ICE agents during courthouse arrests, including an incident where ICE agents pushed a man against the wall and would not allow him to attend his appearance in criminal court, an incident where ICE agents threw a man to the ground, and an incident where ICE agents threw a pregnant young woman to the ground, causing her to bloody her knees.¹

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

As IDP has extensively documented, the phenomenon of ICE courthouse arrests has caused widespread fear in the noncitizen community of attending court, thereby interfering with the courts' functioning and the administration of justice. ICE's new deliberate policy of courthouse arrests is therefore creating the exact disturbances to the administration of justice that the long-standing tradition granting immunity from civil arrest is meant to protect against. ICE's civil arrests in courthouses not only disrupt the dignity of the courthouse when physically restraining individuals in court, but once those individuals are placed into immigration detention, also interfere with the ability of those individuals to attend future court dates.

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

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

John F. Kelly, Sec’y of DHS (Mar. 22, 2017) (“When people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access justice is compromised”), attached as Exhibit P; Letter from Hon. Chase T. Rogers, Chief Justice, Supreme Court of Conn., to Jeff Sessions, Attorney General, and John F. Kelly, Sec’y of DHS (May 15, 2017) (“I believe that having ICE officers detain individuals in public areas of our courthouses may cause litigants, witnesses and interested parties to view our courthouses as places to avoid, rather than as institutions of fair and impartial justice”), attached as Exhibit P; Letter from Hon. Stuart Rabner, Chief Justice, Supreme Court of N.J., to John F. Kelly, Sec’y of DHS (Apr. 19, 2017) (“To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum.”), attached as Exhibit P; Letter from Hon. Thomas A. Balmer, Chief Justice, Or. Supreme Court, to Jeff Sessions, Attorney General, and John F. Kelly, Sec’y of DHS (Apr. 6, 2017) (“ICE’s increasingly visible practice of arresting or detaining individuals in or near courthouses...is developing into a strong deterrent for access to the court[.]”), attached as Exhibit P.

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

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

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

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

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

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

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

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

In carrying out its new deliberate policy of courthouse arrests, therefore, ICE has disrupted the long-standing limitation against civil arrests in the courts that “stands so like a faithful and venerable sentinel at the very portal of the temple of justice that every consideration of a sound public policy... forbids that it should be stricken down.” *Hale v. Wharton*, 73 F. 739, 750 (C.C.D. MO. 1896).

SUMMARY OF THE ARGUMENT

Immigration Judges (“IJs”) are authorized to “terminate proceedings when the DHS cannot sustain the charges [of removability] *or in other specific circumstances consistent with the law and applicable regulations.*” *Matter of Sanchez-Herbert*, 26 I&N Dec. 43, 45 (BIA 2012) (emphasis added). In the Second Circuit, circumstances warranting termination of immigration court proceedings include where there has been a violation that constitutes “prejudice that may have affected the outcome of the proceeding, conscience-shocking conduct, or a deprivation of fundamental rights.” *See Rajah v. Mukasey*, 544 F.3d 427, 447 (2d Cir. 2008); *see also Montilla v. INS*, 926 F.2d 162, 170 (2d Cir. 1991) (invalidating deportation proceedings where respondent’s fundamental right to counsel was violated); *Waldron v. INS*, 17 F.3d 511, 518 (2d Cir. 1993) (noting that a violation of the respondent’s fundamental rights derived from the Constitution invalidates a deportation proceeding). Following a similar analysis, in a recent case, the Ninth Circuit found that “removal proceedings *must* be terminated” where a respondent’s Fourth Amendment rights were violated by an unlawful detention without reasonable suspicion.

Sanchez v. Sessions, 870 F.3d 901, 913 (9th Cir. 2017) (emphasis added) (citing *Waldron*, 17 F.3d at 518). In deciding whether termination is the appropriate remedy, the Second Circuit emphasizes consideration of “societal benefits” and “deterrent effect” that would result from termination. *See Rajah*, 544 F.3d at 447.

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

ARGUMENT

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

IJs are authorized to determine removability, adjudicate applications for relief, order withholding of removal, and “[t]o take any other action consistent with applicable law and regulations as may be appropriate.” 8 C.F.R. §1240.1(a)(iv). This includes authorization to “terminate proceedings when the DHS cannot sustain the charges [of removability] *or in other*

specific circumstances consistent with the law and applicable regulations.” Matter of Sanchez-Herbert, 26 I&N Dec. 43, 45 (BIA 2012) (emphasis added).

Through the text of the Immigration and Nationality Act (“INA”), Congress indicated its intent that Immigration Court be the principal avenue for determining all issues related to removal proceedings. INA § 242 provides that “[n]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” INA §§ 242 (e)–(g). INA § 242(b)(9) affirmatively seeks to combine all issues into one proceeding before the Immigration Court.

