



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony with respect to the joint Committee on Courts and Legal Services and Committee on Immigration oversight hearing concerning enforcement by Immigration and Customs Enforcement (ICE) in New York City courthouses.

I. Introduction.

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and more than 200,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution. This includes fundamentally the rights of individuals to participate meaningfully in the judicial process, to enjoy equal access to the courts, and to be afforded due process of law.

We are pleased that the City Council is taking steps to raise awareness of this urgent issue. Arrests by ICE have shot up by nearly 40 percent under the new administration, with an average of more than 400 immigrants arrested each day.¹ Among the cruelest and most misguided tactics used by ICE is its practice of arresting people when they appear in state courthouses for matters entirely unrelated to their immigration status. Such actions undermine basic constitutional guarantees of due process and threaten the integrity of New York's court system.

Though ICE's practice of making arrests in courthouses is not new, the targeting of immigrants for arrest at courthouses has grown more frequent and more brazen under the current administration. Defense attorneys have collectively reported 38 such arrests and attempted arrests in New York this year.² Earlier this month, it was reported that ICE arrested three individuals on the same day at Queens Criminal Court, and sought to arrest another woman in

¹ Caitlin Dickerson, *Immigration Arrests Rise Sharply as a Trump Mandate Is Carried Out*, N.Y. Times (May 17, 2017), <https://www.nytimes.com/2017/05/17/us/immigration-enforcement-ice-arrests.html>.

² Emma Whitford, *Courthouse ICE Arrests Are Making Immigrants 'Sitting Ducks,' Lawyers Warn*, Gothamist (June 22, 2017), http://gothamist.com/2017/06/22/ice_immigrants_courts.php.

Human Trafficking Intervention Court in Queens.³ It can no longer be argued, as ICE has claimed in the past, that the agency's courthouse enforcement tactics target only those who pose a threat to public safety. Indeed, these incidents reflect the attitude, stated bluntly by ICE's acting director at a recent Congressional hearing, that immigrants without lawful status "should be uncomfortable."⁴

The impact of ICE's courthouse enforcement tactics are far-reaching. Many advocates and legal services providers have spoken out about the impact these actions have on their clients' ability to resolve matters of crucial importance in our state courthouses. Our testimony today focuses on how ICE's actions undermine due process of law and the deeply rooted constitutional right to access the courts.

II. The U.S. Constitution guarantees the right of access to the courts.

The Supreme Court has long recognized access to the courts to be an essential component of liberty and due process of law.⁵ The right to sue and defend in the courts is "the right conservative of all other rights, and lies at the foundation of orderly government."⁶ The constitutional guarantee of due process, arising under the Fifth and Fourteenth Amendments, demands that absent a countervailing state interest of overriding significance, individuals must be afforded a meaningful opportunity to be heard in the courts.⁷ That right must be protected against practices that operate to jeopardize it for certain individuals.⁸ For those who stand accused of crimes, the notion of a fair trial requires that a defendant have the chance to appear in court and confront the witnesses testifying against her.⁹ The promise of due process cannot be realized when individuals are intimidated from availing themselves of the judicial process.

Ensuring the right to be heard in court requires that the government do more than merely open its courthouse doors. Where the fundamental rights of individuals are at stake, the government must remove barriers that prevent certain classes of persons from availing

³ Beth Fertig, *Outcry After Immigration Agents Seen at Queens Human Trafficking Court*, WNYC (June 16, 2017), <http://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>.

⁴ Maria Sacchetti, *ICE chief tells lawmakers agency needs much more money for immigration arrests*, Washington Post (June 13, 2017), https://www.washingtonpost.com/local/social-issues/ice-chief-tells-lawmakers-agency-needs-much-more-money-for-immigration-arrests/2017/06/13/86651e86-5054-11e7-b064-828ba60fbb98_story.html?utm_term=.f7e0ef9ace69.

⁵ See *Marbury v. Madison*, 5 U.S. 137, 163 (1803) ("it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded"); *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876) ("Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable"); *Johnson v. Avery*, 393 U.S. 483, 485 (1969) ("it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed").

⁶ *Chambers v. Baltimore & O.R. Co.*, 207 U.S. 142, 148 (1907).

⁷ *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971).

⁸ *Id.* at 379.

⁹ *Snyder v. Com. of Mass.*, 291 U.S. 97, 105-06 (1934) ("in a prosecution for a felony the defendant has the privilege under the Fourteenth Amendment to be present in his own person whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge").

themselves of the courts, lest their right to court access be effectively foreclosed.¹⁰ To that end, the Supreme Court has required state authorities to take affirmative steps to ensure that the right of court access is realized.¹¹ Just as New York may not maintain its court system in a way that denies individuals the opportunity to be heard, it must not tolerate external threats that undermine its efforts to ensure access to the judicial process.

The right to court access is not only a matter of due process, but of equal protection of the law. It is incumbent on the state to make sure that its courts are open and equally accessible to all individuals, “free of unreasoned distinctions.”¹² It is well settled that where a state has provided an avenue for judicial redress, it must make sure that access to that process is administered equally.¹³ A practice that makes courts less accessible to immigrants, thereby contributing to an underclass that is denied the basic rights and benefits afforded to others, offends established principles of equal protection under the law.¹⁴

The right to access the courts is also rooted in the First Amendment right to petition.¹⁵ The First Amendment’s Petition Clause protects the right of individuals to appeal to the courts for the resolution of legal disputes.¹⁶ The right to petition the government for the redress of grievances is inseparable from the First Amendment’s guarantees of the right of freedom of speech, freedom of expression, and freedom of assembly.¹⁷ It is among the most precious liberties safeguarded by the Bill of Rights, and implied by the very idea of a republican form of government.¹⁸ Practices that infringe on an individual’s right to petition the courts for redress run contrary to the notion of justice built into our constitutional system.

III. ICE’s courthouse enforcement tactics undermine immigrants’ right to court access.

ICE’s enforcement actions in and around New York courthouses undermine these fundamental rights by chilling free and open access to the courts. Our state courts often serve as the exclusive venue for New Yorkers to resolve legal matters touching on personal safety, family relations, parental rights, criminal justice, and fair access to housing. Where immigrants face the

¹⁰ See *Boddie*, 401 U.S. at 377. (court filing fee could not prevent indigent couple from filing for divorce); *Burns v. State of Ohio*, 360 U.S. 252, 257 (1959) (access to appellate review could not be effectively foreclosed due to appellant’s poverty).

¹¹ *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72 (1977) (requiring prison authorities to assist prisoners to prepare court papers and provide them with adequate law libraries).

¹² *Rinaldi v. Yeager*, 384 U.S. 305, 311 (1966).

¹³ *Griffin v. Illinois*, 351 U.S. 12, 18 (1956).

¹⁴ See *Plyler v. Doe*, 457 U.S. 202, 219 (1982) (“The existence of such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under law”).

¹⁵ *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (“The right of access to the courts is indeed but one aspect of the right of petition”); *Bill Johnson’s Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 741 (1983).

¹⁶ *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011).

¹⁷ *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

¹⁸ *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 524 (2002).

prospect of interrogation and arrest by ICE when they file for custody of their children, petition for child support, or respond to a summons, they are effectively denied an opportunity to vindicate their rights under the law. Immigrants are left vulnerable to abuse by bad actors who may take advantage of their reluctance to seek protection and redress through the judicial process. The atmosphere created by ICE's actions erodes confidence in our judicial system, and strikes at the core of the social function that our courts are intended to serve.

In a state with roughly 4.3 million foreign-born residents, these concerns are critical. ICE's courthouse enforcement tactics contribute to a tiered justice system, wherein an entire class of individuals cannot depend on the courts to ensure their protection under the law. The consequences of this effect are broadly felt. Immigrants subject to domestic violence may be reluctant to seek orders of protection against their abusers. Foreign-born workers who suffer harassment or discrimination in the workplace may choose to endure such treatment rather than bring actions against their employers. Victims of crime may be unwilling to testify in court, or may avoid bringing crimes to light in the first instance for fear of confronting the court process.

These concerns are not abstract or speculative. A recent nationwide survey of advocates for immigrant domestic violence survivors, aimed at measuring the effects of current immigration policies on their clients, found that three out of four advocates reported that their clients had concerns about going to court for a matter related to their abusers, and 43% had worked with survivors who dropped civil or criminal cases because they were fearful of going forward.¹⁹ In Los Angeles and Houston, law enforcement officials have observed marked declines in reporting of crimes by Latinos, which officials have attributed to fears of arrest and deportation among immigrant communities.²⁰ Such examples provide only a snapshot of the ruinous collateral effects of ICE's actions.

IV. Conclusion.

We welcome the Council's efforts to bring needed attention to the issue of ICE enforcement in New York's courthouses. ICE's actions threaten the constitutional rights of immigrant New Yorkers and interfere with the administration of justice in ways that we can only begin to measure. We look forward to working with the Council on ways to address this matter and ensure that courthouses in New York City and across the state are open and accessible to all.

¹⁹ National Network to End Domestic Violence, et. al., "2017 Advocate and Legal Service Survey Regarding Immigrant Survivors," available at <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>.

²⁰ Rob Arthur, *Latinos in Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, FiveThirtyEight (May 18, 2017), <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/>.



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June 29th, 2017

Testimony Submitted to the New York City Council Re: ICE Enforcement in New York City Courts

Good afternoon Chairs Menchaca, Lacman, and distinguished Council Members. My name is Karina Alomar and I am the immediate past President of the Latino Lawyers Association of Queens County. I am a private defense attorney and I am here to testify on behalf of our members and our current President, Catalina Cruz. The Latino Lawyers Association of Queens County or "LLAQC" was formed in 1996 to promote the general welfare and legal rights of the Latino community and advance the opportunities that exist for Latino legal professionals. Our organization is made up of more than 100 attorneys, including private practitioners, members of legal service agencies, judges, professors, and students. We support our members through continuing education courses and networking, and our community through our Street Law en Español outreach program and referrals.

A significant number of our members work within the criminal justice system- as defense attorneys, assistant district attorneys, and judges. Under past administrations, ICE's presence inside of the courthouse was infrequent and often limited to the lodging of immigration detainers against our clients - until New York City enacted the detainer law. Under the current President, we have seen a bold and often drastic shift in the enforcement of immigration laws, which most recently included ICE's visit to the Queens County Human Trafficking Intervention Court- a courtroom created specifically to provide victims of sexual slavery with a real chance.

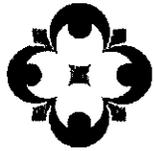
According to the administration and ICE, their enforcement efforts are meant to remove so called "criminal aliens", but this last incident demonstrates the contrary and raises a number of public safety and constitutional concerns. As officers of the court, we understand that there are laws and consequences for violations of the law. However, violations of civil immigration laws carry consequences at par with the violation of criminal laws, but not the same constitutional protections.



So as practitioners, we are afraid for what this type of enforcement will mean for our clients and must get creative in order to protect them. For example, in criminal court, we may ask for bail/detention for our clients so that ICE can't pick them up and deport them. Alarmingly, ICE has also made an appearance in family court, creating dangerous situations children and mixed status families, when for example there is possible neglect situation and one of the parents or even the child is undocumented. I fear for my own clients, so I've recently opted to not call out names in court, and instead look for the client, just in case ICE is there.

It cannot be overstated that ICE's presence in our city's courtrooms will also significantly impact the public safety of our communities. We are concerned that the progress made in New York City by detainer laws, municipal identification cards, and other sanctuary city policies, will be undermined by the outrageous immigration enforcement tactics. As an example, I can tell you that some of my own clients will not seek a much needed order of protection because they are fearful that their mixed status families could be separated if they become involved with the legal system.

As an association, we are committed to continuing to educate our community and our colleagues about changes in immigration law and enforcement practices, so that we can all be prepared. And although we understand that these are federal policies and the Council's ability here may be limited, we thank you for shedding light on this issue and ask you to continue to creatively think of ways to protect New Yorkers, as well as support legal services and organizations that represent and educate our immigrant community.



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**STATEMENT OF
ALBERT FOX CAHN, ESQ.
LEGAL DIRECTOR
COUNCIL ON AMERICAN-ISLAMIC RELATIONS, NEW YORK, INC.**

**BEFORE THE
COMMITTEE ON COURTS AND LEGAL SERVICES JOINTLY WITH THE
COMMITTEE ON IMMIGRATION
NEW YORK CITY COUNCIL**

**FOR A HEARING CONCERNING,
OVERSIGHT - ICE ENFORCEMENT IN NEW YORK CITY COURTS**

**PRESENTED
June 29, 2017***

* My sincerest thanks to Steven Demarest, Miko Zeldes-Roth, and Ibrahim I Bharmal (CAIR-NY interns), for their invaluable assistance in preparing these remarks.

Good morning, my name is Albert Fox Cahn, and I serve as the Legal Director for the New York Chapter of the Council on American-Islamic Relations (“CAIR-NY”). CAIR-NY is a leading civil rights advocacy organization for the Muslim community here in New York City and across New York State. New York must take immediate action to make sure our courthouses remain open to all, and I applaud Speaker Mark-Viverito, Chairman Lancman, and Chairman Menchaca for calling for action on this vital matter.

U.S. Immigration and Customs Enforcement’s (“ICE’s”) operations in state courthouses have become a nationwide epidemic, and New York is no exception.¹ Public data shows at least thirty-eight courthouse arrests in New York State in 2017,² of which nineteen occurred here in New York City.³ This surge has already resulted in more courthouse arrests under the Trump Administration than in the last two years of the Obama presidency combined.⁴

ICE’s tactics prevent countless immigrant Americans from accessing our courts and seeking justice. ICE targets some of the most vulnerable New Yorkers, including victims of human trafficking.⁵ This isn’t theoretical, earlier this month ICE agents stalked the hallways of a courtroom for human trafficking victims here in Queens. Another example is Irvin Gonzalez Torres, who was arrested outside of an El Paso courthouse while trying to seek a restraining order against an abusive husband.⁶ Victims of domestic violence and human trafficking should not have to choose between safety and deportation. Many immigrants are now unwilling to report sexual assault or hate crimes, fearing they will be revictimized by ICE.⁷

¹ Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors*, THE NEW YORK TIMES, June 16, 2017, <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMi8gI/story.html>

James Queally, *ICE Agents Make Arrests at Courthouses, Sparking Backlash From Attorneys and State Supreme Court*, LOS ANGELES TIME, March 16, 2017, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>

² Andrew Denney, *NY Courts Track ICE Encounters With Litigants*, THE NEW YORK LAW JOURNAL, March 27, 2017, <http://www.newyorklawjournal.com/id=1202782175943/NY-Courts-Track-ICE-Encounters-With-Litigants?slreturn=20170527114508>

³ Emma Whitford, *Courthouse ICE Arrests are Making Immigrants ‘Sitting Ducks,’ Lawyers Warn*, GOTHAMIST, June 22, 2017, <http://gothamist.com/2017/06/22/ice-immigrants-courts.php>

⁴ *Id.* at 15-16

⁵ Beth Fertig, *Outcry After Immigration Agents Seen at Queens Human Trafficking Court*, WNYC, June 16, 2017, <https://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>

⁶ Jonathan Blitzer, *The Woman Arrested By ICE in a Courthouse Speaks Out*, THE NEW YORKER, February 23, 2017, <http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>

⁷ Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, THE NEW YORK TIMES, April 30, 2017, <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html>

ICE compounds this harm through unethical and potentially illegal tactics, such as portraying themselves as state or municipal police.⁸ This behavior causes panic and confusion, eroding trust between citizens and local police.⁹

Prohibiting courthouse enforcement will protect all New Yorkers, but it will particularly aid undocumented Muslim New Yorkers. For years, the New York City Police Department (“NYPD”) has targeted the Muslim community with unlawful and unconstitutional surveillance. The NYPD engaged in surveillance of entire mosques,¹⁰ while undercover officers and confidential informants infiltrated Muslim student groups on local university campuses.¹¹ These surveillance practices are detrimental to the health of the community—leading some Muslim New Yorkers to self-censor both their religious practices¹² and their political engagement.¹³ Although most Muslim New Yorkers continue to unapologetically practice their faith in the face of police harassment, some have even stopped attending their places of worship.¹⁴ Muslim New Yorkers know that NYPD surveillance data is routinely shared with federal counterparts, with no protections to block its use by ICE in immigration enforcement. For this reason, Muslim New Yorkers are even more likely than other immigrant populations to be fearful of courthouse arrests.

