

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE,  
O. DOE, T. DOE, Y. DOE, AND J. DOE

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**PETITION FOR WRIT OF PROTECTION  
PURSUANT TO G.L. C. 211, § 3**

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Article 11 of the Massachusetts Declaration of Rights requires the courts of the Commonwealth to provide "justice freely." Free access to the Massachusetts courts is essential not only for the administration of justice and to vindicate a multitude of individual rights, but also for the independence of our State. At this moment, however, access to justice in the Commonwealth is under siege. Immigration and Customs Enforcement (ICE), a civil immigration enforcement arm of the Department of Homeland Security (DHS), is using Massachusetts courthouses as a locus for civil immigration arrests.

Petitioners - seven noncitizens who are a mother seeking guardianship of her disabled daughter, a tenant illegally evicted from her home, a victim of an assault, a mother entitled to unpaid child support, a

victim of domestic violence seeking a restraining order, a long-time lawful permanent resident facing a criminal charge, and a woman wrongfully fired from her job, as well as one juvenile defendant with a crucial noncitizen witness too afraid to appear in court - seek from this Court a long-recognized common law remedy: a writ of protection under the common law privilege against arrest on civil process while within the confines of a courthouse and its environs, and for all those having business before the court while coming to and leaving court proceedings. This privilege, long embraced by this Court and State and Federal courts across the country, including the United States Supreme Court, "is founded in the necessities of the judicial administration." Stewart v. Ramsay, 242 U.S. 128, 129 (1916).

Petitioners respectfully request that this Court reserve and report the matter to the full bench of this Court, so that it may grant a writ of protection from civil arrest (including civil immigration arrest) for all similarly situated people. This Court - the highest court of the Commonwealth, mandated to provide the final word on all matters of Massachusetts law, and responsible for the "general superintendence of

all courts of inferior jurisdiction" within this State - should provide a definitive ruling that the Massachusetts common law privilege applies to all civil arrests, including civil immigration arrests, to provide clear guidance, ensure access to Massachusetts courts, and allow for the true and essential administration of justice within the Commonwealth.

### BACKGROUND<sup>1</sup>

The late winter and early spring of 2017 saw the dramatic rebirth of an old problem: arrest on civil process in and around courthouses.<sup>2</sup> As part of its expanded mandate to pursue all those subject to removal, without prioritizing noncitizens with serious criminal convictions,<sup>3</sup> Immigration and Customs

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<sup>1</sup> Petitioner refers to the Record Appendix as "R.A."

<sup>2</sup> While for hundreds of years arrest was the primary means for initiating a civil proceeding, by the Nineteenth Century this practice had largely been replaced by service of summons and the use of default judgment. Nathan Levy, Jr., *Mesne Process in Personal Actions at Common Law and the Power Doctrine*, 78 Yale L.J. 52, 61-70 (1968).

<sup>3</sup> On January 25, 2017, shortly after being sworn into office, President Trump issued an executive order that, among other things, declared all those subject to removal under U.S. immigration laws to be immigration enforcement priorities. Executive Order: Enhancing Public Safety in the Interior of the United States § 5 (Jan. 25, 2017). On February 20, 2017, DHS repealed a previous DHS memorandum that prioritized those noncitizens with criminal convictions and implemented the new, expanded immigration enforcement

Enforcement (ICE) began using State courthouses (both civil and criminal) as the location for civil immigration arrests.<sup>4</sup> Shawn Neudauer, an ICE spokesperson, confirmed that the increased activity at courthouses reflected the "expanded pool of immigrants" targeted for removal.<sup>5</sup> States across the country - Arizona, California, Colorado, Connecticut, Illinois, New Jersey, New York, Ohio, Oregon, Texas, and Washington - saw an increase in civil immigration enforcement action around their courthouses.<sup>6</sup> Between

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priorities. Memorandum from John Kelly, DHS Sec'y, Enforcement of the Immigration Laws to Serve the National Interest, at p. 2 (Feb. 20, 2017), available at <https://www.dhs.gov/publication/enforcement-immigration-laws-serve-national-interest> [<https://perma.cc/X4GP-XQ9Q>].

<sup>4</sup> Steve Coll, When a Day in Court is a Trap for Immigrants, The New Yorker, Nov. 8, 2017, available at <https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants>; César Cuauhtémoc García Hernández, Opinion: ICE's Courthouse Arrests Undercut Democracy, N.Y. Times, Nov. 26, 2017, available at <https://www.nytimes.com/2017/11/26/opinion/immigration-ice-courthouse-trump.html>.

<sup>5</sup> Maria Cramer, ICE courthouse arrests worry attorneys, prosecutors, Boston Globe, June 16, 2017, available at <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMI8gI/story.html>.

<sup>6</sup> Brian Lockhart & John Nickerson, ICE targeting immigrants at courthouses, Stamford Advocate, Feb. 25, 2018, available at <https://www.stamfordadvocate.com/news/article/ICE-targeting-immigrants-at-courthouses-12707218.php>; Cook County Gov't, "President Preckwinkle Urges Washington

January and September 2017, New York saw a more than six hundred per cent increase in these types of arrests.<sup>7</sup>

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to Change Policy on ICE Arrests in Courthouses," Feb. 7, 2018, available at <https://www.cookcountyil.gov/news/president-preckwinkle-urges-washington-change-policy-ice-arrests-courthouses>; Matt Katz, ICE Arrests in NJ Courthouses Surging, Lawyers Say, NJSpotlight, Dec. 12, 2017, <http://www.njspotlight.com/stories/17/12/11/ice-arrests-in-n-j-courthouses-surging-lawyers-say>; Ericka Cruz Guevarra, ICE Told Oregon Supreme Court It Would Continue Operations at State Courthouses, Sept. 29, 2017, available at <https://www.opb.org/news/article/oregon-ice-arrests-courthouse-washington-county/>; Rick Sallinger, ICE: Courthouses Not Off-Limits for Arresting Suspected Illegal Immigrants, CBS Denver, May 9, 2017, available at <http://denver.cbslocal.com/2017/05/09/ice-illegal-immigrants-arrests/>; Jessica Prokop, ICE agents create a child at courthouse, Columbian, Sept. 19, 2016, available at <http://www.columbian.com/news/2017/sep/19/ice-agents-create-a-chill-at-courthouse/>; Curt Prendergast, Arrest by ICE at Tucson courthouse concerns judge, Arizona Daily Star, Mar. 18, 2017, available at [http://tucson.com/news/local/border/arrest-by-ice-at-tucson-courthouse-concerns-judge/article\\_b7444b3a-700c-5265-9292-4d980c483726.html](http://tucson.com/news/local/border/arrest-by-ice-at-tucson-courthouse-concerns-judge/article_b7444b3a-700c-5265-9292-4d980c483726.html); James Queally, ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court, L.A. Times, Mar. 16, 2017, available at <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>; Colleen Marshall, Attorney: Immigration agents are targeting Central Ohio Traffic Courts, nbc4i.com, Feb. 27, 2018, available at <http://nbc4i.com/2018/02/27/attorney-immigration-agents-are-targeting-central-ohio-traffic-courts/>.

<sup>7</sup> Nancy Morawetz and Lindsay Nash, Get ICE out of N.Y.'s courtrooms, The Daily News, Feb. 27, 2018,

The practice of arresting people seeking access to State courts received national attention after ICE arrested a restraining order applicant in an El Paso, Texas courthouse.<sup>8</sup> People interested in the fair administration of justice, including judges, law-enforcement officials, and the American Bar Association, have raised serious concerns about ICE's courthouse arrests.<sup>9</sup> The Honorable Stuart Rabner, Chief Justice of the Supreme Court of New Jersey, explained:

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available at <http://www.nydailynews.com/opinion/ice-n-y-s-courtrooms-article-1.3777389>.

<sup>8</sup> Richard Gonzales, ICE Detains Alleged Victim of Domestic Abuse at Texas Courthouse, NPR, Feb. 16, 2017, available at <https://www.npr.org/sections/thetwo-way/2017/02/16/515685385/ice-detains-a-victim-of-domestic-abuse-at-texas-courthouse>.

<sup>9</sup> 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) (R.A. 62-63); Letter from Hon. Mary E. Fairhurst, Chief Justice, Supreme Court of Wash., to John F. Kelly, Sec'y of DHS (Mar 22, 2017) (R.A. 64-65); 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) (R.A. 71); Letter from Hon. Stuart Rabner, Chief Justice, Supreme Court of N.J., to John F. Kelly, Sec'y of DHS (Apr. 19, 2017) (R.A. 69-70); 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) (R.A. 66-68); Eric Gonzalez, Dan Satterberg, & Meg Reiss, Prosecutors: Immigration Raids on Courthouses 'Jeopardize' Community Safety, The Crime Report, Dec. 8, 2017, available at <https://thecrimereport.org/2017/12/08/prosecutors->

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.<sup>10</sup>

Prosecutors explained that arresting a criminal defendant who appears for criminal proceedings at a courthouse "not only undermine[s] due process for both the victim and the defendant, but also impede[s] our ability as democratically elected officials to fulfill our responsibilities to our communities."<sup>11</sup>

These fears were not unfounded.<sup>12</sup> In a survey distributed by the Immigrant Defense Project, an

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immigration-raids-on-courthouses-jeopardize-safety/; American Bar Association Resolution 2017A10C (ABA Resolution) (Aug. 15, 2017) (calling for courthouses to be considered "sensitive locations," thereby prohibiting immigration arrests absent exigent circumstances) (R.A. 80-94).

<sup>10</sup> Letter from Hon. Rabner (R.A. 69).

<sup>11</sup> Gonzalez, Prosecutors, supra.

<sup>12</sup> James Queally, Fearing deportation, many domestic violence victims are steering clear of police and courts, L.A. Times, Oct. 9, 2017, available at <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html>; Katie Johnson, For low-wage workers, many obstacles to reporting sexual harassment, Boston Globe, Nov. 27, 2017, available at <https://www.bostonglobe.com/business/2017/11/26/for->

immigrant advocacy organization, and completed by two hundred and twenty five advocates and attorneys in New York, three out of four legal service providers reported that clients had expressed fear of going to court because of ICE and 29% of the advocates had worked with immigrants who had failed to appear in court due to fear of ICE.<sup>13</sup> Arlington, Virginia, Chicago, Illinois, and Denver Colorado, all saw a decline in reporting of crime by Latina and Latino victims.<sup>14</sup>

Massachusetts has not been spared.<sup>15</sup> In the month of April 2017 alone, CPCS recorded forty arrests by

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low-wage-workers-many-obstacles-reporting-sexual-harassment/UVAXy8XrnkkzWUCyShC8oJ/story.html; Immigrant Defense Project, "ICE in NYS Courts: Legal Service and Advocates Survey," available at <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-out-of-courts-survey-final-1.pdf>. See also, Paul P. Murphy & Deanna Hackney, Police answered immigrant's call for help, then gave him to ICE, CNN, Feb. 13, 2018, available at <https://www.cnn.com/2018/02/13/us/tukwila-police-ice-detain-trnd/index.html>.

<sup>13</sup> Immigrant Defense Project, "ICE in NYS Courts: Legal Service and Advocates Survey."

<sup>14</sup> Stillman, Death Sentence, *supra*, at 15.

<sup>15</sup> Cramer, ICE courthouse arrests, *supra*; Affidavit of Oren Nimni, Lawyers' Committee for Civil Rights and Economic Justice ("LCCR") and attached fact sheet, "Immigration Enforcement At Massachusetts Courthouses: A Fact Sheet" ("LCCR Fact Sheet") (Pub. Nov. 14, 2017), available at <http://lawyerscom.org/wp-content/uploads/2017/11/Immigration-Enforcement-at-Massachusetts-Courthouses-FINAL-FOR-PUBLIC-RELEASE.pdf>



ICE in and around Massachusetts courthouses.<sup>16</sup> Jennifer Klein, staff attorney with the Immigration Impact Unit at CPCS, receives regular and consistent reports of ICE arrests at Massachusetts courthouses - at a minimum, one per week.<sup>17</sup> ICE has arrested a soccer coach with a single pending charge of Operating under the Influence of Liquor, an asylum applicant married to a U.S. citizen, a recipient of Deferred Action for Childhood Arrivals (DACA),<sup>18</sup> a young man with Special Immigrant Juvenile status<sup>19</sup> whose delinquency charges had just been dismissed based on his incompetence to stand trial,<sup>20</sup> a woman released from court in order to enter a drug treatment program,<sup>21</sup> and a mentally ill

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(R.A. 43-49); Affidavit of Jennifer Klein (R.A. 27-31); Affidavit of Susan Church (R.A. 50-51); Affidavit of Richard Cole (R.A. 38-42); Affidavit of Nancy Kelly (R.A. 32-37); Northeastern University School of Law Immigrant Justice Clinic, "Blocking the Courthouse Doors: ICE Enforcement at Massachusetts Courthouses and Its Effects on the Judicial Process," (NUSL report) (Mar. 2, 2018), available at <http://www.northeastern.edu/law/pdfs/clinics/ijc/court-house-report.pdf> (R.A. 72-79).

<sup>16</sup> Cramer, ICE courthouse arrests, supra.

<sup>17</sup> Klein ¶ 3 (R.A. 27).

<sup>18</sup> U.S. Citizenship and Immigration Services, "Consideration for Deferred Action for Childhood Arrivals (DACA)," <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca>.

<sup>19</sup> Recinos v. Escobar, 473 Mass. 734, 734-35 (2016).

<sup>20</sup> Klein ¶¶ 7-11 (R.A. 28-30).

<sup>21</sup> NUSL report at 6 (R.A. 77).

man in the middle of a competency evaluation ordered by a District Court judge.<sup>22</sup> These reports are not surprising, since ICE has specifically targeted Massachusetts and its courthouses for enforcement, partially in response to this Court's decision in Lunn v. Commonwealth, 477 Mass. 517 (2017).<sup>23</sup> ICE has become such a presence at Massachusetts trial courts that Chief Justice Paula Carey issued a specific policy and procedures for court employees when dealing with Department of Homeland Security (DHS) officers.<sup>24</sup> The concerns expressed nationally have been mirrored in Massachusetts, where Attorney General Maura Healey said "prosecutors in her office are worried the

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<sup>22</sup> Id.

<sup>23</sup> Jeremy C. Fox, 50 immigrants arrested in Mass. as part of ICE operation, Boston Globe, Sept. 28, 2017, available at <https://www.bostonglobe.com/news/nation/2017/09/28/ice-arrests/QNxhEFfeJ5zvvcgU7cQGnk/story.html>; LCCR Fact Sheet (R.A. 46-49); ICE, "ICE arrests over 450 on federal immigration charges during Operation 'Safe City'" (Sept. 28, 2017) ("Operation 'Safe City' focused on cities and regions where ICE deportation officers are denied access to jails and prisons to interview suspected immigration violators or jurisdictions where ICE detainers are not honored."), available at <https://www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city>.

<sup>24</sup> Executive Office Transmittal 17-13, Memorandum of Chief Justice Carey to Judges, Clerks, Registers, Chief Probation Officers and all staff, "Policy and Procedures Regarding Interactions with the Department of Homeland Security," (Nov. 10, 2017), (R.A. 56-59).

arrests will make unauthorized immigrants reluctant to report crimes and testify in court.”<sup>25</sup> Chief Justice Paula Carey, addressing an ICE Special Agent in Charge, wrote that immigration enforcement in Massachusetts courthouses “would mean fewer [restraining order] applications, more withdrawn cases, and more defaults, resulting inevitably in violence, injustice, and threats to public safety.”<sup>26</sup> Judge Indira Talwani of the U.S. District Court for the District of Massachusetts expressed great concern that an ICE arrest of a person entering a State or Federal courthouse interferes with the administration of justice.<sup>27</sup> These concerns have proved prescient,<sup>28</sup> as advocates cannot promise even their immigrant clients without criminal convictions that they will be safe from arrest by ICE if they appear in court.<sup>29</sup> Moreover, ICE now refuses to transport or facilitate transportation to State courts of those in its custody with pending criminal charges, leaving “countless

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<sup>25</sup> Cramer, ICE courthouse arrests, supra.

<sup>26</sup> Letter from Hon. Paula M. Carey, Chief Justice of the Mass. Trial Court, to Matthew Etre, ICE Special Agent in Charge (Feb. 23, 2017) (R.A. 60-61).

<sup>27</sup> LCCR Fact Sheet at 3 (R.A. 48).

<sup>28</sup> Johnson, Low-wage workers, supra.

<sup>29</sup> Church Aff’t ¶¶ 3-4 (R.A. 50-51); Kelly Aff’t ¶ 9 (R.A. 37).

Massachusetts criminal matters unresolved" and further impeding the administration of justice.<sup>30</sup>

The observations of judges, prosecutors, attorneys, advocates, and journalists are confirmed by ICE policy and statements. Despite requests to add courthouses to its list of "sensitive locations,"<sup>31</sup> on January 10, 2018, ICE issued a policy directive encouraging federal immigration officers to engage in arrests inside courthouses.<sup>32</sup> The Directive states that arrests inside of courthouses (the Directive does not address arrests made outside the courthouse but within their environs) will generally involve "targeted" noncitizens "with criminal convictions, gang members, national security or public safety threats," as well as those with prior orders of removal.<sup>33</sup> While the Directive states that other noncitizens encountered during enforcement actions, such as "family members or

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<sup>30</sup> Klein ¶ 12 (R.A. 31).