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

Under Second Circuit law, a key issue in deciding whether to terminate proceedings is the “deterrent effect” of termination. *See Rajah, 544 F.3d at 447*. Minor, non-systemic violations may not be subject to systemic remedies. It is difficult to deter isolated incidents of individual officers breaking minor procedural rules, and the resulting burden on adjudication could be great. *Id.*; *see also I.N.S. v. Lopez-Mendoza, 468 U.S. 1032, 1044 (1984)* (discussing the difficulty of deterring abuses by immigration enforcement officers). However, where ICE has engaged in a deliberate policy that shocks the conscience or violates fundamental rights, the weighing of the burden on the agency and the societal benefit shifts. In these cases, termination is an appropriate remedy because it can deter a deliberate, agency-wide policy. If the agency knows that cases

brought under its policy will be terminated by IJs, the agency can alter its policy to avoid this outcome, thereby effectively deterring its agents from engaging in the objectionable conduct.

II. ICE’s deliberate policy of making arrests in courthouses is conscience-shocking and deprives respondents of fundamental rights.

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

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

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

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

ICE’s policy of courthouse arrests impedes the efficient functioning of this important sovereign state institution. As described *supra* in the background section, the policy deters immigrants from attending court. IDP Survey, *supra* at 6, Exhibit F (Exhibit p. 15). This deterrence interferes with the court’s ability to adjudicate disputes, because necessary parties are afraid to attend court. Robbins *supra* at 3, Exhibit E (Exhibit p. 11) (describing a press conference where the Brooklyn District Attorney and New York State Attorney General called for an end to courthouse arrests because they are “interfering with the criminal justice system, making witnesses and defendants afraid to appear in court.”); *see also* Letter from Hon. Tani G.

Cantil-Sakauye, Chief Justice, Supreme Court of California (Mar. 16, 2017), attached as Exhibit P (Exhibit p. 62); Letter from Hon. Thomas A. Balmer, Chief Justice, Or. Supreme Court (Apr. 6, 2017), attached as Exhibit P (Exhibit p. 62); Letter from Hon. Stuart Rabner, Chief Justice, Supreme Court of N.J. (Apr. 19, 2017), attached as Exhibit P (Exhibit p. 62). The Tenth Amendment does not allow federal actors to undermine a sovereign state institution in this way.

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

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

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

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

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

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

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

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

This violation of state sovereignty and the commandeering of the courthouse are deprivations of individual fundamental rights warranting termination of immigration proceedings. The right to a federalist system of governance that separates power between the states and the federal government is a fundamental right of all individuals in the United States. *Bond v. United States*, 564 U.S. 211, 220-22 (2011) ("By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.

When government acts in excess of its lawful powers, that liberty is at stake.”). Therefore, an individual can independently allege violations of the Tenth Amendment on her own behalf. *See Bond*, 564 U.S. at 220–22 (holding that criminal defendant could challenge his conviction based on a contention that the federal statute he was convicted under violated the Tenth Amendment). ICE’s courthouse arrests deprive individuals of fundamental Tenth Amendment rights and thus constitute grounds for terminating removal proceedings.

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

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

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

The right to access court is a fundamental, constitutionally protected right. *E.g. Tennessee v. Lane* 541 U.S. 509, 533 (2004) (recognizing “the fundamental right of access to the courts”); *Bounds v. Smith*, 430 U.S. 817, 828 (U.S. 1977) (enforcing “the fundamental constitutional right of access to the court”). The right is derived from the Fourteenth Amendment due process and equal protection clauses, and thereby incorporated into the Fifth Amendment. *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971) (“[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.”); *Griffin v. Illinois*, 351 U.S. 12, 24 (1956) (Frankfurter, J., concurring) (states may not “bolt the door to equal justice” by creating financial barriers to appeals for indigent defendants). The right is also protected through the First Amendment Right to Petition. *E.g. Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011) (“This Court’s precedents confirm that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.”); *see also* Benjamin Plener Cover, *The First Amendment Right to a Remedy*, UC DAVIS L. REV., 1742, 1745 (2017) (“In more than twenty Supreme Court cases over the past five decades, one or more Justices has asserted or assumed that a lawsuit is a petition, without a single colleague disputing the premise.”).

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

noncitizens are guaranteed Fifth and Sixth Amendment rights. *Wong Wing v. United States*, 163 U.S. 228 (1896). The Court recently affirmed this principle in *Padilla v. Kentucky*, which recognized that noncitizens’ Sixth Amendment rights include the right to be informed of immigration-related consequences of entering a guilty plea. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). This holding makes clear that noncitizens are entitled to protections in the courtroom, and that lack of citizenship does not make the right to access court any less fundamental.

