



Mayor's Office of
Immigrant Affairs
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Commissioner

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Testimony of Commissioner Bitta Mostofi
NYC Mayor's Office of Immigrant Affairs

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System

“Oversight - ICE Out of New York Courts”

Thank you to Speaker Johnson, Chair Menchaca, Chair Lancman, and the members of the Committees on Immigration and the Justice System. My name is Bitta Mostofi, and I am the Commissioner of the Mayor's Office of Immigrant Affairs (MOIA).

My testimony today addresses federal immigration enforcement activity in and around state courthouses in New York City and the City's deep concern about the impact this activity has on New Yorkers' access to justice. Though the City does not have jurisdiction to regulate activities in the courts, which are controlled and operated by the State, we recognize the grave importance of this issue.

A hallmark of the Trump Administration continues to be overbroad immigration enforcement. In New York City and the surrounding region¹, U.S. Immigration and Customs Enforcement (ICE) has dramatically increased arrests of immigrants. In the first full federal fiscal year of the Trump Administration, total ICE arrests in the New York City area increased 88 percent compared to the last full federal fiscal year of the previous administration. Arrests of people with no criminal convictions increased even more sharply between those two time periods, by an alarming 414 percent. By its own statements and the accounts of a range of stakeholders, concurrent with this overall shift, ICE has increased its efforts to conduct enforcement at courthouses in New York City and throughout the state.

This degree of enforcement demonstrates a disturbing lack of concern for the devastating human consequences of immigration arrests – and even the mere threat of encountering an ICE officer in the course of one's daily life – on individuals, families, and communities. So does ICE's willingness to conduct enforcement actions in and around courthouses, which should be designated as "sensitive locations."

Mayor de Blasio has repeatedly called for ICE to cease overbroad immigration enforcement in our communities, including ICE presence and enforcement in and around courthouses. The City does not have jurisdiction to regulate ICE access to the courts, but has and will continue to advocate for ICE to limit enforcement at the courts. We have raised our concerns about this issue to ICE, and remain engaged with a range of stakeholders on this issue. We recognize that New York State Office of Court Administration's (OCA) recent expansion of its courthouse access protocol will help ensure safety and security in courtrooms, and provide for additional data collection and transparency around ICE activity in and around the courts.

We support the goals of the Protect Our Courts Act (New York State Bill A.2176/S.425) to limit civil immigration enforcement in and around State-controlled courthouses and will continue to work with our partners in Council, advocates, and colleagues in state government toward a solution that is as strong and protective of access to the courts for all New Yorkers – regardless

¹ The ICE NYC Area of Responsibility is made up of the five boroughs of New York City, as well as Dutchess, Nassau, Putnam, Suffolk, Orange, Rockland, Ulster, and Westchester counties.



of immigration status – as possible. We also continue to call on the federal government to designate courthouses as “sensitive locations.” If ICE will not act to do so, Congress must.

The motives of the Trump Administration are clear: time and again, this administration pursues anti-immigrant policies. They claim to do so in the name of public safety, but what we know in New York City is that overbroad immigration enforcement, including ICE presence in and around the courts, only increases the risks for many vulnerable New Yorkers by deterring them from accessing the justice system.

The state courts are an essential component of our justice system, and as such, play a critical role in public safety for individuals and the community as a whole. For the criminal courts to perform their function, it is imperative that victims, witnesses, and defendants – regardless of their immigration status – are able to fully and fairly participate in the criminal justice process. Whether a person is coming to court to testify as a witness, seek an order of protection, participate in their own defense, or observe a judgement being issued, they must be able to do so without fear that they will be apprehended by federal immigration authorities. Anything short of this risks undermining due process, squandering the resources of the system, and, critically, jeopardizing the safety and well-being of victims of crime or abuse. Moreover, the criminal justice system must be able to resolve cases in a way that is fair for victims as well as those facing prosecution. For these reasons, we are extremely concerned by reports that vulnerable New Yorkers, including victims and survivors of domestic and gender-based violence and others, are staying away from courts out of fear of encountering ICE.

In addition, beyond the criminal courts, we are deeply concerned that the fear of potential ICE enforcement at state civil and problem-solving courts could similarly deter immigrant New Yorkers from pursuing or defending their rights, or engaging in essential services they may need. Civil courts such as the Family Court, Supreme Court, and Housing Court are important forums for individuals to resolve matters essential to their well-being – for example, to seek custody, obtain an order of protection, or prevent eviction. Problem-solving courts such as the Human Trafficking Intervention Court provide an indispensable opportunity to engage trafficking victims in supportive services, including immigration legal services and culturally appropriate counseling services. It is imperative that these courts be as accessible as possible to New Yorkers who need them, no matter their immigration status. While a 2018 ICE Directive instructs officers to generally avoid conducting enforcement actions in courthouse areas dedicated to non-criminal proceedings, such actions are not strictly prohibited. What is clear is this distinction does little to dispel community fears.

We are proud that in New York City, our office has, in collaboration with partners across government and the community, strongly mobilized to combat Trump Administration actions that stoked fear among our immigrant communities. Our approach is multi-faceted.

We have worked with Council to ensure that our local laws and policies protect the privacy of and access to services for all New Yorkers, and promote public safety for all. In New York City,

we generally do not, and will not, use City resources to do ICE's job for them, especially where it is not in the city's public safety interests to do so. Furthermore, the City has strong confidentiality laws and policies that protect the personal information of all New Yorkers who engage with the City. We continue working to strengthen these protections under the leadership of the Mayor's Office of Information Privacy. To help ensure all our city's residents feel safe accessing City services and benefits, regardless of immigration status, City agencies are generally prohibited from permitting non-local law enforcement personnel to access non-public areas of City property. Exceptions are made for when a judicial warrant is presented, exigent circumstances exist, or access is otherwise required by law or to further the mission or purpose of the agency.

In addition, together with our partners in the City Council, we have increased access to legal help for immigrants by investing at historic levels in immigration legal services and promoting programs such as ActionNYC, NYCitizenship, legal services for immigrant survivors of domestic violence, and the New York Immigrant Family Unity Project (NYIFUP). These programs provide immigrant New Yorkers with access to a continuum of services that help meet a broad spectrum of legal needs, from screening and brief advice to deportation defense and other complex forms of representation.

The City has dedicated special attention to enhancing access to justice and services for immigrant crime victims. In collaboration with the Mayor's Office to End Domestic and Gender-Based Violence (ENDGBV), the Mayor's Office of Criminal Justice, and key City law enforcement agencies, including the New York City Police Department (NYPD), Administration for Children's Services (ACS), New York City Commission on Human Rights (CCHR), Law Department, and Department of Consumer Affairs, we have successfully cut red tape in the process of requesting law enforcement certifications and declarations for U and T visa applicants. As a result, in 2018, the City continued to see historic levels of U visa certification requests and issuances by our law enforcement agencies. In addition, since 2016, the City has partnered with OCA through their Remote Temporary Order of Protection (TOP) project. This project is responsive to state legislation amending the Family Court Act to allow electronic filing and appearance for ex parte family offense petitions, when traveling to or appearing in the courthouse would constitute an undue hardship or create a risk of harm to the petitioner. Currently, ENDGBV has implemented this Remote TOP project, in collaboration with OCA, at four NYC Family Justice Centers, increasing access to Family Court for survivors of domestic and gender-based violence.

Further, in partnership with our sister agencies, community-based organizations, and community leaders throughout the City, we have worked to affirm immigrant communities in the face of ongoing attempts by the federal government to advance anti-immigrant policies. We are committed to empowering New Yorkers with timely, trustworthy information about their rights and important immigration-related developments that affect them. Last year, MOIA engaged approximately 18,000 individuals through Know Your Rights events and other outreach efforts,

and mobilized extensive outreach campaigns around issues of crucial concern to immigrant communities, such as the proposed “public charge” rule change.

These efforts have helped immigrant New Yorkers know they are welcome in our city, and can access City services. Nonetheless, throughout MOIA’s outreach work in immigrant communities, we continue to see high levels of fear related to the threat of ICE enforcement. The harsh reality of increased enforcement is also reflected in our Constituent Services work, where in 2018 we saw an uptick in requests for legal assistance for those who are detained or under order of deportation.² The persistent fear of ICE enforcement serves to undermine this important work.

This threat to the effectiveness of the City’s efforts is further evidenced by the harmful impacts of ICE courthouse enforcement observed by service providers. For example, a City-contracted legal services provider reported that a client, who is a survivor of domestic violence, was too afraid to file her order of protection and visitation petition in Family Court because she believed ICE would find out about the filing and try to apprehend her. The client heard about a rumored episode in the Bronx in which ICE made an arrest in a courtroom, and the client was convinced that this would also happen to her. As is evident in the examples recounted by legal providers throughout their *Safeguarding the Integrity of Our Courts* report, released this morning, this is far from a one-off occurrence.

In closing, we reiterate our deep concern about ICE’s activities in the state courthouses, and the impacts these actions have on New Yorkers’ access to justice. We call on ICE to limit enforcement in the courthouses and designate them as “sensitive locations.” We will continue to work in partnership with Council, advocates, and colleagues in state government to advance a solution that protects access to the courts for all New Yorkers – regardless of immigration status – as robustly as possible.

We look forward to hearing the testimony of others today and continuing to work with our many partners on this important issue.

² New York City Mayor’s Office of Immigrant Affairs, *State of Our Immigrant City: MOIA Annual Report for Calendar Year 2018* at p.34, available at <https://www1.nyc.gov/site/immigrants/about/annual-report.page>.