<sup>31</sup> Letter from Hon. Rabner (R.A. 69-70); Letter from Hon. Balmer (R.A. 66-68); Letter from Hon. Fairhurst (R.A. 64-65); Letter from Hon. Rogers (R.A. 71); ABA Resolution (R.A. 80-94).

<sup>32</sup> ICE Directive No. 110721.1, "Civil Immigration Enforcement Actions Inside Courthouses," Jan. 10, 2018, available at <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> (R.A. 52-55).

<sup>33</sup> ICE Directive ¶ 2 (R.A. 52-53).

friends" of those being arrested, will not also be arrested absent "special circumstances," it further observes that "ICE officers and agents will make enforcement determinations on a case-by-case basis."<sup>34</sup> The Directive merely requires approval from a supervisor before arrests may take place in non-criminal courthouses.<sup>35</sup> The Directive is therefore entirely consistent with earlier statements from DHS that federal immigration agents may arrest crime victims and witnesses at courthouses:

"Just because they're a victim in a certain case does not mean there's not something in their background that could cause them to be a removable alien," David Lapan, a Department of Homeland Security spokesman, said, in a briefing to reporters. "Just because they're a witness doesn't mean they might not pose a security threat for other reasons."<sup>36</sup>

Echoing that position in Massachusetts, on August 30, 2017, the Boston Field Office Director for ICE told advocates they could not assure restraining order

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<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Devlin Barrett, DHS: Immigration agents may arrest crime victims, witnesses at courthouses, Wash. Post, Apr. 4, 2017, available at [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=.104ea6943038](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=.104ea6943038).

applicants with no prior criminal record<sup>37</sup> that ICE would not arrest them if they went to the courthouse to seek protection.<sup>38</sup> And on January 29, 2018, several weeks after ICE issued this Directive, ICE arrested Christian Gomez Garcia, a DACA recipient whose status had lapsed, after he appeared in traffic court in Skokie, Illinois to address a traffic ticket.<sup>39</sup> ICE's formal policy, statements, and actions demonstrate that all noncitizens who may be subject to removal risk arrest at all Massachusetts courthouses whether they are appearing for civil or criminal proceedings.

#### PETITIONERS

C. Doe is an undocumented woman from Brazil. She has a twenty-five year old daughter with significant mental and physical disabilities who is completely dependent upon her. C. wants to seek guardianship for

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<sup>37</sup> AP, US Deportations Targeting More People With No Crime Records, N.Y. Times, Feb. 23, 2018, available at <https://www.nytimes.com/aponline/2018/02/23/us/ap-us-immigration-deportations.html> (ICE arrests of non-criminals nearly tripled from October through December 2017 as compared to October through December 2016).

<sup>38</sup> Cole Aff't ¶ 4-7 (R.A. 39-42); Kelly Aff't ¶ 8 (R.A. 36-37).

<sup>39</sup> Robert McCoppin & Brian L. Cox, ICE detains man at traffic court after DACA status expires, then frees him after outcry, Chicago Tribune, Feb. 2. 2018, available at <http://www.chicagotribune.com/suburbs/skokie/news/ct-met-dreamer-daca-skokie-courthouse-arrest-20180131-story.html>.

her daughter in order to legally care for her and oversee her medical care; however, C. has delayed going to court because she fears arrest by ICE at the courthouse. (R.A. 3-5)

D. Doe is an undocumented woman from Honduras who has lived in the United States for eleven years. She has a two year old son who is severely disabled. D. and her son were unlawfully evicted from their apartment last summer. D. wants to go to court to seek redress against her landlord, but she has not taken legal action due to her fear of arrest by ICE at the courthouse. D. knows of other people who have been arrested by ICE at courthouses in Massachusetts, including her brother who was recently arrested and continues to be held in immigration custody. D is too afraid to go to court, because if she were arrested and detained by ICE, she would be unable to care for her son. (R.A. 6-9)

F. Doe is an undocumented man from Honduras who has lived in the United States for sixteen years. In September 2017, F. was assaulted at a store in Chelsea. The Suffolk District Attorney's Office is pursuing criminal charges against D.'s attacker. D. wants to participate in this prosecution; however, he

is afraid of being arrested by ICE when he goes to court. He has heard of other people being arrested by ICE at and around courthouses. Moreover, the man who assaulted F. knows that he is undocumented and has threatened in the past to report F. to ICE. F. fears that his attacker may call ICE when F. appears in court to testify against him. (R.A. 10-13)

K. Doe is an undocumented woman from Guatemala with two U.S. citizen children who has lived in the United States for fifteen years. The father of one of K.'s children has not paid child support that was previously ordered by the Suffolk Probate Court for the last two years. K. wants to go to court to seek contempt and modification orders against the father of her son; however, K. is afraid to go to court now because she has heard many stories recently about undocumented people being arrested by ICE at Massachusetts courthouses. (R.A. 14-17)

O. Doe is an undocumented woman from Brazil who has lived in the United States for eleven years and has a four year old U.S. citizen son. After suffering abuse from her ex-husband, O. obtained a one-year restraining order against him last year. The restraining order expired on February 23, 2018 and O.



wants to return to court to seek a permanent order, particularly because her ex-husband recently tried to contact her again and she continues to fear for herself and her son. O. has not gone to court to seek a permanent restraining order, however, because she fears arrest by ICE at the courthouse. (R.A. 18-20)

T. Doe is a Vietnamese man who has lived in the United States for twenty-six years as a lawful permanent resident. He has a conviction from ten years ago for possession of cocaine. He is currently facing another charge of possession of cocaine, which is pending in a District Court in Massachusetts. T. knows that he must attend his criminal court dates; however, he is afraid of being arrested and detained by ICE at the courthouse. Not only is T. afraid of being deported, but he is also fearful that if he is arrested and detained by ICE, he will not be able to resolve his pending criminal case because he will not be able to appear in court. (R.A. 21-22)

Y. Doe is an undocumented woman from El Salvador who has a pending application for lawful permanent residency in the United States. Y. was fired from her job after taking two sick days and was denied the year-end bonus she had been promised. Y. wants to

pursue wrongful termination and back wages claims against her employer; however, she is afraid that she will be arrested by ICE if she goes to court. (R.A. 23-25)

J. Doe is a seventeen year old boy charged in a Middlesex County Juvenile Court with two counts of indecent assault and battery on a person under fourteen years of age. An investigator hired by J.'s defense attorney interviewed a percipient witness who says that the alleged incident did not happen. The witness is undocumented, however, and has stated that she is unwilling to appear in court to testify for fear of being arrested by ICE at the courthouse. J. is unable to fully defend himself against these charges without the testimony of this crucial witness. (R.A. 26)

### ARGUMENT

#### I.

**UNDER COMMON LAW, ALL THOSE PRESENT WITHIN THE MASSACHUSETTS TRIAL COURTS AND THEIR ENVIRONS, AND THOSE HAVING BUSINESS BEFORE THE COURTS WHO ARE COMING TO, ATTENDING, AND RETURNING FROM THOSE COURTS, INCLUDING PETITIONERS, ARE PRIVILEGED FROM CIVIL ARREST - INCLUDING CIVIL IMMIGRATION ARREST.**

The common law privilege from arrest on civil process dates "back to at least the early fifteenth

century" and has been incorporated into the jurisprudence of the United States and this Commonwealth since their inception. Christopher N. Lasch, A Common-Law Privilege to Protect State and Local Courts During the Crimmigration Crisis, 127 Yale L.J. Forum 410, 423 (2017). See also, Northern Light Technology, Inc. v. Northern Lights Club, 236 F.3d 57, 62 (1<sup>st</sup> Cir. 2001) (discussing the "historical pedigree" of the privilege). It protects all individuals having business with the courts, not only while attending court proceedings but while coming to and going from courthouses, as well as those within the courthouses and their environs. The privilege belongs both to the courts, to prohibit interference with the administration of justice, and to those individuals who seek or need access to the courts to allow the exercise of their constitutional rights. This Court has repeatedly applied the privilege broadly. See, e.g., In re Thompson, 122 Mass. 428 (1877); Wood v. Neale, 71 Mass. 538 (1855); Ex parte M'Neil, 6 Mass. 245 (1810). As immigration arrests are indisputably civil in nature, this Court should formally recognize that civil immigration arrests

conducted under these circumstances are prohibited by common law.

A. Federal and State courts, including this Court, have long recognized the common law privilege.

The roots of the privilege against arrest when coming to, attending, or leaving a court are in early English common law. Since at least the reign of Henry IV (1399-1413), English courts have recognized the privilege and applied it liberally. 17 Charles Viner, A General Abridgment of Law and Equity 510 (1743) (citing a Year Book of Henry IV for this proposition: "If a Man sued in Bank[ruptcy], and he goes to another Place by Leave of the Court to inquire for Evidences concerning this Matter which he has there, he shall have the Privilege if he be arrested there."); 6 Matthew Bacon, A New Abridgement of the Law 530 (7th ed. 1832) (citing a Year Book of Charles II for the rule that "not only serjeants [sic] at law, but all other persons whatsoever, are freed from arrest so long as they are in view of any of the courts at Westminster, or if near the courts, though out of the view, lest any disturbance may be occasioned to the courts or any violence used"). By the mid-eighteenth century, the protection was deeply entrenched. Meekins

v. Smith, 126 Eng. Rep. 363 (1791) (stating the "general rule" that "all persons who had relation to a suit which called for their attendance, whether they were compelled to attend by process or not, (in which number bail were included,) were entitled to privilege from arrest eundo et redeundo<sup>40</sup>, provided they came bona fide."); William Blackstone, 3 Commentaries 289 (1st ed. 1768).

As with much English common law, this ancient privilege made its way across the Atlantic and into American law. 1 Simon Greenleaf, A Treatise on the Law of Evidence §§ 316-317 (12th ed. 1858). By the early nineteenth century, this Court had wholly embraced the privilege from arrest as necessary for the protection of the functioning of State government and particularly its courts.<sup>41</sup> See, e.g., Ex parte M'Neil,

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<sup>40</sup> "Eundo et redeundo" means "going and returning." Black's Law Dictionary (10th ed. 2014).

<sup>41</sup> Massachusetts court rules provide a mechanism for seeking an individual writ of protection under this privilege. S.J.C. Rule 2:14; Rule 16 of the Rules of the Superior Court; Dist./Mun. Cts. R. Civ. P. 112; Mass. Prob. and Fam. Ct. Supp., Rule 14. See also G. L. c. 233, § 13C (compelled out of state witness in criminal case protected from arrest on criminal or civil matter which arose prior to coming to state to testify). As discussed below, the writ provides mere evidence, however, and is unnecessary for exercise of the privilege. In re M'Neil, 3 Mass 288 (writ only serves as "prima facie evidence" of privilege).

6 Mass. 245 (1810) (recognition of privilege for litigants and witnesses required to attend court); Wood v. Neale, 71 Mass. 538 (1855) (privilege applies at commission hearing ordered by probate court judge); In re Thompson, 122 Mass. 428 (1877) (privilege applies to individual testifying before State legislature).

The U.S. Supreme Court has recognized the deep roots and historical pedigree of the privilege. Long v. Ansell, 293 U.S. 76, 83 (1934) (while exploring the scope of the constitutional privilege against arrest for congresspersons, observed that it "must not be confused with the common-law rule that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit, are immune from service in another"); Lamb v. Schmitt, 285 U.S. 222, 225 (1932) (recognizing the privilege against service of process but finding it inapplicable where the two suits were interrelated); Page Co. v. MacDonald, 261 U.S. 446, 447-48 (1923) (affirming abatement of Federal suit based on the privilege where defendant was served while attending State court proceedings); Stewart v. Ramsay, 242 U.S. 128, 129-30 (1916) (affirming abatement of suit based on privilege

where defendant was served while attending as a witness in court in another state). See also Williamson v. United States, 207 U.S. 425, 443 (1908) (recognizing the common law privilege when exploring the constitutional privilege from arrest for congresspersons).<sup>42</sup>

The protection, the Supreme Court has repeatedly acknowledged, is founded in a concern for the "due administration of justice." Lamb, 285 U.S. at 225; Page Co., 261 U.S. at 448 (the privilege "is founded...in the necessities of the judicial administration") (internal citations omitted). Quoting a New Jersey decision, the Supreme Court expounded: "Courts of justice ought everywhere to be open, accessible, free from interruption, and to cast a perfect protection around every man who necessarily approaches them." Stewart, 242 U.S. at 129 (quoting Halsey v. Stewart, 4 N.J.L. 366 (1817)). Without the privilege, court proceedings "would be often embarrassed, and sometimes interrupted if the suitor might be vexed with

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<sup>42</sup> While older case law discusses the privilege only in terms of arrests on civil matters, the privilege has expanded to include protection from civil process, as modern civil suits are generally initiated without an arrest. Lasch, 127 Yale L.J. Forum at 422-23 & n. 71.

process while attending up on the court for the protection of his right, or the witness while attending to testify." Stewart, 242 U.S. at 130.

B. The privilege applies to all those having business before the court while coming to, attending, and leaving court proceedings, and all those within the court and its environs.

The privilege provides absolute protection from civil arrest on unrelated matters for those having business within the courts. The Court has described the privilege as follows:

Parties and witnesses, attending in good faith any legal tribunal, whether a court of record or not, having power to pass upon the rights of the persons attending, are privileged from arrest on civil process during their attendance, and for a reasonable time in going and returning, whether they are residents of this state or come from abroad, whether they attend on summons or voluntarily, and whether they have or have not obtained a writ of protection.

In re Thompson, 122 Mass. at 429;<sup>43</sup> Larned, 12 F. at 594 (privilege "affords an absolute protection").<sup>44</sup>

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<sup>43</sup> In Thompson, the Court relied on Meekins, 126 Eng. Rep. 363, as well as other leading English cases including Persse v. Persse, 10 Eng. Rep. 1064 (1856) (though appellant arrived several months early for his appeal to be heard, and though there was evidence that he came to London to avoid service of process, still he was discharged from arrest), Selby v. Hills, 131 Eng. Rep. 364 (1832) (petitioning creditor attending court to watch bankruptcy proceedings and arrested two hours after leaving court was protected by the privilege, which "ought to be dealt out with a liberal hand"), Ex parte Byne, 35 Eng. Rep. 123 (1813)



The privilege also attaches to the courthouse itself and this privilege of place protects all those within the courthouse and its environs. Blight v. Fisher, 3 F. Cas. 704, 704-05 (C.C.D.N.J. 1809); 6 Matthew Bacon, A New Abridgement of the Law 530 (7th ed. 1832).

Some courts have described the privilege as one "of the court, rather than of the defendant," Stewart, 242 U.S. at 46, while others, including this Court, have treated the privilege as belonging to both the court and the individual seeking its protection.

Benesch v. Foss, 31 F. 2d 118 (D. Mass. 1929) (service of State civil suit on criminal defendant in corridor

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(witness who appeared voluntarily, without a summons, was nevertheless protected from arrest), Spence v. Stuart, 102 Eng. Rep. 530 (1802) (man who appeared before a court-ordered arbitrator at a coffee shop, and who remained in the coffee shop overnight after learning that bailiffs were prepared to arrest him, was privileged from arrest the following morning as he left the coffee shop), and Arding v. Flower, 101 Eng. Rep. 1531 (1800) (bankrupt who appeared, after verbal notice, before a meeting of a commission of bankruptcy for distribution of his estate was entitled to the privilege).

<sup>44</sup> Limitation of the privilege to matters unrelated to the court proceedings is best articulated in Lamb, 285 U.S. at 225-228, in which the Supreme Court withheld the privilege from service in a related suit because "the immunity itself, if allowed, would so obstruct judicial administration in the very cause for the protection of which it is involved as to justify withholding it."

outside Federal courtroom "was an infringement upon the defendant's rights and perhaps also upon the province of this court"); Larned v. Griffin, 12 F. 590 (C.C.D.Mass. 1882) (abatement of civil suit is proper where privilege from arrest on civil process "affords an absolute protection"); Diamond v. Earle, 217 Mass. 499, 501 (1914) ("It is not merely a privilege of the person; it is a prerogative exerted by the sovereign power through the courts for the furtherance of the ends of justice."); In re Thompson, 122 Mass at 430 (individual arrested in violation of privilege is "unlawfully imprisoned or restrained of his liberty" and thus entitled to habeas corpus relief).

