

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.<sup>1</sup>

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.<sup>2</sup> Federal immigration authorities have

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<sup>1</sup>See 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.

<sup>2</sup> 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, 2017, 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-domestic-violence-claim-arrested-at-el-paso-courthouse-by-ice-official-says/>.

publicly stood by such arrests declaring that victims of crime and witnesses will be targets for deportation under the new administration.<sup>3</sup>

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.<sup>4</sup>
- **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 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."<sup>5</sup> Advocates have seen ICE agents follow through on these sweeping new

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<sup>3</sup> 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](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)

<sup>4</sup> Based on interviews conducted by the Immigrant Defense Project.

<sup>5</sup> 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

priorities by showing up at arraignment parts and arresting undocumented immigrants appearing to face misdemeanor charges.<sup>6</sup>

- **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.<sup>7</sup> 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.<sup>8</sup>
- **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.<sup>9</sup> 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.<sup>10</sup>

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.

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

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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>.

<sup>6</sup> 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](http://www.registerstar.com/news/article_10d31df2-f3da-11e6-b865-475c549b1644.html).

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

<sup>8</sup> Woodruff, *supra* note 1.

<sup>9</sup> Wilson, *supra* note 7.

<sup>10</sup> Based on interviews conducted by the Immigrant Defense Project.

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