ICE Out of Courts: Why It Matters

By Terry Lawson

Kaleisha came to Bronx Legal Services for help filing for asylum after many years of severe abuse by her children's father, Nelson. At five months pregnant, Kaleisha left Jamaica after Nelson kidnapped, beat, and raped her. Kaleisha flew to the U.S. with a visitor's visa and filed her asylum application. Shortly upon her arrival, Kaleisha began receiving phone calls from Nelson. Wherever she went, whatever number she had, Nelson would somehow find it and call or text her. Though she changed her Facebook profile, Nelson found her there as well, and sent death threats via Facebook Messenger. Kaleisha moved from one shelter to another, but Nelson always managed to find out where she was. Outside of her apartment building, Kaleisha saw Nelson's cousin watching her from the sidewalk on day. He stared hard at her as she scurried into her building with her baby. When Kaleisha told me, I advised her how to file for an order of protection in Bronx Family Court. "Is that safe?" Kaleisha asked. I knew what she meant, and I had no answer.

Before January 2017, the question of whether it was safe to file for an order of protection was contingent on the individual circumstances of the respondent and the petitioner. As a family and immigration lawyer working with survivors of intimate violence for the past decade, I know that filing for an order of protection does not always make someone safe. At times, I have advised clients not to file, but rather to disappear – move to another state, change their phone numbers, erase their location information online – because court involvement can exacerbate interpersonal violence.¹ But Kaleisha wasn't asking if Family Court

¹ Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (2011).

would make her less safe from Nelson, she wanted to know if would be arrested by ICE (Immigration Customs and Enforcement) if she went to Family Court. She knew that a Texan woman had been apprehended by ICE after filing for an order of protection, she knew that ICE was apprehending people in New York State Courts, and she knew that ICE had taken people from the New York City Human Trafficking Court.²

Kaleisha, like many survivors, has to choose between accessing the courts to keep her and her children safe and staying in the shadows, away from ICE in the courts.³ Though she has a pending asylum application, Kaleisha, as an undocumented person, could be apprehended and detained by ICE at any time.⁴ She could be separated from her one-year-old baby girl, born here. She could spend the rest of the time waiting for a decision on her asylum application in a detention center. When Kaleisha asked whether it was safe to go to Bronx Family Court, I could cite to no rule that requires ICE to have a warrant to apprehend her in the courthouse or that prohibits court officers from assisting with immigration enforcement. Kaleisha has no way of knowing, and I have no way of assuring her, that ICE officers, dressed in plain clothes, won't be sitting next to her on the benches outside of the courtrooms, listening to our conversations. We

² See Jonathan Blitzer, *The Woman Arrested by ICE in a Courthouse Speaks Out*, THE NEW YORKER (Feb. 23, 2017), <http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>.

³ As Leslye Orloff, director of the National Immigrant Women's Advocacy Project (NIWAP), observes, "Eroding trust that law enforcement has built with immigrant crime survivors is particularly dangerous. Our prior research has found that when survivors find the courage to seek immigration relief, perpetrators of domestic violence and workplace-based sexual assault are actively involved in reporting survivors for deportation to ICE and CBP. Stepped up immigration enforcement, particularly at courthouses, aligns with perpetrators' threats that if survivors report the abuse, seeking help from police or courts will result in the survivor being detained and deported and never seeing her children again." *Freezing Out Justice – How Immigration Arrests at Courthouses are Undermining the Justice System*, ACLU (2018), https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf.

⁴ Exec. Order No. 13,767, 82 Fed. Reg. 8793 (Jan. 25, 2017); Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

need rules regulating ICE activity in New York courthouses because Kaleisha shouldn't have to make that choice.

I. Cause and Effect

A. ICE Courthouse Apprehensions⁵ on the Rise

Kaleisha's concern is well-founded. Since 2016, there has been a 1736% increase in ICE courthouse apprehensions in New York, with 172 operations in 2017 compared to 11 in 2016.⁶ In 2018, there were 202 operations in New York State Courts.⁷ Over the past two years, ICE agents have apprehended New Yorkers in Family Courts, Traffic Courts, Youth Parts, Community Courts, Human Trafficking Intervention Court, and Criminal Courts.⁸ The current ICE Courthouse Directive, released January 2018, purports to limit courthouse apprehensions but goes on to instruct ICE agents to conduct them "in non-public areas of the courthouse," "in collaboration with court security staff, and [to] utilize the court building's non-public entrances and exits."⁹

ICE has been unapologetic in its position regarding courthouse apprehensions, citing public safety and sanctuary city policies to justify its actions.¹⁰ In March 2017, Attorney General

⁵ "Because the term 'arrest' implies criminal activity, because only a low threshold of 'reasonable suspicion' is required to take an immigrant into custody, and because of the practice of ICE in depriving individuals of basic rights that would otherwise be respected if the arrest were criminal in nature, the more accurate term in most cases is 'apprehension.'" Sarah Rogerson, *Sovereign Resistance to Federal Immigration Enforcement in State Courthouses*, GEORGETOWN IMMIGRATION LAW JOURNAL (Fall 2018) (forthcoming).

⁶ IMMIGRANT DEFENSE PROJECT, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* (Jan. 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>.

⁷ Information on file with the Immigrant Defense Project.

⁸ IMMIGRANT DEFENSE PROJECT, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* (Jan. 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>. See also IMMIGRANT DEFENSE PROJECT, *IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2018* (Dec. 31, 2017), <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-Courthouse-Arrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

⁹ *ICE Directive No. 11072.1 Civil Immigration Enforcement Actions Inside Courthouses*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Jan. 10, 2018), <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

¹⁰ See Devlin Barrett, *DHS: Immigration Agents may arrest crime victims, witnesses at courthouses*, THE WASHINGTON POST (Apr. 4, 2017), <https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may->

Sessions and then DHS Secretary, John Kelly, rebuked the Chief Judge of California for characterizing ICE courthouse activity as “stalking,” and said that it was because of “statutes and ordinances designed to specifically prohibit or hinder ICE from enforcing immigration law by prohibiting communication with ICE, and denying requests by ICE officers and agents to enter prisons and jails to make arrests” that “ICE officers and agents are required to locate and arrests these aliens in public places, rather than secure jail facilities”¹¹ – a direct attack on sanctuary city policies.

ICE deploys the public safety justification in combination with its campaign to paint those apprehended as “the worst of the worst”¹² despite internal documents, released as a result of litigation and FOIA requests, showing the opposite.¹³ The ICE Courthouse Directive purports to limit ICE courthouse apprehensions to “specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed,” but 28% of the undocumented immigrants

[arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?noredirect=on&utm_term=.28f884cf113a](https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf). The ICE Courthouse Directive states that because courthouses require screening for weapons and other contraband, “civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents” and that “courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.” *ICE Directive No. 11072.1 Civil Immigration Enforcement Actions Inside Courthouses*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Jan. 10, 2018), <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

¹¹ Session and Kelly, *Letter to Chief Justice Cantil-Sakauye* (Mar. 29, 2017), <https://www.politico.com/f/?id=0000015b-23c8-d874-addf-33e83a8c0001>.

¹² Immigration Customs & Enforcement, *Enforcement and Removal, ICE Operation Targeting Public Safety Threats Nets 132 Arrests in DC, VA* (Jul. 24, 2018), <https://www.ice.gov/news/releases/ice-operation-targeting-public-safety-threats-nets-132-arrests-dc-va>.

¹³ See Alice Speri, *Internal Emails Show Ice Agents Struggling To Substantiate Trump’s Lies About Immigrants*, THE INTERCEPT (Oct. 4, 2017), <https://theintercept.com/2017/10/04/ice-raids-trump-immigration-deportation/>; see also https://www.aclum.org/sites/default/files/field_documents/20180813_calderon_petitionernoticeoffiling.pdf

targeted in New York had no prior criminal history.¹⁴ In fact, apprehensions of New Yorkers with no prior criminal history are on the rise, as illustrated by the case of Edison Barros, the cab driver and 25-year Queens resident who was apprehended and subsequently detained as he was leaving court following a dispute with a driver who nearly ran over his dog.¹⁵ Another long-time New York resident was apprehended by ICE in court and quickly deported when he appeared on a non-criminal charge for trespassing despite being diagnosed incompetent for trial due to “learning disabilities, physical illness, and a history of trauma.”¹⁶

Two high profile cases of survivors apprehended in courthouses show that ICE contentions that it only goes after targeted criminals in courthouses, and only as a last resort, do not match the reality on the ground.¹⁷ The February 2017 apprehension in an El Paso courthouse of Irvin González, a transgender woman and DV survivor requesting a protective order against an abusive ex-boyfriend, raised the first alarm bells for anti-violence advocates.¹⁸ After the apprehension, a DHS spokesperson told reporters, “[j]ust because they’re a victim in a certain case does not mean there’s not something in their background that could cause them to be a removal alien.”¹⁹ This past summer, survivors and advocates again saw ICE’s willingness to go after survivors when plainclothes agents apprehended a mother and her 16-year-old son in

¹⁴ See IMMIGRANT DEFENSE PROJECT, *IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2018* (Dec. 31, 2017), <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-Courthouse-Arrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

¹⁵ <https://nypost.com/2018/08/17/cabbie-nabbed-by-ice-outside-court-gets-stay-of-deportation/>

¹⁶ See Michelle Chen, *Kicking ICE Out of the Courthouses*, THE NATION (Sep. 5, 2018), <https://www.thenation.com/article/kicking-ice-out-of-the-courthouses/>.

¹⁷ See Jonathan Blitzer, *The Woman Arrested by ICE in a Courthouse Speaks Out*, THE NEW YORKER (Feb. 23, 2017), <http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>.

¹⁸ See *id.*

¹⁹ See Devin Barrett, *DHS: Immigrant Agents May Arrest Crime Victims, Witnesses at Courthouses* (Apr. 4, 2017), https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?noredirect=on&utm_term=.28f884cf113a.