Witnesses, jurors, civil litigants and criminal defendants are all protected by the privilege. See In re M'Neil, 3 Mass. 288 (privilege applies to "a juror, or any other person, whose duty brings him to Court, whether as a party or a witness"); Benesch, 31 F. 2d at 118 (criminal defendant privileged from service of process on civil suit); United States v. Conley, 80 F. Supp. 700 (D. Mass. 1948) (criminal defendant privileged from service of process in civil suit but not in another criminal case). See also 28 Fed. Proc., L. Ed. § 65:35 and cases cited therein (privilege

applies to criminal defendants).<sup>45</sup> The privilege extends to arrests during legal proceedings outside of courts. Valley Bank & Trust Co. v. Marrewa, 354 Mass. 403 (1968) (individual entitled to privilege when compelled to attend examination before bankruptcy trustee); Wood, 71 Mass. at 538 ("the protection extends to all legal tribunals of a judicial character"). As to courthouses themselves, the privilege protects all those physically within the courthouse or its environs. See Greenleaf, Law of Evidence § 316; Lasch, 127 Yale L.J. Forum at 428-40.

The privilege protects individuals from civil arrest while they are in courthouses or attending court proceedings and also "for such reasonable time before and after as may enable them to come from and return to their home." Diamond, 217 Mass. at 500. See also Stewart, 42 U.S. at 128 (defendant served with civil process "while he was returning from the courtroom after testifying" entitled to the privilege); In re Thompson, 122 Mass. at 429. Without

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<sup>45</sup> But see Ex parte M'Neil, 6 Mass. 264 (witness who attended court voluntarily not entitled to privilege from arrest), a narrower understanding of the privilege, criticized at the time (see editor's note), and rejected in subsequent decisions, see Thompson, 122 Mass at 430.

this broad protection, arrests of court participants coming to or leaving court proceedings would swallow the very reasons on which the courts have relied for imposing the privilege: to protect the administration of justice. See Stewart, 242 U.S. at 129.

C. Civil arrests for immigration purposes fall within the privilege.

"[T]he administrative proceedings brought by Federal immigration authorities to remove individuals from the country are civil proceedings, not criminal prosecutions." Lunn v. Commonwealth, 477 Mass. 517, 522 (2017). See also Arizona v. United States, 567 U.S. 387, 407 (2012) ("it is not a crime for a removable alien to remain present in the United States"). It is incontrovertible that arrests made for the purpose of civil removal proceedings (including summary removals) are civil in nature. Cf. 8 C.F.R. §§ 287.5(c)(1) & (e)(3) (assigning civil immigration arrest authority to public officers). These arrests fall squarely within the longstanding privilege against civil arrest while attending court.

The recent trend in civil arrests for immigration purposes at courthouses has already greatly disrupted the administration of justice, supra at 3-14, and

interfered with the vindication of individual rights, infra at 35-38. Thus both the law and the policy behind the common law privilege squarely support its application to civil immigration arrests.

Petitioners, and all similarly situated people with business before the Massachusetts trial courts while coming to, attending, or returning from Massachusetts courts, as well as all those within the courthouse and its environs are entitled to the privilege against civil arrest, including civil immigration arrest. By applying the privilege in such a manner, this Court will ensure the interests underlying the privilege - the administration of justice and the vindication of individual rights - consistent with this Court's own jurisprudence. See In re Thompson, 122 Mass. at 429.

## II.

### **THE COMMON LAW PRIVILEGE AGAINST CIVIL ARREST IN AND AROUND STATE COURTHOUSES FALLS SQUARELY WITHIN THE POWERS RESERVED TO THE STATES UNDER THE TENTH AMENDMENT.**

The privilege against civil arrest in and around courthouses, so deeply rooted in English and American common law, infra at 20-24, falls squarely within the powers reserved to the States. See Younger v. Harris,

401 U.S. 37, 44 (1971) (Federal interference in the functioning of State courts is contrary to "Our Federalism"). In fact, the heart of the privilege is access to and administration of State (as well as Federal) courts, which represents a fundamental concern of our federalist system. Younger, 401 U.S. at 44. See also Gregory v. Ashcroft, 501 U.S. 452, 460 (1991) (state's determination of the qualifications for state court judges "is a decision of the most fundamental sort for a sovereign entity"). "Our Federalism" dictates that "the National Government, anxious though it may be to vindicate and protect Federal rights and Federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." Younger, 401 U.S. at 44. Congress has not made "clear and manifest" an intent to intrude upon the functioning of State courts by preempting the privilege against civil arrest. See Wyeth v. Levine, 555 U.S. 555, 565 (2009).<sup>46</sup> And with good reason - any statutory

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<sup>46</sup> "In all pre-emption cases . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Wyeth, 555 U.S. at 555 (internal citations and punctuation omitted).

authorization would be in violation of common law,  
supra at 18-29, and the Constitution, infra at 35-38.

To the contrary, the privilege against arrest has long been incorporated in Federal common law without inference from Congress. See, e.g. Page Co., 261 U.S. at 447; Benesch, 31 F.2d at 118. In Page Co., the Supreme Court, in rejecting a challenge to the abatement of a Federal suit, where the defendant was served process for that Federal case while attending State court proceedings, concluded that the Federal court was not "antagonistic" to the State court or the protections of the privilege. Page Co., 261 U.S. at 447-48. The privilege, the Court observed, "is founded . . . in the necessities of the judicial administration, and the courts, federal and state, have an equal interest in those necessities." Id. (internal citation and punctuation omitted). Where Federal law has adopted State common law,<sup>47</sup> with the

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<sup>47</sup> See, e.g., Stewart, 242 U.S. at 129 (adopting Supreme Court of New Jersey decision when addressing the policy justifications for the privilege); Conley, 80 F. Supp. at 703 (relying on State court decisions to support holding with respect to the common law privilege). See also Page Co., 261 U.S. at 447-48 ("the courts, federal and state, have an equal interest" in defending the common law privilege from arrest).

apparent consent of Congress, the Supremacy Clause cannot be offended. See United States v. Texas, 507 U.S. 529, 534 (1993) (Federal statute will displace Federal common law only when it "speak[s] directly to the question addressed by the common law").

To the extent any decision issued by this Court might be considered distinct from the privilege recognized by Federal common law, a writ of protection in this matter does not fall within any of the traditional categories of preemption - it is neither expressly preempted, nor field preempted, nor conflict preempted. This is unsurprising, because any attempt by Congress to authorize civil arrests in courthouses (State or Federal) through legislation would violate Federal law, supra at 18-29. Thus, the privilege has not been preempted, notwithstanding the fact that it touches on immigration. See DeCanas v. Bica, 424 U.S. 351, 355 (1976) ("[T]he fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain."). The Immigration and Nationality Act (INA) does not expressly preempt the



common law prohibition on arrest in courthouses for civil purposes.<sup>48</sup> Congress has similarly not occupied the field with respect to civil arrests in and around courthouses.<sup>49</sup> Nor does the privilege make compliance with Federal law a "physical impossibility" or "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." See Arizona, 567 U.S. at 399-400. Rather, the prohibition on civil arrests in and around courthouses leaves ample space for civil immigration arrests, as evinced by the forty-two percent increase in civil immigration arrests in the past year, of

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<sup>48</sup> The INA includes only two preemption provisions - 8 U.S.C. § 1324a(h)(2) and § 1188(h)(2) - both of which involve regulating the employment of non-U.S. citizens.

<sup>49</sup> The only provision in the INA that mentions immigration enforcement activities in courthouses is 8 U.S.C. § 1229(e), a domestic violence provision that seeks to prevent perpetrators from using immigration enforcement to manipulate and further endanger victims. Specifically, the provision establishes protocols that are intended to prevent the federal government from apprehending victims in spaces that provide legal and social services on malicious tips from abusers. This is not even remotely "clear and manifest" evidence that Congress intended to repeal the long-standing common law privilege against arrest in and around courthouses. See Wyeth, 555 U.S. at 565. See also Milwaukee v. Illinois & Michigan, 451 U.S. 304, 316-17 (1981) (observing that the evidence required for Federal preemption of State common law is even greater than that required for Congressional displacement of Federal common law).

which only a tiny fraction took place in and around courthouses.<sup>50</sup> Absent clear and manifest intent, and consistent with Our Federalism, Congress has left in place the vital protection of this privilege. To find otherwise would permit undue interference in the basic functioning of the Massachusetts courts in violation of the Tenth Amendment. See Bond v. United States, 564 U.S. 211, 225 (2011) ("Impermissible interference with state sovereignty is not within the enumerated powers of the National Government" and violates the Tenth Amendment.).<sup>51</sup>

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<sup>50</sup> Niraj Chokshi & Vivian Yee, ICE Deportation Cases: Your Questions Answered, N.Y. Times, Feb. 13, 2018, available at <https://www.nytimes.com/2018/02/13/us/immigration-deportation-ice.html>.

<sup>51</sup> ICE courthouse arrests also inhibit public access to the courts, which undermines our Republican form of government. See Globe Newspaper Co. v. Superior Court for Norfolk Cty., 457 U.S. 596, 606 (1982) (public access to courts "enhances the quality and safeguards the integrity of the factfinding process," "fosters an appearance of fairness, thereby heightening public respect for the judicial process," and "permits the public to participate in and serve as a check upon the judicial process-an essential component in our structure of self-government.").

### III.

#### APPLICATION OF THE COMMON LAW PRIVILEGE TO CIVIL IMMIGRATION ARRESTS IS ESSENTIAL FOR NONCITIZENS TO EXERCISE CONSTITUTIONAL RIGHTS THAT CAN ONLY BE ASSERTED BY PHYSICAL APPEARANCE IN COURT.

Civil immigration arrests not only impact the administration of justice in Massachusetts' courthouses when litigants and witnesses do not appear, supra at 3-14, they also impede the vindication of individual constitutional rights. Access to courts, due process, equal protection, and the right of criminal defendants to be present at trial are just a few examples of constitutional rights encumbered by immigration arrests that prevent litigants and witnesses from appearing in court. A writ of protection from civil immigration arrests is thus vital to protecting the exercise of these fundamental rights.

Without a writ of protection to prevent civil immigration arrests in and around courthouses, noncitizens are being denied their right to access Massachusetts courts.<sup>52</sup> Persons who suffer immigration

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<sup>52</sup> Article 11 of the Massachusetts Declaration of Rights mandates access to "justice freely" from the courts of the Commonwealth. See Sahli v. Bull HN Info. Sys., Inc., 437 Mass. 696, 700-01 (2002); Graizzaro v.

arrests and subsequent immigration detention while attempting to file claims or resolve civil or criminal matters are prevented from physically appearing in court and asserting their legal rights and interests. Noncitizens who do not seek redress from Massachusetts courts because of the significant threat of immigration arrest (and subsequent detention and deportation) are similarly prevented from accessing the courts. In either case, those harmed by civil immigration arrests at courthouses present "the essence" of an access to court claim because "official action is presently denying an opportunity to litigate" for this population. Christopher v. Harbury 536 U.S. at 413. This Court has long held that noncitizens, both with and without lawful status, are entitled to "seek[] redress in our courts."<sup>53</sup> Janusis

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Graizzaro, 36 Mass. App. Ct. 911, 911 (1994). The Federal constitutional right of access to courts has been found alternatively to stem from the First Amendment Speech and Petition Clauses, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Due Process and Equal Protection Clauses. Christopher v. Harbury, 536 U.S. 403, 415 n.12 (2002) (citations omitted); Murray v. Giarratano, 492 U.S. 1, 11 and n.6 (1989).

<sup>53</sup> Depriving a class of people (in this case, removable noncitizens) access to the courts similarly violates the equal protection provisions under art. 11 and the Fourteenth Amendment. See Murphy v. Comm'r of Dep't of Indus. Accidents, 415 Mass. 218, 233 (1993).

v. Long, 284 Mass. 403, 410 (1933). Civil immigration arrests prevent such redress and access to our courts.

When civil immigration arrests prevent persons, including Petitioners, from appearing in Massachusetts courthouses to present or defend against claims, to present evidence or testimony of noncitizen witnesses, or to cross-examine adverse witnesses, they are also denied due process rights under the Fifth and Fourteenth Amendments and art. 12 of the Massachusetts Declaration of Rights. Due process is a broad term, but its "central meaning" is "the right to notice and an opportunity to be heard," which "must be granted at a meaningful time and in a meaningful manner." Fuentes v. Shevin, 407 U.S. 67, 80 (1972) (internal quotations omitted); In Re Angela, 445 Mass. 55, 62 (2005); see Diamond, 217 Mass. at 501 (privilege protects a party's "right to testify in his own behalf").

Civil immigration arrests further impede the rights of adult criminal defendants, like T. Doe, and juveniles facing delinquency charges, J. Doe, under the Sixth Amendment and art. 12. Arrests and subsequent immigration detention prior to resolution of criminal and juvenile cases prevent these individuals from being present at the critical stages

of their proceedings, Hopt v. Utah, 110 U.S. 574, 579 (1884). Noncitizens charged with crimes, like T. Doe, and defendants with noncitizen witnesses, like J. Doe, are also denied their rights to "produce all proofs that may be favorable to [them]; to meet the witnesses against[them]face to face, and to be fully heard in [their] defence[s]." Commonwealth v. Robichaud, 358 Mass. 300, 302 (1970) (quoting from art. 12); Application of Gault, 387 U.S. 1 (1967) (same due process protections apply to juveniles). A writ of protection issued by this Court is therefore essential for the vindication of these many constitutional rights.

#### IV.

**THE COURT SHOULD ISSUE THE WRIT OF PROTECTION CONFIRMING THAT THE MASSACHUSETTS COMMON LAW PRIVILEGE AGAINST ARREST APPLIES TO CIVIL IMMIGRATION ARRESTS AS PART OF ITS BROAD, SUPERINTENDENCE POWERS UNDER G.L. C. 211, § 3.**

Pursuant to the Court's general superintendence power under G.L. c. 211, § 3, this Court should issue a writ of protection from civil arrests, including arrests for civil immigration purposes, for all individuals, including Petitioners, who have business before the courts of the Commonwealth, while such individuals are coming to, attending, and leaving the

courthouses, as well as for all individuals within the courthouse and its environs.<sup>54</sup> G.L. c. 211, § 3 vests this Court with superintendence of all Massachusetts courts to prevent "abuses therein if no other remedy is expressly provided," and to issue writs "as may be necessary or desirable for the furtherance of justice . . . and the securing of [the courts'] proper and efficient administration." This Court has granted relief under this provision when a petitioner presents an issue of "systemic concern," Simmons v. Clerk-Magistrate of the Boston Div. of the Hous. Court Dep't, 448 Mass. 57, 62 (2006), where there is "no other legal remedy to pursue," McGuinness v. Commonwealth, 420 Mass. 495, 497 (1995). This matter easily meets both requirements.

Petitioners present an issue of great systemic concern. Civil immigration arrests disrupt the administration of justice in the Massachusetts

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<sup>54</sup> Class certification is unnecessary where, as here, "the relief afforded pursuant to G.L. c. 211, § 3 . . . will apply to all the individuals who share predominant issues of fact and law with the petitioner, and where . . . certification of a class will lead to relief no greater or in addition to that afforded pursuant to G.L. c. 211, § 3." Brantley v. Hampden Div. of Prob. & Family Court Dep't, 457 Mass. 172, 184 (2010).

courthouses by taking individuals with pending matters before the courts into federal immigration custody, and by discouraging litigants, witnesses and others with business before the courts from entering the courthouses due to fear of civil immigration arrest of themselves or their family members. When noncitizens are arrested in and around courthouses and immigrant communities view the courts of the Commonwealth as places of federal immigration enforcement, the administration of justice is severely hampered. This petition therefore involves just the sort of extraordinary circumstances that justify relief under G.L. c. 211, § 3. See Bridgeman v. Dist. Attorney for Suffolk Dist., 471 Mass. 465 (2015); Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655, 657 n.5 (2013), S.C., 471 Mass. 12 (2015).

No other effective remedy exists. A significant harm alleged in this petition - the fear among all immigrant communities considering whether to avail themselves of the protections of the Massachusetts courts - can only be remedied by an order protecting all persons attending court proceedings. Piecemeal litigation will not address the pervasive fear of appearing in Massachusetts courts. While the writ of



protection is not necessary for the privilege to apply - the privilege exists and protects Petitioners and all those within its scope - In re Thompson, 122 Mass. at 429, a ruling from this Court that the privilege covers civil immigration arrests is essential to provide clear guidance, so that noncitizens in Massachusetts will not be forced to speculate as to the protections provided by Massachusetts law.

Petitioners recognize the possibility that Federal immigration officers may choose to ignore this Court's writ. If enforcement in Federal court becomes necessary, a ruling from this Court would be conclusive as to the scope of the Massachusetts common law privilege before the Federal court, see United States v. Tavares, 843 F.3d 1, 14-15 (1st Cir. 2016) (decision from SJC binding as to Massachusetts law), and would guide (if not compel) a Federal court action. See Stewart, 242 U.S. at 129 (adopting Supreme Court of New Jersey decision when addressing the policy justifications for the privilege); Conley, 80 F. Supp. at 703 (relying on State court decisions to support holding with respect to the common law privilege). See also Page Co., 261 U.S. at 447-48 ("the courts, federal and state, have an equal

interest" in defending the common law privilege from arrest). This Court, tasked with providing and safeguarding the due administration of justice in the Commonwealth, must speak to this matter to ensure that the courts and residents of Massachusetts receive the protections our laws require.

G.L. c. 211, § 3 is the proper avenue for this Court to consider this issue, to exercise its superintendence powers, and to issue a writ of protection that marshals Massachusetts law to prevent civil immigration arrests from impeding both access to and the administration of justice in the courts of the Commonwealth.

#### CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court report the matter to the full bench, so the Court can rule on this matter of vital importance and grant a writ of protection from civil arrest (including civil immigration arrest) for the Petitioners and all similarly situated individuals.

Respectfully submitted,  
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Dated: March 15, 2018

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COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE, Y.  
DOE, T. DOE, J. DOE, AND O.DOE.

AFFIDAVIT OF C. DOE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, C. Doe, do hereby state that the following is true to the best of my knowledge, information and belief:

1. I live in Everett, Massachusetts. I have lived there for one year since arriving from Brazil in 2017 on a visa.
2. My visa has expired, and I am now undocumented, with no work permit or immigration status in the United States.
3. I have one child, a 25-year-old adult daughter. My daughter has severe intellectual delay and suffers from mental illness with a diagnosis of autism and bi-polar disorder. She has had cognitive deficits since birth and has never learned to read or write. My daughter takes medication to keep her from having manic episodes and becoming uncontrollable.
4. Our daughter requires constant attention and care. She is completely dependent on me and could not function without my assistance and support. I need to help her comb her hair and help her dress. I need

to prepare her medication and see that she takes it as directed.

*Need to Access the Courts*

5. I want to apply for permanent guardianship over my daughter to be able to ensure that she receives appropriate medical care and that she can always live with us and be cared for in our home. Because of her disabilities, our daughter does not have the capacity to handle her own affairs.

6. I need to go to court to be declared the guardian of my adult daughter.

7. Even though I need to have legal authority to be able to oversee my daughter's medical treatment, I have delayed going to court because I am afraid.

*Fear of ICE Presence at Courthouses and Need for Writ of Protection*

8. I have not gone to court to seek guardianship because I am afraid that if I do, Immigration and Customs Enforcement (ICE) will detain me and I will be deported.

9. I am afraid because my friends tell me that immigrants without papers who have gone to court for one reason or another have been picked up by ICE. I have seen television reports confirming this.

10. If I did not fear being picked up by ICE, I would definitely go to court to apply for permanent guardianship for my daughter so that I can oversee her medical treatment and effectively care for her.

**Esta declaração jurada foi traduzida e explicada em espanhol e eu assino por minha própria vontade e com pleno conhecimento de seus termos.**

Signed under the penalties of perjury this the 6th day of March 2018.

C. Doe.  
C.Doe



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE, Y.  
DOE, T. DOE, J. DOE, AND O.DOE.

AFFIDAVIT OF D. DOE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, D. Doe, do hereby state that the following is true to the best of my knowledge, information and belief:

1. I live in Chelsea, Massachusetts. I have lived in the United States for 11 years since arriving from Honduras in January 2007.
2. I left Honduras because of the criminal violence and widespread delinquency.
3. I am undocumented, with no work permit or immigration status in the United States.
4. I now live with my son and my son's father. I can no longer work in the United States because I must take care of my son who is severely disabled.
5. My son Kevin was born in the United States on October 16, 2015. He cannot walk without the aid of a walker. He does not speak and gets angry and frustrated when I do not understand what he wants. He will hit me or his father if we do not respond.

6. My son is completely dependent on me. He needs help eating, dressing, bathing and cannot be left alone.

*Need to Access the Courts*

7. On July 31, 2017, my landlord illegally evicted my family from our apartment.

8. Even though we were current on rent, he just told us that we had to move.

9. He told us to move because he was getting complaints from our downstairs neighbor (a relative of the landlord). The neighbor would get angry and bang on the ceiling whenever my son tried to use his walker.

10. I know that I have legal rights and could go to court to try to get compensation for what happened to me and my family. I could try to get damages from my landlord because of this illegal eviction, such as moving costs and perhaps some money to cover the more expensive rent that I now must pay.

11. However, although I would like to go to court against my landlord, I am afraid, so I have not even tried.

*Fear of ICE Enforcement at Courthouses and Need for  
Writ of Protection*

12. I have not gone to court against my former landlord because I am afraid that if I try to vindicate my rights, Immigration and Customs Enforcement (ICE) will detain me and I will be deported.
13. I am extremely afraid of being deported if I go to court. Because of my son's condition and his complete dependence on me, it is frightening to think about the possibility that I might be picked up by ICE and deported. I don't know what my son would do without me or who would care for him.
14. I have heard of other undocumented people being picked up by ICE at courthouses, including my brother who was detained on his way to court. He has been held in ICE custody for the past five months. We do not have the money to hire an immigration lawyer. I know that my brother will be deported.
15. My brother's arrest makes me even more afraid that I, too, might be deported if I went to court. I am so afraid of ICE that I no longer even go shopping in Chelsea. My son's father who has immigration status does the shopping. I am even afraid to go

to the Health Center for my son's medical appointments.

16.If I were not afraid of ICE, I would go to court to seek justice against my former landlord.

**Esta declaración jurada me ha sido traducida y explicada en español y la firmo por mi propia voluntad y con pleno conocimiento de sus términos.**

Signed under the penalties of perjury this the 6th day of March 2018.

D. Doe  
D. Doe

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE, Y.  
DOE, T. DOE, J. DOE, AND O. DOE.

AFFIDAVIT OF F. DOE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, F. Doe, do hereby state that the following is true to  
the best of my knowledge, information and belief:

1. I live in Chelsea, Massachusetts. I have lived  
there for 16 years since arriving from Honduras in  
2002.
2. We were very poor in Honduras and I had to leave  
school after the fifth grade in order to help  
support my family.
3. I left Honduras to escape from the widespread  
delinquency, violent gangs, and civil unrest. My  
wife and I have three children and we constantly  
feared for their safety.
4. I came to the United States without immigration  
papers. I am undocumented, with no work permit.
5. As soon as I was settled in the United States, I  
managed to find construction work and an occasional  
roofing job. In 2011, I was fortunate enough to be

hired by a roofing company. The headquarters are in a town outside of Boston.

6. I have two sons. One is nineteen years old and the other is sixteen. They are living with me in Chelsea and attending school here. They also are undocumented.

7. They are dependent on me for financial and familial support.

#### *Need to Access the Courts*

8. On September 9, 2017 I was violently attacked at the Home Depot store in Chelsea. The man who attacked me is an acquaintance from Honduras, who had helped me find work as a roofer when I first came to the United States.

9. The District Attorney has brought a criminal case against my attacker, which is still going on.

10. I want to see justice done and to prevent further violence against me or my family. I want to be useful to the District Attorney who is prosecuting this case.

11. I have attended court in the past on this matter as the complaining witness, but I am afraid to appear at our next court date.

*Fear of ICE Enforcement at Courthouses and Need for  
Writ of Protection*

12. I am afraid to go to court because I fear that I could be deported and separated from my children if Immigration and Customs Enforcement (ICE) detained me.

13. I have heard from others in the community about undocumented people being picked up by ICE at and around courthouses. Also, the man who attacked me knows that I am undocumented. If he wanted to get back at me for being a witness against him in court, it would be very easy for him to just call ICE and tell them that I am undocumented. In the past, he used to threaten that he would do this to me. He knows the court dates for his case and he could tell ICE that as well.

14. I have suffered a lot because this man attacked me. I want to see justice done. But I am getting more and more worried each time I go back to court. Every time there is a new court date, I have to think long and hard about whether I should risk going back.

15. If I did not fear ICE detention at court, I would definitely do everything that the District

Attorney wants me to do, in terms of going to court hearings and testifying in the case. But because of that fear, I am not sure what I will do.

**Esta declaración jurada me ha sido traducida y explicada en español y la firmo por mi propia voluntad y con pleno conocimiento de sus términos.**

Signed under the penalties of perjury this 2nd day of March 2018.

F. Doe  
F. Doe



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE, Y.  
DOE, T. DOE, J. DOE, AND O.DOE.

AFFIDAVIT OF K. DOE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, K. Doe, do hereby state that the following is true  
to the best of my knowledge, information and belief:

1. I live in Chelsea, Massachusetts. I have lived  
there for 15 years since arriving from Guatemala in  
2003.
2. I fled Guatemala to escape from the terrible  
violence and gang warfare that are getting worse  
and worse.
3. I do not have a work permit or immigration status  
in the United States. I am undocumented.
4. I have two children who were born in the United  
States. My son was born on January 16, 2013 and my  
daughter, two years later, on January 25, 2015.
5. My children are dependent on me for financial  
support. Although I live with the father of my  
second child, he has had trouble finding steady

work. He is also undocumented and has only been able to find seasonal work doing landscaping.

*Need to Access the Courts*

6. In 2014, I went to the Suffolk Probate and Family Court to obtain child support from the father of my older child, Dylan. Dylan's father tried to oppose this action. But the Court ordered a DNA test that established paternity. Dylan's father was then ordered to pay child support.
7. Dylan's father stopped paying child support in 2016. He did not provide support for even two full years. Without that additional money, I have had a very hard time providing for my two young children.
8. I work in a supermarket as a cashier. Without the child support, I am forced to work many more hours. I even work on Saturday, relying on paid babysitters to watch the children while I am at work.
9. I would like to go to court to file a Complaint for Contempt in order to force Dylan's father to start paying child support again.
10. I would also like to seek a modification of the initial court order under the new Guidelines so

that the support payments reflect the father's actual earnings.

11. However, I am now in fear of going back to the court to seek enforcement or modification.

***Fear of ICE Enforcement at Courthouses and Need for Writ of Protection***

12. I have not returned to the Probate Court because I am afraid that if I go, Immigration and Customs Enforcement (ICE) will detain me and I will be deported. Although I went to court originally in 2014, there is just too much ICE activity now, so I am scared to go back to court.

13. I have heard from others about undocumented people recently being picked up by ICE around the courthouses. My co-workers in the supermarket share stories about people who have already been deported, and that just increases my fear.

14. I cannot imagine what would happen to me and my children if I were picked up by ICE. If I were deported, my children would be left without a mother to care for them. My children are both U.S. citizens, and this country is the only home that they have ever known. If I were sent back to Guatemala, I would be confronted with a terrible

choice: either take my children away with me to a dangerous country that is entirely unfamiliar to them or leave them in the United States with relatives who are already overburdened with their own family obligations. I can't imagine having to make that choice.

15. I have suffered a lot, both emotionally and financially, from the loss of child support income. I know that I have a right to it. But I am just too afraid to go to court to try to secure it, because of my fear of being detained and deported.

16. If not for this fear, I would definitely try to get the Court to order Dylan's father to start paying child support again.

**Esta declaración jurada me ha sido traducida y explicada en español y la firmo por mi propia voluntad y con pleno conocimiento de sus términos.**

Signed under the penalties of perjury this the 6<sup>th</sup> day of March 2018.

K. Doe  
K. Doe

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE, Y.  
DOE, T. DOE, J. DOE, AND O. Doe.

AFFIDAVIT OF O. DOE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, O. Doe, do hereby state that the following is true to  
the best of my knowledge, information and belief:

1. I live in Everett, Massachusetts. I have lived in  
the United States for 11 years since arriving from  
Brazil in February 2007.
2. I am undocumented, with no work permit or  
immigration status in the United States.
3. I came to the United States with my husband. Our  
son Rafael was born in the United States on May 17,  
2013.
4. I work cleaning houses.

*Need to Access the Courts*

5. My husband and I settled in Everett, where we have  
friends and family.
6. We lived together for nine years.
7. My husband and I separated two years ago.

8. Last year on February 8, 2017, my husband became aggressive towards me. He verbally abused me. He threatened to kill me. He then grabbed my cell phone, threw it on the floor, and broke it so that I could not call the police.
9. He then left the house, taking my son with him. I had to go to the police to recover my son for whom I have sole legal and physical custody.
10. On February 19, 2017, I was able to get a restraining order against him. The order expired on February 23, 2018.
11. On February 18, 2018, before the order had expired, my now ex-husband tried to communicate with me by cell phone. He later denied that he had done so and denied that he knew my telephone number. I, however, have a facetime image on my cell phone showing the date and time of the call.
12. I would like to renew the restraining order, because I am worried that my former husband will try to hurt me or to take the child away, but I am afraid to return to court.

***Fear of ICE Enforcement at Courthouses and Need for  
Writ of Protection***

13. I know that I have legal rights and could go to court to make my restraining order permanent, but I am afraid that if I try to vindicate my rights, Immigration and Customs Enforcement (ICE) will detain me and I will be deported.

14. I am extremely afraid of being deported if I go to court. Particularly because my young son is dependent on me, it is just too frightening to think about the possibility that I might be picked up by ICE and deported. I don't know what my son would do without me. My husband would not be able to care for him.

15. I have heard of other undocumented people being picked up by ICE at courthouses.

16. If I were not afraid of ICE, I would go to court to seek a permanent stay away order against my husband.

Esta declaração jurada foi traduzida e explicada em espanhol e eu assino por minha própria vontade e completo conhecimento de seus termos.

Signed under the penalties of perjury this the 6th day of March 2018.

  
O. Doe

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE,  
O. DOE, T. DOE, Y. DOE, AND J. DOE

AFFIDAVIT OF T. DOE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, T. Doe, hereby depose and state as follows:

1. I am a 48-year-old man who was born in Vietnam to a Vietnamese mother and an American father.
2. In 1991, I entered the United States as a lawful permanent resident (LPR or "green card" holder). I came to this country to find my father, and I have lived here for my entire adult life.
3. I remain in the United States today with a green card.
4. I am currently charged with possession of cocaine and the case is pending in a District Court in Massachusetts. My next court date in this matter is April 20, 2018.
5. I must go to the courthouse for all of my court dates.
6. My defense attorney told me that if I do not go to my court dates, the court will issue a warrant for me and I will be arrested.
7. However, I am fearful of going to the courthouse because I do not want to be arrested by ICE.
8. I have a prior conviction for possession of cocaine from ten years ago that makes me inadmissible and deportable.
9. Some of my friends from Vietnam have been arrested by immigration officials (ICE) and they have been deported.



10. After my friends were deported to Vietnam, they were unable to return to the United States.
11. I am worried that when I go to the courthouse, I could be arrested and detained by ICE. If that happens, I will not be able to get back into criminal court from immigration custody and I might be defaulted on my pending criminal case. And of course I am afraid of being deported to a country that I left over twenty-five years ago.
12. However, if I do not go to the courthouse for my criminal case because I am afraid of arrest by ICE, the judge will issue a warrant in the criminal case and I will be arrested by the Boston police.
13. If I am held in jail because of an arrest on my criminal case, I will lose my housing and I will be unable to work.
14. If I know that ICE cannot arrest me when I go the courthouse, I would feel less frightened about going to court for my pending criminal case.
15. This affidavit was translated to me in Vietnamese by an interpreter and it is accurate.

Signed under the penalties of perjury this 6 day of March 2018.

T. Doe  
T. Doe

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE, Y.  
DOE, T. DOE, J. DOE, AND O. DOE.

AFFIDAVIT OF Y. DOE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, Y. Doe, do hereby state that the following is true  
to the best of my knowledge, information and belief:

1. I live in Chelsea, Massachusetts. I have lived in  
the United States for four years since arriving  
from El Salvador in 2014.
2. I left El Salvador to escape from the gangs and  
criminal activity. The country is very dangerous,  
and I would be afraid to be sent back.
3. I have filed an application for Legal Permanent  
Resident status, but right now I am undocumented.

*Need to Access the Courts*

4. For part of 2017, I worked in a factory cooking and  
packing mushrooms. After working there for six  
months, I took two days sick leave. When I asked  
for a third sick day, my boss fired me. That was  
right before Christmas.

5. My boss had promised me a two-hundred-dollar year-end bonus. But when I was fired, he refused to pay me the bonus.
6. Losing both my job and the bonus has been very hard on me. Money has always been extremely tight for me, but the loss of my employment made my situation even more dire. I am living with my fiancé, and we barely have enough money to buy food.
7. I would like to go to court to make my employer pay me the promised bonus or even to get my job back, but I am afraid to go to court. I am scared that if I go near a courthouse, Immigration and Customs Enforcement (ICE) will come after me and I will be deported.
8. Being sent back to El Salvador would be terrible for me and my fiancé. It is very dangerous there, and I have no idea how we would support ourselves.
9. I know that what my employer did to me was wrong, and that I could go to court to try to get the money that I am owed, or try to challenge the fact that he fired me just because I was sick. But I am too afraid to go to court because of the risk of being detained and deported.

10. If I did not fear being picked up by ICE, I would go to court, claim my back wages, and challenge my termination so that I can be in a more economically stable position.

**Esta declaración jurada me ha sido traducida y explicada en español y la firmo por mi propia voluntad y con pleno conocimiento de sus términos.**

Signed under the penalties of perjury this the 6th day of March 2018.