New York State courts must be free from this intimidation, and we must join the nationwide movement of states who close their doors to ICE. We must follow the lead of states like California, whose Chief Justice rightfully objected that ICE compromised “the judiciary’s ability to provide equal

⁸ *Id.* at 72-74; Macy Corica, *Hartford Officials: ICE Agents Pose as Local Police, Try to Detain Undocumented Woman*, NEWS8, March 20, 2017, <http://wtnh.com/2017/03/20/hartford-officials-ice-agents-pose-as-local-police-try-to-detain-undocumented-woman/>

⁹ Joel Rubin, *It’s Legal for an Immigration Agent to Pretend to be a Police Officer Outside Someone’s Door. But Should it Be?*, THE LOS ANGELES TIMES, February 21, 2017, <http://www.latimes.com/local/lanow/la-me-immigration-deportation-ruses-20170219-story.html>

¹⁰ Matt Apuzzo & Joseph Goldstein, *New York Drops Unit That Spied on Muslims*, N.Y. TIMES, Apr. 15, 2014, https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?_r=0; see also Diala Shamas & Nermeen Arastu, *Mapping Muslims: NYPD Spying and its Impact on American Muslims*, MUSLIM AM. CIVIL LIBERTIES COAL., CREATING LAW ENF’T ACCOUNTABILITY & RESPONSIBILITY & ASIAN AM. LEGAL DEF. & EDUC. FUND, 10-14 (2013), <https://www.law.cuny.edu/academics/clinics/immigration/clar/Mapping-Muslims.pdf>.

¹¹ Shamas & Arastu, *supra* note 8, at 39.

¹² Shamas & Arastu, *supra* note 8, at 12-14.

¹³ Shamas & Arastu, *supra* note 8, at 20.

¹⁴ SHAMAS & ARASTU, *supra* note 8, at 12-14.

access to justice.”¹⁵ Closer to home, officials in both Connecticut¹⁶ and New Jersey¹⁷ demanded that ICE treat courts as “sensitive locations,” as is done with schools and houses of worship.¹⁸

While judges and elected officials across the country take a stand against the presence of ICE officers in state and local courtrooms, the voices of New York State leaders remain largely absent. Our state court leadership has failed to protect vulnerable New Yorkers or stand up to the Trump Administration.¹⁹ A public statement (as in California) is just a first step. Today we are asking for more than a public stand, we are asking for more than symbolic action, we are calling on city and state officials to go to federal court to assert our state’s interest in the unobstructed operation of our justice system.

ICE’s courthouse arrests are not merely unjust, they may be unconstitutional. As the Supreme Court has repeatedly stated, the 10th amendment prohibits the federal government from commandeering any state to enforce federal laws or regulatory programs.²⁰ To put it simply, ICE cannot force New York officials to do ICE’s job.²¹ Just as the federal government cannot compel the NYPD to conduct immigration raids, and just as it cannot compel this council to enact immigration bans, it cannot transform our courts and prosecutors into instrumentalities of immigration enforcement.

This constitutional concern is clearest when ICE arrests those who have been subpoenaed by prosecutors, arresting New Yorkers who have been compelled by our state to be present at a time/place where ICE can detain them. This tactic turns executive branch officials into an indispensable component of ICE’s immigration enforcement strategy. Such a co-option of state

¹⁵ Chief Justice Tani G. Cantil-Sakauye, *Letter to Attorney General Sessions and Secretary Kelly*, March 16, 2017, <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>

¹⁶ Roque Planas, *Chief Justice in Connecticut Asks ICE To Stay Out of Courthouses*, HUFFINGTON POST, June 8, 2017, http://www.huffingtonpost.com/entry/judge-courthouse-immigration-arrests-us_59398006e4b0c5a35c9d3928

¹⁷ Chief Justice Stuart Rabner, *Letter to Secretary of U.S. Department of Homeland Security John F. Kelly*, April 19, 2017, <https://drive.google.com/viewerng/viewer?url=https://assets.documentcloud.org/documents/3673693/Kelly-ICE-Ltr-041917.pdf>

¹⁸ John Morton, Memorandum on Enforcement Actions at or Focused on Sensitive Locations, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, October 24, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>; *see also* Chief Justice Stuart Rabner, Letter to Secretary of U.S. Department of Homeland Security John F. Kelly, at line 22-23 (“the same sensible approach that bars ICE enforcement [in sensitive locations] . . . should apply to courthouses.”).

¹⁹ Kristine Philips, *California Chief Justice to ICE: Stop ‘Stalking’ Immigrants at Courthouses*, THE WASHINGTON POST, March 17, 2017, https://www.washingtonpost.com/news/post-nation/wp/2017/03/17/california-chief-justice-to-ice-stop-stalking-immigrants-at-courthouses/?utm_term=.d93f4e341db7 *see also* Ryan Haas and Conrad Wilson, *Oregon Supreme Court Chief Justice Tells ICE to Stay Out Of Courthouses*, OREGON PUBLIC BROADCASTING, April 7, 2017 <http://www.opb.org/news/article/oregon-supreme-court-justice-ice-courthouse-letter/>

²⁰ *See* *Printz v. United States*, 521 U.S. 898, 935 (1997); *New York v. United States*, 505 U.S. 144, 161 (1992).

²¹ *See* *Galarza v. Szalcyk*, 745 F.3d 634, 644-45 (2014).

subpoena power seriously compromises the integrity of our court system and our centuries old experiment with federalism. ICE has the power to arrest individuals, it has the power to use the federal courts, but is simply may not turn our City into an unwilling accomplice in the Trump Administration's attack on undocumented New Yorkers.²² Congress has not authorized such a tactic, and our constitution forbids it, so our state must now put an end to these arrests.

ICE's unlawful commandeering of state instrumentalities does not end here. The Supreme Court has explicitly deemed immigration an area that the federal government has reserved for itself.²³ The broad preemption of state law in this field cuts both ways; just as state governments cannot make their own law in this field, they cannot be compelled to serve as agents of federal policy. The fact that Congress has statutorily allocated review of the immigration process to federal immigration courts and *not* to state courts further reflects this.

ICE's conduct subverts this regulatory scheme by turning the state judiciary into an implicit arm of the federal immigration system. This is not merely a matter of a state court applying federal law. State judicial officers are being compelled to become an extension of a federal program, and not just any federal program, but one that embodies a strongly and distinctly *federal* interest.²⁴

ICE's conduct also raises serious issues of public accountability. Immigration enforcement in state courthouses by a federal agency with a history of impersonating state and municipal police forces creates the clear impression of state cooperation with the federal immigration program. Our constitution prohibits federal programs that mislead the public in this way, since they disrupt democratic accountability. The Supreme Court has previously invalidated programs that are carried out in such a way that the public might erroneously hold state officials culpable for the decisions of federal authorities.²⁵

ICE's transformation of state courthouses into traps for undocumented immigrants thus places state officials in a situation in which the maintenance of a core state function implicitly compels them to submit to cooperation with a federal program. ICE's decision to disregard constitutional boundaries and undermine the state judicial system simply cannot be tolerated.

In light of the foregoing, we urge this city and state officials to do everything in their power to block ICE enforcement in New York's courthouses. I thank you for giving me the opportunity to address these urgent issues, and I look forward to working with the Council to safeguard the rights of Muslim New Yorkers in the months and years to come.

²² See *Printz*, 521 U.S. at 915.

²³ See *Arizona v. United States*, 567 U.S. 387, 402 (2012).

²⁴ *Id.*

²⁵ See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 578 (2012); *Printz*, 521 U.S. at 929.

FOR THE RECORD

PUBLIC TESTIMONY

ON:

ICE ENFORCEMENT IN NEW YORK CITY COURTS

PRESENTED BEFORE:

THE COMMITTEE ON COURTS AND LEGAL SERVICES WITH THE COMMITTEE ON IMMIGRATION

PRESENTED BY:

SHANTI THARAYIL,

IMMIGRANT JUSTICE CORPS FELLOW

COMMUNITY DEVELOPMENT PROJECT

URBAN JUSTICE CENTER

Good afternoon, my name is Shanti Tharayil and I am an Immigrant Justice Corps Fellow at the Urban Justice Center's Community Development Project ("CDP"). CDP's mission is to strengthen the impact of grassroots organizations in New York City's low-income and other excluded communities through direct representation, research reports, the formation of cooperatives and new organizations, and technical assistance. At any given time, our six practice areas – workers' rights, housing, immigrants' rights, consumer justice, research and policy, and capacity building – work in close collaboration with 60 – 70 grassroots partners across the City. These partnerships enable CDP to track broad trends and shared concerns across boroughs and cultures at the community level. All of our practice areas dedicate significant resources to working with immigrant New Yorkers.

CDP appreciates the Committee providing this opportunity to share our concern about Immigration and Customs Enforcement (ICE) enforcement in New York City's courts. The obvious ramification of the actual and perceived rise in immigration enforcement in New York City courts is that those in most need of assistance from the justice system, will not seek it. This has already manifested in our work, as client's have expressed reticence at taking on any course of action which may result in a court appearance, including a green card holder refusing to pursue claims against abusive partners and an undocumented, long-time city resident fearful of appearing in court to address a minor traffic violation.

This is particularly troubling in New York City which has staked its reputation on expanding and enshrining the rights of all of its citizens, regardless of status. Between the launch of the #YouHaveRightsNYC campaign, assertions that New York City is and shall remain a Sanctuary City, and innovative programs that guarantee access to counsel in housing and immigration courts, this government has taken significant steps and expended considerable resources to ensure that New Yorkers are not only aware of rights but, more importantly, in a position to enforce them. These efforts to dismantle barriers to justice, will be critically undermined by the undoubtedly chilling effect of ICE presence in New York City's courts. Faced with the prospect of harassment, detention, and deportation, immigrants New Yorkers are unlikely to turn to the City's courts system for recourse. Which, in turn, will allow for the continued exploitation of immigrants by abusive employers, landlords, and intimate partners that New York City has fought so hard to address.

Equally concerning is the ripple effect of this policy on the broader community. Emboldened by the xenophobic rhetoric of the current administration, our attorneys have reported an alarming increase in harassment and threats targeted at immigrant tenants and workers. My colleagues have assisted individuals who have been denied wages and threatened with eviction on the basis of their immigration status. Ending these discriminatory practices and ensuring respect for state and local law, necessitates safe and accessible courts.

We are grateful for all that the Council has done to safeguard the rights of New York City's immigrant workers, residents, and families. We thank for your advocacy and urge you to

continue to press the Office of Court Administration to swiftly adopt and implement a policy that will ensure that immigrant New Yorkers can access justice without the threat of interference by immigration officials.

Thank you for the opportunity to testify.



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**Written Testimony of Carmen Maria Rey, Esq.,
Deputy Director, Immigration Intervention Project, Sanctuary for Families
Submitted to the New York City Council, Committee on Courts and Legal Services
Chair, Council Member Rory Lancman
(Hearing on June 29, 2017)**

Good afternoon. My name is Carmen Maria Rey. I am the Deputy Director of the Immigration Intervention Project at Sanctuary for Families, one of New York City's leading providers of legal, clinical, housing, and employment services for survivors of human trafficking, domestic violence, and other forms of gender-based violence. We are grateful to the New York City Council for the opportunity to testify today, and to Council Member Lancman for calling this hearing to discuss the impact of having agents from U.S. Immigration and Customs Enforcement (ICE) present and engaging in immigration enforcement efforts in New York City's courtrooms.

The presence of ICE in New York's courtrooms deeply concerns us because it has unquestionably created a chilling effect on victims of domestic violence and trafficking seeking to exercise their legal rights in New York's Courts.

A recent survey conducted by The Immigrant Defense Project over three weeks in June found that of 225 advocates surveyed, 74% reported having worked with immigrants who expressed fear of the courts because of ICE's presence there, and a further 45% reported having worked with immigrants who failed to file a petition, or who withdrew a petition because they were afraid of encountering ICE in the court. Most concerning for us as attorneys and advocates working with survivors of domestic violence and trafficking, 67% of survey respondents working with survivors reported having had clients who decided to not seek help from the courts because they feared encountering ICE there.

These survey results are extremely troubling. Abusers and traffickers share one common trait: they exercise power and control as an instrument of abuse,¹ attacking their victims where they are most vulnerable to keep them under their control. For immigrant victims, especially those with tenuous or no immigration status, the weapon of choice is clear.² Abusers and traffickers routinely threaten their victims with deportation and permanent separation from their U.S.-born children and other family in the U.S. as a tool to prevent them from calling authorities and ending the abuse.

For decades, organizations like Sanctuary have worked tirelessly to gain the trust of immigrant victims and assure them that if they come forward to report the crimes

¹ For a discussion on the role of power and control in abusive relationships and human trafficking, see: <http://www.nrcdv.org/dvam/sites/default/files2/HumanTrafficking%26DV-TalkingPointsForm.pdf>

² For a full discussion of power and control exercised against immigrant victims of domestic violence, please see: <https://www.peacepalacelibrary.nl/ebooks/files/Immigrant-Women-and-Domestic-Violence-Experiences-Menjivar.pdf>; <http://dvrp.org/immigrant-power-and-control-wheel/>; <http://www.thehotline.org/is-this-abuse/abuse-and-immigrants/>



Sanctuary for Families

committed against them, we can keep them safe from their abusers and traffickers; that ICE will not be able to just find them and take them away, and that, most importantly, they will be safe with our law enforcement officers and with judges in our courts.

That trust that we developed over decades has been severely damaged since January of this year. Routinely now the news report incidents of ICE arresting litigants in our courts—even attempting the arrest of a survivor of human trafficking in the Queens trafficking part two weeks ago. This lends credence to the threats they have heard for years—sometimes decades—from their abusers and traffickers. These days, even in our professed “sanctuary city”, being an immigrant in a courthouse seeking to exercise your right to safety and protection may well lead to arrest, detention, and deportation by ICE.

Over the past several months, immigrant clients have been particularly apprehensive about going to Family Court to seek orders of protection, custody and child support. They have even expressed concern about protecting their property rights in divorces: “if I make my husband mad, he will call ICE to come and get me in the courtroom.”

Of the hundreds of our clients that have been too afraid to proceed with litigation in the Courts, one of the most heartbreaking stories is that of one of my longtime clients, Maria, who is too afraid to seek an order of custody and visitation in Family Court against her daughter's father, a man who beat her brutally for over a decade and recently kidnapped their daughter. Maria's abuser knows that she entered the country unlawfully and that, in 1998, at the age of 17, she was convicted of a minor drug-related crime. This means that, despite having lived in the United States for nearly thirty years, and having a young U.S. citizen daughter, Miriam is a priority for deportation. Her abuser knows this, and has threatened Miriam that if she tries to get her daughter back, he will call immigration and have her deported. He doesn't know where she lives, but if she files for custody, he can tell ICE where she will be on the day of her Court hearing, and they will likely come to arrest her. This means that Maria is too afraid to seek the one legal remedy that would be available to her—suing for custody and visitation in Family Court—because she is too afraid to come to the attention of immigration authorities and be deported from the U.S. and never see her daughter again. And as advocates for Maria, as the situation currently stands, we unfortunately cannot assure her of her safety in court.