North Carolina, living in a domestic violence shelter, when they appeared in court on July 9, 2018 to contest charges by the woman's ex-fiancé, against whom she had a protective order.²⁰ The woman, who had no prior removal orders, had entered the U.S. lawfully, and was in court to respond to the charges later dismissed.²¹ Her lawyer told reporters, "Had ICE done any minimal investigating they would have quickly discovered that the charges against her were retaliatory and were going to be dismissed[;] [s]he is not a danger to our community, she is a victim of domestic violence."²² She was never fingerprinted or arrested by state authorities, leading some to conclude that ICE responded to a tip by her abuser.²³

ICE's targeting of human trafficking survivors in Queens²⁴ further illustrates the agency's disregard for long-sought protections for survivors in the New York State Unified Court System.²⁵ As Carlos Menchaca, New York City Council Member and Chair of the Council's Immigration Committee put it, "[a]s if ICE [] targeting some of the most vulnerable New Yorkers were not bad enough, when the ICE agents were not able to address the trafficking survivor, they retaliated by randomly arresting three individuals outside the Queens Courthouse . . . [showing] that when ICE is faced with delays or is unable to arrest their specific target, they will

²⁰ See Chantal Da Silva, *ICE Agents Arrested a Mother and Son After They Appeared in Court Over Domestic Violence Dispute*, NEWSWEEK (Jul. 24, 2018), <https://www.newsweek.com/ice-agents-arrested-mother-and-son-they-appeared-court-over-domestic-violence-1039472>.

²¹ *Id.*

²² See Melissa Jelsten, *Domestic Abusers Have an Ally in the Trump Era. It's ICE*, THE HUFFINGTON POST (Jul. 24, 2018), https://www.huffingtonpost.com/entry/ice-domestic-violence-abuse_us_5b561740e4b0b15aba914404.

²³ See Hannah Rappleye, Stephanie Gosk, Brenda Breslauer and John Carlos Frey, *Immigration crackdown makes women afraid to testify against abusers, experts warn*, NBC NEWS (Sep. 22, 2018), <https://www.nbcnews.com/politics/immigration/immigration-crackdown-makes-women-afraid-testify-against-abusers-experts-warn-n908271>.

²⁴ See Beth Fertig, *When ICE Shows Up in Human Trafficking Court*, WNYC (June 27, 2017), <https://www.wnyc.org/story/when-ice-shows-court/>.

²⁵ See Liz Robbins, *In a Queens Court, Women in Prostitution Cases Are Seen as Victims*, THE NEW YORK TIMES (Nov. 21, 2014), <https://www.nytimes.com/2014/11/23/nyregion/in-a-queens-court-women-arrested-for-prostitution-are-seen-as-victims.html>.

randomly arrest individuals regardless of whether that person has any criminal history or possesses a security risk.”²⁶

B. Survivors Are Avoiding Court

In a statewide survey on the chilling effects of ICE in courts, one-third of New York advocates reported that their clients decided not to seek an order of protection, nearly half worked with clients afraid to be a complaining witness in criminal court, and nearly half had clients who decided not to seek custody or visitation, due to fear of ICE in the Courts.²⁷ A recent ACLU report revealed that 82% of surveyed prosecutors saw DV underreporting and had increased difficulty investigating and prosecuting cases in their jurisdictions.²⁸ Reports of sexual assault are also way down, with 70% of prosecutors reporting difficulties pursuing those cases with immigrant survivors.²⁹ Over half of judges surveyed said that court cases were interrupted due to an immigrant crime survivors’ fear of coming to court.³⁰

In a recent survey, New Yorkers responded to the question, “Do you have any concerns about Immigration and Customs Enforcement working with court officials?”³¹ with:

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

²⁶ New York City Council, Transcript of Minutes of the Committee On Immigration Jointly With Committee On Courts And Legal Services (Jun. 29, 2017), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3088096&GUID=8EB5B0DF-AB60-40E1-88AC-63B2BDEA21A9&Options=&Search=>.

²⁷ See *Protect Our Courts Act Statistics*, THE IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Chilling-Effect-Statistics.pdf>. An ACLU nationwide survey revealed a 40% drop in cases filed for immigrant crime survivors by advocates and legal services providers between 2016 and 2017. See *Freezing Out Justice – How Immigration Arrests at Courthouses are Undermining the Justice System*, ACLU (2018), https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf.

²⁸ See *Freezing Out Justice – How Immigration Arrests at Courthouses are Undermining the Justice System*, ACLU (2018), https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf.

²⁹ *Id.*

³⁰ *Id.*

³¹ Bronx Immigration Partnership Clinic Surveys, on file with author.

“Que tengo un niño con discapacidad y tengo que ir a la corte por una custodia”³²

“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”

“Que los derechos de los inmigrantes no sean escuchados”³³

“Que intervengan en las decisiones sobre los procesos de cada persona”³⁴

“¿Ellos me pueden mandar a inmigración, aunque tenga el caso pendiente?”³⁵

“Que haya arrestos en las cortes”³⁶

“Me preocupa si podemos entrar a cualquier lugar y nos pidan documentos legales de
inmigración”³⁷

“Porque el estatus inmigratorio lo pueden tomar en contra”³⁸

“Ser detenido”³⁹

New York City Family Justice Centers (FJCs), which provide crucial services for survivors, report similar drops in those coming through their doors,⁴⁰ the majority of which are located next to New York State Courthouses. Between 2016 and 2017, there was a 10% decline in foreign-born clients visiting an FJC for the first time.⁴¹ To put that decline on context, foreign-

³² “That I have a child with a disability and I have to go to court for custody”

³³ “That the rights of immigrants are not heard”

³⁴ “That they interfere in every person’s decision on what course of action to take”

³⁵ “They can send me to immigration, even if I have a pending case?”

³⁶ “That there are arrests in the courts”

³⁷ “It worries me that we will be asked for legal immigration documents upon entering any particular place”

³⁸ “Because your immigration status can be used against you”

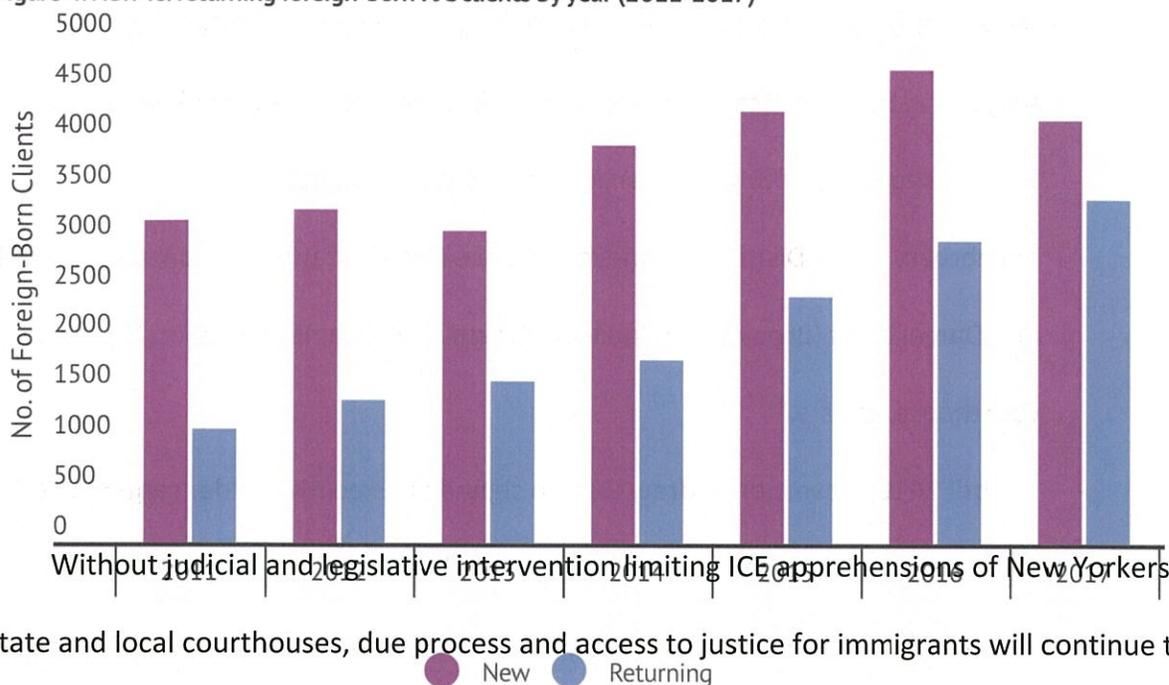
³⁹ “Being detained”

⁴⁰ See Sandhya Kajeepeta, Kara Noesner, Edward Hill, *OCDV in Focus: A Closer Look at Foreign-Born Clients Visiting the New York City Family Justice Centers*, OFFICE TO COMBAT DOMESTIC VIOLENCE, NEW YORK CITY OFFICE OF THE MAYOR (2018), <https://www1.nyc.gov/assets/ocdv/downloads/pdf/Foreign-Born-FJC-Client-Report.pdf>

⁴¹ *Id.*

born clients visiting an FJC for the first time steadily increased each year from 2013 to 2016, and only in 2017 did that number drop.⁴²

Figure 4. New vs. returning foreign-born FJC clients by year (2011-2017)



Without judicial and legislative intervention limiting ICE apprehensions of New Yorkers in state and local courthouses, due process and access to justice for immigrants will continue to erode. ICE’s failure to produce immigrants in its custody for their New York State Court proceedings further exacerbates this judicial crisis.⁴³ ICE’s refusal to treat courts as sensitive locations, as requested by New York courts,⁴⁴ means that the New York State Unified Court System (UCS) needs its own rules to protect litigants.

II. New York Calls for Action

Calls to protect access to justice and due process from the deleterious effects of ICE in the courts are on the rise across New York, to wit:

⁴² *Id.*

⁴³ ICE Out of Courts Affidavit, Rosa Cohen-Cruz, The Bronx Defenders (Jul. 18, 2018), on file with author.

⁴⁴ See Erin Durkin, *Judge Urged to Curb ICE Arrests at New York State Courts*, N.Y. DAILY NEWS (May 9, 2018), <http://www.nydailynews.com/new-york/judge-urged-curb-ice-arrests-new-york-state-courts-article-1.3981075>.