Y. Doe  
Y. Doe



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE, Y.  
DOE, T. DOE, J. DOE, AND Q. Doe (ww)

AFFIDAVIT OF J. DOE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, J. Doe, do hereby state the following to be true to the best of my knowledge and belief:

1. I am seventeen years old and I am a lawful permanent resident (LPR, also known as a "green card" holder) of the United States.
2. I am currently charged in a Juvenile Court in Middlesex County with two counts of indecent assault and battery on a person under fourteen years of age. The case is scheduled for trial on March 20, 2018.
3. The police report alleges that, while at a group gathering at a local park, I twice touched the genital area of the complaining witness.
4. I have entered pleas of not delinquent, and I want to defend myself against these charges. I did not commit this crime.
5. My juvenile defense attorney told me that she hired an investigator to interview other people who were at the gathering. She told me that the investigator talked to a witness who was there and who told the investigator that I was nowhere near the complaining witness during the time when this incident is alleged to have happened.
6. My attorney told me that the testimony of this witness would be extremely important at trial to show that I am not guilty of these charges. However, my attorney also told me that the witness said to the investigator that she is unwilling to come to court to testify in this case, because she does not have legal immigration status and she is afraid of being arrested at or near the courthouse by immigration officials (ICE).
7. If this witness does not come to court to testify on my behalf, I will not be able to completely defend myself against these charges.
8. This affidavit was translated to me in Spanish by an interpreter and it is accurate.

(ww) Signed under the penalties of perjury this 2<sup>nd</sup> day of March 2018.

J Doe

J. Doe



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE,  
O. DOE, T. DOE, Y. DOE, AND J. DOE

AFFIDAVIT OF JENNIFER KLEIN  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, Jennifer Klein, hereby state the following to be true, to the best of my knowledge and belief:

1. I have been employed as an Immigration Law Specialist for the Immigration Impact Unit (IIU) of the Committee for Public Counsel Services (CPCS) since 2010. In this capacity, I provide training, support, and advice on individual cases to all CPCS staff attorneys and bar advocates on the immigration consequences of criminal conduct. I distribute written training and resource materials about this area of law and I lecture frequently in Massachusetts on the intersection of criminal and immigration law.
2. As part of my responsibilities at CPCS, I, along with my colleagues, follow Immigration and Customs Enforcement (ICE) enforcement tactics and policies, especially as they relate to the criminal justice system. Because of this, we have been monitoring immigration arrests in Massachusetts courthouses for a number of years.
3. Since the spring of 2017, ICE has used State courthouses, especially Massachusetts courthouses, as the location for a significant portion of their enforcement efforts. My office receives at least one call per week from defense attorneys who have had clients arrested by ICE while going to, attending and leaving Massachusetts courthouses. Beginning in April 2017, the IIU distributed a survey to all CPCS staff attorneys and bar advocates and asked that they document ICE arrests in and around courthouses in an attempt to track the prevalence of courthouse arrests. While under-representative

(completing the survey was voluntary and we know of many arrests that defense counsel did not report in the survey), we have recorded at least 84 ICE arrests in and around state courthouses.

4. On January 10, 2018, the Department of Homeland Security (DHS) issued a memorandum and "FAQs" detailing its enforcement practices inside courthouses. The memorandum and FAQs do not address arrests immediately outside of courthouses. The documents suggest that arrests inside courthouses target specific individuals, namely those with criminal convictions, "gang members," national security or public safety threats, those who have been previously ordered removed, and those who have illegally re-entered after deportation. However, a footnote in the directive states that enforcement decisions will be made on a case-by-case basis, suggesting that the arrest of any removable noncitizen inside a courthouse remains possible. The IIU is aware of a number of cases in which undocumented individuals were arrested by ICE in and around criminal courthouses who do not fall into any of the above listed categories, such as some of the individuals described below.
5. The ICE memo and FAQs indicate that ICE should focus on criminal courthouses or criminal sessions of multicourt facilities when making arrests. However, the ICE memo does not prohibit arrests in non-criminal courthouses or sessions and, in fact, indicates that when "operationally necessary" and with supervisory approval, immigration arrests may occur in these other settings.
6. The FAQs further state that ICE will make every effort to arrest individuals only after their court matters are concluded. As discussed below, this is contrary to what we have seen in Massachusetts.
7. It is my experience that ICE courthouse arrests are not only targeting people with prior criminal convictions, but they are arresting undocumented individuals with only the pending criminal

matters for which they are appearing in court. For example, I worked with a defense attorney and his client out of Middlesex County on a case where the defendant had lived lawfully in the United States for a number of years on a valid non-immigrant work visa. He had been a popular youth athletic coach for almost 10 years - his defense attorney had collected many letters of support on his behalf from colleagues, employers and parents. However, his visa expired and he remained in the U.S. leaving him without legal immigration status. He had no prior criminal record. According to the police report, which I have reviewed, while driving, another car pulled out in front of him and he struck the rear of that car. The other driver left the scene and my client stayed to call the police. However, at the scene my client was charged with Operating under the Influence of Liquor, pursuant to M.G.L. ch. 90 § 24 (OUI). On his way out of his first pre-trial conference, he was arrested by ICE at the courthouse. He has since been deported.

8. In a similar case, I spoke with an immigration attorney whose client entered the U. S. seeking asylum. He had work authorization and was living here awaiting his asylum adjudication. He lawfully held two jobs. The client subsequently met and married a U.S. citizen. He is currently in the process of applying for a green card based on that marriage. They are expecting their first child in May and the client is the sole provider for the family. In December 2017, this client was involved in a car accident. He initially panicked and drove away from the scene. However, within a few blocks, he stopped and returned. He was charged with leaving the scene of property damage and personal injury. After arraignment, he was arrested leaving the courthouse. The case remains open. In February, an Immigration Judge denied bond based exclusively on the pending criminal charge.
9. In an Essex County case, I learned from speaking with the immigration lawyer that ICE arrested a lawful permanent resident while he was walking to court for a probation violation hearing on an



OUI. Because ICE arrested him before he could appear at the violation hearing, a default warrant issued against him in the state case. His immigration removal proceedings were eventually terminated because he was not removable and he was restored to his status as a lawful permanent resident.

10. In some instances, ICE is arresting people before they enter the courthouse for hearing dates or probation appointments. For instance, from defense counsel I learned of a case in Essex County where ICE arrested a young Deferred Action for Childhood Arrivals (DACA)<sup>1</sup> recipient with a low IQ and mental health concerns ( he reports hearing voices) when he arrived at the courthouse to meet with his probation officer. He was arrested outside the courthouse before he could attend his appointment. He remains in immigration detention with pending removal proceedings.

11. In a case out of Suffolk County, I was present when ICE arrested a young man who had fled violence in his home country. From speaking with his juvenile defense counsel and his immigration attorney, I learned that he had already been approved for Special Immigrant Juvenile status and was waiting to apply for legal permanent resident status (commonly referred to as a "green card").<sup>2</sup> On the date that the juvenile court dismissed his delinquency charges upon finding him incompetent to stand trial, ICE arrested him as he was walking out of

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<sup>1</sup> DACA is a grant of deferred action that permits the recipient to live and work in the U.S. for a period of two years. For more information, see <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>.

<sup>2</sup> Special Immigrant Juvenile status permits "immigrant children who have been abused, neglected, or abandoned by one or both of their parents to apply for lawful permanent residence while remaining in the United States." Recinos v. Escobar, 473 Mass. 734, 734 (2016).

the courthouse. He remains in immigration detention with pending removal proceedings.

12. ICE arrests at courthouses result in State cases remaining indefinitely in default status. It is currently ICE policy not to transport individuals to Massachusetts courts for hearings or to make them available for State officials to provide transportation. This leaves countless Massachusetts criminal cases unresolved. For individual defendants, having open criminal matters - no matter how minor- may lead to the denial of release on bond and denial of relief from removal. Moreover, if a person is deported with an open criminal case, the negative discretionary effect of the open case will make it far more difficult, if not impossible, to be granted lawful admission to the United States in the future.

Signed under the penalties of perjury this 8  
day of March, 2018.



Jennifer Klein

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE,  
O. DOE, T. DOE, Y. DOE, AND J. DOE

AFFIDAVIT OF NANCY KELLY  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, Nancy Jean Kelly, hereby depose and state as follows:

1. I am over the age of eighteen, am competent to testify as to the matters below and make this declaration based on personal knowledge
2. I am an attorney, licensed to practice in the Commonwealth of Massachusetts. I am the managing attorney of the Immigration Unit at Greater Boston Legal Services (GBLS), located at 197 Friend Street, Boston, Massachusetts 02114. I am also an assistant director of the Harvard Immigration and Refugee Clinic, a section of which is located within GBLS.
3. Both Greater Boston Legal Services and the Harvard Immigration and Refugee Clinic provide representation to immigrants in in a variety of matters, including, among other things, applications for asylum and other forms of relief from persecution

and/or torture; applications for special immigrant juvenile status; and applications for immigration protection for survivors of domestic abuse and other violence (including applications for U Visa status and self-petitions under the provisions of the Violence Against Women Act). In addition to individual client representation, we are involved in advocacy on a broad range of issues involving immigration rights and the proper application of immigration laws. We conduct trainings for attorneys, law students and community advocates; advocate for legislative, regulatory, policy and procedural change; and provide amicus support in cases raising significant issues in the interpretation of the immigrations laws. All of our work is done without charge to our clients.

4. As part of my work, I conduct outreach to various community agencies serving immigrants within Massachusetts. I, and other GBLS advocates, conduct trainings for and meetings with the staff of these agencies, and provide advice on both a group and individual basis for community members. Group sessions involve advising community members of possible immigration remedies, changes to immigration laws and policies, and individuals' rights when

dealing with the law enforcement and immigration authorities. In these sessions, we invite questions, and try to address concerns expressed by community members. In addition, we meet with community members on a one-on-one basis, providing individual assessments of their situations and identifying possible remedies.

5. Over the last year, in my dealings with both community members and community advocates, I have heard increasing concerns regarding the actions of U.S. Immigration and Customs Enforcement (USICE) in and around the Massachusetts state courthouses. Community advocates have related stories of individuals who have been detained by USICE officers when appearing in state courts in relation to criminal and noncriminal matters. These detentions have occurred within courthouses, but also outside courthouses or in the surrounding areas. In addition, individual community members have related stories and rumors of arrests and expressed fear of going to court to assert their rights in a particular matter, or to address a minor criminal matter, such as driving without a license. The resolution of these cases can have an impact on the individual's eligibility to move

forward on a pending immigration case. I have also heard stories of individuals who have forfeited their right to assert a civil claim because of fear of going to court.

6. As part of my work, I also attend meetings with various government officials to address community concerns and to obtain updates on government policies. These include periodic meetings with officials from the local office of USICE. These meetings are arranged by the Massachusetts Immigrant and Refugee Advocacy Coalition and are attended by representatives of legal service organizations and community-based organizations. I attended one such meeting on August 30, 2017. That meeting was with officials of Enforcement and Removal Operations (ERO) of USICE, including then-Field Office Director, C.M. Cronen. At that meeting, we discussed, among other things, concerns regarding the presence of USICE officers in the state courthouses.

7. Because I and other advocates in my office represent numerous survivors of domestic violence, I have a particular concern with ensuring that individuals subjected to domestic violence have access

to the state courts to obtain abuse prevention orders. In my experience, abuse survivors who are immigrants without full lawful status in the United States are often fearful of reporting abuse to the police or seeking protection from the courts because of fear that they will be turned over to the immigration authorities. I have always tried to dispel that fear, providing assurances that local law enforcement is concerned with protecting their safety and that the Massachusetts courts will not report their presence to USICE.

8. With this in mind, at the August 30, 2017 meeting with USICE/ERO officials, I raised my concerns to Field Office Director Cronen. I explained that I represented numerous individuals who are survivors of domestic abuse, that I provide community outreach, and that I advise community advocates. I explained that I had always been able to assure individuals seeking the protection of the courts that they could access that protection without fear of consequences for their immigration status. I explained that the recent reports concerning ICE enforcement at courthouses had raised serious concerns within immigrant communities and I wanted to be able to continue to assure abuse

survivors that they could continue to safely access the state courts. Field Officer Cronen would not provide that assurance and essentially indicated that the circumstances of an individual case would dictate ICE actions. I pressed, asking if I could guarantee individuals that, when they appeared in a hearing specifically to access a protection order, they could do so without fear of ICE enforcement action. He again refused to give that assurance.

9. As a result of that conversation, I no longer feel that I can advise individuals seeking protection from domestic abuse that they are unconditionally safe in appearing in a Massachusetts Court to obtain a protection order.

Signed under the penalties of perjury this day the 2nd of March, 2018 in Boston, Massachusetts.



Nancy Jean Kelly



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE,  
O. DOE, T. DOE, Y. DOE, AND J. DOE

AFFIDAVIT OF RICHARD COLE  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, Richard W. Cole, do hereby state the following to  
be true to the best of my knowledge and belief:

1. By way of background, I am an attorney and the principal of "Cole Civil Rights and Safe Schools Consulting" in Boston, Massachusetts. I am a civil rights attorney who has practiced law for over 40 years. I am Chair of the Massachusetts Bar Association's ("MBA") Civil Rights and Social Justice Section Council. I am also Chair of the MBA's Immigration Working Group, which includes prominent Massachusetts immigration attorneys and leaders from the Massachusetts Office of Attorney General, the Committee for Public Council Services and leading advocacy organizations in Massachusetts that promote immigrant rights. I am a former Assistant Attorney General and Chief of the Civil Rights Division in the Massachusetts Office of Attorney General, where I was employed for sixteen years. For a number of years in the 1990's, while Chief of the Civil Rights Division, I served as Chair or Co-Chair of the Civil Rights Task Force of the National Association of Attorneys General.
2. In or about early to mid-August, 2017, I learned from a member of the MBA's Immigration Working Group, who is also an employee of the Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA Coalition), about an upcoming meeting between the

MIRA Coalition and the leadership of the Boston Field Office of U.S. Immigration and Customs Enforcement ("ICE"). I also learned that the MIRA Coalition had periodically been participating in meetings with ICE's Boston Field Office leadership. I asked the MIRA representative whether I could attend the meeting in my role as Chair of the MBA's Immigration Working Group, with a particular interest in hearing directly from ICE about the MBA's concerns about ICE's recent aggressive enforcement activities in and around Massachusetts courthouses. I was informed that I may attend.

3. My strong interest in discussing this issue with ICE leadership followed my involvement with the MBA in its role as a lead sponsor of the American Bar Association's ("ABA") Resolution to address increased ICE enforcement in and around courthouses, adopted by its House of Delegates at its annual meeting on August 15, 2017. The ABA Resolution "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." (Resolution, p.7)
4. On August 30, 2017, with members of the MIRA Coalition, I attended the meeting with the leadership of the Boston Field Office of ICE at 10 New England Executive Park, Burlington, Massachusetts. Upon arrival, ICE staff escorted the meeting participants to a conference room. ICE's Boston Field Office Director, its Assistant Director, and Alexia Koplewski, its Community Affairs Officer (with whom I exchanged business cards with), attended on behalf of ICE. The following reflects my memory of the relevant

substance of what transpired and was said at the meeting, without quoting the exact words used.


5. The meeting seemed to follow a prepared Agenda that included presentations by and a dialogue between the Boston Field Office Director and Eva Millona, the Executive Director of MIRA. At the conclusion of discussions on the Agenda items, the Field Office Director of ICE asked if anyone wanted to raise any additional item. In response, I introduced myself, including my role with the MBA and my former role at the Office of Attorney General, and then stated that the MBA had substantial concerns about recent DHS/ICE enforcement practices in and around Massachusetts courthouses that raise significant access to justice issues. I stated that such enforcement activities have adversely impacted the willingness of victims, witnesses and criminal defendants to access the courts, including, as an example, domestic violence victims. I then raised the lead role the MBA played in the adoption of the recent ABA Resolution on ICE enforcement activities in and around courthouses, briefly summarizing its content, stating that it had received unanimous support from the ABA's House of Delegates, and how extraordinary that was considering the diversity of the ABA's national membership, and then concluding by stating that I am assuming he was aware of this ABA Resolution. As I recall, the ICE Field Office Director nodded in the affirmative.
6. The ICE Field Office Director then responded to my stated concerns by defending ICE enforcement activities in and around courthouses. He emphasized that doing so provides ICE agents the ability to safely arrest individuals, helping protect ICE agents from harm, because all those individuals have already been screened for weapons upon entering courthouses. I replied that this rationale was not a valid basis for ICE's policy because numerous

individuals have reportedly been arrested by ICE agents outside of Massachusetts courts before they ever enter courthouses to be screened by courthouse security. The ICE Field Office Director did not respond to or dispute my statement. He then did state that ICE enforcement policy is set nationally, and that his Office and its agents are charged with carrying out the national policy. I responded by stating that although they do not set national policy (referring to the Director and Assistant Director), they certainly were in a position to weigh in with ICE's national leadership about our concerns, and to urge a change in ICE's national policy because of the harmful impact ICE's enforcement activity in and around courthouses is having on access to justice.