In closing, we strongly believe that the courts must remain a sanctuary for all New Yorkers in need of help, and that ICE's presence in the courts has had a tremendously damaging effect on immigrant victims of domestic violence and trafficking in need of protection from the courts.

Thank you again for the opportunity to testify.



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Lisa Schreibersdorf – Executive Director, Brooklyn Defender Services
BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committees on Courts and Legal Services & Immigration
Oversight Hearing on ICE Enforcement in NYC Courts

June 29, 2017

My name is Lisa Schreibersdorf. I am the Executive Director of Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 30,000 clients in Brooklyn every year. I thank the New York City Council Committees on Courts and Legal Services & Immigration, and in particular Speaker Melissa Mark-Viverito, Chair Lancman, and Chair Menchaca, for holding this oversight hearing on Immigrants and Customs Enforcement (ICE) enforcement in New York City courts. Coming together to demand an end to courthouse arrests is urgent and critically important. BDS is proud to work with the Council to strengthen our city's resistance of federal practices that would infringe on the rights and well-being of our clients and all immigrant New Yorkers and we are hopeful that greater progress may be made as the scope of the problem becomes increasingly evident. Specifically, we must work together to protect immigrants' access to justice, not only by mobilizing to prevent ICE arrests in court, but also by continuing to reduce unnecessary points of contact with the criminal legal system

altogether which often put our New York immigrant families and community at risk of separation.

It is important to state at the outset that studies show immigrants commit fewer crimes than native-born Americans and the majority of them are never even accused of a crime.¹ To the contrary, an influx of immigrants has been shown to reduce crime in New York City neighborhoods.² That said, immigrants who do become court-involved often face disproportionate punishment and harm, including banishment, for offenses that are largely tolerated in affluent communities.

Impaired Access to Justice

Since Trump took office, our immigrant clients have increasingly expressed concerns about the risks of coming to court. These clients include people with lawful status, those with citizenship claims, those seeking asylum and even naturalized citizens. They are often confused about the entanglement between ICE and the criminal legal system. They express fear of collusion between ICE and local government officials, or those they perceive to be government officials, including court staff, judges, prosecutors, and even their own defense counsel. BDS's in-house immigration attorneys, who specialize in advising our criminal and family defense clients about the immigration consequences of criminal legal system contact, are routinely required to counsel our clients on the very real possibility of ICE's presence in criminal or family court weighted against the serious and definite risks of not appearing for their proceedings.

We are certain this fear, which is perpetrated by ICE's willful arrest practices, has a grave and chilling effect on immigrant communities' willingness to avail themselves of civil and criminal courts and the legal system generally. In practice, this means fewer innocent people or people with mitigating circumstances mounting a defense against criminal allegations, likely resulting in permanent criminal records and incarceration and/or triggering warrants; fewer cases bringing to light abuses and constitutional violations by police in immigrant communities and fewer people exercising their legal rights in housing court to compel their landlords to repair unsafe conditions that endanger immigrants and non-immigrants alike. This chilling effect is starkly present in Family Court, where immigrant New Yorkers are afraid to show up to prosecute domestic violence, assert their parental rights or participate in visitation, custody or child support payment proceedings.

One particularly egregious example of ICE's callousness was the attempted arrest of a woman in Queens' Human Trafficking Intervention Court (HTIC) on June 16, 2017. This action, along with the three completed arrests in the Queens Criminal Court that day, brought the total number of attempted and actual ICE arrests in New York City courts to date in 2017 to 38, or nearly *five times* the total number reported for the entire year of 2016. It must be repeated that these are not

¹ Rafael Bernal, Reports find that immigrants commit less crime than US-born citizens The Hill (2017), <http://thehill.com/latino/324607-reports-find-that-immigrants-commit-less-crime-than-us-born-citizens> (last visited Jun 27, 2017).

² Yoni Bashan, Immigrants in New York City Bolster Housing Values The Wall Street Journal (2014), <https://www.wsj.com/articles/immigrants-in-city-bolster-housing-values-1397086910?tesla=y> (last visited Jun 27, 2017).

only undocumented immigrants, as news outlets often erroneously report, but also people with lawful status like green card-holders.

ICE has blamed Sanctuary City policies for the spike in courthouse arrests, arguing that preventing the agency from apprehending people in City jails and police precincts leaves them no choice but to find our clients in court.³ However, many of the local policies in question have been in effect for several years and, moreover, they only prevent City agencies from turning people over to ICE when there is no valid judicial warrant to verify the legitimacy of the arrest.

There is simply no excuse for ICE's courthouse arrests. New York State Court officials must loudly and publicly rebuke these arrests and make clear that New York State's policy is to prohibit them, unless there is a judicial warrant for an individual's arrest. They must also ensure that court staff adheres to this policy. If ICE flouts this policy, we must all stand together with our colleagues and allies across the country and condemn the agency.

Client Stories

The following client stories are excerpted from affidavits written by BDS attorneys. These affidavits and others are attached to this testimony for your review.

ICE Arrests in Court: Adding to the Pressure on Innocent People to Plead Guilty

Many facets of our criminal legal system are used to pressure defendants to plead guilty, rather than mount a defense, including: bail and pre-trial detention, mandatory minimum sentences, the Blindfold Law, and missing work, family duties, and other appointments for seemingly endless court dates. The threat of arrest by ICE only adds to this pressure.

Mr. S had consistently attended several court appearances before ICE agents came to the Kings County Supreme Court to arrest him. His criminal defense attorney called his Padilla attorney to assist her in court. The Padilla attorney quickly arrived at the court house and attempted to speak to the Agents, but they refused. She asked the agents not to detain her client, which would interfere with his right to appear in court and resolve his case. However, as a result of ICE's presence in court and intent to apprehend and detain Mr. S, the client decided to waive his right to trial, plead guilty to a lesser offense, and begin his jail sentence that day.

Mr. W's case spanned nearly a year and included time before the 2016 election and the 2017 inauguration. He had been a Legal Permanent Resident (LPR) for more than ten years, with a stable address and an on-the-books job, when he was arrested on felony assault charges. Video footage was consistent with self-defense, and the case was swiftly reduced to a Misdemeanor. Mr. W knew he was innocent, and I believed we could and should win the case, so he refused to

³ Alan Neuhauser, Sessions, Kelly Defend Courthouse Immigration Arrests U.S. News & World Report (2017), <https://www.usnews.com/news/national-news/articles/2017-03-31/jeff-sessions-john-kelly-defend-courthouse-immigration-arrests> (last visited Jun 27, 2017).

plead. He returned to court eight times before his case was ultimately completely dismissed and sealed. At each of the five court dates preceding the inauguration of the new federal administration, he was impressively positive and showed up to court early. His employer knew he was a good man and kept him on the payroll even though he'd have to miss work for court. He was confident that he would win and did not even consider a plea deal.

After the inauguration, everything had changed. Mr. W showed up to his next court appearance late, stressed and tearful. His eyes were bloodshot and he was shaking with fear. He hoped the case would finally be dismissed, but the prosecutor was still offering only a plea to a non-criminal violation. His attorney had to advise him that this plea would not be entirely safe given his immigration status. Also, even if he were to accept the plea, he would have to return to court to pay the surcharge. He decided to continue fighting. The case was adjourned. He walked out into the hallway and admitted to his attorney that he had heard about ICE making arrests in court and was utterly terrified to be there.

In this case, he had developed a long and trusting relationship with his attorney, and together they were able to work through the relative risks of showing up to court, failing to appear, or pleading guilty, and ultimately get the case dismissed. Most of our clients' cases resolve much quicker than that, and many of them are too afraid to open up to use about their concerns because of their perceptions that everyone in criminal court is collaborating with ICE. This is devastating, as it interferes with our clients' ability to feel safe and exercise their due process rights, as well as our ability to build trusting, confidential relationships with them. Ultimately, it only adds to the immense pressure on them to plead to whatever would resolve their cases and make space for the next New Yorker's case to be called.

ICE Arrests in Court: Thwarting the Court's Administration of Humane and Effective Justice

Another client, Mr. R, was detained and questioned by ICE outside the Brooklyn Mental Health Treatment Court. He is an LPR who had been successfully participating in a mental health treatment program for nine months and was well on his way to completing the program and resolving his case favorably. However, to this day, approximately eight months later, he remains in ICE custody at the Hudson County jail, where his seizure condition has become acute and the medicine he needs to treat it has been regularly withheld. BDS is very concerned about his health, including his mental health, especially given the history of substandard health care at the detention center and the recent death in custody there.^{4,5} We continue to advocate for humanitarian release from ICE custody, but in the meantime his criminal case—and, more importantly, his mental health treatment and life—have been derailed.

⁴ Nina Bernstein, Health Care at New Jersey Immigrant Jail Is Substandard, Watchdog Groups Say The New York Times (2016), https://www.nytimes.com/2016/05/12/nyregion/health-care-at-new-jersey-immigrant-jail-prompts-claim.html?_r=0 (last visited Jun 27, 2017).

⁵ Andrew Keshner & Victoria Bekiempis, Sick Honduran immigrant mistakenly cuffed by ICE dies in custody NY Daily News (2017), <http://www.nydailynews.com/new-york/sick-honduran-immigrant-mistakenly-cuffed-ice-dies-custody-article-1.3263023> (last visited Jun 27, 2017).

ICE Arrests in Court: Warrants Issued

Last month, a client decided to leave the country before receiving his sentence of probation due to fear of ICE apprehension in criminal court. The client was being assessed for a probation sentence. In the probation report, the probation officer noted in that she called ICE to confirm our client's immigration status. After seeing this information in the probation report, our client became so afraid of his risk of being arrested by ICE in criminal court and detained, that he decided to leave the United States. As a result, this client was not sentenced and his case remains open.

On October 19, 2015, our client Clarence Threlkeld shared the story of his courthouse arrest in testimony before the Council. He was walking down a hallway in Brooklyn Criminal Court for a second appearance to answer Misdemeanor charges when he heard his name called. He assumed that it was the lawyer who would stand up on his case, but instead found himself arrested by two plainclothes ICE officers. After more than five months in detention at the notorious Hudson County Correctional Center in New Jersey, he received representation by a BDS attorney through NYIFUP, who discovered that he had a citizenship claim and never should have been detained. He was released three days later, and eventually won his immigration case. Yet the criminal court judge had already issued a bench warrant that appears on his record.

It is important to remember that people arrested by ICE but not deported still suffer serious harm. For example, approximately 30% of our New York Immigrant Family Unity Project (NYIFUP) clients ultimately win their immigration cases, but only after many months or years of detention, during which they are separated from their families and communities, where many are crucial income-earners and caretakers. People in immigration detention face inhumane jail disciplinary practices like long-term solitary confinement and are deprived of needed health care. They are unable to appear for ongoing criminal or family court matters as well because ICE is unwilling to have them produced for court. This act alone shows that ICE is not concerned about due process and the legitimacy of New York State's legal proceedings

Limiting Contacts with the Criminal Legal System

Ultimately, the surest way for local policymakers to protect immigrant New Yorkers from federal immigration enforcement is to limit involvement in the criminal legal system. BDS thanks Speaker Melissa Mark-Viverito and the Council for passing important legislation to reduce such contacts and mitigate the harm for those who do become court-involved. In response to costly lawsuits and also heeding this Council legislation, NYPD has begun to reduce arrests and criminal court summonses, and crime rates continue to decline. Accelerating these reductions and ending Broken Windows policing is urgent, now more than ever, as the Trump Administration uses dragnet local law enforcement actions and state-level convictions to aid in its mass deportation effort. ICE can identify and track our clients through arrest fingerprints

shared by the NYPD with the National Crime Information Center database, court appearances and, troublingly, some probation agents who call the agency to check immigration statuses.

Three Active Reform Campaigns that Would Benefit from the Council's Advocacy

I. Ending Arrests of Human Trafficking Victims and Sex Workers

As BDS and others have reported for many years, mere arrests, even in cases that are later dismissed or resolved with a non-criminal violation, can lead to deportations, broken families and broken communities. Courthouse arrests are just one of many ways this occurs. Diversion courts like HTICs can help to reduce the likelihood of ICE enforcement actions by encouraging less punitive dispositions, but they can also serve as a trap, prolonging court involvement with mandated services. New Yorkers were rightfully shocked that ICE would even enter an HTIC part, and we must speak out against this impropriety, but policymakers should also ask themselves why a woman found to be a victim of human trafficking was arrested and prosecuted at all. The same question should be asked for those who voluntarily engage in sex work, many of whom are immigrants. Criminalization is a dangerous and inappropriate tool to help them move on to a different life, if that is the goal. Other major cosmopolitan cities permit and regulate the industry, enabling sex workers to openly organize and protect themselves and each other in ways that the criminal justice system is no substitute. Here in New York City, groups like the Red Umbrella Project and the Sex Workers Project are organizing for reform. Please consider holding a hearing on this subject.

II. Narrowing the Definition of Illegal Gravity Knives to Exclude Common Work Tools

Another common arrest charge that cuts against public safety is gravity knife possession. Under a poorly-written 1950's law intended to criminalize a specific type of knife that is no longer in use, the NYPD has arrested tens of thousands of working New Yorkers for mere possession of tools like utility knives and box cutters. These arrests do not follow any allegations of criminal behavior, threats, or intent and serve no public safety purpose. Often, our clients are in their laborers uniform—a construction union or moving company sweatshirt, or a Local 1 Stagehand t-shirt—when they are arrested traveling to or from a job site. A.5667A-Quart / S.4769A-Savino, bill to reform the gravity knife statute to end the criminalization of workers for carrying their tools passed both houses of the Legislature for the second time this year. An earlier version was vetoed by Governor Cuomo last year. The Council's advocacy with the Governor to sign the simplified version of the bill this year would help to convey the broad base of local support for it, even as the Manhattan DA uses fear tactics to lobby against it. Please consider a resolution or letter in support of the bill.

III. Legalization and Regulation of Marijuana Access

Lastly, it is long past time to end the drug war in New York City. The fourth and fifth most common arrest charges are low-level marijuana possession (18,136 arrests in 2016) and low-level non-marijuana drug possession (16,630 arrests in 2016), respectively. There is a growing recognition among policymakers of all parties, many of whom may struggle with addiction themselves or have friends or family members who struggle with addiction, that criminalization is an ineffective and, in fact, often very dangerous approach to drugs. The sharp racial disparities in these arrests—approximately nine-in-ten of those arrested are Black and/or Latinx—are

inexcusable and the disproportionate adverse impacts, especially for immigrants, are severe. In fact, we are currently representing a man facing deportation due to his New York State marijuana possession conviction. As a preliminary step, the Council should sign-on as a supporter of the Drug Policy Alliance's Start SMART NY campaign for state legislation enabling sensible and legal marijuana access through regulated trade that would help to economically empower those who are targeted under the current law.

With the surge in federal immigration enforcement actions against our families, friends, neighbors, co-workers, and clients, ripping apart our communities, New Yorkers must come together and make the necessary changes to build the sanctuary as promised.

Thank you for considering my comments.