- In March 2017, Representative Adriano Espaillat introduced HR 1815 to add courthouses and other areas to the list of codified sensitive locations.⁴⁵
- In December 2017, The Fund for Modern Courts proposed four solutions: “1) Require judicial warrants for civil immigration law enforcement actions conducted in New York State courthouses; 2) Require the presiding judicial officer to notify the targets . . . ; 3) Limit the cooperation or assistance from court employees . . . ; and 4) reduce frequency with which parties need to appear in court.”⁴⁶
- In February 2018, District Attorneys Cy Vance (Manhattan), Eric Gonzalez (Brooklyn), and Darcel Clark (Bronx), and Public Advocate Leticia James called on ICE to stop courthouse arrests.⁴⁷
- In April 2018, Governor Andrew Cuomo signed an Executive Order requiring ICE agents to have warrants before making apprehensions on state property.⁴⁸
- In July 2018, the New York City Bar issued its recommendations: “1) require judicial, not administrative, warrants for civil arrests, including civil immigration arrests, conducted in New York State courthouses; 2) require the presiding judicial officer to notify the targets . . . ; 3) limit the cooperation and assistance of court personnel in civil immigration enforcement actions . . . and provide training []; 4) reduce the

⁴⁵ Protecting Sensitive Locations Act, H.R. 1815, 115th Cong. (2017). *See also* Protecting Sensitive Locations Act, S. 845, 115th Cong. (2017) (adding the area 1000 feet within a courthouse as well).

⁴⁶ THE FUND FOR MODERN COURTS, *Protecting the Administration of Justice in New York State: Impact of ICE Arrests on New Yorkers’ Access to State Courthouses* (Dec. 5, 2017), <http://moderncourts.org/wp-content/uploads/2017/12/Modern-Courts-Report-December-2017-ICE-and-NY-COURTHOUSES2-1.pdf>.

⁴⁷ *See* Erin Durkin, *City DAs plead with ICE to stop arresting immigrants at NYC courthouses: ‘It jeopardizes public safety’*, N.Y. DAILY NEWS (Feb. 14, 2018), <http://www.nydailynews.com/new-york/city-das-press-ice-stop-arresting-immigrants-courthouses-article-1.3820798>.

⁴⁸ Executive Order 170.1, Amendment to Executive Order 170 - State Policy Concerning Immigrant Access to State Services and Buildings (Apr. 25, 2018), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_170.1.pdf. Because the Office of Court Administration has exclusive control over courthouses, this Executive Order does not govern courthouse activity.

frequency with which parties need to appear in court; and 5) make available . . . the information obtained and recorded by court personnel . . . with respect to ICE enforcement activities in courthouses.”⁴⁹

Scholars have assessed available options for states and individuals seeking to exclude or limit ICE apprehensions in the courts, exploring remedies under the First Amendment, the Fourth Amendment, the Fifth Amendment, the Tenth Amendment, the Guarantee Clause, and Section 1983 of the Civil Rights Act, all of which bear further exploration.⁵⁰

The National Center for State Courts keeps a running list of actions taken nationwide to address ICE in the courts, such as introducing legislation, filing writ of habeas corpus petitions, and petitioning the courts to adopt rules.⁵¹ As of the publication of this article, these efforts are all still underway, with none yet bearing fruit.

⁴⁹ See NEW YORK CITY BAR, *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses* (July 2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf>.

⁵⁰ See Sarah Rogerson, *Sovereign Resistance to Federal Immigration Enforcement in State Courthouses*, GEORGETOWN IMMIGRATION LAW JOURNAL (Fall 2018) (forthcoming); see also Christopher N. Lasch, *A Common-Law Privilege to Protect State and Local Courts During the Cimmigration Crisis*, 127 YALE L.J.F. 410, 413 nn.15-18 (2017);

⁵¹ National Center for State Courts, *Improving Relationships with ICE Resource Center*, <https://www.ncsc.org/Topics/Courthouse-Facilities/Improving-Relationships-with-ICE/ICE.aspx>.

III. Rules, Rules, Rules

A. Current Court Rules

On April 26, 2017, Michael Magliano, Chief of the New York State Unified Court System's Department of Public Safety, issued a "Policy and Protocol Governing Activities in Courthouses by Law Enforcement Agencies," setting forth regulations for any law enforcement agency representatives who enter a New York State courthouse to take custody of a person without a New York State judicial warrant.⁵² Under these regulations, representatives are required to identify themselves to UCS uniformed personnel and state their law enforcement purpose and proposed enforcement action.⁵³ In these cases, UCS uniformed personnel are directed to file an "Unusual Occurrence Report for each law enforcement action taken in a New York State courthouse."⁵⁴ The April 2017 Protocol came just one month after the head of the New York State Court Officers Association, Dennis Quirk, issued a memo to court officers directing them to provide "100 percent cooperation" with ICE.⁵⁵ Advocates have argued that because these rules permit ICE to take custody of litigants, even without a judicial warrant, and do not prohibit NYS UCS employees from assisting in those actions, the April 2017 protocol does not go far enough to protect New Yorkers in state court.⁵⁶

⁵² Policy and Protocol Governing Activities in Courthouses by Law Enforcement Agencies, Memorandum from Chief Michael Magliano to All Chiefs and Majors, Office of the Chief Administrative Judge, New York State Unified Court System (Apr. 26, 2017).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Colby Hamilton, Gloria Pazmino, Azi Paybarah, *Court officers union tells members to cooperate '100 percent' with ICE*, POLITICO (Mar. 24, 2017), <https://www.politico.com/states/new-york/albany/story/2017/03/court-officers-union-tells-members-to-cooperate-100-percent-with-ice-110699> ("Effective immediately, inform members to provide 100 percent cooperation to ICE and any other law enforcement agency and disregard any instruction to the contrary," wrote Quirk in the memo. "Also, report any attempts by anyone to obstruct ICE to the union immediately.").

⁵⁶ See Emma Whitford, *Existing Rules to Regulate ICE Officers in Court are 'Pretty Much Useless'*, GOTHAMIST (Jul. 1, 2017), http://gothamist.com/2017/07/01/ice_courts_ny_immigration.php.

In May 2018, additional instructions were provided to judicial and non-judicial personnel in New York Criminal Court, directing court officers to ask ICE agents if they have a warrant, and if the warrant was issued by a judge, information they are required to record.⁵⁷ Like its predecessors, these instructions do not limit ICE apprehensions without a judicial warrant, nor do they prohibit cooperation with ICE.

B. A Legislative Proposal

On May 30, 2018, Assemblymember Michaelle Solages introduced A11013, the Protect Our Courts Act, in the New York Assembly.⁵⁸ Under the Act, litigants, witnesses, and their family members would be privileged from civil arrest while attending or leaving court in the absence of a judicial warrant.⁵⁹ The Act further directs the promulgation of rules restricting court personnel from allowing access to non-local law enforcement who enter due to federal immigration law violations without a judicial warrant and that they must identify themselves and their purpose.⁶⁰

C. Proposed Court Rules

The following court rules have been proposed as actions that could be taken by the New York State Unified Court System (UCS) without legislation action:⁶¹

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

⁵⁷ See NEW YORK CITY BAR, *Recommendations Regarding Federal Immigration Enforcement In New York State Courthouses* (July 2018) at 11, <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf>.

⁵⁸ Protect Our Courts Act, A11013 (May 30, 2018), http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A11013&term=2017&Summary=Y&Memo=Y&Text=Y.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ IMMIGRANT DEFENSE PROJECT, *ICE Out of Courts Campaign Toolkit* (2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/IDPCourthouseToolkit.pdf>.

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

2) Civil arrests without judicial warrants:

Civil arrests may only be executed within a courthouse of the Unified Court System when accompanied by a judicial warrant or judicial order authorizing them to take into custody the person who is the subject of such warrant. "Judicial warrant" is defined as a warrant issued by a magistrate sitting in the judicial branch of local, state, or federal government. "Judicial order" is defined as an order issued by a magistrate sitting in the judicial branch of local, state, or federal government.

The next section explores these rules and what their adoption could mean for New Yorkers.

IV. How the Proposed Rules Would Help Kaleisha and Others Like Her

With the proposed rules in place, Kaleisha can go to Family Court and be safe from a random ICE apprehension inside the courthouse. Because ICE has no established record of securing judicial warrants,⁶² Kaleisha could be reasonably safe inside New York State Courts with these rules. Furthermore, with these rules, New York State Unified Court System (UCS) employees, including clerks, court officers, court attorneys, and judges, could not assist ICE in apprehending Kaleisha because they would not know her immigration status (there is no reason for them to ask), they could not provide her name or the time of her court proceeding to ICE, and they could not time the calling of her case to match ICE's schedule. With the adoption of

⁶² See Eoin Higgins, *Confidential Ice Handbook Lays Out Paths For Investigators To Avoid Constitutional Challenges*, THE INTERCEPT (Feb. 23, 2018), <https://theintercept.com/2018/02/23/ice-search-seizure-handbook-manual-secret/>.

these rules, I can advise Kaleisha that ICE cannot apprehend her in court without a judicial warrant and that court personnel cannot assist ICE in her apprehension. This is far more than I can say now.

Still, it may not seem like much. Surely, some may say, won't ICE just start getting judicial warrants? My response. Let them start acting and being treated like other law enforcement entities making arrests in accordance with New York State Law and the Fourth Amendment.⁶³ The significant disruption that an arrest or an apprehension causes to New York State Courts,⁶⁴ especially when those individuals are not produced for future court dates,⁶⁵ means that ICE should be held to the same standards as the New York Police Department, which must have a judicial warrant in hand before making an arrest, unless they have reasonable suspicion that an offense occurred in their presence.⁶⁶ Why should ICE be treated any differently? Furthermore, unlike the NYPD, apprehensions by ICE increased 1200% between 2016 and 2017,⁶⁷ forcing the safety of the New York State Unified Court System to be

⁶³ Under New York Criminal Procedure Law and the NYPD Patrol Guide, an arrest may be made without a judicial warrant only when the officer has "reasonable cause" to believe that an offense or petty offense was committed in his or her presence or that an arrested person committed a crime. See N.Y. Crim Pro L § 140; see also "Law of Arrest," New York City Police Department Patrol Guide (Aug. 1, 2013), http://www.nyc.gov/html/nypd/downloads/pdf/public_information/public-pguide2.pdf.

