

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

RE: Oversight—ICE Enforcement in New York City Courts

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

Summary

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

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

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

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

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

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

Information Regarding ICE Operations

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

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

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

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

How Trump’s ICE Uses State Courthouses

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

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

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

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

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

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

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

Conclusion

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