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**Written Testimony of Sanctuary for Families
Submitted to the New York City Council, Committee on Courts and Legal Services
Chair, Council Member Rory Lancman
(Hearing on June 29, 2017)**

Good afternoon. My name is Yvonne Chen, and I am the Manager of Outreach for the Anti-Trafficking Initiative at Sanctuary for Families, one of New York City's leading providers of services for survivors of trafficking and other forms of gender-based violence. We are grateful to the New York City Council for the opportunity to testify today—and to Council Member Lancman for calling this urgent hearing to discuss the crisis triggered by U.S. Immigration and Customs Enforcement appearances in our city courtrooms. Most recently, less than two weeks ago, ICE agents entered the Queens Human Trafficking Intervention Court, a problem-solving court whose goal is to identify trafficking victims and offer comprehensive services to assist them in escaping their abuse, not only from the massage parlor owners and brothel keepers who hold them captive, but from the thousands of sex buyers who rape them with impunity. As such many, if not most, of the defendants are themselves victims of horrific crimes, and feel hopeless about their prospects for getting help. The terrifying appearance of three male ICE agents, to detain them rather than investigate the abuses against them, not only failed to protect public safety: by eviscerating the trust the courts had carefully nurtured, ICE aided traffickers in instilling the kind of fear in victims that discourages them from seeking justice.

Sanctuary was closely involved in the creation of the Human Trafficking Intervention Courts (HTICs) in New York City and statewide over the past five years. These courts are a powerful means of identifying trafficking victims, offering them social and legal services as an alternative to criminal conviction. In partnership with some of New York's preeminent law firms, Sanctuary launched a Pro Bono Project at the Queens HTIC in June 2014. Today, hundreds of trained lawyers provide high-quality legal services to trafficking victims including immigration, public benefits, family law and criminal conviction vacatur. Perhaps even more importantly, these mandated consultations are an opportunity to identify indicia of severe forms of trafficking.

Since the launch of the HTICs, Sanctuary has provided immigration consultations and counseling services to increasing numbers of victims in Queens and in Brooklyn—from 57 in 2014, to 370 in 2016. Among service providers working in the City's trafficking courts, Sanctuary has elicited the highest rates of victim disclosure, due to the culturally and linguistically sensitive and trauma-informed interviewing techniques utilized by our staff and pro bono partners. The outcomes reveal a brutal industry that preys upon some of the most defenseless members of society—many of them Chinese and Korean women, most of them mothers and, in some cases, grandmothers—who come from impoverished rural communities with little education. Hoping to escape abuse in a land that they believed valued human dignity, these women instead have been coerced into providing sexual services through debt bondage and under threats of arrest and deportation.

On June 16, ICE sought to detain one such defendant, a Chinese woman believed to be a trafficking victim, who, like many of the East Asian defendants seen by Sanctuary, had been arrested for unlicensed massage. This young woman had been in touch with Sanctuary in the past, and was on track to have the charges against her dismissed after completing her mandated services. Instead, by complying with the legal requirement to appear in court as scheduled, she suddenly risked detention and deportation. All of this occurred in front of dozens of other immigrant defendants in the same situations—and many surely resolved at that moment never to return or complete their services.

Victims seeking justice in the courts—whether trafficking survivors in the HTICs, or domestic violence survivors in Family Court—should never be fearful of accessing protections offered by the criminal justice system. These courts should remain havens for traumatized victims. How can Sanctuary and other service providers responsibly encourage clients to seek the lifesaving help they need in the courts while the menacing presence of immigration agents are likely to be there? This only makes our city LESS safe: immigrant crime victims are driven into the shadows, less likely to report crimes for fear of arrest and deportation, while their exploiters flourish, emboldened with this extra layer of fear they can use to coerce their victims into submission. And it weakens the efforts of service providers, who can no longer reassure clients that they will be safe in the courts.

To illustrate this, let me describe to you the scene at court when ICE agents appeared on the scene two weeks ago: after court broke for lunch, two Chinese women approached me anxiously, questioning why ICE was there and if they were going to be deported next. They were terrified to even exit the courtroom and asked me to escort them outside so they could get some food, as they had been waiting since early morning for their case to be heard. As we were about to exit the courthouse, they panicked and decided to remain huddled inside the courthouse rather than risk arrest. I could tell they were famished, but because they could not bring themselves to step outdoors, the best I could do was bring them some stale bagels. As I sat with them for a few minutes, they wondered how they could possibly finish their sessions and return to court given the risk that doing so could cause them to be deported.

The mental health ramifications on a population of immigrants such as those in Queens, scores of whom fled traumatic experiences of state control in China, is chilling. Coming from places where corruption runs rampant, our clients experience overwhelming anxiety and paralyzing fear of public systems, especially the justice system. As a result, we must repeatedly explain to them that we are not representatives of the court or immigration. Our multilingual staff works hard to gain their trust so that clients understand our assistance is safe and confidential. However, having been betrayed by supposed friends who trapped them into illicit massage parlors, where customers are often permitted to beat, rape, stab or strangle them for their sexual pleasure, fear and suspicion remain high. Unfortunately, the challenge of identifying victims and gaining their trust is getting more difficult, not less. Given the anti-immigrant sentiment expressed by the current federal administration, non-citizen victims are so terrified of the risk of being deported just for reporting their abuse, they choose not to come forward at all.

Immigrant victims must not be allowed to believe what their traffickers tell them: if you try to escape and seek help, the American government will arrest you and lock you up instead. Our courtrooms must remain a sanctuary for victims of crime seeking justice. Thank you for listening to this testimony—and thank you for your work on behalf of our most vulnerable neighbors.



Fighting for your rights, one person at a time

Stanislaw A. Germán, Executive Director
Carolyn P. Wilson, Director

6/29/2017 CITY COUNCIL HEARING

TESTIMONY OF NYCDS EXECUTIVE DIRECTOR

Good Afternoon and thank you to Chairman Lanceman & Chairman Menchaca for convening these hearings to discuss ICE in our courtrooms. My name is Stan Germán and I am the Executive Director of New York County Defender Services here in Manhattan.

Before my colleagues from the other Defender offices provide this Council with ideas about what the Office of Court Administration can and should be doing to protect our immigrant communities Access to Justice I want to give a brief overview of what has transpired over the last six months with respect to ICE in our Court Houses.

In Early February of this year, the Defenders were planning a press conference to address the disturbing tone emanating from the Executive Branch in Washington D.C. following the January 20th inauguration. The event, however, was pre-empted because on February 18th, 2017, ICE agents were seen in a Manhattan Criminal Court Arraignment Part to take a person into custody. It was the first time that anyone could recall the presence of ICE in an arraignment courtroom only 24 hours after an arrest of an individual and the event set off alarm bells among everyone who was concerned about protecting our immigrant population.

3 days later on February 21st, Chairman Lancman joined by the Defenders and members of the community held a press conference on the steps of City Hall drawing attention to the issue of ICE in our courthouses.

In response the press conference, the Defenders met with members of the Mayor's Office of Criminal Justice as well as the Office of Court Administration and we

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were told that OCA had no contingency plans in place to deal with what everyone knew would become a real issue after January 20th, 2017. ICE in our courts.

In the wake of no leadership or action plan by OCA officials, we saw disturbing trends among New York City and New York State Judges. Some judges were suddenly making inquiries about clients immigration status and even highlighting those who were foreign born. The head of the State's Court Officer Union, Dennis Quirk, declared that Court Officers MUST cooperate with ICE. Once again, no leadership or action plan by OCA officials.

On April 5th, the Defenders met with OCA's Chief Administrative Judge and we were essentially told that there was no need for concern but that they would monitor the situation and encouraged us to report any ICE presence in the courtrooms. We all warned OCA that this is simply the beginning of increased ICE presence in the courts and that a proactive and not a reactive approach must be taken. As requested by OCA, during the ensuing two months all the public defenders offices reported every instance of ICE in our courtrooms. We communicated with each other and with OCA every time one of our clients were taken away by ICE officials when our clients simply appeared in court voluntarily and as required to do so. ICE presence was spotted in all five boroughs and all we heard from OCA was silence. No leadership, no bold action, simply silence.

Finally on June 16 of this year the incident that directly led to all of us gathering here today occurred when VICTIMS were taken away by ICE officials when they appeared in the Queens Human Trafficking Intervention Court.

At last, we heard from our Chief Judge, Janet DiFiore, that she was "greatly concerned" and that they would talk to ICE.

Still no leadership and no plan of action.

ICE is preying on our immigrant communities and it is incumbent on OCA leadership to take bold action.



Fighting for your rights, one person at a time

Stanislaw A. Germán, Executive Director
Carolyn P. Wilson, Director

6/29/2017 CITY COUNCIL HEARING TESTIMONY OF NYCDS MENTAL HEALTH SPECIALIST

My name is Katherine Bajuk. I've been a public defender in New York since 1994, and am currently the Mental Health Specialist at New York County Defender Services. NYCDS represents indigent clients charged with violations and crimes in Manhattan from arraignment through disposition. As the office's specialist in these matters, I oversee or participate in the psychiatric fitness exams of our clients, represent them in Mental Health Court, and assist my colleagues with any mental health issues that arise in their cases.

The Criminal Justice system is evolving in its approach to clients with mental health issues. Police officers are being trained that there are other options besides arrest when interacting with this population. Judges and prosecutors are increasingly choosing dispositions which favor treatment instead of jail. There are now Mental Health Courts in every county in New York City, and many more being created all over the state. We are slowly learning that offering assistance to those with illness and not jailing this vulnerable population benefits not only these individuals, but society as a whole.

I would like to share the recent experiences of my client, J.P., a non-citizen client with mental health issues who was originally arraigned on a charge of Robbery in the Second Degree. While this was not her first arrest - her prior record includes a lower-level felony drug conviction - there were no prior incidents where ICE detained her. On my case, bail was set at criminal court arraignments and J.P. remained in custody for several months prior to her brother posting bail for her. There was no ICE involvement during this time.

My social worker submitted a report documenting J.P.'s psychosocial history. This report detailed that she had both cognitive and mental health issues. It documented her life history - where she suffered multiple incidents of sexual abuse and rape in her home country and here, as well as trauma related to having family members murdered by gangs in her home country. Due to her past trauma, J.P. had attempted suicide on several occasions.

In consideration of her mental health and immigration issues, J.P. was ultimately offered a misdemeanor plea. The primary condition of her plea required that she remain in compliance with her mental health treatment. For the first time in her life, J.P. saw a psychiatrist regularly and complied with medication. She learned a vocation. She repaired relationships with family and friends that had suffered previously. J.P.'s case was pending for almost a year without any ICE involvement. However, when SHE appeared in court this past spring, her only court appearance since the 2017 inauguration, she was arrested by ICE agents.

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A Court officer who knew me let me know that ICE had called the Court that morning asking the case not be called without them. ICE agents arrived before J.P. did. They were not in uniform but court staff pointed them out to me. I attempted to speak to them as J.P.'s attorney. Neither would give their name nor show me any paperwork they had relating to my client. At first neither even wanted to interact with me, but I followed them out of the courtroom.

I explained that J.P. had cognitive and mental health issues, a history of multiple suicide attempts, was a rape and sexual assault victim, was under the care of a psychiatrist, and was taking prescribed medication as part of her mental health treatment. I asked, in light of these facts, whether we could voluntarily surrender J.P. rather than have her forcibly arrested. They declined. I asked if J.P. could be taken to a hospital rather than detention, because this situation seemed sufficiently destabilizing that she risked a psychotic break. At that, one of the ICE officers shrugged, the other said once her paperwork was done she'd get to see a doctor.

When J.P. arrived, Megan Hu (an attorney from our Immigration Unit) and I explained to her what was happening. She began crying and trembling. She held my hand and seemed afraid to let it go. The presiding judge allowed the ADAs in the part, myself, and Ms. Hu to approach to discuss whether, given the client's mental health and cognitive issues, we could shelter J.P. from ICE by having bail set in the case. The Judge second called the case for over half an hour to consult with other judges. During this time, sympathetic to J.P.'s issues, the Court staff allowed J.P. to sit in the front row with me and to call family members from the courtroom to explain what was happening.

When the case was re-called, the Judge explained that because J.P. had completed all conditions required and the matter was on for sentencing, she was unable to set bail. However, after reviewing the letter sent by J.P.'s therapist and with the A.D.A.'s consent, the Judge dismissed the Petit Larceny charge and retained only the misdemeanor assault charge, which did offer some protection for immigration purposes.

Ms. Hu and I tried to escort our client from the courtroom. We were stopped by ICE and a court officer assisting them. We were excluded from the area between the two sets of doors where the arrest took place, even though we specifically requested access to our client given her special needs. After J.P.'s arrest, we tried to give the ICE officers a letter from her psychiatrist detailing her past trauma and treatment, but they refused to accept it. I put the letter in J.P.'s pocket and told her to show it to whomever seemed in charge when they processed her.

The reaction in the courtroom to these events was telling. Many - including court staff, attorneys, and clients - were visibly upset. At least one person was crying. An individual seated behind us said she would tell her friends to not come to court because they would be deported. We should not allow extremely vulnerable people like J.P. to suffer interruption of their treatment, disruption of their medication regimens, and exposure to further trauma by these kinds of unnecessary and heavy handed ICE actions in our courtrooms.

Katherine Bajuk
Mental Health Specialist Attorney
New York County Defender Services

Fryda Guedes

Director of Immigration and Civic Engagement

Hispanic Federation

Testimony on ICE in the courthouse

June 29, 2017

Good Afternoon. My name is Fryda Guedes and I am the Director of Immigration and Civic Engagement at the Hispanic Federation. Chair Lancman and committee members, thank you for the opportunity to testify on behalf of Hispanic Federation and the more than 60 Latino-led community based organizations we represent in New York.

I would like to thank the NYC Council's Committee on Courts and Legal Services for bringing us together today and affording our community of immigrants and Latino advocates the opportunity to express our concerns over Immigration and Customs Enforcement (ICE) officers in our courthouses. As a leader in the Latino community, Hispanic Federation joins LatinoJustice in calling on the City Council to urge Chief Judge DiFiore and Chief Administrative Judge Marks to protect immigrant New Yorkers and their families and restore trust in the state court system.

For more than two decades now, the Federation has been working tirelessly to advocate for the passage of humane and fair immigration reform in our nation's capital. Our mission has been to protect vulnerable and disenfranchised immigrants from falling prey to our unjust and broken immigration system. However, recent directives from the federal government have magnified the scope and impact of immigration enforcement in this nation, increasing fears and anxieties in the immigrant community regarding the presence of ICE officers in safe spaces. Among the safe spaces being threatened by ICE officer presence are state courthouses, which have long been spaces for all Americans to claim legal recourse and relief, regardless of immigration status.

Since February 2017, ICE officers have reportedly been showing up unannounced to courthouses in Texas, Florida, Colorado, and New York. In New York State alone, there have been 38 ICE apprehensions and attempted apprehensions near or at a courthouse - of those, 19 apprehensions and 9 attempted apprehensions have taken place in New York City. ICE agents have allegedly approached individuals once they have left the courtroom - not only in the hallways, but also outside on the front steps, and even as individuals exit the building and walk towards a subway station. These agents are showing up unannounced and sometimes without a warrant.

It is no surprise that our immigrants now fear the courthouse - and, by association, they also fear accessing our legal justice system. Hispanic Federation recently launched a public education campaign focused on teaching immigrants about their rights in this country. We received thousands of phone calls from concerned immigrants across New York City. Over 20% of the immigrants that called us expressed apprehension over their safety when travelling to government buildings. Our callers were afraid that they would not be protected from immigration officers in traffic court, criminal court, small claims court, and more.

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We are aware that many of the immigrants that have called our hotline have chosen to miss court dates out of fear of being apprehended by ICE. In fact, the immigrant community has shown increased fear and hesitancy in reporting crimes out of fear of repercussions due to their immigration status. This disengagement with the American justice system is a grave matter, especially when the affected individuals are victims of domestic violence or assault. Not appearing before the court impairs the effectiveness of our justice system and undermines the safety of all New Yorkers.