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

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

technical right to be legally allowed to enter a courthouse: courts need to be affirmatively accessible to all, without barriers that disadvantage certain populations.

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

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

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

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

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

III. Termination of proceedings is necessary to deter ICE’s deliberate misconduct.

When a respondent’s rights are violated, there are two potential remedies available in Immigration Court: termination of proceedings and suppression of evidence. Second Circuit case law calls suppression of evidence where a violation is *either* widespread *or* egregious. *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 234 (2d Cir. 2006). But ICE’s courthouse arrests are *both* widespread *and* egregious. *Supra* Background Section. *Rajah*, by emphasizing the deprivation of fundamental rights, as well as “societal benefit” and “deterrence” strongly suggests that where violations are both egregious and widespread, termination is an appropriate remedy. *Rajah*, 544 F.3d at 446. Given that ICE’s courthouse arrests meet this heightened standard, suppression is insufficient and termination is necessary.

In many cases, suppression of evidence is no remedy at all. Any time there is independent evidence of alienage, suppression of evidence has no effect. For example, immigrants arrested by ICE in courthouses include legal permanent residents, asylees, and visa holders, so the question of evidence of alienage is irrelevant in those cases. Even if an IJ suppresses evidence obtained through an unlawful ICE arrest, removal proceedings will often be able to continue uninterrupted on the basis of independent evidence of alienage. *See Lopez-Mendoza*, 468 U.S. at 1043 (explaining that suppression has limited deterrent effect because “deportation will still be

possible when evidence not derived directly from the arrest is sufficient to support deportation”). Thus, offering suppression as the sole remedy fails to do anything to correct the conscience-shocking conduct that violates fundamental rights. If suppression were the only remedy, ICE would be able to continue its misconduct without any judicial check on its power.

Termination, however, is a much more effective remedy available to Immigration Judges in response to deliberate conscience-shocking conduct that deprives people of their rights. *Cf. Rajah*, 544 F.3d at 447 (declining to terminate where there would be no deterrent effect or societal benefit in the case of isolated, individualized incidents of abuse). It sends a clear and effective message that a particular course of conduct is impermissible, and that proceedings initiated with this kind of violation of rights will not be allowed to move forward. By terminating proceedings brought through courthouse arrests, IJs can set a clear, bright line rule that arresting individuals while they are attending to other matters in state court is not permissible. Unlike suppression, termination has the ability to protect fundamental rights by deterring ICE’s objectionable conduct. In this case, termination will deter violations of the fundamental constitutional rights to federalism and to access court.

In the criminal context, the Supreme Court has stated there are cases where “the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction[.]” *U.S. v. Russell*, 411 U.S. 423 (1973). A defendant can assert a selective prosecution defense if the prosecutor brought charges in a way that violated the defendant’s Fourteenth Amendment rights, thus tainting the entire case. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996). Deportation proceedings, like criminal proceedings, can be “tainted from their roots” so as to call for a “prophylactic remedy[.]” *Castaneda-Delgado v. INS*, 525 F.2d 1295, 1302 (7th Cir. 1975). Courthouse arrests

are the type of outrageous conduct that taints the entire proceeding, and which should bar the government from invoking judicial processes to obtain removal.

ICE asserts that its practice of making courthouse arrests is necessary for safety and efficiency, *see* Exhibit V (Exhibit p. 92), but this reflects a short-sighted view. ICE fails to take into account the disastrous effect its policy has on the administration of justice in state courts. Where immigrants are afraid to show up at court, our communities are inherently less safe. Moreover, individual access to court is protected by deeply entrenched constitutional law that cannot be single-handedly upended by ICE for the sake of the convenience of ICE officers.

The Supreme Court has recognized that “the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy.” *Cox v. State of Louisiana.*, 379 U.S. 559, 562 (1965). Termination of proceedings where ICE has made a courthouse arrest can effectively deter ICE’s disruption of this sacred American institution.

CONCLUSION

Because this case was brought through a courthouse arrest in violation of constitutional law and against the public interest, respondent’s motion to terminate should be granted. There is no other remedy available to deter ICE from this harmful practice that deprives immigrants of fundamental rights, and endangers the functioning of state courts to the detriment of the entire community.