⁶⁴ See Victoria Bekiempis, *Undocumented immigrant arrests surge inside and outside of NYC courthouses*, N.Y. DAILY NEWS (May 2, 2018), <http://www.nydailynews.com/new-york/immigrant-arrests-surge-nyc-courthouses-article-1.3968590>.

⁶⁵ *Declaration of Brigitte Hamadey, Esq.*, Immigration Attorney at The Bronx Defenders (Jul. 17, 2018), on file with the author.

⁶⁶ See *supra* note 63.

⁶⁷ IMMIGRANT DEFENSE PROJECT, *IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2018* (Dec. 31, 2017), <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-Courthouse-Arrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

questioned by citizens and non-citizens like never before.⁶⁸ ICE should be held to the same standard as the NYPD and other law enforcement agencies.

Some may say that because immigrants do not feel safe anywhere, there is little that court rules could do to change their willingness to go to court. But adopting these rules signals that everyone is entitled to access New York courts. Doing nothing allows fear to triumph over due process and access to justice. The prevalence of plainclothes apprehensions in and around courts,⁶⁹ and the terror that these apprehensions instill, leading bystanders to believe they are witnessing a kidnapping,⁷⁰ against a backdrop of no restrictions on ICE activity in courts sends a clear message to New Yorkers that their rights are less important, less meaningful, than what ICE wants – free and unfettered access to New York litigants, witnesses, and family members.

Some may say “aren’t they just arresting sexual predators?” or “they are only going after people with serious felonies,” repeating a narrative, promoted by the current administration, that is both wrong⁷¹ and that endangers survivors, while perversely purporting to protect them.⁷² If people must choose between the risk of deportation or detention and

⁶⁸ *Key Findings, ICE in NYS Courts Legal Service and Advocates Survey*, THE IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-out-of-courts-survey-final-1.pdf>.

⁶⁹ Maya Rhodan, *Plainclothes Officers Arrested Immigrants at a Courthouse. Can They Do That?* TIME (Sep. 18, 2017), <http://time.com/4946747/immigration-plainclothes-brooklyn-courthouse/>.

⁷⁰ Alan Pyke, ‘Like a kidnapping’: ICE snatches 25-year Minnesota resident from his family in harrowing video, THINK PROGRESS (Jul. 31, 2018), <https://thinkprogress.org/carlos-immigrant-taken-by-ice-minnesota-courthouse-b8df5da98eb8/> (“‘The way that I’d describe it is like a kidnapping. Because literally, if you look at it, two individuals took Carlos away from us aggressively and never identified themselves to us,’ said Catalina. ‘And we were in a courthouse. Can you imagine what’s happening when they’re in someone’s home?’”)

⁷¹ Matt Sedensky, *ICE is Increasingly Arresting Immigrants with No Criminal Record*, THE ASSOCIATED PRESS (Sep. 20, 2018), <https://www.bloomberg.com/news/articles/2018-09-20/trump-s-immigrant-roundups-increasingly-net-noncriminals> (“ICE arrests of noncriminals increased 66 percent in the first nine months of the 2018 fiscal year over the same period a year earlier. Arrests of convicts, meantime, rose nearly 2 percent. More noncriminals have also been deported. Among those expelled from the U.S. interior in fiscal 2017, there was a 174 percent increase from the previous year of those with no criminal convictions.”)

⁷² See Hannah Rapplepey, Stephanie Gosk, Brenda Breslauer and John Carlos Frey, *Immigration crackdown makes women afraid to testify against abusers, experts warn*, NBC News (Sep. 22, 2018),

going to court for child support, custody, orders of protection, or to seek repairs against their landlords, we know what they will choose.

No one should have to die for restrictions on ICE activity in New York Courts to be adopted. We must refuse the temptation to sensationalize violence to protect litigants. We want court rules prohibiting court personnel from collaborating with ICE and requiring judicial warrants for apprehensions because it makes all of us safer, not just the weakest among us.

Conclusion

Our courts cannot function with ICE patrolling the hallways, working with court officers, clerks, and judges, to zero in on unsuspecting litigants. Courts must be a place where people can go to exercise their rights under New York law, without becoming easy targets for a federal immigration enforcement agency that takes advantage of the hard-won resources of the New York Court Unified System.

Terry Lawson directs the Family and Immigration Unit of Bronx Legal Services, the Bronx program of [Legal Services NYC](#), and has been representing survivors of intimate violence in family and immigration matters for over 10 years. She cofounded the [Bronx Immigration Partnership](#) and coleads the [Bronx Domestic Violence Roundtable](#). Terry is an active member of the New York State Advisory Council on Immigration Issues in Family Court, Immigrant-ARC, the ICE out of Courts Coalition, and the Lawyers Committee Against Domestic Violence. She is a graduate of Yale College, Georgetown University Law Center, and the Harvard Kennedy School.

Testimony of

Shani Adess, Associate Director, Matrimonial & Family Law Unit

and

Melissa Chua, Associate Director, Immigrant Protection Unit

New York Legal Assistance Group

Oversight – ICE Out of New York Courts.

Res- Calling on the State Legislature to pass, and the Governor to sign, the “Protect our Courts Act” (A.2176/ S.425), in order to protect certain interested parties or people from civil arrest while going to, remaining at, or returning from the place of such court proceeding.

**Committee on Immigration
Carlos Menchaca, Chair**

and

**Committee on the Justice System
Rory I. Lancman, Chair**

New York City Council

April 10, 2019

Chairs Menchaca and Lancman, Council Members, and staff, good afternoon and thank you for the opportunity to speak to the Committee on Immigration and the Committee on the Justice System regarding the impact of new immigration enforcement tactics on access to justice and services. My name is Shani Adess and I am the Associate Director of the Family Law Unit of the New York Legal Assistance Group (NYLAG), and I am joined by my colleague, Melissa Chua, the Associate Director of NYLAG's Immigrant Protection Unit. 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 survivors, 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.

NYLAG, in addition to countless other organizations across New York State, are a part of the ICE Out of Courts Coalition, a group of organizations that work together to document the impact of the sharp increase in ICE enforcement in and around New York Courts since 2016. As is well documented in the report released by the ICE Out of Courts Coalition, "Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State," there was an increase of 1736% in ICE courthouse enforcement in and around New York courts since 2016.¹ This increase has had a severely detrimental impact on the administration of justice, and moreover, has had an outsized impact on the most vulnerable New York City and State residents, including survivors of domestic violence, trafficking, and general based violence, those who have been victims of or witnesses to crimes, and youth.

¹ Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State (2019)[hereinafter "Safeguarding Report"], p. 3.

At NYLAG, we believe in the power of the judiciary to protect the rights of vulnerable New Yorkers. NYLAG uses the power of the law to obtain protection and benefits for survivors of domestic violence; ensure access to public benefits; maintain housing for people at risk of homelessness; and protect families from deportation in immigration court. The presence of ICE in our courts undermines the integrity of our courts and creates a perception that our courts are not equally accessible to all, and thereby diminishes the power of these courts to serve as a vehicle for redress for our clients. In our work we see firsthand the impact of this restricted access to justice. Indeed, since ICE started its policy of courthouse policing, the number of orders of protection issued against partners or family members dropped from 235,282 in 2016 to 232,803 in 2017.²

At NYLAG, we litigate in courts across New York State, have programs that run inside of and attached to courthouses, conduct intake in courtrooms, and receive referrals from courts and agencies across New York City. NYLAG has immigration and family law attorneys who sit at four of the five Family Justice Centers (“FJCs”), centers operated by the Mayor’s Office to End Domestic and Gender-Based Violence. The FJCs are co-located with the District Attorney’s office as well as legal and social service organizations that provide services to survivors of domestic violence, all on-site, to better serve survivors. Our attorneys are at the FJCs specifically to serve survivors of domestic violence, sexual assault, and other gender based violence. We also conduct intake in the Manhattan and Brooklyn Integrated Domestic Violence Courts, courts dedicated to the “one family one judge” model, that are able to hear any pending family, matrimonial, and criminal cases involving the same family when there are underlying issues of domestic violence; we co-run the Courtroom Advocates Project with Sanctuary for Families, through which one of our attorney supervises law students who help people who are appearing in Brooklyn Family Court for the first time to request an order of protection; and we conduct courthouse intake and consultation programs

²Safeguarding Report, p. 22.

in housing courts in three boroughs. We meet with clients outside of courts in community-based programs throughout the five boroughs and Long Island, including in schools, hospitals, religious institutions, shelters and social service organizations.

Our work provides us with an on the ground view of the true impact ICE presence in our courts has had on all immigrants, and in particular those most vulnerable. We have worked directly with clients who have withdrawn requests for orders of protection, remained married to their abusive spouse out of fear of having to go to court to obtain a divorce, and who have refused to even begin a court case, despite being in need of court intervention, because of ICE courthouse presence. For example:

1. One undocumented woman, Lisa, met with us because she wanted to separate from her husband, who frequently slaps, punches, and pushes her in front of their three children. After learning that she would have to appear in court to get an order of protection, Lisa decided not to file a case. Lisa specifically said that she had heard stories of ICE coming to courts in New York, and so she didn't feel safe there. Lisa had to weigh her and her children's safety against the safety of being in court as an undocumented person, something no survivor should have to do.
2. Another woman, Brenda, fled her abusive husband two weeks after their marriage, following an attack. When our attorneys met with her, she still had marks on her face from his abuse. We were able to obtain an order of protection on her behalf, but she later decided she could not risk appearing in court to continue with the case on the following date, when her abusive spouse would be there. Her spouse had already put up signs all over the neighborhood where she worked saying "ICE AN ILLEGAL IMMIGRANT WORKS HERE" with her identifying information. We could not tell

her that there was no risk ICE would not appear if her abusive spouse tipped them off to the court date, and so she dropped her case.