In our over 25-year history, Hispanic Federation has supported millions of Hispanic children, youth and families via broad-based coalitions that advance civil rights and social change policies locally, statewide and nationally. We have helped more than 50,000 immigrants learn English and become citizens, served over 300,000 Latinos through our comprehensive immigration services and widespread public education outreach, provided more than 10,000 DACA-eligible youth with application assistance, and resolved around 9,000 calls a year through our immigration hotline. We know our community well. Immigrants in our city and state want to build better lives for themselves and their families through education and work opportunities. By permitting ICE presence at or near courthouses, we are shutting out some of the most vulnerable members of our society who are in need of judicial recourse.

As a sanctuary city our goal should be to protect immigrants from being detained or deported. The Federation strongly encourages the NYC Council to protect hundreds of individuals who are not receiving the specific protections they deserve. We ask that the Office of Court Administration (OCA) deem all NYS courthouses "sensitive locations," that they promulgate a policy barring ICE agents from making arrests in NYS courthouses, and that OCA court employees be prohibited from assisting and cooperating with ICE agents. We need to work together to eliminate the barriers that prevent immigrants in our communities from reporting crime, participating in the courts, and performing their civic duties.

Thank you.

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NYC COUNCIL COMMITTEE ON COURTS AND LEGAL SERVICES OVERSIGHT HEARING ON ICE ENFORCEMENT IN NYC COURTS

Testimony of Jose Perez, Deputy General Counsel, LatinoJustice PRLDEF

Thursday, June 29, 2017

Good Afternoon. My name is Jose Perez. I am the Deputy General Counsel and Legal Director of LatinoJustice PRLDEF. I would like to thank Speaker Melissa Mark-Viverito, and the NYC Council Committee on Courts & Legal Services, particularly Chairman CM Rory Lancman for inviting LatinoJustice to participate in this afternoon's hearing to address the ongoing problem of Immigration & Customs Enforcement (ICE) enforcement in our courts.

LatinoJustice PRLDEF is a national, not-for-profit legal defense fund that seeks to protect and advance the civil and constitutional rights of the greater *pan-Latino* community in the United States. The organization was originally known as the Puerto Rican Legal Defense & Education Fund when it was founded in New York City in 1972. Since then, our nationally recognized law reform impact litigation and related advocacy has advanced equality under the law and greatly improved how Latinos are treated in U.S..

LatinoJustice is unfortunately quite familiar with ICE and their questionable immigration enforcement practices over the past decade. We sued the agency in 2007 for their illegal home raid practices targeting Latino families in Long Island and in Westchester at that time – a case we described as “*sleeping while brown*”! ICE agents would forcibly enter Latino homes while seeking to arrest the subject of an administrative immigration warrant which only permitted a consensual entry - were clearly in violation of federal constitutional protections.

ICE's current practices of arresting immigrant New Yorkers in our courts based upon nothing more than an administrative immigration warrant is equally egregious, and similarly violates our nation, state and city's notions of equality and equal access to justice for all. ICE continues to refuse to recognize courts as a “*sensitive location*”, similar to hospitals, schools, churches and houses of worship where they typically will not seek to engage in immigration enforcement activities absent exigent circumstances and supervisory approval.

ICE is one of 3 agencies within the U.S. Department of Homeland Security primarily responsible for enforcing federal immigration law. The other two agencies are U.S. Customs and Border Patrol and U.S. Citizenship and Immigration Services. ICE's purview is the arrest, detention, and deportation of individuals the agency believes are subject to removal from the interior of the United States. Since President 45 assumed office, ICE has dramatically expanded the category of immigrants targeted for deportation. Under Executive Order 13,768, the humane priority system created by the prior administration was rescinded in favor of a system that makes virtually any undocumented immigrant a target for arrest and removal. The current system even targets those individuals who may have some sort of status and documented such as green-card holders, asylees, refugees, and dacomented individuals who may be removable.

ICE's mandate which is to enforce our immigration laws derives its authority to conduct arrests from federal law and DHS regulations. 8 U.S.C.A. § 1357; (Powers of Immigration Officers and Employees), 8 C.F.R. §287.5 (Exercise of Power by Immigration Officers). The Fourth and Fifth Amendments to the U.S. Constitution do apply in the immigration enforcement context, but with certain limitations.

Unlike NYC and other municipal and state police officers, ICE agents are expressly limited to immigration related matters. Civil immigration offenses, like many handled by the Enforcement and Removal Operations (ERO), are not inherently criminal offenses. The U.S. Supreme Court in Arizona v. United States, 576, U.S. 387, 407—08 (2012) stated that an immigration officer may not arrest an individual solely for being unlawfully present in the United States without a warrant unless they are "likely to escape before a warrant can be obtained."

The Fourth Amendment requires that "*probable cause determinations*" must be made by a "neutral magistrate" that is "detached from the activities of law enforcement." However, ICE immigration warrants which are issued in civil immigration enforcement proceedings are signed by ICE's very own agency officials, and not by a judge or judicial magistrate. The checkboxes on Form 1-200 titled "Warrant for Arrest of Alien" does not state that person whose arrest is sought has committed a crime or that there is probable cause of a crime for which a person can be arrested by local police. That no independent or neutral party who has reviewed the evidence or basis to determine there is probable cause to support the warrant is yet another reason why ICE agents should be permitted to enforce immigration warrants in our courts.

NY Rep. Nydia Velazquez has stated that the "ability of an ICE or CBP agent to pose as local police officers is a flaw in our system. . .which instead of keeping our communities safe, fuels fear, undermines trust and ultimately further marginalizes our immigrant neighbors". She and 18 co-sponsors introduced a bill on April 6th, 2017 proposing to amend §287 of the INA to prohibit DHS agents from wearing clothing or other items that say "police." "(i) Immigration officers or agents of the Department of Homeland Security, including officers and agents of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, shall not wear any clothing, accessories, or other items on their person bearing the word 'police' while performing duties under the immigration laws."

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. In New York, ICE agents have arrested individuals in homes, workplaces, public spaces like sidewalks and outside airports, and at homeless shelters. State courthouses are just one of many locations where ICE agents may regularly seek to engage in immigration enforcement. Official ICE policy "advises against" enforcement actions at a short list of specified "*sensitive locations*." See Memorandum from ICE Director John Morton, Enforcement Actions at or Focused on Sensitive Locations, Oct. 24, 2011.

Courthouses unfortunately do not fall under ICE policies concerning enforcement actions at or focused on "*sensitive locations*." New York Congressmen Adriano Espaillat and Jose Serrano in April 2017 introduced new legislation "*The Protecting Sensitive Locations Act*" aimed at codifying and expanding ICE's current administrative policy protecting sensitive locations including courthouses during immigration enforcement efforts. The bill would prohibit immigration enforcement, including arrests, interviews, searches, and surveillance at "sensitive locations" that include areas such as medical or health care facilities, public and private schools, places of worship, courthouses, DMV offices, and locations that provide emergency services.

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

It should be noted that the police chiefs of Los Angeles and Houston have reported dramatic decreases in the numbers of Latinos reporting rapes and other violent crimes. Concerns about public safety have prompted the chief justices of the California, Washington, and Oregon Supreme Courts to issue letters to Attorney General Jeff Sessions and Homeland Security Secretary John Kelly requesting that ICE cease making arrests in their state courthouses. Several chief prosecutors have also condemned ICE's practice, citing concern that ICE's presence undermines immigrants' trust in law enforcement.

Therefore, LatinoJustice joins with our fellow legal services organizations, domestic violence and victims services groups, housing and tenants' rights groups, and other community based service organizations that work with immigrant and citizen New Yorkers who depend on access to our state courts to express our collective outrage at recent reported events in the Queens Trafficking Court, and urge Chief Judge DiFiore and Chief Administrative Judge Marks to take immediate steps to protect immigrant New Yorkers and their families, and restore trust in the state court system.

First, we ask that OCA deem all NYS courthouses "sensitive locations" even if ICE will not;

Second, OCE must promulgate a policy that will bar ICE agents from making any arrests in NYS courthouses unless they have a judicially proscribed arrest warrant duly signed by a magistrate or judge. A judicial warrant is defined as a warrant issued by a magistrate sitting in the judicial branch of local, state, or federal government.

Third, prohibit OCA court employees from assisting and cooperating with ICE agents unless they have a court order or judicial warrant of arrest. Thank you for your attention and support.

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April 3, 2017

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Hon. Janet DeFiore
Chief Judge
New York Court of Appeals
20 Eagle Street
Albany, NY 12207

Re: Protecting Immigrants' Access to the Courts

Dear Honorable Chief Judge DeFiore:

Ensuring the public's access to the courts has always been a critical part of the success of our nation's system of justice, one that our judiciary has zealously sought to protect. "Access to Justice" has long been a rallying cry across the country. As barriers have arisen, the judiciary has stepped in to protect the public's access.

Unfortunately, a very substantial barrier has arisen in the past two months. The federal agency charged with enforcing this country's immigration laws, the United States Immigration and Customs Enforcement ("ICE"), changed its practices and begun to, in or around this State's courthouses, seize and arrest individuals who were going to court to appear in both civil and criminal matters.

A revealing article on this new practice in the March 27, 2017, issue of the New York Law Journal detailed several such arrests and noted that a representative for ICE confirmed that these arrests were occurring. Concerned about the impact of these new practices, the New York City courts began keeping track of these incidents, at least the ones they are aware of:

Since February, when officials with the New York City court system began tracking ICE's interactions with litigants at city courthouses, there have been six encounters, of which three have resulted in arrests, said court system spokesman Lucian Chalfen.¹

¹ New York Law Journal, "NY Courts Track ICE Encounters With Litigants" March 27, 2017, available at www.newyorklawjournal.com/id=1202782175943/NY-Courts-Track-ICE-Encounters-With-Litigants?mcode=0&curindex=0&curpage=1

One of the encounters described in the article occurred March 17 in Brooklyn Family Court where ICE agents seized and arrested someone who had appeared in court with respect to a child support matter. That three of the six encounters did not result in arrests could be troubling if they were the result of misidentifications. In none of these cases did it appear ICE had obtained a judicial warrant to conduct the arrest.

The consequences of these arrests can be horrific, separating children from parents, breaking up families who have lived together here for decades, sending them to countries that may be less than welcoming to their return.

If this practice is allowed to continue, a large segment of the State's immigrant population will simply refuse to go to court if they believe there is any chance they could be seized by ICE agents, effectively excluding them from the judicial system. If they have a family member, a coworker, a classmate, or just a good friend who is undocumented, an immigrant is likely to refuse to go to court, irrespective of whether the matter was a civil or criminal matter.²

Police chiefs agree. The Major Cities Chiefs Association (MCCA), which represents the 68 largest law enforcement agencies in the United States, has voiced the same concern, concluding that local agencies enforcing federal immigration law "undermines the trust and cooperation with immigrant communities,"³ which "result[s] in increased crime against immigrants and in the broader community, creat[ing] a class of silent victims and eliminat[ing] the potential for assistance from immigrants in solving crimes or preventing future terroristic acts."⁴

For the same reason, the federal government's *21st Century Policing Task Force* took an even stronger stance against localities getting involved in enforcing federal immigration law, concluding that DHS "should terminate the use of the state and local criminal justice system, including through detention, notification, and transfer requests, to enforce civil immigration laws against civil and non-serious criminal offenders" (emphasis added).⁵ A very recent study confirms that conclusion, revealing that crime is statistically significantly lower in counties that do not hold people on the basis of immigration detainers, when compared to counties that do.⁶

² Aggravating the situation is the simultaneous expansion of ICE's "expedited removal" zone, an area previously limited to 100 miles from the border, to encompass the entire country. This designation empowers ICE agents to call for immediate removal of someone without court review. In sum, ICE now has the ability to seize someone without judicial authority and then deport them without judicial authority.

³ MCCA Immigration Position (Oct 2011) https://majorcitieschiefs.com/pdf/news/immigration_position112811.pdf.

⁴ Craig E. Ferrell, Jr. et al., "M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Policy Agencies," at 6 (June 2006), https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf

⁵ President's Task Force on 21st Century Policing, *Final Report* 18 (Washington D.C. May 2015), http://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁶ Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS (Jan. 26, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effectsofsanctuary-policies-on-crime-and-the-economy/>.

Altogether, the data suggest that when local law enforcement focuses on keeping communities safe, rather than becoming entangled in federal immigration enforcement efforts, communities are safer and community members stay more engaged in the local economy. This in turn brings benefits to individual households, communities, counties, and the economy as a whole.

The justice system only works if all the parties have unfettered access to the courts, be it a civil or a criminal matter. Police chiefs and law enforcement experts agree that this practice of ICE agents arresting immigrants in local courts must be brought to an end, that the continued use of the local justice system by ICE agents will result in higher crime rates, both with respect to local crimes as well as to future terrorist acts. In short, allowing this practice to continue is not only inhumane to those directly impacted but presents a danger to us all.

For the reasons cited above, we urge you to request that ICE halt its practice of seizing and arresting immigrants in or around local New York State courthouses.

Yours truly,



Juan Cartagena

Good afternoon.

I want to thank the City Council and the Committee on Immigration and the Courts for the opportunity to testify today. My name is Hamra Ahmad and I am the Director of Legal Services at Her Justice. We are a nonprofit organization that takes a pro bono first approach to provide free legal services to women living in poverty in New York City. We train and mentor volunteer lawyers who enable our clients to access the legal system and obtain the justice they so deserve.

Our clients come from all five boroughs of New York City, half are Latina, a quarter are African American, and 16% are Asian or from another minority group. Approximately 80% of our clients are domestic violence survivors and three-quarters of our clients are mothers. Our staff of 18 lawyers and legal assistants ensures that over 3,000 women every year receive legal assistance in family, divorce, and immigration matters. The majority of our cases – 80% – are handled by volunteer attorneys from the City's premiere law firms, with rich assessment, mentoring, training and support from our staff. The remaining 20% of the cases are handled in-house to ensure that we retain the necessary flexibility to respond to emergency situations, navigate particularly complex legal issues, and stay fully engaged in the matters on which we train and provide support.

As you are well aware, recent activity of Immigration and Customs Enforcement (ICE) in the family and trafficking courts as well as the current reality of charged language and changing federal policy has created a dreadful climate of fear among families who have any foreign-born members. As 70% of Her Justice clients were born abroad, we have been working to address these fears with even more focus and dedication than before. We are working hard to ensure that civil court is a safe place for our clients to access remedies crucial to their and their families' well-being. Immigrants are hesitant to seek custody of their children, financial support to raise their children or to assert their rights to a fair share of any assets accumulated in the marriage in a Supreme Court divorce litigation. Immigrant victims of domestic violence are more afraid than ever to call law enforcement, to access the courts, or to even contact a lawyer for advice. This may be the first time they come into contact with the legal system to directly address the violence they have suffered, by participating in the criminal justice system as a witness or seeking a civil court order of protection.

The volunteer attorneys we train and mentor are concerned for their clients. Before, attorneys would encourage their clients to seek help in the courts, no matter what their immigration status. We have had to shift our advice to volunteer attorneys who are now taking calculated risks counseling their clients to seek relief in the courts. We conduct special trainings with our volunteer partners to help them counsel clients in this new climate of uncertainty.

Here are two recent examples of what our clients are experiencing:

- At the Bronx Family Justice Center, a client came seeking a divorce from her husband and orders of paternity and child support from an abusive former partner. Following the consultation, the client decided not to file paternity and child support petitions because she fears that Family Court litigation will lead to her former partner's deportation. The client cited recent reports of ICE officials near and in courthouses. Her former

partner told her not to file because he doesn't have legal status and doesn't want to be in the court system. Without these paternity and child support orders, the client's divorce against her husband will likely require hearing on notice to the abusive partner, which could put the client in danger because of the history of abuse.