7. Following my exchange with the ICE Field Office Director, Attorney Nancy Kelly spoke. Ms. Kelly is the Managing Attorney of the Immigration Unit of Greater Boston Legal Services and Assistant Director of the Harvard Immigration & Refugee Clinical Program. She is also a member of the MBA's Immigration Working Group. Attorney Kelly stated that for years she has felt comfortable assuring her immigrant clients who are domestic violence victims that they could feel safe from ICE arrest when going to court to seek domestic violence restraining orders. Attorney Kelly then stated that with the recent ICE enforcement activities in and around courthouses she no longer feels she can provide that assurance to her clients, which has impacted their willingness to go to court to obtain protection orders. Attorney Kelly then asked the ICE Field Office Director whether he could provide her that assurance for her clients, assuming that her clients were not involved in criminal activities. The ICE Field Office Director stated he could not provide that assurance, stating that although her clients were not ICE enforcement priorities, they were

nevertheless subject to arrest by ICE agents. As I recall, the meeting concluded soon thereafter.

Signed under the penalties of perjury this 2nd day of March, 2018.

  
Richard W. Cole, Esq.

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE,  
O. DOE, T. DOE, Y. DOE, AND J. DOE.

AFFIDAVIT OF OREN NIMNI  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, OREN NIMNI, do hereby state that the following is true to the best of my knowledge, information and belief:

1. My name is Oren Nimni and I am an attorney at the Lawyers' Committee for Civil Rights and Economic Justice ("Lawyers' Committee").
2. The Lawyers' Committee is a non-profit legal organization in Boston representing pro bono individuals seeking to assert their civil rights. The Lawyers' Committee partners in these efforts with both law firms and community-based organizations.
3. After hearing from our partner organizations about increased Immigration and Customs Enforcement (ICE) presence at Massachusetts courthouses, the Lawyers' Committee filed a Public Records Act ("PRA") request, asking the Massachusetts Trial Courts for documents related to immigration enforcement at Massachusetts courthouses. This request was filed on June 16, 2017.
4. On the same date, the Lawyers' Committee filed a similar Freedom of Information Act ("FOIA") request, asking ICE for

documents in its possession related to immigration enforcement at Massachusetts courthouses.

5. As a result of both the PRA request and the FOIA request, the Lawyers' Committee received records from the Trial Court and ICE on June 30, 2017.

6. I and other Lawyers' Committee attorneys reviewed these records, which contained internal emails, memoranda, and other documents from both ICE officials and Trial Court personnel. We summarized key findings from the documents in a Fact Sheet entitled Immigration Enforcement At Massachusetts Courthouses, a true and correct copy of which is attached hereto.

7. Key information found through our records review and summarized in the Fact Sheet includes:

- **ICE detentions are occurring in and around numerous courthouses in Massachusetts.** Specifically, the records revealed immigration enforcement activity at twenty-four courthouses in the Commonwealth.
- **Targeting courthouses is a new and intentional policy of the Trump Administration.** Internal e-mails between ICE officials explicitly state that "[c]urrent ICE policy supports enforcement actions at courthouses..." ICE officials include enforcement activity at and around

courthouses as one of several "new tactics with regard to locating aliens...."

- Judges are expressing significant concerns about the effect that these targeting schemes will have on the ability of victims and witnesses to effectively use the courts.

Records we received included statements from both state and federal judges expressing concern that ICE activity in and around courthouses would harm administration of justice.

8. I personally prepared the Fact Sheet and attest to its veracity as a true representation of the records received and reviewed.

Signed under the penalties of perjury this 9<sup>th</sup> day of March 2018.



Oren Nimni

BBO #691821

Lawyers' Committee for Civil Rights  
and Economic Justice

61 Batterymarch Street Suite 5

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LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS AND  
ECONOMIC JUSTICE  
*Serving Greater Boston Since 1968*

## Immigration Enforcement At Massachusetts Courthouses: A Fact Sheet

### Background

Federal immigration authorities have traditionally avoided immigration enforcement at courthouses. This has been done in recognition of the fact that we as a nation are stronger if immigrant families are not deterred from participating in court proceedings. If individuals fear that going to court will subject them or their families to immigration enforcement, then they become reluctant to report crimes or serve as witnesses in legal proceedings. Battered women are chilled from seeking restraining orders against their abusers, and in general the public's sense of security in accessing justice is undermined.

Following the election of President Trump in November 2016, however, immigrant rights advocates began hearing anecdotally about an unprecedented increase in immigration enforcement activities at courthouses. Subsequently, Massachusetts' Supreme Judicial Court issued a ruling in July 2017 (*Commonwealth v. Lunn*), prohibiting state officials from detaining individuals based solely on federal civil immigration detainees.

### Information Uncovered Through Public Records Requests

The Lawyers' Committee responded to these events by filing public records requests with both Immigration and Customs Enforcement (ICE) and the Massachusetts Trial Courts, to uncover the depth of the problem of ICE enforcement activities in Massachusetts courthouses from 2016-2017.

Key information uncovered includes:

- **Targeting courthouses is a new and intentional policy of the Trump Administration.**
  - Internal e-mails between ICE officials explicitly state that "[c]urrent ICE policy supports enforcement actions at courthouses"<sup>1</sup>
  - ICE officials include enforcement activity at and around courthouses as one of several "new tactics with regard to locating alien."<sup>2</sup>
- **Targeting courthouses is a new federal tactic employed in direct response to Massachusetts court decisions that ICE deemed to be unfavorable.**

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<sup>1</sup> "ICE internal email Subject RE: Arrest at federal dist ct today?", June 23, 2017 at 2.

<sup>2</sup> "ICE internal email Subject: RE: Arrest at federal dist ct today?", June 23, 2017 at 1.

- Even before the *Lynn* decision, ICE officials were critical of guidance that Massachusetts court officials gave to court personnel about the limits of permissible cooperation with ICE (“The recent SJC guidance...has had an immediate and overwhelming impact on our field enforcement operation....the current framework is desperately lacking in efficiency”).<sup>3</sup>
- According to ICE officials: “Massachusetts courts blatantly, and willfully disregard ICE’s requests to detain aliens on a daily basis and cannot be relied on to honor our requests.”<sup>4</sup>
- **ICE enforcement at courthouses is not limited to targeting people accused of violent crimes.**
  - Recent courthouse detentions have targeted people accused of motor vehicle violations such as driving with a suspended license or operating under the influence.<sup>5</sup>
  - Increased enforcement against people accused of low-level offenses is consistent with administration statements that they are going to newly target a broader range of individual eliminating important enforcement priorities established in the Obama Administration for national security and public safety threats.<sup>6</sup>
- **Judges are expressing significant concerns about the effect that these targeting schemes will have on the ability of victims and witnesses to effectively use the courts.**
  - On February 23, 2017, Chief Justice of the Trial Court Paula Carey sent a letter to the Special Agent in Charge for ICE in Massachusetts. The letter expressed deep concern that victims seeking abuse prevention orders and witnesses going to court would be chilled from accessing the court system and requested that immigration officials respect this important interest. Justice Carey wrote:

“It is essential that [victims of domestic violence and civil litigants] be free to seek relief from the Court without fear that their presence in Court will be the cause of an immigration enforcement action. If not, the unfortunate result will be that public safety will decrease, communities will become less safe and perpetrators of domestic violence will feel empowered to abuse their victim with impunity. Further, individuals who currently come to our Courts to help themselves or a loved one in obtaining civil commitment for detox or treatment will be reluctant to come forward if the fear immigration consequences. Any increased immigration enforcement in these civil matters would mean fewer applications, more withdrawn cases, and more defaults, resulting inevitably in violence, injustice, and threats to public safety. In my

<sup>3</sup> “ICE internal email Subject: Read this and add whatever you think is needed”, May 5, 2017 at 1.

<sup>4</sup> “ICE internal email Subject: RE: Arrest at federal dist ct today?”, June 23, 2017 at 1.

<sup>5</sup> See Collected Massachusetts Trial Courts Security Department Incident Reports.

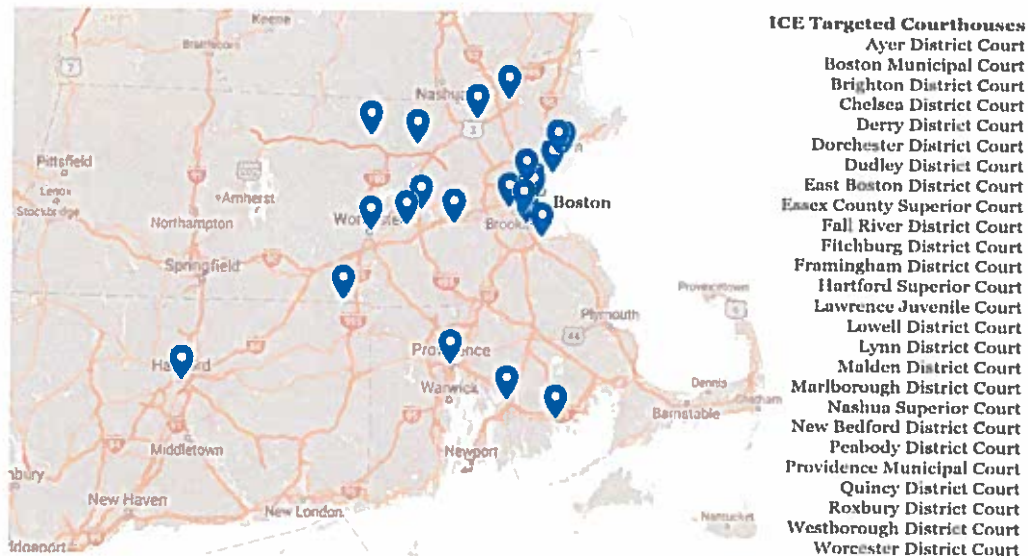
<sup>6</sup> See *Executive Order: Enhancing Public Safety in the Interior of the United States*, Office of the White House Press Secretary (Jan. 25, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

view, it would ultimately affect the Court's ability to carry out its mission to provide the protections guaranteed by the law of this Commonwealth."<sup>7</sup>

This letter, detailing the dangers of ICE enforcement at courthouses, was part of a national call by many judges across jurisdictions who sought to curtail this type of ICE action.<sup>8</sup>

- Judge Indira Talwani of the U.S. District Court for the District of Massachusetts is reported to have told an immigration enforcement attorney that "she considers [an ICE arrest of an individual entering a courthouse] a violation of a court order and obstructing justice...she thinks that ICE should not be arresting anyone entering a state or federal courthouse."<sup>9</sup>

- **ICE detentions are occurring in and around numerous different courthouses in Massachusetts.** A map of the courthouses recently targeted for enforcement action by ICE:



<sup>7</sup> "Letter from Chief Justice Paula M. Carey to Special Agent in Charge Matthew Etre" dated February 23, 2017.

<sup>8</sup> Top court officials in other States have similarly called upon ICE to curtail immigration enforcement activities at and around their States' courthouses. See *Open Letter*, Tani Cantil-Sakauye, available at <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses> (California); *NJ Top Judge Asks ICE To Stop Arresting Immigrants* (Apr. 20, 2017), available at [http://www.nj.com/politics/index.ssf/2017/04/nj\\_top\\_judge\\_asks\\_ice\\_to\\_stop\\_arresting\\_immigrants.html](http://www.nj.com/politics/index.ssf/2017/04/nj_top_judge_asks_ice_to_stop_arresting_immigrants.html) (New Jersey); *Oregon Chief Justice Urges Feds To Keep Immigration Agents Out Of Courthouses* (Apr. 7, 2017), available at [http://www.oregonlive.com/portland/index.ssf/2017/04/oregons\\_chief\\_justice\\_urges\\_feds.html](http://www.oregonlive.com/portland/index.ssf/2017/04/oregons_chief_justice_urges_feds.html) (Oregon); *State Supreme Court Chief Justice To Feds: Keep Immigration Agents Away From Courthouses* (Mar. 22, 2017), available at <http://q13fox.com/2017/03/22/state-supreme-court-chief-justice-to-feds-keep-immigration-agents-away-from-courthouses/> (Washington).

<sup>9</sup> "ICE internal email Subject: Arrest at federal dist ct today?", June 22, 2017 at 1.

## **Recent Developments**

Massachusetts Trial Courts have responded to the decision in *Commonwealth v. Lunn* with further guidance for how trial court personnel should interact with immigration enforcement. The guidance tracks the holding in *Lunn* and states:

Trial Court employees shall not hold any individual who would otherwise be entitled to release based solely on a civil immigration detainer or civil immigration warrant. Trial Court employees do not have authority to detain an individual based solely on a civil immigration detainer. Nor do Trial Court employees have the authority to comply with a civil warrant issued by a DHS official for the arrest of an individual based solely on a civil immigration violation. Trial Court employees shall not serve civil immigration detainers or civil immigration warrants. Individuals subject to civil immigration detainers or warrants shall be processed and handled in the same manner as all other individuals coming before the court. No person shall be held in custody for any shorter or longer period than the person would otherwise be held based solely on a civil immigration detainer or civil immigration warrant.<sup>10</sup>

The targeting of courthouses for immigration enforcement activities appears likely to intensify in the future. In September 2017, the Trump Administration announced immigration enforcement actions specifically targeted at Massachusetts and other jurisdictions that the Administration deemed to be “sanctuary jurisdictions.”<sup>11</sup>

**If you believe your rights have been violated, please contact the Lawyers’ Committee for Civil Rights and Economic Justice at (617) 482-1145 or submit an intake online at <http://www.lawyerscom.org/>**

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<sup>10</sup> Executive Office Transmittal 17-13, Chief Justice Paula M. Carey (Nov. 10, 2017).

<sup>11</sup> See *State Democrats Blast ICE Raid Targeting Sanctuary Cities* (Sept. 29, 2017), available at <https://www.bostonglobe.com/metro/2017/09/29/families-immigrants-arrested-ice-raid-calling-advocates-for-help/ukvgXI9g5FTqF8DCSpULIK/story.html>.

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO.

IN THE MATTER OF C. DOE, D. DOE, F. DOE, K. DOE,  
O. DOE, T. DOE, Y. DOE, AND J. DOE

AFFIDAVIT OF SUSAN CHURCH  
IN SUPPORT OF PETITION FOR WRIT OF PROTECTION

I, Susan Church, hereby state the following to be true, to the best of my knowledge and belief:

1. I am an immigration and criminal defense attorney. I am the Immediate Past Chair of the American Immigration Lawyers Association of New England. I regularly teach at local and national conferences on immigration law. Over the past year or more, I have worked with various immigrant groups to present "know your rights" presentations and advise the immigrant community about the consequences of appearing in courthouses on criminal or civil charges. I have practiced criminal defense and immigration law for the past 20 years.
2. To my knowledge, until the current presidential administration, Immigrations and Customs Enforcement (ICE) arrests did not regularly occur at courthouses. Prior to this administration, I would advise that it was extremely unlikely that the appearing in courthouses would cause arrests by ICE. Although a few courts had probation officers cooperating with ICE, ICE rarely appeared at courthouses and did not require specific warnings to my clients.
3. Since early 2017, when my noncitizen clients ask me whether ICE would likely arrest them in court, I tell them I do not know, but ICE has been arresting more and more people in and around courthouses and therefore this is a risk that ICE will arrest them at the courthouse. Although I do not tell my clients not to appear in court, I am obligated to answer the questions about whether ICE would likely be present. I have seen increased enforcement by ICE at Massachusetts courthouses. My office represents at least two clients who were arrested by ICE at a

Massachusetts courthouse, and I have repeatedly heard other immigration attorneys report that their clients have been arrested at a Massachusetts courthouse.

4. This advice regarding the risk of arrest by ICE at courthouses is particularly true for people with final orders of removal, driving while intoxicated charges (including pending charges without any prior convictions), and people here under the visa waiver program<sup>1</sup>, as immigration advocates have seen some targeted enforcement against such people. However, in no way is my advice regarding increased enforcement limited to these cases. Indeed, if an applicant for a restraining order asked me whether or not she should appear in court to seek a restraining order, I would advise her of the increased risk of arrest by ICE at the courthouse. Recently, I spoke with an attorney in a wage dispute with an undocumented worker about increased ICE enforcement at courthouses. As a result of my advice, the attorney withdrew the undocumented worker as a plaintiff.

Signed under the penalties of perjury this 15<sup>th</sup>  
day of March 2018.



Susan Church

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<sup>1</sup> The Visa Waiver Program permits citizens of certain enumerated countries to travel to the U.S. on business or pleasure for 90 days or less without first obtaining a visa. See <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>.

## 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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>
  - 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.

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<sup>2</sup> 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.

<sup>3</sup> ERO will use the Field Operations Worksheet and HSI will use the Enforcement Operation Plan.

FOR OFFICIAL USE ONLY



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Thomas D. Homan  
Deputy Director and  
Senior Official Performing the Duties of the Director  
U.S. Immigration and Customs Enforcement



**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF THE TRIAL COURT  
John Adams Courthouse  
One Pemberton Square, Floor 1M  
Boston, Massachusetts 02108  
617-878-0203**

**Paula Carey**  
Chief Justice of the Trial Court

**Jonathan S. Williams**  
Court Administrator

*Executive Office Transmittal 17-13*

To: Judges, Clerks, Registers, Chief Probation Officers and all staff

From: Chief Justice Paula M. Carey  
Court Administrator Jonathan S. Williams

*JMC*

cc: Departmental Chief Justices, Probation Commissioner, Jury Commissioner,  
Deputy Court Administrators, OCM Directors

Date: November 10, 2017

**Re: Policy and Procedures Regarding Interactions with the Department of Homeland Security**

In Transmittal 17-10 we provided notice of the Supreme Judicial Court's decision in *Lunn vs. Commonwealth & Another*, addressing the authority of Massachusetts court officers to arrest pursuant to a civil immigration detainer. As noted at the time, the Court specifically concluded that court officers did not have the authority to arrest and hold an individual solely on the basis of a Federal immigration detainer beyond the time that individual would otherwise be entitled to release from State custody.