Dated:

██████████

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(TO DOWNLOAD THE FULL PDF OF EXHIBITS IN SUPPORT OF THIS BRIEF, PLEASE VISIT IDP'S WEBSITE AT <https://www.immigrantdefenseproject.org/wp-content/uploads/IDP-NYU-amicus-brief-motions-to-terminate-courthouse-arrests.pdf>)

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R	<p>Statements from State Attorneys General:</p> <ol style="list-style-type: none"> 1. AG Eric Schneiderman Press Release, <i>New York AG Eric Schneiderman and Acting Brooklyn DA Eric Gonzalez Call for ICE to End Immigration Enforcement Raids in State Courts</i> (Aug 3, 2017), https://ag.ny.gov/press-release/new-york-ag-eric-schneiderman-and-acting-brooklyn-da-eric-gonzalez-call-ice-end. 2. Letter from the Md. Att’y Gen. Brian E. Frosh to John F. Kelly, Sec’y of DHS, Lori Scialabba, Acting Dir. of USCIS, Kevin K. McAleenan, Acting Comm’r of CBP, and Thomas D. Homan, Acting Dir. of ICE (Mar. 2, 2017), http://www.marylandattorneygeneral.gov/News%20Documents/Homeland%20Security_Ltr_030117.pdf. 3. Letter from the Me. Att’y Gen. Janet T. Mills to Richard W. Murphy, Acting U.S. Att’y for Me., and John F. Kelly, Sec’y of DHS (Apr. 10, 2017), http://www.ncsc.org/~media/Files/PDF/Topics/ICE/Maine%20AG%20Letter.ashx. 4. Letter from N.J. Att’y Gen. Gurbir Grewal, to Sec’y of DHS Kirstjen Nielsen (Jan. 25, 2018), http://nj.gov/oag/newsreleases18/Letter-to-DHS_Jan-25-2018.pdf. 	74
S	The Legal Aid Society and Brooklyn Defender Services, <i>Legal Aid, Brooklyn Defender Services Joint Statement on ICE Courthouse Arrests That Undermine Court System Integrity, Erode Due Process Rights, and Deter Immigrants from Seeking Legal Services</i> (Apr. 6, 2018), https://www.legalaidnyc.org/news/2018/4/6/legal-aid-brooklyn-defender-services-joint-statement-on-ice-courthouse-arrests-that-undermine-court-system-integrity-erode-due-process-rights-and-deter-immigrants-from-seeking-legal-services .	83
T	Nicole Brown and Lauren Cook, <i>ICE detains immigrant at Queens courthouse, attorneys say</i> , AM New York (Apr. 10, 2018), https://www.amny.com/news/ice-court-arrest-nyc-1.17942936 .	85
U	U.S. Immigration and Customs Enforcement, <i>Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses</i> , issued Jan. 10, 2018, https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf .	88
V	U.S. Immigration and Customs Enforcement, <i>FAQ on Sensitive Locations and Courthouse Arrests</i> (last visited May 2, 2018), https://www.ice.gov/ero/enforcement/sensitive-loc# .	92
W	Devlin Barrett, <i>DHS: Immigration agents may arrest crime victims, witnesses at courthouses</i> , The Washington Post (Apr. 4, 2017), https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.29fbd1c60932 .	96

SECTION 8: TRAININGS & PRACTICE ADVISORIES FOR THOSE WORKING WITH IMMIGRANTS IN THE COURTS

BACKGROUND

IDP has worked in partnerships to train public defenders and civil legal service providers working with communities who are affected by ICE presence in the courts on what to expect when ICE shows up at court and how to best protect their clients' ability to continue to participate in their case. IDP has also adapted this curriculum for non-attorneys and delivered trainings to social workers and case managers who work with immigrant clients in alternative to incarceration programs administered through the courts.

RESOURCES

Practice Advisories: How to Advise Immigrant Clients on ICE in the Courts

- [For Criminal Defenders](#): this two-page advisory outlines basic strategies that criminal defense attorneys can use to protect their client's constitutional right to appear in court. It also provides tips on what to do after ICE arrests a client, including arguments to be made to avoid the issuance of bench warrants and production of clients from immigration custody.
- [For Family Court Attorneys](#): IDP produced a similar two-page advisory geared towards advising family court attorneys on how to protect clients who might be at risk of an ICE courthouse arrest.

Trainings. Defense attorneys and other advocates who are interested in trainings on courthouse arrests, please contact IDP.



DEFENSE ATTORNEYS: HOW TO ADVISE IMMIGRANT CLIENTS ON ICE IN THE COURTS

Immigration & Customs Enforcement (ICE) and Homeland Security Investigations (HSI) are federal agencies that send officers to detain and deport “removable” people in the community, including at courthouses. This practice of arresting immigrants in courthouses undermines equal access to justice and can interfere with clients’ ability to resolve criminal matters.

WHERE DO ICE AGENTS MAKE ARRESTS IN THE COURTS?

ICE officers have made arrests in courtrooms, vestibules, hallways, private areas, and just outside of courthouses. ICE has come more frequently to criminal courts but has also been in family courts.

ARE ICE AGENTS EASILY IDENTIFIABLE WHEN THEY COME TO COURT?