- A client with a pending application for U nonimmigrant status came home and found a notice from the NYC Sheriff's office stating that service was attempted and requesting that the client contact the Sheriff's office. The client, who was 34 weeks pregnant at the time, became so panicked that the notice concerned her immigration status that she went into early labor and gave birth to the baby. The Sheriff's notice concerned service of a visitation petition that the baby's abusive father had filed in Family Court.

The presence of ICE in the courts has a chilling and rippling effect on the most vulnerable of our clients. Many of our foreign-born clients are scared to go to court. The courts stand for the rule of law and have historically served as a safe place where rights are protected. We want to work with the court system to develop protocols and rules that will make the courts a safer place for survivors and their family members. We ask that Unified Court System employees not assist or cooperate with federal immigration enforcement activities in the course of their employment, in any courthouse of the Unified Court System, including providing any information to immigration enforcement officers regarding persons appearing before the court. In addition, ICE officers should be required to provide a judicial warrant authorizing them to take into custody the person who is the subject of such warrant.

The fear of ICE impacts all clients, domestic violence victims and non-victims. We are gravely concerned about all the impacts that are not always measurable, that are not as easily seen, on immigrants and their families, such as those described above.

Thank you

**Testimony submitted to the New York City Council
Committees on Courts and Legal Services and Immigration**

Thursday, June 29, 2017, 1:00 p.m.

Re: T2017-6383 Oversight – ICE Enforcement in New York City Courts



Thank you for this opportunity to testify regarding ICE enforcement in the New York Unified Court System. My name is Terry Lawson. I am the Director of the Family and Immigration Unit of Bronx Legal Services, an office of Legal Services NYC. Legal Services NYC is the largest provider of free civil legal services in the country, with offices in all five boroughs serving over 90,000 New Yorkers annually. I also co-lead the Bronx Immigration Partnership, a network of over twenty organizations and agencies working together to create a coordinated safety net of legal and social services for Bronx residents.

Last month, we hosted our first Emergency Preparedness Workshop to prepare Bronx families in the event of deportation or detention. The majority of people who came were Spanish-speaking immigrants, and most had been affected by intimate partner and family violence. The participants completed surveys that asked if they feared collaboration between Immigration and Customs Enforcement and court officials. These are the answers they provided:

“I won’t be safe in case I need to go to court for any reason”

“Que tengo un niño con discapacidad y tengo que ir a la corte por una custodia” /
That I have a child with a disability and I have to go to court for custody

“I should be able to go to court without having to be scared of getting arrested or deported”

“As an immigrant, we have rights and should be safe trying to get help for our kids”

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“Que los derechos de los inmigrantes no sean escuchados” /
That the rights of immigrants are not heard

“Que intervengan en las decisiones sobre los procesos de cada persona” /
That they interfere in every person’s decision on what course of action to take

“¿Ellos me pueden mandar a inmigración, aunque tenga el caso pendiente?” /
They can send me to immigration, even if I have a pending case?

“Que haya arrestos en las cortes” / That there are arrests in the courts

“Me preocupa si podemos entrar a cualquier lugar y nos pidan documentos legales de
inmigración” / It worries me that we will be asked for legal immigration documents upon
entering any particular place

“Si tengo mucha preocupación” / Yes I am very worried

“Porque el estatus migratorio lo pueden tomar en contra” / Because your immigration status
can be used against you

“Ser detenido” / Being detained

These sentiments make clear that immigrants do not feel safe anywhere and is further compounded by the fact that NYC Court officials have stated that there is little the courts can do to change the national anti-immigrant rhetoric. This may be true, but to do nothing is to signal that not everyone is entitled to access to justice and allows the rhetoric of fear to oppress people’s due process rights.

Court officials and others seem to believe that ICE is only arresting sexual predators and people convicted/charged with serious felonies, thereby repeating a false narrative that purports to protect survivors, while actually endangering them. If our clients must make the choice between deportation, even a risk of deportation, and going to court for child support, custody,



orders of protection, or to seek redress against their landlords, it should be obvious to everyone that clients will choose to remain with their families rather than face deportation. A colleague asked me recently whether someone has to die for us to have court rules that prevent ICE from working with court officials. But we must refuse the temptation to sensationalize tragedy to convince the courts to protect litigants. What happened last week at Queens Trafficking Court was shocking, and provided us with an important foothold in our argument that ICE is arresting more than just sexual predators. But OCA must act to prohibit its personnel from collaborating with ICE, not just to protect the weakest among us, but because our courts cannot function with ICE patrolling the hallways, working with court officers, clerks, and judges, to zero in on unsuspecting litigants. The courts must remain a place where people can go to exercise their rights under New York law, and not be easy targets for a federal immigration enforcement agency that takes advantage of the hard-won resources of our New York courts. Thank you.

Terry Lawson,
Director, Family and Immigration Unit,
Bronx Legal Services (Legal Services NYC)

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Testimony by New York Legal Assistance Group (NYLAG)

**before the NYC Council Committees on Courts & Legal Services and Immigration
regarding:**

ICE Enforcement in New York City Courts

June 29, 2017

Chairs Lancman and Menchaca, Council Members, and staff, good afternoon and thank you for the opportunity to speak to the Courts & Legal Services and Immigration Committees regarding the impact of new immigration enforcement tactics on access to justice and services. My name is Sarah Nolan and I am a Supervising Attorney in the LegalHealth Division of the New York Legal Assistance Group (NYLAG), and I am joined by my colleague, Alejandra Caraballo, from the LGBTQ Law Project. NYLAG is a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, veterans, as well as others in need of free legal services.

Since the election of President Trump last November, NYLAG has seen a surge in requests for information regarding immigration enforcement from existing clients and new clients who are seeking legal advice for the first time. These requests have increased as reports of ICE's presence in New York City courts have spread. My colleague and I would like to spend a few minutes providing the Immigration Committee with concrete examples of how ICE's increased presence in the courts has impacted our clients.

The recent report of ICE's presence in the Human Trafficking Intervention Court has caused panic among many of NYLAG's immigrant clients who are victims of domestic violence. Several

such clients have already asked to withdraw criminal cases against abusers because they are afraid that ICE will arrest them when they go to testify about the abuse in court. Other clients have told NYLAG that they do not want to file cases in Family Court or file for immigration relief or public benefits for fear that it will lead to detention and deportation. As you may know, abusers often use a victim's lack of immigration status to keep the victim from cooperating with criminal cases against the abuser or from going to Family Court to pursue an order of protection by threatening to have the victim deported if she does so. Sadly, ICE's presence in the courts has given credibility to these threats and weakened advocates' ability to assure clients that the Courts are a safe place to seek protection from abuse.

The palpable fear of ICE presence in courtrooms also has a very real impact on our clients' willingness and desire to move forward with their immigration cases. For example, NYLAG represents a couple in a pending case for asylum. Our client was driving his brother's car to work, unaware that the vehicle's registration had expired. He was pulled over and issued a summons. Our client called us extremely concerned about appearing in court to resolve his case because of the reports of ICE's presence in courtrooms. He was so afraid of being detained, he seriously considered not going to court and thereby potentially jeopardizing his strong claim for asylum. Another client, a veteran of the U.S. military, delayed going to court for a disposition on a minor traffic violation for months due to her fear of immigration enforcement, delaying her application for citizenship. The fear of enforcement in courtrooms is having a very real, chilling effect on our ability to assist our clients in obtaining legal immigration status or citizenship.

I will now turn the floor over to my colleague, Alejandra Caraballo, to discuss the impact ICE's presence in New York City courts has had on NYLAG's transgender clients.

New York City's transgender community has been disproportionately affected by threats of ICE in courts, particularly the Trans-Latina community. NYLAG's transgender clients, many of whom are served through its LGBTQ Law Project, are understandably terrified of ending up in

detention; the only detention facility designated for transgender people in the country is in California. All other transgender people are put into detention with the general population, and according to Human Rights Watch, transgender women held in ICE detention facilities are often subjected to violence, sexual assault, and harassment because of their gender identity.¹ Transgender women are held in men's facility which creates an exceptionally high risk of sexual assault, trauma, and abuse. ICE resorts to the extended and unreasonable use of solitary confinement of transgender women because "authorities cannot or will not devise any safe and humane way to keep transgender women in detention."² Worse than the conditions in the ICE detention centers, many transgender individuals face deportation back to countries where they face violence, harassment, rape, and sexual assault; they often fled to the United States in the first place due to the horrendous conditions they face in their home countries. Knowing that this is a risk, NYLAG's immigrant transgender clients are doing what they can to reduce the risk of detention, including not showing up in court or filing for protections that would require court appearances. For example, NYLAG was representing two transgender clients on their name change petitions, which would have made them safer through ensuring that their documents matched their gender identities. NYLAG conducted screenings and consultations, and prepared the name change petitions for the clients. However, before the petitions were filed in Civil Court, the clients called and requested that NYLAG not file the applications and withdraw from representation, citing their fear of the immigration consequences of proceeding with the case. We have also seen clients afraid to even go to small claims court for fear of encountering immigration enforcement. The chilling effect that the presence of ICE is having in New York City

¹ <https://www.hrw.org/report/2016/03/23/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us>

² *Id.* (Under ICE policy, immigration officials may still elect to house transgender women in men's facilities— placing them at exceptionally high risk of sexual assault and other kinds of trauma and abuse. Others may be kept indefinitely in conditions of isolation simply because authorities cannot or will not devise any safe and humane way to keep them in detention.)

courts is truly dangerous to this population that is already vulnerable. For them, the situation is truly life or death.

While we were pleased with Chief Judge Janet DiFiore's statement following the arrest in the Human Trafficking Intervention Court requesting that ICE treat courthouses as sensitive locations similar to hospitals, schools, and places of worship, we believe further steps must be taken to prevent immigration enforcement inside New York City's courts.

We support the proposal that the Office of Court Administration issue a directive that judicial warrants are required for civil arrests in courthouses unrelated to the proceeding at hand. This will ensure that ICE is executing targeted enforcement, rather than "raiding" courthouses to round up as many immigrants as possible. Further, the Office of Court Administration must train its employees, including judges and court officers, on interactions with ICE. We believe that all Unified Court System employees should be directed not to cooperate with ICE or provide any information not legally required to federal enforcement agents, including pointing out specific individuals when ICE cannot identify them. We urge the Council to advocate with the Office of Court Administration to put these two rules in place to help protect immigrants in courts.

I want to thank Chairs Lancman and Menchaca and the Committees for holding this important hearing and shining a much-needed light on the issue of ICE in New York City courts. We look forward to continuing to work with the Council and the Mayor's Office to protect our diverse and vibrant immigrant communities.

Respectfully submitted,

New York Legal Assistance Group

Testimony of Kids in Need of Defense

“Oversight-ICE Enforcement in New York City Courts”

before

Committee on Courts and Legal Services

Committee on Immigration

June 29, 2017

FOR THE RECORD

Kids in Need of Defense (KIND) respectfully submits this testimony on ICE Enforcement in New York City Courts. We would like to thank the City Council for its attention to this issue in this moment of heated national rhetoric about immigration, and intense fear and uncertainty in the immigrant community. We are eager to share our experience working on behalf of unaccompanied children, who face unique vulnerabilities in this age of heightened enforcement.

KIND is a member of the Immigrant Children's Advocate Relief Effort—the ICARE coalition. ICARE members include The Legal Aid Society, The Door, Catholic Charities, Central American Legal Assistance, Make the Road New York, The Safe Passage Project, and Kids in Need of Defense (KIND). ICARE represents children and families who have fled violence in Central America and are fighting deportation in New York's immigration court. Immigrants in removal proceedings, including children, are not entitled to counsel at government expense. ICARE was created in 2014 to close the justice gap by providing representation for unaccompanied children in removal proceedings. In 2015, ICARE expanded to provide representation to parents with children as well.

Background

Since 2014, more than 200,000 children have arrived alone to the United States. Many of these children are fleeing grave violence in their home countries--the majority from Honduras, Guatemala, and El Salvador. When detected by immigration officials, these children may be placed in court proceedings directed at removing them from the U.S. More than 60 percent will face immigration proceedings in court without legal representation to assist them in navigating some of our nation's most complex laws. KIND was established to address this gap in representation and works to ensure that no refugee or immigrant child faces immigration court alone.

As a national organization, KIND works in partnership with over 477 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation to unaccompanied children referred to KIND for assistance in their deportation proceedings. KIND has received more than 14,500 child referrals since we opened our doors in 2009, and trained over 20,400 pro bono attorneys.

KIND also helps children who are returning to their home countries through deportation or voluntary departure to do so safely and to reintegrate into their home communities. Through our reintegration pilot project in Guatemala and Honduras, we place children with our local nongovernmental organization partners, which provide vital social services including family reunification, school enrollment, skills training, and counseling. KIND advocates to change law, policy, and practices to improve the protection of unaccompanied children in the United States, and is working to build a stronger regional protection framework throughout Central America and Mexico. We educate policymakers, the media, and the broader public about the violence that is driving children out of the Northern Triangle and their need for protection.

Unaccompanied Children in State Court Proceedings

Immigration policy and enforcement have garnered headlines and attention nationally as top priorities of the President and the Administration. Intense rhetoric, including vows to deport all who are here without lawful status, have stoked fear in communities across the country, with a particularly paralyzing effect on immigrant children. Children who have survived harrowing journeys to the United States in their effort to flee unspeakable violence now fear the deportation of loved ones, family members, and friends who have stepped forward to care for them. For too many immigrant children, the U.S. immigration system--a necessity for their protection--creates new vulnerabilities.

Most unaccompanied children enter the U.S. immigration system through their arrival at the nation's Southern border. Increasing numbers of these children, particularly girls and LGBT youth, are fleeing gang or sexual and gender-based violence in their home countries from which their countries cannot protect them.¹ Many children have personally experienced and witnessed extreme violence and threats to their safety, left with no alternative but to seek refuge beyond their country's borders. The U.N. High Commissioner for Refugees (UNHCR) has reported that the majority of children arriving at the border have valid claims for protection under international law.² Many of these children likewise qualify for protection and immigration relief under our nation's immigration laws, including through Special Immigrant Juvenile Status (SIJ). SIJ status is available to children who are unable to reunify with one or both parents due to abuse, abandonment, neglect or similar mistreatment, and for whom return to their country of origin is not in their best interests.³ To qualify for the status, applicants must receive an order from the juvenile court system that determines a custody placement or finds them to be dependent on the state system and otherwise eligible for SIJ relief.

SIJ affords many children a critical means of escaping ongoing abuse by a parent in their country and the opportunity to live in the United States with a parent, guardian, or sponsor who will provide needed care and protection. The following case highlights the importance of such relief:

- **Rosa, Alicia, and Isabel** are three young sisters who were raised by their mother in Mexico. One day their mother was murdered; their father was suspected of killing her but ultimately was acquitted of the crime. The three girls went to live with their maternal grandmother, who physically and emotionally abused the girls, blaming them for their father's past domestic violence against their mother. All three girls were sexually abused by various uncles in the home. The father later came and took the girls away, leaving them unattended in Tijuana with other laborers while he worked. The father tried to bring the girls to the U.S., but was ultimately deported without them, since the girls were able to disclose the abuse and identify a fear of being returned back in his care, rendering the girls unaccompanied children. The girls were taken in by a family, who eventually petitioned the court to be their guardians. The father had initially agreed to the

¹ See KIND & Human Rights Center Fray Matias de Cordova, *Childhood Cut Short: Sexual and Gender-based Violence against Central American Migrant and Refugee Children* (June 2017).