At this time we are pleased to provide the document entitled *Policy and Procedure Regarding Courthouse Interactions with the Department of Homeland Security*, to provide clear guidance to judges, clerks, probation, security and all court staff on responding to DHS requests and the presence in DHS officers in our courthouses.

Please be advised that we have provided the DHS Field Agent in Charge with a copy of this document. We will also be sharing it with CPCS and local bar associations.

Please contact your departmental administrative office with any questions or concerns.

**Policy and Procedures Regarding Courthouse Interactions  
With the Department of Homeland Security**

**I. PURPOSE AND PRINCIPLES**

The following policy governs the manner in which trial court employees, and in particular, court officers, shall respond to requests from the Department of Homeland Security (DHS) to provide information about, and take custody of, individuals subject to civil immigration detainers. It also governs how Trial Court staff shall respond when officials from the D H S enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer.

Trial Court employees should be mindful that courthouses are public spaces that are open to all persons and that all persons entering a courthouse should be treated with respect and dignity, including individuals subject to civil immigration detainers and DHS employees. Trial Court employees play essential roles in ensuring the orderly administration of justice and providing a safe and secure environment inside the courthouse.

Nothing in this policy shall be construed to restrict compliance with 8 U. S. C. § 1373 (current edition) or to limit or abrogate: a court officer's authority to detain an individual pursuant to G.L. c. 221, § 70A; an order of a judge; a warrant issued by a judge or clerk authorizing the arrest of an individual for a criminal offense; or a criminal detainer.

**II. RESPONSE TO DHS REQUESTS**

Individuals subject to a civil immigration detainer often arrive in custody at a courthouse accompanied by a DHS "Notice of Action" immigration detainer form (currently DHS Form I-247A) that requests court employees to voluntarily: 1) detain the individual subject to the detainer for up to 48 hours in order for DHS officials to arrive and take custody of the individual even though the individual would otherwise be released from the trial court's custody; 2) transmit information to DHS regarding the individual subject to the detainer; 3) serve the individual with a copy of the detainer form; 4) relay the detainer to any other law enforcement agency to which the court employee transfers custody of the individual; and 5) notify DHS in the event of the individual's death, hospitalization or transfer to another institution. The DHS detainer form frequently is accompanied by a civil immigration warrant (ICE Form I-205 and/or Form I-200) that is signed not by a judge or clerk, but by a DHS official. In addition, there may be instances in which DHS officials directly ask court personnel for information regarding an individual or an individual's case.

Trial Court employees shall not hold any individual who would otherwise be entitled to release based solely on a civil immigration detainer or civil immigration warrant. Trial Court employees do not have authority to detain an individual based solely on a civil immigration detainer. Nor do Trial Court employees have the authority to comply with a civil warrant issued by a DHS official for the arrest of an individual based solely on a civil immigration violation. Trial Court employees shall not serve civil immigration detainers or civil immigration warrants. Individuals subject to civil immigration detainers or warrants shall be processed and handled in the same manner as all other individuals coming before the court. No person shall be held in custody for any shorter or longer period than the person would otherwise be held based solely on a civil immigration detainer or civil immigration warrant.

Requests by DHS officials for information regarding an individual or an individual's case, whether made in a civil immigration detainer or made directly to court personnel, shall be treated by court employees in the same manner as would a request for information from any other member of the public.

If a DHS official requests information from a court officer regarding the status of an individual's case, the court officer may direct the DHS official to the appropriate clerk's office.

If a DHS official requests information from the clerk's office regarding an individual's case, or any case file, the scope of the responding employee's response shall be guided by the same statutes, rules, and policies that govern public access to court records.

If a DHS official requests information from Probation, the Probation employee shall direct the request to the attention of the Probation Legal Unit to be processed in the normal course.

### **III. DHS OFFICIALS TAKING CUSTODY OF INDIVIDUALS AT A COURTHOUSE**

Although DHS officials are permitted to act in the performance of their official duties in Massachusetts courthouses, it is essential to the fair administration of justice that members of the community are provided a safe and secure environment when they enter the courthouse. To that end, DHS officials may enter a courthouse and perform their official duties provided that their conduct in no way disrupts or delays court operations, or compromises court safety or decorum.

In accordance with existing policy, armed law enforcement officers may enter a courthouse while in the performance of official duties. As applicable to all law enforcement officers, when an armed DHS official enters a courthouse, courthouse security personnel shall ask the DHS official to state his or her official law enforcement purpose for entering the courthouse and the proposed enforcement action to be taken, if any. The DHS official's information shall immediately be transmitted to a security supervisor or designated court officer.

The security supervisor or designated officer shall inform the first justice, or regional administrative justice of the department with jurisdiction over the person if DHS officials are present in the courthouse with the intent of arresting or taking anyone into custody, i.e. a party or other participant in a case before a judge or magistrate, or a person attending to business in the courthouse.

#### **A. Individuals over whom the Trial Court has custody**

Consistent with Chapter 2, sections XIV and XV of the Court Officer Manual (current edition), when an individual who was brought into court in custody is subject to release after his or her court proceeding, court security personnel shall process that individual out of lock up in the normal course regardless of whether the individual is subject to a civil immigration detainer or warrant.

If, during the processing of an individual subject to release out of the courthouse, a DHS official is present in the courthouse and seeks admission into the courthouse's holding cell area in order to take custody of the individual pursuant to an immigration detainer or warrant, court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual once Trial Court security personnel have finished processing that individual out of the court security personnel's custody,

if a security department supervisor determines that the DHS official would otherwise take custody of the individual inside or immediately outside of the courthouse.

Before being granted entry into the holding cell area, DHS officials must present credentials and a copy of the detainer or civil immigration arrest warrant to court security personnel, sign in to the holding cell area, and surrender their weapons.

To the extent possible, court security personnel should require that DHS officials transport any individuals taken into custody through the prisoner transport entrance and avoid taking the individual through the public areas of the courthouse.

**B. Individuals coming to court who are not in the custody of the trial court**

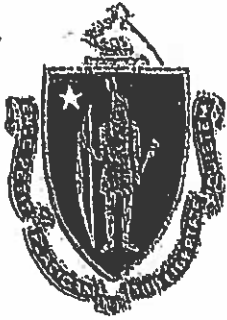
In those instances where DHS officials seek to take custody in a courthouse of an individual who is not in custody of the courthouse security personnel, Trial Court employees shall neither impede DHS officials from doing so nor assist in the physical act of taking that individual into custody. In the event that court security personnel are present as DHS officials place an individual in custody in a courthouse, the role of such court personnel is to take those actions necessary to maintain the safety and decorum in the courthouse.

Nonpublic spaces in a courthouse, such as within clerks' offices or Probation offices, may not be used by DHS officials. No DHS official shall be permitted to take an individual into custody pursuant to a civil immigration detainer or warrant in a courtroom, unless permission has been given in advance by the regional administrative judge or first justice sitting in the courthouse.

**IV. RECORDING INTERACTIONS WITH DHS**

Court security personnel shall keep a log of every individual over whom the court accepts custody and who is subject to a civil immigration detainer or warrant, if known. Court security staff shall likewise keep a log of every instance in which DHS was notified that a person subject to a detainer was released from court custody, as well as every time DHS takes an individual into custody in a courthouse.

In addition, court security personnel shall draft an incident report for every instance in which DHS takes an individual into custody in a courthouse.



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF THE TRIAL COURT  
John Adams Courthouse  
One Pemberton Square, Floor 1M  
Boston, Massachusetts 02108  
617-878-0203

Paula Carey  
Chief Justice of the Trial Court

February 23, 2017

Matthew Etre  
Special Agent in Charge  
Office of the Special Agent in Charge  
10 Causeway Street, Room 722  
Boston, MA 02222

Re: Victims of Crime and Civil Litigants

Dear Special Agent in Charge Etre:

In light of recent media reports concerning the arrest of a domestic violence victim by ICE agents at a courthouse in El Paso, Texas, I am writing to express concerns by the Massachusetts Trial Court about the protection of victims and civil litigants, especially domestic violence victims, who appear in Massachusetts state courts seeking protection and redress.

Victims of abuse and harassment appear every day in the Boston Municipal Court, District Court, Juvenile Court, Probate and Family Court, and Superior Court seeking the protection of the judicial system through applications for abuse prevention orders under G.L. c. 209A, applications for harassment prevention orders under G.L. c. 258E, and complaints for civil restraining orders. Victims of criminal acts appear daily in the Boston Municipal Court, District Court, Juvenile Court, and Superior Court seeking justice and the meaningful role in the criminal justice system guaranteed by G.L. c. 258B, § 3. Others, fearful for their safety or the safety of others as a result of mental illness or a substance use disorder, seek the protection of the court under G.L. c. 123 in Boston Municipal Court and District Court.

For decades, the Trial Court has strived to encourage and address the concerns of these victims and litigants. In recent years, the Trial Court has increased its efforts, adopting new procedures and trainings in the area of domestic violence and substance use and mental health disorder cases. Encouraging individuals who are concerned for their safety or the safety of another to explore the options and protections available to them from the Trial Court has been an essential part of providing justice, preventing crime, and promoting public safety.

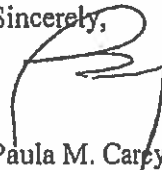
It is essential that these individuals be free to seek relief from the Court without fear that their presence in Court will be the cause of an immigration enforcement action. If not, the unfortunate result will be that public safety will decrease, communities will become less safe and perpetrators of domestic violence will feel empowered to abuse their victim with impunity. Further, individuals who currently come to our Courts to help themselves or a loved one in obtaining a civil commitment for detox or treatment will be reluctant to come forward if they fear immigration consequences. .

Any increased immigration enforcement in these civil matters would mean fewer applications, more withdrawn cases, and more defaults, resulting inevitably in violence, injustice, and threats to public safety. In my view, it would ultimately affect the Court's ability to carry out its mission to provide the protections guaranteed by the laws of this Commonwealth.

I urge you to exercise your discretion whenever possible in a way that avoids any appearance that seeking the assistance of the Court as a victim of a crime or a civil litigant seeking the protection of the court system can lead to immigration enforcement against the victim.

I appreciate the collaborative attitude and the respect for the needs of the state court system that has existed in interactions between ICE and the court system. I thank you for your consideration and would welcome an opportunity to meet with you about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula M. Caray". The signature is stylized with a large, looped "P" and "C".

Paula M. Caray  
Chief Justice of the Trial Court

cc: Hon. Ralph D. Gants, Chief Justice of the Supreme Judicial Court  
Todd Thurlow, Assistant Field Office Director





## Supreme Court of California

350 McALLISTER STREET  
SAN FRANCISCO, CA 94102-4797

TANI G. CANTIL-SAKAUE  
CHIEF JUSTICE OF CALIFORNIA

415-865-7000

March 16, 2017

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

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

RE: Immigration Enforcement Tactics at State Courthouses

Dear Attorney General Sessions and Secretary Kelly:

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

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

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

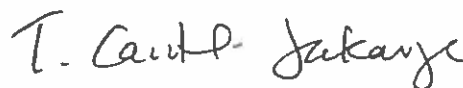
mitigate fear to ensure fairness and protect legal rights. Our work is critical for ensuring public safety and the efficient administration of justice.

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

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read "T. Cantil-Sakauye". The signature is fluid and cursive, with the first name "T." and the last name "Sakauye" being more prominent.

TANI G. CANTIL-SAKAUYE

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

*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

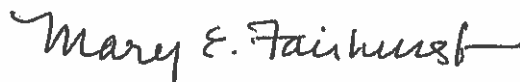
justice is compromised. Their absence curtails the capacity of our judges, clerks and court personnel to function effectively.

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, reading "Mary E. Fairhurst", followed by a horizontal line.

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

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.

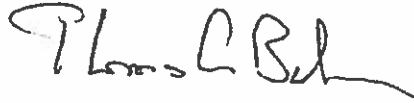
I understand and appreciate the difficulty of the law enforcement work that you do. I trust that you understand as well the central role that the Oregon courts play in our state's criminal justice system, our efforts to protect children and families, and our daily work to ensure the rule of law for all 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  
Page 3

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 'T. A. Balmer', with a stylized flourish at the end.

Thomas A. Balmer  
Chief Justice

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

# SUPREME COURT OF NEW JERSEY

STUART RABNER  
CHIEF JUSTICE



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

April 19, 2017

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

Dear Secretary Kelly:

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

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

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

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

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



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

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

Very truly yours,

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

Stuart Rabner  
Chief Justice

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



STATE OF CONNECTICUT  
SUPREME COURT

May 15, 2017

Chambers of  
CHASE T. ROGERS  
Chief Justice

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LEGAL SERVICES  
CT JUDICIAL BRANCH

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,

Chase T. Rogers  
Chief Justice

Bcc: Judge Carroll  
Judge Solomon  
Judge Ment  
Joe D'Alesio  
Tom Siconolfi  
Melissa Farley  
Martin Libbin  
Gary Roberge  
O'Donovan Murphy

***Blocking the Courthouse Doors:***  
**ICE Enforcement at Massachusetts Courthouses and**  
**Its Effects on the Judicial Process**

*Northeastern University School of Law*  
*Immigrant Justice Clinic*  
**March 2018**

## **Acknowledgements**

This report was researched and written by students in the Northeastern University School of Law Immigrant Justice Clinic, Winter 2017-2018:

Ienna Dela Torre  
Anne Georges  
Lili Giacomia  
Stefanie Gonzales  
Janae Hakala Choquette  
Amanda Joy  
Alyssa Kane  
Jiyeon Kim  
Amandha Lima-Pacheco  
Kaitlin O'Connor  
Sarah Schulte

Faculty Supervisors: Prof. Hemanth Gundavaram and Prof. Rachel Rosenbloom

The Immigrant Justice Clinic would like to thank the following individuals for providing information about their clients' experiences or otherwise assisting with this research: Leonard Enos, Hillary Fenton, Brian Hughes, Jennifer Klein, Nicholas Louisa, Kimberley McMahon, Megan Parker-Johnson, Schuyler Pisha, Sarah Sherman-Stokes, Nathaniel Spinney, Connie Tran, James Vita, Wendy Wayne, and Emma Winger.

## Introduction

Immigration enforcement has intensified on all fronts since Donald Trump took office as president. One aspect of this rise in enforcement is a new practice of arresting immigrants at state courthouses. Immigration and Customs Enforcement (“ICE”) has dramatically increased its activity in and around courthouses across the country over the past year, apprehending noncitizens who are appearing in court for a range of proceedings unrelated to their immigration status.<sup>1</sup>

The legal community has voiced serious concerns about the effects of ICE presence at courthouses. Hundreds of public defenders in New York staged walk-outs in recent months to oppose ICE’s presence in the courts.<sup>2</sup> Judges across the country have similarly denounced this enforcement tactic, including the chief justice of the California Supreme Court, Tani Gorre Cantil-Sakauye, who wrote a letter to the Department of Homeland Security (“DHS”) decrying the use of courthouses as “bait.”<sup>3</sup>

Courthouse enforcement is a particularly pressing issue in Massachusetts.<sup>4</sup> There are indications that the Trump Administration is targeting certain areas of the country for increased immigration enforcement in retaliation for state and local policies that are protective of immigrants.<sup>5</sup> Massachusetts is among these places. A number of

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<sup>1</sup> See, e.g., James Queally, “ICE Agents Make Arrests at Courthouses, Sparking Backlash from Attorneys and State Supreme Court,” *L.A. Times*, March 16, 2017, available at <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>; 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/xxFH5vVJnMeggQaONMi8gl/story.html>.

<sup>2</sup> Christina Carrega, “Defense attorneys protest outside Brooklyn courthouse after ICE cuffs one lawyer’s client,” *New York Daily News*, Nov. 28, 2017, available at <http://www.nydailynews.com/new-york/brooklyn/defense-attorneys-protest-client-ice-arrest-brooklyn-article-1.3663018>; ABC News, “Public Defenders Walk Out in Protest of ICE Court Arrests,” Feb. 9, 2018, <http://abcnews.go.com/US/wireStory/public-defenders-walk-protest-ice-court-arrests-52956396>.

<sup>3</sup> Madison Park, “Judge on ICE Arrests: ‘Courthouses should not be used as bait,’” *CNN*, Mar. 17, 2017, available at <https://www.cnn.com/2017/03/17/us/immigration-ice-courthouse-arrests/index.html>.

<sup>4</sup> See Lawyers Committee for Civil Rights and Economic Justice, “Immigration Enforcement at Massachusetts Courthouses: A Fact Sheet,” available at <http://lawyerscom.org/wp-content/uploads/2017/11/Immigration-Enforcement-at-Massachusetts-Courthouses-FINAL-FOR-PUBLIC-RELEASE.pdf>; Maria Cramer, “ICE Courthouse Arrests Worry Attorneys, Prosecutors,” *Boston Globe*, June 16, 2017, available at <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQaONMi8gl/story.html>.