ICE agents are often in plainclothes and come in groups of 2-4 (sometimes more).

DOES ICE USUALLY TARGET SPECIFIC INDIVIDUALS TO ARREST?

ICE usually identifies a specific individual appearing for a court date and has an “administrative warrant” signed by a supervisor, not a judge. This allows the agents to detain the person upon confirmation that s/he is the individual named in the document.

WHO IS AT RISK OF BEING TARGETED AND ARRESTED BY ICE?

People who are undocumented and people with lawful status with certain criminal convictions may be at risk of being detained and deported. For more details see IDP’s advisory on the January 2017 Executive Order priorities: <http://bit.ly/2ohuSjn>.

Here are some things **you** can do in your practice to protect immigrant clients in the courthouse:

1. **Identify clients who are not U.S. citizens (USCs) and seek a *Padilla* consult as soon as possible after assignment.** Assigned counsel in NYC: contact IDP at immdefense.org/psc for a free immigration consult. Other NYS appointed counsel: contact your Regional Immigration Assistance Center at on.ny.gov/2o162kA. Others: contact a local criminal-immigration expert.
2. **For clients at risk of deportation,** advise them of their constitutional rights to be present to resolve criminal charges and to have the assistance of counsel. Discuss strategies for ensuring that you will be able to conduct the full course of representation and they will be able to resolve their cases without impermissible interruption. This may include lessening the number of court appearances, resolving cases off-calendar, and avoiding the need for personal information like name and docket number to be shared loudly in hallways or courtrooms.
3. **Prepare your clients for interactions with ICE.** Advise your clients that they have the right to remain silent when they encounter ICE agents and should say that they want to speak to a lawyer. Warn them about the dangers of answering questions about their immigration status, where they were born, or how they entered the U.S. Know Your Rights information is available in multiple languages at: immdefense.org/raids.
4. **Stay current on local detainer laws and law enforcement cooperation with ICE.** If you are in a jurisdiction that has limits on honoring detainers, setting bail might be the best way to protect your client’s ability to resolve a case. This requires individualized assessment. To learn about the current policies in NYC, visit: <http://bit.ly/2nMGD00>.



DEFENSE ATTORNEYS: HOW TO ADVISE IMMIGRANT CLIENTS ON ICE IN THE COURTS

IF YOU WITNESS ICE AGENTS ARRESTING YOUR CLIENT:

- **Invoke your client's rights.** Identify yourself as the person's lawyer. Tell ICE not to question your client. Tell your client not to sign anything and to exercise his/her right to remain silent. Answering questions will only help ICE deport him/her. **Request to call or recall the criminal case while your client is present to avoid the issuance of a warrant.**
- **Get info from ICE.** Ask for agents' names and contact info. Ask for the basis of the arrest and to see a warrant. Note if the document ICE presents is signed by a judge vs. ICE supervisor. Ask where they are taking your client.
- **Get on the record.** Explaining the situation may prevent a bench warrant and possibly help in immigration court. If possible, talk to your client about the impact that going into *criminal* custody via bail or a plea instead of ICE custody would have on his/her interests.

WHAT TO SAY ON THE RECORD BEFORE ICE DETAINS YOUR CLIENT:

- Describe the ICE agents and how you know they are going to arrest your client.
- State if they are present in the courtroom as you speak.
- Explain how you have invoked your client's rights to the agents and stated s/he is not to be questioned.
- State if you think court staff or a DA has helped ICE (e.g. waiting to call the case until ICE arrives).
- If you are asking for criminal bail, invoke your client's 6th Am. right to appear in the case against them. Explain the purpose of bail is to ensure appearance. (*see below for considerations*)

WHAT TO SAY ON THE RECORD IF ICE HAS ALREADY DETAINED YOUR CLIENT:

- Ask for a bench warrant stay. Put the DA on notice of the need to produce your client from ICE custody. For more on how DAs can request production from ICE, see <http://bit.ly/2nkIXZQ>.
- Describe the ICE agents and how they arrested your client. State when/where they did this in the court. Explain how you invoked your client's rights to the agents and stated s/he is not to be questioned.
- State if ICE agents denied your request to call or recall the criminal case. Explain that ICE's practice interferes with individual cases and access to justice in the courts.
- State if you think court staff or a DA assisted with arrest (e.g. blocking exit, calling case late).
- State if you witnessed ICE violate your client's constitutional rights (e.g. searching your client's pockets without consent).