² U.N. High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (Mar. 2014).

³ Immigration and Nationality Act §101(a)(27)(J).

dependency, but ultimately declined and has grown progressively more aggressive. The father tried to use the request for guardianship as leverage to get money from the family. With the help of a KIND attorney, the family was able to get the state court to issue findings as a result of the mother's death. Now, the girls have access to special immigrant juvenile status (SIJS) without having to wait for service on the father, who was abusing the process in hope of getting money.

Although available under federal immigration law, SIJ status uniquely hinges on a determination by a state court. Absent this "predicate order," a child may not receive SIJ status, and in turn, a green card enabling their continued residence in the United States. Recent immigration enforcement actions at New York state courts threaten dire consequences for children who qualify for and desperately need access to this important protection, as parents and sponsors without legal immigration status have grown hesitant to attend court hearings or assist in legal proceedings that might expose them to deportation.

These fears are not unfounded. The New York Office of Court Administration has reported that 20 individuals have been arrested by ICE in New York City courthouses since February 2017.⁴ Additional arrests have been made outside of courthouses. These arrests loom large in the minds of undocumented immigrants, whose efforts to protect their children may transform them into targets for deportation. The consequences cannot be overstated. By intimidating parents and sponsors from coming forward to assist with securing permanent and safe placements for vulnerable children, ICE enforcement actions will result in many children being unable to access legal protections for which they are eligible, and even being sent back to harmful and dangerous situations. Even if a caregiver is willing to pursue legal guardianship or custody of a child despite the current heightened risk, other family members living together may be resistant to this effort, perceiving the child's court process as attracting unwanted law enforcement attention to the household.

Our nation's family court system has long prioritized the "best of interests of the child" as central to all decisions regarding a child's welfare. ICE enforcement actions at courthouses do the very opposite, intimidating and traumatizing children, and depriving them of access to individuals who would provide them care and safety. We appreciate the New York City Council's attention to this important matter and to the well-being of children who look to New York's courts for protection.

⁴ Beth Fertig, *Outcry After Immigration Agents Seen at Queens Human Trafficking Court*, WNYC, June 16, 2017.

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Testimony of Theo Liebmann

Hearing on ICE Enforcement in New York City Courts New York City Council Committee on Courts and Legal Services Committee on Immigration June 29, 2017

For the past 18 years I have directed a legal clinic that advocates for immigrant children escaping violence, poverty, and neglect. Our clinic has worked on behalf of Haitian children orphaned after the devastating 2010 earthquake. We have assisted LGBTQ youth escaping countries where their sexuality is a crime. And we have represented countless survivors of physical and sexual abuse. We advocate for our young clients in New York's family courts, appellate courts and federal immigration courts to achieve two over-arching goals: to promote our clients' safety, stability and permanency by establishing formal legal guardianship arrangements between them and their primary caretakers; and, by pursuing Special Immigrant Juvenile Status ("SIJS") and lawful permanent residence, to ensure that our clients do not have to return to countries where they endured violence, abject poverty and other traumatic experiences. Guardianship proceedings and key elements of the SIJS process require our clients and their families to initiate matters in family court, to attend court appearances and hearings in family court, and to provide extensive personal information to family court judges and administrators.

Although most of our young clients have been through harrowing experiences simply to make it to the United States, I have never seen the level of anxiety I see today in them and their families. Their fears are understandable. One provision of the Department of Homeland Security ("DHS") memos released earlier this year calls for criminal prosecution and removal from the U.S. of family members who pay a guide to bring a child into the U.S., regardless of the danger from which the child is escaping. DHS Secretary John Kelly has stated that he is considering separating immigrant children from their parents at the border, placing the parents in detention facilities and the children in foster care. And, of most relevance to this hearing, ICE enforcement in state courts has increased dramatically since President Trump took office.

In the twenty-one years I have worked in New York's family courts, including New York City family courts as well as Long Island family courts, I had never seen nor heard of a single instance of ICE enforcement or presence in family court buildings, nor ICE involvement in any aspect of family court proceedings. That changed in November 2016. Recent activities of ICE in family courts that have been reported and confirmed by the Immigrant Defense Project include the following:

- On November 22nd, ICE agents arrested a mother who had appeared in Albany Family Court for a PINS petition she had filed after her teenage daughter had run away. While attorneys for the mother and daughter attempted to resolve the PINS petition, ICE agents stood outside of the courtroom for several hours. At the conclusion of the proceeding, ICE

took the mother away and detained her at Albany County Jail. During her month and a half long detention, the mother's teenage daughter and son were both placed in foster care.

- On March 16th, ICE agents arrested the father of a five year old as he waited to appear for a child support matter in Brooklyn Family Court. The father is a lawful permanent resident and was making his second appearance in the child support part. Plainclothes ICE agents staked the father out in the waiting area of the court part. When the court clerk called the father's name, he stood up, and ICE agents surrounded the man and then handcuffed him. The father is now detained in an immigration jail.
- On April 19th, plainclothes ICE agents arrested a father who was appearing for a visitation matter in the Suffolk County Family Court. The father who was targeted had sole custody of the two children, a four- and five-year old, and the mother was filing for visitation. The father came to the U.S. as a toddler when his family fled their native country because of persecution. His parents and 7 siblings are all U.S. citizens or lawful permanent residents. The ICE agents, who were in plainclothes, arrested the father in the hallway outside of the visitation part. He is now detained in an immigration jail and his children are living with his parents.

Even before recent ICE presence in family courts, it has often been a challenge to convince our clients and their families that accessing courts is a viable method of achieving goals of safety and stability. Security screening at courthouse entrances, the formality of the courtrooms themselves, the presence of uniformed court officers, and the practice of requiring fingerprinting are among the common aspects of court involvement that many might take for granted, but that can be especially anxiety producing for young immigrant clients who have often had negative and even abusive interactions with police, government representatives, immigration agents, and other adults in positions of authority. Until recently, however, advocates had always been able to provide at least some comfort by explaining that ICE has no involvement with the family courts; that ICE has no presence in family courts; that ICE does not access family court information. We cannot say that any longer, and, unsurprisingly, we have seen a dramatic decrease in the willingness of our clients and their families to go to family court. Across New York, including at crucial legal service providers such as The Domestic Violence Project at the Urban Justice Center, My Sisters' Place, Bronx Legal Services, John Jay Legal Services, Sanctuary for Families, and The Door's Legal Services Center, more and more immigrant children and families are choosing not to access the courts because of fears of ICE presence and enforcement.

As a lawyer for immigrant children I see all the time how important access to courts is for stability, a sense of permanence, and formal caretaking relationships that provide access to proper education and medical care. Unfortunately, unless we can frankly say to immigrant clients that New York is taking action to keep ICE out of family courts, we will continue to make it harder to help immigrant children and families achieve those basic human goals.

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.

June 29, 2017

Chairman Rory I. Lancman
Committee on Courts and Legal Services
250 Broadway, Suite 1773
New York, NY 10007

Chairman Carlos Menchaca
Committee on Immigration
250 Broadway, Suite 1728
New York, NY 10007

RE: Oversight hearing on ICE Enforcement in New York City Courts

Dear Chairman Lancman, Chairman Menchaca, and Members of the Committees on Courts and Legal Services and Immigration,

We very much appreciate the opportunity to submit testimony with regards to this timely hearing on ICE Enforcement in New York City Courts.

Since 1913, the mission of the Anti-Defamation League (ADL) has been to “stop the defamation of the Jewish people and to secure justice and fair treatment for all.” Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, as well as defending democratic ideals and promoting civil rights, ADL is proud of its leadership role in developing innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups. In the past 10 years, ADL has trained well over 100,000 federal, state, and local law enforcement personnel on hate crimes, extremism, domestic terrorism, ethics, and core values at our national training programs or through our regional offices. As a leading civil rights and advocacy organization with vast experience working with law enforcement, we are uniquely positioned to help address issues affecting the relationship and trust between law enforcement and the people and communities they serve.

We are deeply concerned by the effects of the current administration’s aggressive deportation policy which has led to a significant escalation in ICE courthouse presence and arrests since the beginning of 2017 and the impacts such activities have in and around the State’s courts and immigrant communities. There have been increasing numbers of reports that ICE is seeking to arrest individuals at courthouses in 2017, including a Texas domestic violence survivor who was arrested when she went to court to obtain a restraining order, and a Michigan father seeking custody of his children. Since February, ICE agents, without valid judicial warrants, have reportedly arrested or attempted to arrest at least 19 individuals in New York’s courts, compared to 20 arrests over the past two years. Most recently, ICE’s attempt to arrest a young Chinese woman in the Human Trafficking Intervention Court in Queens and other individuals in New York’s Family Courts and Criminal Courts is deeply disturbing and has significant implications to our justice system and equal protection for all.

This practice will have a chilling effect and deny vulnerable victims and individuals access to justice and deter them from contacting authorities when needed, such as in the event of a hate crime. Community members, regardless of immigration or citizenship status, need to be able to contact and cooperate with local police and access our justice system without fear of deportation or other immigration consequences. Cities are already seeing a decline in reporting in sexual assault and rape cases. In Houston, Texas, for example, the number of Hispanics reporting rape is down 42.8 percent from last year, and the number of Hispanics reporting violent crimes has dropped 13 percent.¹ In Los Angeles, California, reports of sexual assaults by the city's Latino population have dropped 25 percent this year, and reports of domestic violence from the Latino community have dropped 10 percent, while reporting from other communities has remained largely the same as previous years. Los Angeles Police Chief Charlie Beck said of the drop, "Imagine a young woman, imagine your daughter, your sister, your mother . . . not reporting a sexual assault, because they are afraid that their family will be torn apart."² And Boston Police Commissioner William B. Evans recently reported that Boston Police is tracking a 7 percent decline in reported neighborhood crimes in East Boston this year compared with the same time frame last year.³

A survey released today of legal advocates and attorneys working with immigrants and their family members in New York State confirms that victims' fear of coming forward and seeking help has increased this year. Seventy-four percent of advocates reported that their clients had expressed fear of the courts. Forty-five percent had worked with immigrants who had failed to file a petition or withdrawn a petition due to fear of potential ICE enforcement action in the courts. Twenty-nine percent of advocates had worked with immigrants who have failed to appear in court due to fear of ICE. And forty-eight percent of advocates said that they had a client who expressed fear of calling police because they were afraid of immigration enforcement.⁴

By punishing the victim of domestic violence, sexual assault, or hate crime, the government is sending a message to other victims and witnesses that they too are at risk of deportation if they come forward. Crime increases when members of the community fear turning to police and the justice system for protection because perpetrators become emboldened and unafraid of consequences.

In addition, immigration arrests at courthouses threaten our constitutional right to petition for redress of grievances as "among the most precious of the liberties safeguarded by the Bill of

¹ Brooke A. Lewis, *HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year*, Houston Chronicle (Apr. 6, 2017), <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>.

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³ Antonio Planas, Chris Villani, *Evans: Deportation fears lead to crimes being underreported in Eastie*, Boston Herald (May 25, 2017), http://www.bostonherald.com/news/local_coverage/2017/05/evans_deportation_fears_lead_to_crimes_being_underreported_in_eastie.

⁴ Immigrant Defense Project, *ICE in New York State Courts Survey* (June 29, 2017), <https://www.immigrantdefenseproject.org/ice-courts-survey/>.

Rights . . . intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press.”⁵ The increased presence of ICE at courthouses will create an environment that will further chill immigrants’ exercise of this constitutional right and access to the courts. Courthouses should, therefore, be treated as “sensitive areas,” like churches and schools.

In response to these aggressive tactics around the country, state supreme court chief justices, state prosecutors, and lawmakers have started to take action to halt this action. For example, chief justices of California and Washington supreme courts have urged DHS to halt immigration arrests at state courthouses.

We urge the New York City Council to ask the Chief Judge and Chief Administrative Judge of the Unified Court System of New York to take steps to stop ICE enforcement actions at New York state courthouses and preserve equal access to our justice system.

Thank you for your consideration of this important issue.

Sincerely,



Evan R. Bernstein
Regional Director

cc:

Councilmember Ben Kallos
Councilmember Andrew Cohen
Councilmember Vanessa L. Gibson
Councilmember Paul Vallone
Councilmember Barry Grodenchik
Councilmember Peter Koo
Councilmember Daniel Dromm
Councilmember Rafael L. Espinal Jr.
Councilmember Mathieu Eugene

⁵ *Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217 (1967).

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June 29, 2017

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This practice will have a chilling effect and deny vulnerable victims and individuals access to justice and deter them from contacting authorities when needed, such as in the event of a hate crime. Community members, regardless of immigration or citizenship status, need to be able to contact and cooperate with local police and access our justice system without fear of deportation or other immigration consequences. Cities are already seeing a decline in reporting in sexual assault and rape cases. In Houston, Texas, for example, the number of Hispanics reporting rape is down 42.8 percent from last year, and the number of Hispanics reporting violent crimes has dropped 13 percent.¹ In Los Angeles, California, reports of sexual assaults by the city’s Latino population have dropped 25 percent this year, and reports of domestic violence from the Latino community have dropped 10 percent, while reporting from other communities has remained largely the same as previous years. Los Angeles Police Chief Charlie Beck said of the drop, “Imagine a young woman, imagine your daughter, your sister, your mother . . . not reporting a sexual assault, because they are afraid that their family will be torn apart.”² And Boston Police Commissioner William B. Evans recently reported that Boston Police is tracking a 7 percent decline in reported neighborhood crimes in East Boston this year compared with the same time frame last year.³

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In addition, immigration arrests at courthouses threaten our constitutional right to petition for redress of grievances as “among the most precious of the liberties safeguarded by the Bill of Rights . . . intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press.”⁵ The increased presence of ICE at courthouses will create an environment that will further chill immigrants’ exercise of this constitutional right and access to the courts. Courthouses should, therefore, be treated as “sensitive areas,” like churches and schools.

In response to these aggressive tactics around the country, state supreme court chief justices, state prosecutors, and lawmakers have started to take action to halt this action. For example, chief justices of California and Washington supreme courts have urged DHS to halt immigration arrests at state courthouses.

We urge the New York City Council to ask the Chief Judge and Chief Administrative Judge of the Unified Court System of New York to take steps to stop ICE enforcement actions at New York state courthouses and preserve equal access to our justice system.

Thank you for your consideration of this important issue.

Sincerely,



Evan R. Bernstein
Regional Director

cc:

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**Testimony of Immigrant Justice Corps on
ICE Enforcement in New York City Courts
June 29, 2017**

Immigrant Justice Corps (IJC) thanks the New York City Council for the opportunity to submit testimony on the increasing problem of Immigration and Customs Enforcement (ICE) agents trolling state and city courts and arresting non-citizen defendants and witnesses. ICE presence in courthouses is fast eroding long standing relationships of trust developed between immigrant communities and local law enforcement. It also increases the possibility that crimes that may be committed against immigrants who are vulnerable and less likely to seek the protection of law enforcement authorities for fear of civil immigration enforcement. We thank the City Council for its continued attention to this important issue and for supporting IJC's comprehensive legal assistance for immigrants in all five boroughs.

Immigrant Justice Corps

Immigrant Justice Corps (IJC) is the country's first and only fellowship program dedicated to meeting the need for high-quality legal assistance for immigrants seeking a path to lawful status, citizenship and fighting deportation. IJC's goal is to use legal assistance to lift immigrant families out of poverty – helping them access secure jobs, quality health care and life-changing educational opportunities. Inspired by the Katzmann Study Group on Immigrant Representation, IJC brings together the country's most talented law school and college graduates, connects them to New York City's best legal and community institutions, leverages the latest technologies, and fosters a culture of creative thinking that produces new strategies to reduce the justice gap for immigrant families, ensuring that immigration status is no longer a barrier to social and economic opportunity. Now in our third year, IJC has trained and placed over 100 Justice Fellows (law graduates) and Community Fellows (college graduates) in support of our mission to increase both the quantity and quality of immigration legal services. All our fellows are lawyers, law school graduates, Board of Immigration Appeals accredited representatives, or in the process of becoming accredited representatives.