3. NYLAG represented Sara, before the Integrated Domestic Violence Court. The sole witness in her case for both the civil and criminal orders of protection was a friend who refused to testify in the case fearing she would be arrested by ICE in the courthouse and deported for being here without status. Not being able to produce the witness weakened the client's case substantially in the eyes of the court and other counsel.
4. A NYLAG family law attorney spoke to Carmen, a young undocumented mother in her twenties, now raising two children as a single mom having fled physical violence at the hands of their father. Carmen tearfully explained that she could not go get a divorce or child support because if she went to court she was afraid that, given ICE's presence, she would be arrested and deported. "My children are young and need me, I can't risk being taken from them and having them lose me," she said, explaining that she would have to figure out how to support her children alone, and remain formally tied to him as his wife.
5. Hannah appeared at one of the Family Justice Centers, and met with an attorney from our Immigrant Protection Unit. Hannah had already reported and cooperated in the criminal case against her ex-boyfriend and would have been eligible to petition for U nonimmigrant status (a U Visa), but she was too fearful to file an application. This woman, who previously had a *positive* experience engaging with our courts and felt comfortable appearing in criminal court for the proceedings, *also* believed our

systems where no longer safe for her anymore because of the increase in ICE enforcement.

This fear of going to court did not exist before this administration and the increased ICE enforcement and presence in our courts. Never before have we had to speak with immigrant clients who express fear about whether ICE can pick them up in the courthouse, about whether going to court is safe for them or whether appearing will put them at risk of being picked up, and separated from everything and everyone in their lives. Never before have we had to sit with clients and weigh with them the benefit of engaging with court (asserting or protecting their rights to safety, housing, financial redress, resolution to family matters) against the risk of engaging with court (deportation, permanent separation from their families, the loss of the lives they have built and the supportive systems they have in place). Never before have we been at such a loss for words when our immigrant clients tell us about the threats their abusive partner made to have them deported if they get help, file for custody, or ask for money, and they say to us: but if I fight for this, couldn't they just tell ICE I'll be in the courthouse? I've heard ICE is there:

As advocates who work to protect and defend the rights of New Yorkers in courts across the City, NYLAG believes that it is vital for our clients to feel safe when they walk through the courthouse door. While everyone needs our courts, those most vulnerable to harassment, intimidation, violence, and the loss of their basic and fundamental rights, have a particular need for them, and one we must protect. The presence of ICE in the courtroom silences immigrant communities, depriving them of due process under the law and undermining the sanctity of our court system. Requiring ICE to obtain judicial warrants prior to engaging in enforcement activities in our courthouses, and having recourse if they fail to do so, is necessary to ensure that

the power of our laws and systems are not degraded and that our courts remain a safe place for individuals to come forward and be heard.

The Protect Our Courts Act (“Act”) would make New York courts safer for the most vulnerable by requiring that, absent a signed judicial warrant or order authorizing an arrest, the arrest of any person attending a court proceeding would be prohibited. The Act would also designate the willful violation of this requirement as contempt of the court and false imprisonment, and grant individuals the ability to bring a civil action for appropriate equitable and declaratory relief. While the Act would still allow ICE to engage in lawful enforcement activity, the requirement of a warrant ensures a case-by-case analysis of each immigrant’s particular immigration and criminal history, allowing legal services providers greater ability to counsel our clients as to their individual risk and ensuring some judicial oversight over who is being targeted for arrest and why. It would help allay the ‘chilling effect’ that has happened as a result of ICE presence in courts, because we can counsel our clients more clearly as to their specific risk when filing. Further, the language in the Act will make it clear that nobody in our court system is working for ICE, reporting people to ICE, or working ‘with’ ICE, a perception that we desperately need to change.

Indeed, we at NYLAG believe that the requirement of a warrant, and the consequences contained in the legislation, appropriately balances ICE’s right to engage in enforcement activities against the broader need for our courts to be accessible to all New Yorkers, including the most vulnerable. Requiring a warrant is simply making ICE engage in the legal process, obtain judicial oversight, and ensure that their enforcement is individualized. In these ways, the Act will provide consistent and clear guidelines to ensure all New Yorkers are protected; limit the impact of harassment by abusive partners, landlords, or parties to litigation attempting to

intimidate another from appearing in court and testifying; and will show a clear, strong message to all New Yorkers that our government officials believe that having courts that are free and open to all equally is a fundamental tenant of our legal system.

For these reasons we support the “Protect Our Courts Act” (A.2176/S.425), and strongly encourage the City Council to call on the State Legislature to support this bill, and the Governor to sign it.

Thank you to 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



**New York City Council
Committee on Immigration and Committee on the Justice System
Oversight - ICE Out of New York Courts, April 10, 2019
Testimony of Mizue Aizeki, Acting Executive Director, Immigrant Defense Project**

Thank you to the Committee on Immigration and Committee on the Justice System for giving me the opportunity to speak about the critical and urgent issue of Immigration and Customs Enforcement (ICE) arrests in courthouses. I am the Acting Executive Director of the Immigrant Defense Project (IDP), which works to expand and protect the rights of people caught in the intersection of the criminal legal and immigration systems. IDP has been tracking ICE enforcement operations in New York for a number of years, and we have specifically monitored ICE presence and activity in and around courthouses since the beginning of 2017.

In our January 2019 report, *The Courthouse Trap: How ICE Operations Impacted New York Courts in 2018*,¹ IDP documented a 1700% increase in ICE courthouse arrests and sightings over the last two years. This astronomical rise has been accompanied by an increase in use of force tactics by ICE officers. IDP has documented ICE's increased use of violent force to conduct arrests, including slamming family members against walls, dragging individuals from cars, and even pulling guns on people leaving court. Another significant trend is that ICE has been expanding its practice of arresting individuals outside of the courthouse. ICE is still operating inside courthouses (which includes ICE arrest squads sitting in court part and conducting surveillance throughout court), but they are increasingly arresting people as they are leaving court.

The report highlights stories such as this: a block away from the Brooklyn criminal court, two plain-clothes agents grabbed a young man who was attending court with his mother and dragged him towards an unmarked car. His mother thought her son was being kidnapped, and the agents refused to identify themselves as ICE when she asked. As the mother cried for help, a third plain-clothes ICE officer pushed her against a wall, repeatedly told her to "shut up," and physically blocked her from going over to the unmarked car where her son had been pushed inside.

These are typical ICE tactics. ICE officers often work in teams of 3 or 4 people, with reports of up to 10 agents for a single arrest. They are plain-clothed, often do not identify themselves, and aggressively arrest their targets and rip them away from loved ones without explanation. IDP has documented hundreds of such cases during the past two years.

¹ <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>

This morning, our coalition of more than 100 organizations across New York State issued a new report measuring the harmful impacts of ICE's increased courthouse arrests: *Safeguarding the Integrity of Our Courts; The Impact of ICE Courthouse Operations in New York State*.² Other members of the ICE Out of Courts Coalition will speak today about the report findings on the widespread impact of ICE's aggressive courthouse operations, including the widespread chilling effect, which discourages victims, witnesses, and defendants from seeking legal protections.

ICE has sent a clear message to immigrant communities and the jurisdictions that safeguard their rights that nobody is safe, not even in a courthouse—not those who are required by law to attend, and not those who are seeking protection from the courts.

ICE has ignored the numerous public calls made by judges, district attorneys, attorneys general, and anti-violence advocates across the country to end courthouse arrests. Last December, close to 70 judges and former chief justices from 23 states, sent a letter to ICE broadly condemning courthouse arrests and calling on ICE to end this practice.³ Instead, ICE has doubled down on this policy, escalating courthouse arrests and spreading its disruptive and harmful tactics throughout New York State.

Since ICE has made clear that it does not see itself as accountable to anyone, waiting for ICE to change its own courthouse policy is foolish at best and at worst, dangerously complicit. Today, immigrants are being forced to weigh things like their physical safety, their financial well-being (in the case of fraud), compliance with court dates, fines, and fees, and support of their families, against the possibility of ICE arrest, immigration detention, and permanent separation from their families. This will also happen tomorrow, and the next day, and the next, exacerbating panic and calcifying mistrust, until the state legislature decides to do something about it.

IDP thanks the City Council for recognizing this urgency and considering the proposed resolution in support of the Protect Our Courts Act. This bill responds to ICE's unlawful courthouse arrest practice by requiring a judicial warrant or court order for a civil arrest of someone attending court. This requirement aligns with existing New York law, which already places significant limitations on civil arrest of people attending court. Because ICE has stated that no group of immigrants, even vulnerable ones, is off limits, the bill protects litigants, witnesses, and those who accompany these individuals to court. The bill also authorizes judges to issue orders to ensure that this privilege against civil arrest is not violated.

New York and federal law contain multiple provisions for individuals and the state attorney general to bring suit for a number of different civil rights violations, and the Protect Our

² <https://www.immdefense.org/ice-courts-nys/>

³ <https://www.scribd.com/document/395488473/Letter-From-Former-Judges-Courthouse-Immigration-Arrests>

Courts Act does the same. This bill makes sure that if federal agents willfully violate the law, there is a cause of action for that violation. These enforcement provisions provide meaningful resolutions, and meaningful recognition of immigrants' rights under the law.

The bill also ameliorates the confusion and chaos caused by the disruptions to court function caused by ICE enforcement. It creates a clear protocol for court staff to follow regarding civil immigration enforcement operations and requires law enforcement agents to present a judicial warrant or court order if entering a courthouse with respect to a civil immigration violation. The bill also provides instructions on how to implement and staff this provision, which will ease the execution of this policy while providing much needed clarity and standard guidance on managing federal immigration enforcement in courthouses.