WHAT TO DO AFTER A CLIENT IS ARRESTED BY ICE:

- **Document what happened**, including: where arrest took place (e.g. in court part vestibule, courthouse hallway, courthouse private area outside the courthouse); # of ICE agents, how they were dressed & identified themselves; how they responded when you asked questions, incl. for a warrant; and whether any court staff were involved in the arrest or aware of ICE presence.
- **Report it** to advocates pushing back against this practice. In NYC, contact IDP at 212-725-6422 if you see ICE in or around a courthouse.
- Search ICE Online Detainee Locator to **locate your client** and then **figure out how to resolve the criminal matter** with client in ICE custody. Contact an immigration lawyer for more information.



FAMILY ATTORNEYS, HOW TO ADVISE IMMIGRANT CLIENTS ON ICE IN THE COURTS

Immigration & Customs Enforcement (ICE) and Homeland Security Investigations (HSI) are federal agencies that send officers to detain and deport “removable” people in the community, including at courthouses. This practice of arresting immigrants in courthouses undermines equal access to justice and can interfere with a client’s ability to resolve civil and criminal matters.

WHERE DO ICE AGENTS MAKE ARRESTS IN THE COURTS?

ICE officers have arrested unsuspecting people in courtrooms, vestibules, waiting areas, hallways and just outside of courthouses. ICE has come more frequently to criminal courts but, since November 2016, ICE has also made arrests in family courts.

ARE ICE AGENTS EASILY IDENTIFIABLE WHEN THEY COME TO COURT?

ICE agents typically appear in plainclothes and come in groups of 2-4 (sometimes more).

DOES ICE USUALLY TARGET SPECIFIC INDIVIDUALS TO ARREST?

ICE usually identifies a specific individual appearing for a court date and has an “administrative warrant” signed by a supervisor, not a judge. This allows the agents to detain the person upon confirmation that s/he is the individual named in the document.

WHO IS AT RISK OF BEING TARGETED AND ARRESTED BY ICE?

People who are undocumented and people with lawful status with certain criminal convictions may be at risk of being detained and deported. For more details see IDP’s advisory on the January 2017 Executive Order priorities: <http://bit.ly/2ohuSjn>.

TIPS ON PROTECTING IMMIGRANT CLIENTS IN THE COURTHOUSE

1. **Identify clients who are not U.S. citizens (USCs)** and have them call ActionNYC at 800-354-0365 for screening about their status and risk of deportation. **Assigned counsel in NYC:** contact IDP at immdefense.org/psc for a free consult. **Other NYS appointed counsel:** contact your Regional Immigration Assistance Center at on.ny.gov/2o162kA. Others: contact a local immigration expert.
2. **For clients at risk of deportation**, discuss strategies for ensuring that client’s can resolve their cases without interruption and that you can conduct the full course of representation. Talk with your clients about minimizing the number of court appearances. On court dates, arrange to have your client meet you away from the courtroom (e.g. on another floor or in your office) and avoid calling your client’s name aloud in the hallways.
3. **Prepare clients for interactions with ICE:** Advise your clients that they have the right to remain silent when they encounter ICE agents and should say that they want to speak to a lawyer. Warn clients about answering questions about their immigration status, where they were born, or how they entered the U.S. Know Your Rights information is available in multiple languages at: immdefense.org/raids.
4. **Warn clients about the risks of arrest and incarceration.** Arrest and incarceration, for any reason, can put your client on ICE’s radar. Warn clients who are deportable that contact with the criminal justice system can put them at risk of being picked up by ICE.
5. **Make an emergency plan.** If your client is at risk of deportation, help them to prepare their family for the possibility of separation by gathering emergency contacts and discussing who could care for their children. Find resources at: immdefense.org/emergency-preparedness.



FAMILY ATTORNEYS, HOW TO ADVISE IMMIGRANT CLIENTS ON ICE IN THE COURTS

IF YOU WITNESS ICE AGENTS ARRESTING YOUR CLIENT

- **Invoke your client's rights.** Identify yourself as the person's lawyer. Tell ICE not to question your client. Tell your client not to sign anything and to exercise his/her right to remain silent. Answering questions will only help ICE deport him/her. **Request to call or recall the case while your client is present to avoid the issuance of a warrant.**
- **Get info from ICE.** Ask for agents' names and contact info. Ask for the basis of the arrest and to see a warrant (note if signed by a judge vs. ICE supervisor). Ask where they are taking your client.
- **Get on the record.** Explaining the situation may prevent a bench warrant and possibly help in immigration court.
- **Report it** to advocates pushing back against this practice. In NYC, contact IDP at 212-725-6422 if you see ICE in or around a courthouse.

WHAT HAPPENS TO YOUR CLIENT AFTER THE ARREST?