Since IJC's founding in 2014, our fellows have provided immigration screenings to over 10,000 non-citizens and represented them on more than 5,000 applications and immigration matters to improve or stabilize their immigration status. Many of our fellows work with survivors of domestic violence who are particularly vulnerable and for whom access to the courts and orders of protection can be life-saving. An illustrative example will show how important it is to keep ICE out of our courts:

Last year, one of our Justice Fellows, an attorney, who is working at Safe Horizon, represented a woman, Ms. Y who had suffered physical, sexual and psychological abuse at the hands of her ex-boyfriend. The Fellow assisted Ms. Y to obtain an order of protection which the abuser violated, entering Ms. Y's home and beating her. Ms. Y cooperated in the investigation and prosecution of the criminal case against her abuser who was arrested and incarcerated for violating the order of protection. It is not clear whether Ms. Y would have pursued the order of protection or testified against her abuser in the current environment, knowing that participating in a court case could put her in jeopardy of arrest by ICE simply because she lacked immigration status. Ms. Y now has a U visa application pending based on her extensive cooperation with the police.

ICE in the Courts

New York City has declared itself a Sanctuary City¹ and has made clear that immigrants are a vital part of its fabric and the City will do everything it can to protect them.² However, immigrant advocates and their clients have seen a frightening increase in ICE arrests in state and local courts. These arrests have had a chilling effect on non-citizens who are afraid to utilize the court systems.

¹ "We're going to defend all of our people regardless of where they come from, regardless of their immigration status," Mayor Bill de Blasio of New York said at a news conference with other city officials." "Sanctuary City' Mayors Vow to Defy Trump's Immigration Order," by Liz Robbins, New York Times, January 2, 2017

<https://www.nytimes.com/2017/01/25/nyregion/outraged-mayors-vow-to-defy-trumps-immigration-order.html>;

² "I'm hoping we are going to become this administration's worst nightmare,' [Speaker] Mark-Viverito told the group." "Council Speaker Mark-Viverito urges sanctuary cities like NYC to be Trump's 'worst nightmare,'" by Erin Durkin, NY Daily News, March 27, 2017,

<http://www.nydailynews.com/news/politics/nyc-pol-urges-sanctuary-cities-trump-worst-nightmare-article-1.3010841>



Last week, an immigrant was arrested in the Queens Human Trafficking Court.³ The Trafficking Court was established to protect victims of human trafficking,⁴ with those involved understanding that the low-level crimes that bring victims to court are often the byproduct of truly heinous felonies and violations of human rights being carried out by those who control the victims. Targeting the victims in these cases will make them reluctant to go to court and have the perverse effect of making it easier for human traffickers to operate without impediment. A Legal Aid Society attorney said that they were aware of 38 arrests or attempted arrests in New York courts since the start of the year – a higher number than in the prior two years combined.⁵

While ICE has a memorandum which prohibits its agents from making arrests at “sensitive locations,” and while that memorandum remains in effect even with the new federal administration’s increased immigration enforcement efforts, the “sensitive locations” memorandum does not include courthouses.⁶ Although ICE claims that it makes arrests at courthouses to protect public safety, its FAQs hint that the increased courthouse arrests are a direct response to sanctuary cities’ refusal to carry out detainers. The ICE FAQs state:

³ "Courthouse ICE Arrests Are Making Immigrants 'Sitting Ducks,' Lawyers Warn," by Emma Whitford, *The Gothamist*, June 22, 2017, http://gothamist.com/2017/06/22/ice_immigrants_courts.php

⁴ “Justice practitioners are increasingly recognizing that prostitution is often a form of human trafficking. In response, judges, courts, and other critical stakeholders are developing new approaches—rather than fines and jail time—to address the complex and overlapping problems, including violence, fear, trauma, abuse, and drug addiction, that keep many prostituted women, men, and children in “the life” of prostitution.” <http://www.courtinnovation.org/topic/human-trafficking>

⁵ “Courthouse ICE Arrests,” *supra* note 3.

⁶[ICE] FAQ on Sensitive Locations and Courthouse Arrests <https://www.ice.gov/ero/enforcement/sensitive-loc>



In years past, most individuals arrested at a courthouse would have been turned over to ICE by local authorities upon their release from jail based on ICE detainers. When criminal custody transfers occur inside the secure confines of a jail or prison, it's far safer for everyone involved, including officers and the person being arrested. Now that some law enforcement agencies no longer honor ICE detainers, these individuals, who often have criminal histories, are released onto the street, presenting a potential public safety threat.⁷

Despite ICE's rhetoric about public safety, the reality is that when any community members are afraid to access the court system, everyone's safety is affected. If witnesses won't go to court, prosecutors cannot try their cases against suspected criminals. If victims of domestic violence cannot seek orders of protection, their abusers remain at large. And if those accused of crimes are afraid to defend their cases, justice is not served. We thank the City Council for addressing this issue which has such a significant impact on so many immigrants living in New York City. Our court system should remain open and accessible to all those who wish to support law enforcement in the prosecution of crimes. IJC stands ready to work with the Council and partners to devise solutions to keep ICE out of New York courts.

Submitted by,

Jojo Annobil
Executive Director
Immigrant Justice Corps
17 Battery Place, Suite 236
New York, New York 10004
Tel: 646-690-0481
jannobil@justicecorps.org

⁷ Id.

Testimony of

Allen S. Keller, M.D.

**Associate Professor, NYU School of Medicine, Director, Bellevue/NYU Program for
Survivors of Torture**

Presented before

**The New York City Council Committees on Courts and Legal Services & Immigration,
Oversight Hearing on ICE Enforcement in NYC Courts
June 29 2017**

Contact Info:

Allen S. Keller, M.D., Associate Professor, NYU School of Medicine, Director, Bellevue/NYU
Program for
Survivors of Torture, NYU Center for Health A Human Rights
O: 212-562-8490; email: allen.keller@nyumc.org

Thank you for holding these hearings at a time when it is more important than ever to reaffirm that we are a city, a state, a nation and society based on decency, humanity and the fair implementation of the rule of law.

My name is Dr. Allen Keller. I am a graduate of NYU School of Medicine where I am now an Associate Professor. I am an attending physician at Bellevue Hospital, our Nation's oldest public hospital, and Director of the Bellevue/NYU Program for Survivors of Torture (PSOT) and the NYU Center for Health and Human Rights (CHHR). I also co-chair the Bellevue Hospital Bioethics committee. While my testimony is shaped and informed by my experiences and continued work with these organizations, I testify today on my own behalf.

PSOT is the first and largest program of its kind in New York City and provides comprehensive medical, mental health, social and legal services, regardless of ability to pay, to immigrants, including refugees and asylum seekers, who endured torture and other human rights abuses. Founded in 1995, PSOT has cared for nearly 5,000 men, women and children from over 90 countries, including individuals from countries listed on President Trump's Executive Order Travel Ban. Given the state of the world, it is not surprising that PSOT and programs like ours throughout the U.S. are busier than we have ever been. This past year, we cared for roughly 1,000 CLIENTS and the wait time for new patients can be as long as 8 months.

CHHR is dedicated to better understanding the interrelationship of health and human rights, and the promotion of both by applying the skills of health professionals as clinicians, educators, researchers and advocates. Promoting more humane immigration policies and practices is a central focus of our work as is documenting the harmful health and human rights consequences of inhumane immigration procedures. My colleagues and I have worked with ICE to develop health-related policies for detained immigrants if not to promote health, then at least to minimize harm. Through CHHR'S Immigration Detention Health Advocacy Project, we provide medical

consultations including evaluating detained asylum seekers and preparing medical affidavits. Such documentation by health professionals can make all the difference as to whether an undocumented immigrant is detained or released, allowed to remain in this country or are summarily deported.

Throughout my medical training and practice over the past 30 years here in New York City, I have the privilege of caring for individuals from all walks-of-life. This includes the rich, the poor, those whose families have lived in the U.S. for generations and those who come here as immigrants. From all of my patients I continue to learn that health is not merely the absence of disease but rather the sum of related physical, mental and social well-being. These dimensions of health affect one and are interdependent in promoting as well as harming health for the individual as well as the community.

As a physician who has dedicated his career to caring for all New Yorkers, I am deeply concerned about the t the draconian escalation of ICE enforcement against undocumented immigrants we are witnessing both here in New York city and nationally. These cruel and misguided measures are harmful and dangerous for the health and well-being of undocumented immigrants and their families, as well as **all** New Yorkers.

Policies empowering ICE to detain undocumented immigrants wherever and whenever they choose have their basis in fear, ignorance and lies. Despite vitriolic rhetoric against undocumented immigrants, including repeated tweets from President Trump, undocumented immigrants are less likely to commit crimes.

The potential health consequences physical, psychological and social of these unwarranted ICE enforcement are severe and harmful for the individual, their family which is torn apart, as well as communities and society. In addition to tearing families apart, the psychological fear and terror can be profound. This includes painful traumatic memories for those directly impacted as well as those who live in constant fear that they may be next. One thing I've learned from the torture survivors I've care for these past 20 years is that when one individual in the community is tortured and traumatized, so too is potentially the family and community through a ripple effect, or in this case, potentially a tidal wave, of fear and terror.

After their arrest by ICE, detained immigrants are imprisoned in ICE's gulag- immigration detention system-which includes county jails and privately run, for-profit immigration detention facilities. It should come as no surprise that the companies running these for profit detention facilities were among the largest contributors to President Trump's inauguration.

While access to and the quality of healthcare at these immigration detention facilities varies enormously, it is uniformly disruptive of care detained immigrants may have been receiving before their detention. For individuals with chronic health problems, including high blood pressure, diabetes and depression this may not only be bad for the health of detained immigrants, but can be potentially life threatening.

Societal harm from these policies is severe as well. A society is less safe when people are not willing to come forward and report crime or participate in the legal system. A society is less

healthy when people are afraid to seek for healthcare. This is true for individual health and for public health. And as the famous singer,

I am deeply concerned, that when it comes to unwarranted, fear mongering ICE policies and practices that as noted Jazz Singer Al Jolson-also an immigrant- would say, “You ain’t heard nothing yet.” Yet we are already catching glimpses of what is to come. Already, in other cities, asylum seekers face arrest when they appear in compliance with their immigration proceedings including asylum interviews. So, we are actually witnessing the perverse scenario whereby individuals who came here seeking safety and asylum consistent with what the Statue of Liberty stands for, are instead placed in shackles such as those that lie at the great lady’s feet.

If New York City is committed to protecting those among our most vulnerable-undocumented immigrants, and truly remain a sanctuary city, then we need to oppose such harsh and misguided ICE enforcement policies. It is more important than ever to ensure that all immigrants have a right to legal representation in immigration proceedings, just as they do in criminal proceedings.

Similarly, we also need to expand access to health professionals to assist in such immigration legal proceedings. Such health expertise can be crucial in immigration proceedings. My colleagues and I at the Bellevue/NYU Program for Survivors of Torture and the NYU Center for Health and Human Rights are committed to this. In partnership with health professional and legal service providers throughout New York City and across the country, we are expanding this work through our Immigration Health Advocacy Project (IHAP). This will strengthen and build upon our already substantial immigration detention-health advocacy work we are currently doing. The goal is to ensure that all undocumented immigrants have access to not only healthcare, but access to crucial health expertise to assist in their immigration legal proceedings.

Thank you for your continued efforts and dedication to remaining true to who we are: A city, a community and a country of immigrants, a country of refugees.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 6/29/17

(PLEASE PRINT)

Name: Sarah Nolan

Address: _____

I represent: New York Legal Assistance Group

Address: 7 Hanover Sq, 7th Fl New York, NY 10007

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Alejandra Caraballo

Address: 7 Hanover Sq Fl 18 NY, NY 10004

I represent: New York Legal Assistance group (NYLAG)

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Hanza Ahmad

Address: Her Justice 100 Broadway, NY, NY

I represent: NYLAG

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/17

(PLEASE PRINT)

Name: Michael Snow

Address: _____

I represent: Anti-Defamation League (ADL)

Address: msnow @ ADL.org

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/17

(PLEASE PRINT)

Name: Fryda Guedes

Address: 55 exchange place, NY

I represent: Hispanic Federation

Address: 55 exchange place, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: June 29th, 2017

(PLEASE PRINT)

Name: Nyasa Hickey

Address: 177 Livingston St, 7th Floor, Brooklyn, NY

I represent: Brooklyn Defender Services

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Perla Lopez

Address: 35-51 95 St Jackson Heights QNS

I represent: Make the Road NY

Address: 92-10 Roosevelt ave.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Stan German

Address: _____

I represent: New York County Defenders

Address: 225 B'way St 100, NY, NY
10007

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/17

(PLEASE PRINT)

Name: HEIDI HOEFINGER

Address: _____

I represent: RED UMBRELLA PROJECT

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/2017

(PLEASE PRINT)

Name: Carmen Maria Rey / Sanctuary

Address: for families - 30 Wall St.

I represent: 8th Fl. NY NY 10005

Address: Sanctuary for families

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/2017

(PLEASE PRINT)

Name: YVONNE CHEN

Address: _____

I represent: SANCTUARY FOR FAMILIES

Address: 30 WALL ST NY NY 10005

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JUSTINE Olderman

Address: 300 E 161 St NY

I represent: Bronx Defenders

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/2017

(PLEASE PRINT)

Name: Theo Liebmann

Address: Hempstead, NY 11549

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/17

(PLEASE PRINT)

Name: Karina Alomar

Address: 6089 Myrtle Ave

I represent: Latino Lawyers Association of

Address: Queens 6089 Myrtle Ave

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Allen S. Keller, M.D.

Address: NYU School of Medicine 10016 CD 241 NY, NY

I represent: Assoc. of Intern. Dir. of NYU center

Address: For Health + Human Rights

Bellows NYU Program for survival of nation

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/17

(PLEASE PRINT)

Name: Jose Perez

Address: jperez@latinojustice.org

I represent: Latino Justice

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/17

(PLEASE PRINT)

Name: Albert Carr

Address: 46-01 20th AVE

I represent: CAIR NY

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/29/17

(PLEASE PRINT)

Name: Andrew Wachtentein

Address: 40 W 39th St, NY, NY 10018

I represent: Immigrant Defense Project

Address: 40 W 39th St, NY, NY 10018

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

Name: KATHERINE (PLEASE PRINT) BAJUK

Address: 225 Bway

I represent: NYCDS

Address: 225 Bway

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

Name: TINA (PLEASE PRINT) huong

Address: LAS 199 Water Street / 58 Van Brunt

I represent: LAS

Address: 199 Water

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

Name: Zachary (PLEASE PRINT) Ahmad

Address: 125 Bnd St.

I represent: NYCLU

Address: 125 Bnd St.

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Terry Lawson
Address: Bronx Legal Services, 349 E. 149 St, 10th Fl

I represent: Bronx Legal Services + Bronx, NY 10451
Address: Legal Services NYC

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Kate Mogulescu
Address: The Legal Aid Society

I represent: 49 Thomas St.
Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Shanti Tharayil

Address: 123 William St 11e NY NY 10038

I represent: Urban Justice Center

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Dei Quinsay - with WomanKind

Address: 32 Broadway NY 10004

I represent: WomanKind

Address: _____

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