Thank you for your attention to this issue. The Protect Our Courts Act would provide critical protections to immigrant communities and restore non-discriminatory access to the courts in New York State. We thank the committees for your consideration of this critical matter and your ongoing commitment to the well-being of all New Yorkers.

Since the inauguration of President Trump, there has been an unprecedented increase in ICE arrests in and around New York's courts. **From 2016 to 2018, the Immigrant Defense Project has documented a 1700% increase in ICE operations in courthouses throughout the state.** Undercover ICE agents are now routinely arresting immigrants in the state's civil and criminal courts—even targeting people in family courts and courts designed for victims of human trafficking.

ICE's growing presence in the courts has spread fear, making many New Yorkers afraid to attend. In a statewide survey, **a third of advocates working with domestic violence survivors reported that their clients were afraid to seek a protection order in court due to fear of ICE.** Nearly half of housing court advocates said that clients were afraid to bring complaints because of ICE. As a result, **prosecutors across the state have condemned ICE courthouse arrests for jeopardizing the safety and security of all New Yorkers.**

ICE's courthouse arrests also threaten the efficient operation of the state's courts. Every time ICE agents arrest and detain a New Yorker, a case is interrupted. Because ICE often refuses to return people for their court proceedings, cases are not only delayed, but permanently derailed.

The Protect Our Courts Act will ensure that every immigrant New Yorker can access the courts without fear of being arrested by ICE. Here's what it does:

- Makes it unlawful for ICE to make a civil arrest while a person is going to, attending or leaving court unless the officer presents a valid judicial warrant or court order. Most ICE arrests are for civil violation of federal immigration law.
- Protects a person from *civil* arrest not only inside of a courthouse, but while they are going to the courthouse or leaving it. This is an essential protection since ICE arrests are often executed right outside the courthouse doors.
- Extends protection to *any* person who is a party or potential witness in a civil or criminal court proceeding, including family and household members.
- Empowers the New York Attorney General to pursue legal action on behalf of individuals arrested in violation of this law.
- Recognizes individuals have a right to pursue civil legal claims when they are arrested.

1. An unprecedented increase in ICE arrests interferes with the state's court system.

- The Immigrant Defense Project documented a 1700% increase in ICE courthouse operations from 2016 to 2018.
- The surge in ICE arrests has made immigrants and their families fearful of going to a wide range of courts including criminal court, family court, and housing court.
- This means domestic violence survivors aren't getting orders of protection, tenants aren't bringing complaints against abusive landlords, and people facing criminal charges are denied their fair day in court.

2. ICE's courthouse arrests undermine safety and security for all New Yorkers.

- Prosecutors across the state have endorsed the bill because they say ICE's presence in the courts is making victims and witnesses fearful of coming to court.
- Two-thirds of advocates who work with survivors of violence say their clients have declined to seek protective orders and other help from the courts due to fear of ICE.
- More than half of housing rights advocates surveyed have clients who are too scared to file a housing court complaint because of ICE being in court.

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

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

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

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

5. The legislature has the power to protect the state's courts from ICE.

- ICE is exploiting the state's courts by using them as a hunting ground for immigrants.
- When an outside agency interferes with our courts, we have a duty to protect them.
- The state constitution gives New York's legislature clear authority to regulate the court system to ensure that they operate effectively and serve EVERY New Yorker.

PROTECT OUR COURTS ACT

Prosecutor Endorsements

A.02176/S.00425

Westchester DA Anthony A. Scarpino, Jr.

"The growing presence of Immigration and Customs Enforcement (ICE) agents in Westchester courts undermines our efforts to effectively investigate and prosecute crimes. When ICE uses our local courthouses to make civil immigration arrests, both immigrants who are victims of or witnesses to domestic violence, scams, wage theft or violent crimes are now fearful that coming to court may lead to arrest by ICE. How can justice be served if some of our most vulnerable are afraid to come forward? I support the Protect Our Courts Act to ensure a fair and equitable system, and a safer and more secure community."

Nassau DA Madeline Singas

"New York's justice system works best when everyone has access. Immigrants who are victims of domestic violence, wage theft, fraud, or violent crime should be able to seek justice regardless of their status, and they should be able to come to court for that purpose without fear that their appearance will lead to civil arrest by ICE."

Albany DA David Soares

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

Bronx DA Darcel D. Clark

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

Brooklyn DA Eric Gonzalez

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

Manhattan DA Cyrus Vance, Jr.

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

Afraid to Get a Restraining Order

A mother showed up to My Sister's Place, a Rockland County legal services organization, with her head bandaged. When the attorney asked what happened, the woman said that the father of her children had raped her in a parking lot and severely beat her on the head with "metal things." The woman suffered neurological damage and permanent vision loss as a result.

When asked why she did not report it to the police and seek a restraining order in Family Court, she told the attorney that she was too afraid of being picked up by ICE. - *As reported by Andrea Panjwani, Esq., Former Managing Attorney, My Sister's Place*

A Bronx Man who Came to the U.S. at Age 3

A young man who came to the U.S. at the age of 3 was ambushed by a team of 8-10 ICE officers outside of a Bronx courthouse. Originally from the Ivory Coast, the Bronx man had big plans for building a life with his U.S. citizen wife. He was working as a barrista, had recently applied to college, and was in the process of applying for a green card. On the day that ICE grabbed him, he was in court on a misdemeanor case and had no prior criminal record.

When news of his arrest spread, close to a hundred public defenders walked out of the courthouse in protest. - *As reported by Casey Dalporto, Esq., The Legal Aid Society*

Victims of Human Trafficking

When a 29 year-old Chinese woman showed up to the Queens Human Trafficking Intervention Court last June, she stepped into a courtroom designed to be a safe space for victims of human trafficking. She, like most of the women appearing that day, was charged with a prostitution related offense. Instead of a fine and jail time, she was expected to get help.

But that day, two plainclothes ICE officers watched her and other women appearing in the courtroom. Thanks to quick thinking by her attorneys, the young woman was not taken away by ICE. But later that day, the ICE agents arrested another woman just minutes after she left the human trafficking court. - *As reported by WNYC and The New York Times*

A Witness Goes Silent in Housing Court

Soon after the first reports of arrests in New York State Courts, a housing rights advocate had a concerning interaction with a long-term client. The client, a green card holder, was a long-time member of a tenant association in Cypress Hills, Brooklyn, and was married to an undocumented man. The attorney had been working with her to enforce her succession rights and had been preparing for trial.

Suddenly, the client informed the attorney that her husband—a key witness in the case—wouldn't feel comfortable going to court. The attorney was unable to continue the case. - *As reported by Katherine LeGeros Bajuk, Esq., New York County Defender Service*

A History of Suicide Attempts; ICE Shrugs

Her client trembled when she broke the news. Katherine, a mental health specialist from New York County Defender Services, had just told her that ICE agents were there to arrest her.

Katherine had pleaded with the plainclothes agents not to take her client away. She had had a string of arrests but was finally getting treatment for her underlying mental health issues. She had already made several suicide attempts and Katherine feared that if she was locked up in ICE custody, her client might have a psychotic break.

She told all this to the ICE agents. They just shrugged. When she asked to see the warrant for her client's arrest, they refused to produce anything. - *As reported by Katherine LeGeros Bajuk, Esq., New York County Defender Service*

PROTECT OUR COURTS ACT

Frequently Asked Questions

A.02176/S.00425

What will the Protect Our Courts Act do?

The Protect Our Courts act makes it unlawful for any law enforcement officer (including Immigration and Customs Enforcement) to arrest a person for a *civil* violation while that person is going to, attending, or leaving court *unless* a judicial warrant or court order authorizing the arrest is presented to court staff.

It also prohibits law enforcement officers from outside of New York (including ICE) from entering a courthouse to enforce federal immigration law, unless they present a valid judicial warrant or court order authorizing the arrest.

How will the Protect our Courts Act protect people from ICE?

ICE arrests people for *civil* violations of federal immigration law. By making *civil* arrests unlawful, this bill will effectively stop ICE from making arrests in our courts.

The only way ICE can make an arrest under this law is by presenting a valid judicial warrant or court order from a federal judge, a requirement that has effectively stopped ICE arrests in other contexts.

Who will the Protect Our Courts Act protect?

The law will protect *any* person who is a party or potential witness in a court proceeding in New York state. This includes victims, witnesses, defendants, and anyone who is part of a non-criminal proceeding such as a family or housing court matter.

It will also protect any family or household members who are part of a court proceeding or potential witnesses.

Where will the Protect Our Courts Act protect people from arrest?

The bill protects people from arrest not only inside of a courthouse, but while they are going to the courthouse or leaving it. The exact boundaries of this protection are not spelled out in the legislation but would likely extend to the area within sight of the courthouse.

This concept of a zone of protection against civil arrest while attending court already exists in New York's civil rights law and has a long history in U.S. law. This concept was developed to prevent law enforcement agencies from using people's attendance in court as a way to arrest them on civil matters.

How will the Protect Our Courts Act be enforced?

The bill includes several enforcement measures. It empowers judges to hold any person who violates the law in contempt of court. It also instructs the New York Attorney General to pursue legal action on behalf of individuals who are arrested in violation of this law. In addition, the bill recognizes that individuals have a right to pursue legal claims when they are arrested.

How will the Protect Our Courts Act be implemented?

The Office of Court Administration will designate attorneys to review any judicial warrants or court orders presented before allowing non-local law enforcement (including ICE) to enter a courthouse in order to make a *civil* arrest. The bill also requires that the court document any warrants or court orders presented to its staff.

The Office of Court Administration will also need to adopt rules explaining how it will implement this legislation.