- **ICE makes a custody determination.** ICE agents will decide whether to detain your client in an immigration jail or release your client under an order of supervision.
- **Some but not all clients are entitled to a hearing before an Immigration Judge** where they may argue against their deportation and apply for various waivers of deportation. It can take 1-2 months before they have their first court date and the case can last months to years depending on whether they remain detained. There is no right to assigned counsel in these proceedings. However, indigent immigrants who are detained may be eligible for a free attorney through the New York Immigrant Family Unity Project (NYIFUP).
- **Detained immigrants have the right to participate in their Family Court hearings.** Under ICE policy, immigration detention should NOT prevent parents or guardians from participating in Family Court proceedings or visiting with their kids. For more info, see: [ice.gov/parental-interest](https://www.ice.dhs.gov/parental-interest).

HOW TO HELP A CLIENT IN DETENTION

- **Locate your client** by using the ICE Detainee Locator at [locator.ice.gov](https://locator.ice.dhs.gov). You will need the full name, date of birth, and country of origin, or, your client's "alien" number, which appears on work permits and green cards. In NYC, most immigrants are detained in New Jersey or Orange County, NY.
- **Talk to the deportation officer.** Your client will be assigned a deportation officer who is responsible for managing your client's case. **Per ICE policy, the local field office is required to facilitate your client's participation in Family Court hearings and court-ordered visitation with children.** To locate the deportation officer in NYC, call (212) 264-4213 with your client's name, "alien" number (if available) and date of birth. Outside of NYC, see [ice.gov/contact/ero](https://www.ice.dhs.gov/contact/ero).
- **Help your client maintain contact with their family.** Maintaining contact with children and other family members is essential and could help your client's Family Court case. Ask the court to order the Child Protective Services agency to facilitate visitation with children at the detention facility.
- **Every detention facility permits visits from family and friends.** People who do not have lawful immigration status should consult an immigration attorney before going to a detention facility.

SECTION 9:

MEDIA

*Key media pieces and suggestions
on the role of the media in a state campaign*

BACKGROUND

Media coverage in traditional news outlets and social media has been instrumental throughout the campaign in New York. While there was local media interest in the increase in ICE courthouse arrests throughout the Spring of 2017, it was a particularly abhorrent ICE operation in a court designed for victims of human trafficking that increased coverage. By coincidence, a reporter from New York's public radio station, WNYC, was present in the courtroom when ICE targeted at least two young women. The WNYC story triggered a wave of press coverage about ICE's courthouse arrests and drew the attention of local elected officials who promptly called City Council hearings on ICE's practices.

However, while much press has been reactive, some of it has been earned through organized [press conferences](#), [rallies](#) and attorney [walk-outs](#), and through the [release of statistics](#) on courthouse operations documented by the Immigrant Defense Project.

As the campaign continued, persistent local coverage of ICE courthouse arrests begot national coverage from outlets including the New York Times, the New Yorker, and the Nation. The New York Times discussed

the impact of courthouse arrests on the work of a local prosecutor's office. In-depth coverage from the New Yorker helped to expose some of ICE's underhanded tactics in stalking domestic violence survivors to court and also discussed the disturbing implications of ICE arrests on the constitutional rights of noncitizens.

While traditional media has played a significant role in putting pressure on ICE and the New York Office of Court Administration, social media (#ICEoutofcourts) has also been critical. As ICE operations have persisted, some public defenders have started using twitter to document what ICE is doing in the courts. Tweets from public defenders began to evolve into a defacto alert system for advocates throughout New York City. Social media has also increasingly become an organizing tool for advocates who have staged numerous walk-outs at courts around New York City to protest ICE arrests. Because many traditional media outlets now look to twitter for the latest breaking news, tweets from advocates have often been an important source for reporters. In one incident, a public defender tweeted that he observed several plainclothes ICE agents staking out the Brooklyn Criminal Court. Several reporters rushed to the court and confronted the agents who refused to identify themselves.

Finally, strategically placed opinion pieces have helped to draw attention to ICE courthouse arrests and give voice to important perspectives. Several immigration law experts have published op-eds highlighting the grave threat that these arrests pose to constitutional rights. Elected officials have also bylined pieces that make the case for state level legislation that could limit ICE's operation in the courts.

RESOURCES

Traditional Media

[Michael Gordon, “A mother and son turned up for a domestic violence case. Then ICE arrested them.” The Charlotte Observer](#) (Jul. 20, 2018)

“Maria was scheduled to be in court on July 9 as the defendant in a misdemeanor criminal complaint filed by her former fiance. That case had been preceded by a domestic-violence complaint in which the 16-year-old son had accused the former fiance of severely beating him.”

[Michelle Chen, “Why is ICE Arresting Immigrants in Court,” The Nation](#) (Dec. 3, 2017)

“[T]he menace ICE poses in local courtrooms actually capitalizes on the endemic [dysfunctionality](#) of New York’s criminal-justice system, which enmeshes many vulnerable communities in a cycle of surveillance and punishment. A criminal-justice system that systematically abuses communities of color, advocates say, brings trouble enough for the city’s black and brown communities, so immigrants are doubly exposed to the federal government’s deportation drive.”