<sup>5</sup> See *Boston Globe*, “State Democrats Blast ICE Raid Targeting Sanctuary Cities,” Sept. 29, 2017, <https://www.bostonglobe.com/metro/2017/09/29/families-immigrants-arrested-ice-raid-calling-advocates-for-help/ukvgXI9g5FTqF8DCSpULIK/story.html>; ICE Directive 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses*, Jan. 10, 2018, available at <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> (asserting that “courthouse arrests are often necessitated by the unwillingness of

Massachusetts communities have adopted sanctuary policies. Additionally, in a July 2017 case, *Lunn v. Commonwealth*,<sup>6</sup> the Massachusetts Supreme Judicial Court held that state court officers in Massachusetts do not have the authority to hold immigrants for pick-up by ICE beyond the termination of their criminal custody. In accordance with this decision, the Chief Justice of the Trial Court issued guidance in November 2017 reaffirming that state court employees may not honor ICE detainer requests.<sup>7</sup>

This report provides a snapshot of ICE courthouse enforcement in Massachusetts based on three sources of information: observation of ICE enforcement activity at Chelsea District Court in Chelsea, Massachusetts, in January and early February 2018; information gathered from December 2017 through February 2018 from immigration detainees held at the Suffolk County House of Correction; and examples of courthouse arrests gathered through outreach to Massachusetts criminal defense attorneys.<sup>8</sup>

## Findings

### I. ICE Presence at Chelsea District Court

The Northeastern University School of Law Immigrant Justice Clinic ("IJC") coordinated an initiative in which law student volunteers monitored ICE activity at Chelsea District Court on eleven days between January 10, 2018, and February 6, 2018. Chelsea is a low-income community just outside Boston with a significant immigrant population.

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jurisdictions to cooperate with ICE in the transfer of custody of [non-citizens] from their prisons and jails.").

<sup>6</sup> 78 N.E.3d 1143 (Mass. 2017).

<sup>7</sup> Executive Office of the Trial Court, Policy and Procedures Regarding Interactions with the Department of Homeland Security, Nov. 10, 2017.

<sup>8</sup> There have been reports from around the country that ICE has detained others besides criminal defendants at courthouses, including those appearing for traffic violations and those seeking protective orders or testifying as witnesses. See, e.g., Richard Gonzalez, "ICE Detains Alleged Victim Of Domestic Abuse At Texas Courthouse," NPR, February 16, 2017, available at <https://www.npr.org/sections/thetwo-way/2017/02/16/515685385/ice-detains-a-victim-of-domestic-abuse-at-texas-courthouse>; Devlin Barrett, "DHS: Immigration agents may arrest crime victims, witnesses at courthouses," *Washington Post*, April 4, 2017, available at [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=.ed854473c1e1](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=.ed854473c1e1). Massachusetts Attorney General Maura Healey has expressed concern about the effects of ICE courthouse enforcement on victims and witnesses, and has noted that reporting of sexual assault and domestic violence offenses has dropped since the advent of such enforcement tactics. See Cramer, *supra* note 1. See also James Queally, "Fearing Deportation, Domestic Violence Victims are Steering Clear of Police and Courts," *L.A. Times*, Oct. 9, 2017, available at

<http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html>. This aspect of courthouse enforcement is beyond the scope of the present report.

Observers noted the presence of ICE officers at the courthouse on three of the eleven monitored days; on two other days, observers were informed by court officers that ICE presence had been heavy the previous day. Observers saw ICE officers waiting outside the entrance to the courthouse. They also saw ICE officers inside the courthouse in the waiting room and lobby area. The officers were dressed in plain clothes. They were distinguishable from the general population in the courthouse primarily due to their use of cell phones, which are otherwise prohibited for non-lawyers inside the court. Observers spoke with numerous courthouse employees and attorneys who confirmed that ICE officers have become a regular presence at the courthouse.

Observers witnessed an arrest on January 11, 2018. The arrest was made by four ICE officers outside of the courthouse as the individual was leaving the building. The officers took the individual away in an unmarked sedan with tinted windows that was parked across the street from the courthouse.

## **II. Courthouse Enforcement Reported by Detained Immigrants**

Students from the IJC conduct intakes on a regular basis among immigration detainees held at Suffolk County House of Correction. In the course of four visits to the detention center between December 2017 and February 2018, IJC students encountered eight individuals who reported being taken into ICE custody at Massachusetts courthouses. The courthouses at which detainees reported having been arrested included Brockton District Court, Cambridge District Court, Chelsea District Court, Dedham District Court, Fitchburg District Court, Framingham District Court, and Worcester District Court.

## **III. Examples of ICE Enforcement at Massachusetts Courthouses**

The IJC conducted outreach to Massachusetts criminal defense attorneys to gather information regarding clients who were apprehended by ICE at courthouses. Examples of cases reported include the following:

- “H”<sup>9</sup> is a lawful permanent resident who is married to a U.S. citizen. He and his spouse have a four-year-old son who has been diagnosed with autism. H’s spouse recently moved to Florida in order to be closer to extended family and to receive support for their son, and H planned to follow her after completing probation for an OUI offense. In October 2017, H was found to have violated his probation, and was consequently re-probated and instructed to comply with various requirements including continuous alcohol monitoring and an alcohol education course. Upon leaving a meeting with his probation officer, H was apprehended by ICE officers

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<sup>9</sup> The IJC did not ask attorneys for names or other identifying information regarding their clients; random initials have been assigned to each example.

outside Lynn District Court. As a direct result of his ICE detention, H was unable to comply with the alcohol monitoring and education conditions of his probation; the court consequently issued a default warrant and a police arrest warrant. H was held in ICE detention until January 2018. The day after his release from detention, he was arrested by police pursuant to the warrant. Due to his unavoidable violation of his probation conditions, H was held in custody pending a final probation violation court hearing and ultimately sentenced to a six-month term in prison rather than to a new term of probation.

- “Y” is a longtime lawful permanent resident in her fifties who has two U.S. citizen sons. She formerly worked as a certified nursing assistant. A number of years ago, she was prescribed pain medication by a doctor and subsequently developed an addiction to the medication. Her drug dependency, coupled with severe depression, led her to become unemployed and homeless. In February 2018, she appeared in Roxbury District Court on charges of simple assault and malicious destruction of property. Her attorney had secured a placement for her in a drug treatment program, and the court allowed for her release in order to enter the program. However, ICE took her into custody at the courthouse immediately following her hearing. Because of her detention, she is unable to receive the intensive drug treatment and mental health treatment that she needs.
- “B” is a formerly undocumented immigrant with a wife and young son who are both U.S. citizens. In March 2017, B was arrested by ICE officers on the steps of Malden District Court prior to a court hearing on a charge of assault and battery. The judge entered a default warrant for B’s non-appearance. Although B ultimately prevailed in his immigration court proceeding and gained lawful status in the United States, the default warrant entered by the court as a result of his ICE detention caused a significant delay in the adjudication of his immigration case.
- “L” has been under an order of supervision from ICE and has been attending regular check-ins with ICE every six months. In February 2018, L was in Worcester District Court to stand trial on charges of negligent operation of a motor vehicle, assault, and resisting arrest. While L’s attorney was upstairs waiting for him, ICE arrested L on the ground floor of the courthouse and transferred him to an ICE detention center. Because L failed to appear in court, the judge issued a default warrant.
- “R” is an undocumented immigrant with a significant history of mental illness who was charged with breaking and entering and was released on his own recognizance at Quincy District Court in November 2017. Immediately following R’s release, his attorney requested a competency evaluation by a psychologist. ICE officers interrupted the competency evaluation while it was underway. Ignoring requests from R’s attorney to let the evaluation proceed, the ICE officers arrested R.



## Conclusions

### I. ICE Courthouse Enforcement is Widespread

ICE is conducting arrests at numerous Massachusetts courthouses. The data contained in this report relates to ICE activity at twelve different courthouses within recent months.<sup>10</sup> ICE is targeting both documented and undocumented immigrants, with no apparent regard for the seriousness of the pending charge. Many of those who have been arrested are longtime residents with U.S. citizen family members.

### II. ICE Courthouse Enforcement Interferes with the Judicial Process

ICE policy holds that “[w]hen practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.”<sup>11</sup> However, the examples above show that in actuality, ICE enforcement practices routinely interfere with court proceedings. ICE frequently arrests immigrants prior to the resolution of their criminal case. ICE detention can have grave impacts on a criminal proceeding, resulting in probation violations, default warrants, and other adverse consequences. ICE interference with the criminal process does not just harm defendants. It also harms victims, whose rights are compromised when defendants are not available to stand trial, and it disrupts the entire operation of the courts. In addition, the climate of fear created by ICE courthouse enforcement deters immigrant victims and witnesses from seeking assistance or participating in legal proceedings.<sup>12</sup>

ICE has justified courthouse arrests by asserting that “civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents” because “[i]ndividuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband.”<sup>13</sup> However, our research has shown that ICE frequently arrests individuals outside courthouses, before they have even entered.

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<sup>10</sup> See also “Immigration Enforcement at Massachusetts Courthouses: A Fact Sheet,” *supra* note 4 (documenting ICE enforcement at additional Massachusetts courthouses).

<sup>11</sup> See ICE Directive 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses*, *supra* note 5.

<sup>12</sup> Massachusetts Attorney General Maura Healey has expressed concern about the deterrent effects of such enforcement. See *supra* note 8.

<sup>13</sup> See ICE Directive 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses*, *supra* note 5.

### **III. ICE Courthouse Enforcement Harms Vulnerable Populations**

Several of the cases described above concern individuals with significant mental health issues. ICE arrests have interfered with the efforts of the judicial system to address mental health and addiction issues through such means as psychological evaluation and drug treatment.

In summary, this report concludes that ICE's aggressive tactics are disrupting the Massachusetts judicial system in a variety of ways. These deeply troubling new enforcement practices are having harmful effects on defendants, victims, witnesses, and the judicial system itself.

**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 enforcement 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.<sup>1</sup>

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<sup>1</sup> 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>.

Where “exigent circumstances” are present, ICE policy allows for enforcement actions at sensitive locations.<sup>2</sup> 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.<sup>3</sup>

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”.<sup>4</sup>

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.<sup>5</sup> The ACLU cited “countless cases” from across the country in which ICE agents were documented “interrogating, detaining, and even deporting individuals” at courthouses.<sup>6</sup> 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.”<sup>7</sup>

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.<sup>8</sup> Massachusetts attorneys have observed that among those persons being arrested in

<sup>2</sup> *Id.*, at pp. 2-3

<sup>3</sup> *Id.*

<sup>4</sup> 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>.

<sup>5</sup> 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>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 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/xxFH5vVJnMeggQa0NMi8eI/story.html>.

courthouses are individuals who are not even the subject of a detainer order.<sup>9</sup> Other prominent reports of courthouse arrests include instances of ICE targeting asylum seekers (Maine),<sup>10</sup> agricultural workers (Vermont),<sup>11</sup> victims of domestic violence (Texas),<sup>12</sup> and recipients of Deferred Action for Childhood Arrivals (Arizona).<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> Similar reports of courthouse arrests have come in from Colorado, Oregon,<sup>17</sup> and Washington.<sup>18</sup> Victims of domestic abuse actually in the process of seeking protection from the courts have been arrested<sup>19</sup> 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.<sup>20</sup>

<sup>9</sup> 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>.

<sup>10</sup> 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>.

<sup>11</sup> 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>.

<sup>12</sup> *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/>.

<sup>13</sup> 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>.

<sup>14</sup> 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/>.

<sup>15</sup> 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/>.

<sup>16</sup> 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>.

<sup>17</sup> *Id.*

<sup>18</sup> Gene Johnson, *Washington justice to feds: Keep immigration agents away*, ASSOCIATED PRESS., March 22, 2017, <https://www.apnews.com/5622c73e5f014f2d8822f8d5f200358a/Washington-justice-to-feds-Keep-immigration-agents-away>.

<sup>19</sup> *Id.*

<sup>20</sup> 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](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).

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.”<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

California Chief Justice Tani G. Cantil-Sakauye wrote that “courthouses serve as a vital forum for ensuring access to justice and protecting public safety.”<sup>25</sup> 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.”<sup>26</sup> The letter was met with emphatic support from City Attorney of San Francisco Dennis Herrera.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 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/>.

<sup>24</sup> Johnson, *supra* note 8.

<sup>25</sup> 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>.

<sup>26</sup> *Id.*

<sup>27</sup> 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/>.

<sup>28</sup> 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/>.

<sup>29</sup> *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.<sup>30</sup>

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."<sup>31</sup> Legislators in California, Illinois, and Pennsylvania have all proposed similar legislation, even extending the protection to workplaces in one California version.<sup>32</sup> Federally, the "Protecting Sensitive Locations Act" was introduced in the House of Representatives on March 30, 2017.<sup>33</sup> A parallel version of the bill was introduced in the Senate on April 5.<sup>34</sup>

#### 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.<sup>35</sup>

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)<sup>36</sup> 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

<sup>30</sup> *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/>.

<sup>31</sup> 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>.

<sup>32</sup> *Id.*

<sup>33</sup> 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/>.

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

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

<sup>36</sup> H.R. 1815, § 2; S. 845, § 2.

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action” could be taken at a sensitive location.<sup>37</sup> 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”),<sup>38</sup> the Senate bill expands upon the definition, including any “apprehension, arrest, interview, request for identification, search, or surveillance for the purposes of immigration enforcement.”<sup>39</sup>

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).<sup>40</sup> These include: schools, bus stops, and scholastic-related activities;<sup>41</sup> medical treatment or health care facilities;<sup>42</sup> places of worship and civil or religious ceremonies, such as funerals or weddings;<sup>43</sup> and public demonstrations.<sup>44</sup> 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.<sup>45</sup> The House version also explicitly lists various federal properties, including Congressional district offices,<sup>46</sup> public assistance offices,<sup>47</sup> Social Security offices,<sup>48</sup> and the departments of motor vehicles.<sup>49</sup>

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.”<sup>50</sup> 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.”<sup>51</sup> 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

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

<sup>38</sup> H.R. 1815, § 2(i)(7)(B).

<sup>39</sup> S. 845, § 2(i)(1)(B)(i).

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

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

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

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

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

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

<sup>46</sup> H.R. 1815, § 2(i)(7)(E)(xi).

<sup>47</sup> H.R. 1815, § 2(i)(7)(E)(xii).

<sup>48</sup> H.R. 1815, § 2(i)(7)(E)(xiii).

<sup>49</sup> H.R. 1815, § 2(i)(7)(E)(xiv).

<sup>50</sup> H.R. 1815, § 2(i)(7)(E)(x).

<sup>51</sup> S. 845, § 2(i)(1)(E)(vii).

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

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

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

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

## 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:	<u>Protection of Rights of Immigration Detainees</u> Opposing incommunicado detention of foreign nationals and urging immigration authorities to adopt certain detention standards, including access to counsel and legal information.
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2006 (MY) 107A:	<u>Due Process Right to Counsel in Immigration Related Matters:</u> Supporting the due process right to counsel for all persons in removal proceedings, and the availability of legal
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representation for all non-citizens in immigration-related matters.

2006 (MY) 107B:

Immigration Reform

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

2006 (MY) 107C:

Due Process and Judicial Review in Immigration Related Matters:

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

2006 (MY) 107D:

Administration of Immigration Laws

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

2006 (MY) 107E:

Detention in Immigration Removal Proceedings

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

2006 (MY) 107G:

Crime Victims in Immigration Related Matters

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

2008 (MY) 111B:

Immigration Detention Standards

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

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2009 (MY) 101C:

## Due Process and Access to Counsel in Immigration Enforcement Actions

Supporting legislation and/or administrative standards to ensure due process and access to appropriate legal assistance to persons arrested or detained in connection with immigration enforcement actions.

2010 (MY) 102G:

## Non-Partisan Attorneys in the Department of Justice

Urging the President and the Attorney General to ensure that lawyers in the Department of Justice, and leaders of state, local and territorial legal offices, do not make decisions concerning investigation or proceedings based upon partisan political interests and do not perceive that they will be rewarded for, or punished for not, making a decision based upon partisan political interests.

2017 (MY) 10C:

## Urges the President to Withdraw Executive Order 13769

Urging that the Executive Branch, while fulfilling its responsibilities to secure the nation's borders, take care that any Executive Orders regarding border security, immigration enforcement, and terrorism respect the bounds of the U.S. Constitution and facilitate a transparent, accessible, fair, and efficient system of administering the immigration laws and policies of the United States.

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

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

### 6. Status of Legislation.

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

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

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

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

None.

9. Disclosure of Interest. (If applicable)

N/A

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

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

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

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

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## EXECUTIVE SUMMARY

### 1. Summary of the Resolution

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

### 2. Summary of the Issue that the Resolution Addresses

This Resolution addresses the current state of unrestrained and unguided immigration enforcement practices taking place in our courthouses, by urging Congress and the Department of Homeland Security to recognize courthouses as “sensitive locations” in which enforcements 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.