[Steve Coll, “When a Day in Court is a Trap for Immigrants,” The New Yorker](#) (Nov. 8, 2017)

Describes an ICE operation targeting a father attending

Family Court and discusses implications for constitutional rights of litigants.

“One of the most disturbing aspects of “interior enforcement” of the immigration laws—meaning arrests and detentions carried out far from the American border, typically by ICE agents—is that the actions can pollute the administration of justice and undermine the rights that the Constitution affords all criminal defendants, whether they are U.S. citizens or not”.

[James Queally, “Fearing deportation, many domestic violence victims steering clear of police and courts,” Los Angeles Times \(Oct. 9, 2017\)](#)

Describes steep declines in the reporting of domestic violence from Latinos in Los Angeles, San Diego, San Francisco, and Houston, Texas.

[Everton Bailey, Jr., “ICE agents mistakenly try to grab Latino county worker near courthouse,” Oregonian \(Sept. 19, 2017\)](#)

Links to video of ICE agents trying to arrest a Latino county worker near a courthouse who is a U.S. citizen. The incident prompted this [ACLU lawsuit](#).

[Leon Neyfakh, “Secret Police,” Slate \(Sept. 14, 2017\)](#)

Reporter gives firsthand account of his encounter with plainclothes ICE agents outside of a Brooklyn court during which agents refuses to identify themselves.

[Liz Robbins, “A Game of Cat and Mouse with High Stakes: Deportation,” New York Times \(Aug. 3, 2017\)](#)

Examines the impact of ICE courthouse arrests on local prosecutors in New York City.

Discusses the creative strategies public defenders use to protect clients at risk of an ICE courthouse arrest.

[Beth Fertig, “When ICE shows up in Human Trafficking Court,” WNYC \(June 22, 2017\)](#)

Feature-length piece providing a firsthand description of an ICE operation in a court designed for victims of human trafficking.

[Jonathan Blitzer, “The Woman Arrested by ICE in a Courthouse Speaks Out,” The New Yorker \(Feb. 23, 2017\)](#)

Investigative piece on ICE arrest of a transgender woman who sought protective order in court. Reveals key details on ICE’s tactics including the use of an abuser’s tip to track down the woman they arrested.

Op-Eds

[Eric Gonzalez and Judy Harris Kluger, “How ICE harms the justice system: The feds’ aggressive tactics in our courthouses are emboldening violent criminals” NY Daily News \(Aug. 2, 2018\)](#)

The Brooklyn district attorney and the executive director of Sanctuary for Families explain why ICE courthouse arrests endanger victims of violence.

[Sen. Marisol Alcantara and Assemblywoman Michaelle Solages, “New York Should Protect Its Courts from ICE” City and State](#) (June 20, 2018)

The two sponsors of the Protect Our Courts Act explain why state-level action is necessary to stop ICE.

[Nancy Morawetz and Lindsay Nash, “Get ICE Out of N.Y.’s Courtrooms” NY Daily News](#) (Jan. 25, 2018)

Two law professors make the case for why state courts can and should implement court rules requiring ICE to have a judicial warrant or court order before executing a courthouse arrest.

[César Cuauhtémoc García Hernández, “ICE’s Courthouse Arrests Undermine Democracy,” New York Times](#) (Nov. 26, 2017)

“[A]rrests at courthouses don’t just derail the lives of the unsuspecting people who are detained, they threaten the very operation of our judicial system. Such arrests scare people away from the courts, keeping them, for example, from testifying at trials or seeking orders of protection. By using this tactic, the nation’s lead immigration law enforcement agency is undermining a pillar of our democracy.”

Social Media Sample Tweets

[Immigrant Defense Project](#): We are here at the rally in NYC with so many other New Yorkers calling for [#ICEOutofCourts!](#)

[Brooklyn Defender Service](#): ICE OFFICERS IN COURT HALLWAY OF 120 SCHERMERHORN. MISDEMEANOR COURT IN BROOKLYN. CAREFUL

[Association of Legal Aid Attorneys](#): FOR THE 3RD DAY IN A ROW, ICE has been spotted now in Queens Criminal Court (125-01 Queens Blvd), with intent to detain one of our clients. Our attorneys in Queens will walk out at 12pm in protest of this attack and the refusal to act by [@NYSCourts-News](#) and Janet DiFiore. [#ICEOUT](#)

For more media coverage, see:
immdefense.org/courts-media/



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[IMMDEFENSE.ORG/ICE-COURTS/](https://immdefense.org/ice-courts/)

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