ICE Out of Courts Coalition. More info at immdefense.org/ice-courts-nys/

December 12, 2018

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

Dear Acting Director Vitiello,

As former state and federal judges, we write to express our concern about Immigration and Customs Enforcement's (ICE) continued reliance on immigration enforcement activities inside courthouses. We know firsthand that for courts to effectively do justice, ensure public safety, and serve their communities, the public must be able to access courthouses safely and without fear of retribution. For many, however, ICE's courthouse arrests have made courts places to avoid.

We welcomed ICE's clarification of its courthouse arrest policy in January, but that policy provides only qualified assurances that ICE will limit arrests to particular individuals or locations and makes clear that ICE officers will continue to operate inside courthouses. Following nearly two years of high profile ICE courthouse activity, only unequivocal guarantees and protections will restore the public's confidence that it can safely pursue justice in our nation's courts.

As you continue your tenure as Acting Director of ICE, we urge you to restore that confidence by adding courthouses to ICE's list of "sensitive locations," thereby assuring officers will refrain from courthouse enforcement activities except in exigent circumstances.

Increase in ICE Courthouse Activity

Federal immigration arrests of individuals appearing in state and local courthouses are not unique to the current administration,¹ but reports suggest there has been a dramatic increase in ICE presence in courthouses over the last two years.² These arrests are pervasive – they have been documented in Arizona, California, Connecticut, Colorado, Illinois, Florida, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, and Washington.³ And these examples may just touch the surface, as data in this area is slow to emerge.

Persons arrested include defendants facing criminal charges, survivors of domestic violence,⁴ persons disputing traffic tickets, and parents seeking to protect their children from unsafe living conditions.⁵ ICE has arrested people in criminal court, family court, and even a diversion court for victims of human trafficking.⁶

The Impact on the Administration of Justice and Public Safety

Together, we have presided over thousands of cases in trial and appellate courts. We know that judges simply cannot do their jobs – and our justice system cannot function effectively – if victims, defendants, witnesses, and family members do not feel secure in accessing the

courthouse. We recognize that ICE officers have duties to perform, but this sense of security requires that courts remain open to all and, just as important, that courts *appear* open to all.

Surveys of law enforcement and legal service providers confirm that ICE's reliance on immigration arrests in courthouses instills fear in clients and deters them from seeking justice in a court building.⁷ Affidavits detail persons "terrified" to request orders protecting them from violence or enforcing child support, to serve as witnesses, and to defend themselves.⁸

Across the country, this fear has meant valid law enforcement prosecutions are abandoned, or never pursued. Denver's City Attorney dropped several domestic violence cases when victims declined to cooperate with prosecutors out of fear they would encounter ICE officers.⁹ Data from Los Angeles, San Francisco, and San Diego shows a disproportionate decrease in the number of domestic violence complaints from Latino communities in 2017,¹⁰ and Houston saw a 16 percent decline in domestic violence reports in 2017 from its growing Hispanic population.¹¹ Widespread reluctance to report crime both shields existing incidents from prosecution and can lead crime rates to increase.¹²

Immigration arrests have also made it more difficult for courts to remain orderly places of business. ICE's courthouse activities have led to physical altercations involving court employees, court staff burdened by ICE requests to facilitate arrests, and disputes between court administration and legal service providers.¹³ The environment created by these incidents, in addition to the delays and rescheduling that result when fear prevents parties from appearing in court, only makes it more difficult for judges and court staff to do their jobs.

ICE's January Policy Clarification

We recognize that ICE responded in January 2018 to the concerns of judges,¹⁴ lawyers,¹⁵ and advocates regarding courthouse arrests, clarifying its policy and identifying the kinds of courts and individuals ICE will prioritize.¹⁶ According to that policy, courthouse arrests will continue, but officers should avoid enforcement in courthouse areas dedicated to "non-criminal" proceedings. Officers also will not arrest family members of arrest targets "absent special circumstances," such as interference with ICE enforcement. Finally, ICE instructs officers to collaborate with court security staff to ensure arrests occur in "non-public areas of the courthouse."

After nearly two years of high-profile ICE courthouse activity, and with arrests continuing, this policy is insufficient to lift the specter of immigration arrests from court appearances. Fine-line distinctions, such as who is a target and which parts of the courthouse ICE will use for enforcement activities, will not restore the public's confidence that it can safely access courts. This is particularly true in communities in our states where family, civil, and criminal courts share the same physical space. Indeed, the chilling effect of courthouse arrests appears enduring – in the first five months of 2018, applications for protective orders in El Paso, Texas were down 18 percent from the same period in 2016.¹⁷

Moreover, interrupting criminal proceedings with civil immigration arrests undermines the justice system.¹⁸ Immigration arrests delay both exoneration and prosecution, including for the

many low-level offenses resolvable quickly and without incarceration. ICE arrests have even put judges in the position of facing defendants who request to be detained, rather than released, because they know ICE officers are waiting outside the courtroom.¹⁹

Finally, the January policy explicitly instructs ICE officers to make use of court security resources to carry out arrests. This involvement of court staff in ICE arrests is a drain on resources and has contributed to some of the more disruptive incidents over the last two years.

Courts Should Be Treated as Sensitive Locations

We urge you to take steps to restore confidence in safe access to the courts, including treating courthouses as “sensitive locations” as you do schools, hospitals, places of worship and religious ceremonies, and public demonstrations. Current ICE policy prohibits officers from conducting enforcement activities in sensitive locations except in “exigent circumstances,” such as risks of violence and national security matters. The same level of consideration must apply to courts.

The sensitive locations policy, in place for 25 years, reflects core values that Administrations of both political parties have prioritized above immigration enforcement.²⁰ Like other sensitive locations, individuals use courts to protect themselves and their communities from harm and to exercise fundamental rights. For these very reasons, the Supreme Court has recognized time and again that obstacles – physical, monetary, procedural – to fully accessing courts are intolerable.²¹

We understand that ICE favors courthouse arrests because it considers courts to be safe environments where officers are confident they can operate without danger. But it is exactly that sense of safety that we as judges tried to foster for anyone seeking access to justice, and that we believe ICE’s courthouse activities put at risk.

We ask you, Acting Director, to designate courthouses as sensitive locations. Our courts and our communities will be better for it. If you wish to hear more about our concerns, many of us would gladly make ourselves available for further discussion.

Sincerely,

Hon. Wallace B. Jefferson (ret.), Chief Justice of the Supreme Court of Texas

Hon. Jim Jones (ret.), Chief Justice of the Supreme Court of Idaho

Hon. Jonathan Lippman (ret.), Chief Judge of the New York Court of Appeals

Hon. Michael L. Bender (ret.), Chief Justice of the Supreme Court of Colorado

Hon. Edward L. Chavez (ret.), Chief Justice of the Supreme Court of New Mexico

Hon. Sue Bell Cobb (ret.), Chief Justice of the Supreme Court of Alabama

Hon. Christine M. Durham (ret.), Chief Justice of the Supreme Court of Utah

Hon. Stanley G. Feldman (ret.), Chief Justice of the Supreme Court of Arizona

Hon. Chase Rogers (ret.), Chief Justice of the Supreme Court of Connecticut

Hon. Marsha Ternus (ret.), Chief Justice of the Supreme Court of Iowa

Hon. Thomas A. Zlaket (ret.), Chief Justice of the Supreme Court of Arizona
Hon. Margot Botsford (ret.), Associate Justice, Massachusetts Supreme Judicial Court
Hon. Bobbe J. Bridge (ret.), Associate Justice, Supreme Court of Washington
Hon. Louis B. Butler (ret.), Associate Justice, Supreme Court of Wisconsin
Hon. Patricia O. Cotter (ret.), Associate Justice, Supreme Court of Montana
Hon. Fernande R.V. Duffly (ret.), Associate Justice, Massachusetts Supreme Judicial Court
Hon. Janine P. Geske (ret.), Associate Justice, Supreme Court of Wisconsin
Hon. Geraldine S. Hines (ret.), Associate Justice, Massachusetts Supreme Judicial Court
Hon. Faith Ireland (ret.), Associate Justice, Supreme Court of Washington
Hon. Wayne L. Kidwell (ret.), Associate Justice, Supreme Court of Idaho
Hon. Howard Levine (ret.), Associate Judge, New York Court of Appeals
Hon. James C. Nelson (ret.), Associate Justice, Supreme Court of Montana
Hon. James M. Regnier (ret.), Associate Justice, Supreme Court of Montana
Hon. Annabelle Imber Tuck (ret.), Associate Justice, Supreme Court of Arkansas
Hon. Mike Wheat (ret.), Associate Justice, Supreme Court of Montana

Hon. Steven S. Alm (ret.), Hawaii Circuit Court, First Circuit
Hon. J. Thomas Brooks (ret.), Arizona Court of Appeals
Hon. Jeffrey S. Cates (ret.), Superior Court of Arizona in Maricopa County
Hon. Colin F. Campbell (ret.), Superior Court of Arizona in Maricopa County
Hon. David H. Coar (ret.), U.S. District Court, Northern District of Illinois
Hon. Cynthia J. Cohen (ret.), Associate Justice, Massachusetts Appeals Court
Hon. Mary Catherine Cuff (ret.), Appellate Division, Superior Court of New Jersey
Hon. Beverly Cutler (ret.), Alaska Superior Court, Third Judicial District
Hon. Raya S. Dreben (ret.), Associate Justice, Massachusetts Appeals Court
Hon. Noel Fidel (ret.), Arizona Court of Appeals
Hon. Ken Fields (ret.), Superior Court of Arizona in Maricopa County
Hon. W. Royal Furgeson (ret.), U.S. District Court, Western and Northern Districts of Texas
Hon. Katherine B. Forrest (fmr.), U.S. District Court, Southern District of New York
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Hon. Gloria Sosa-Lintner (ret.), New York City Family Court
Hon. Linda Stephens (ret.), North Carolina Court of Appeals
Hon. Patricia Wald (ret.), Chief Judge of the U.S. Court of Appeals, District of Columbia Circuit
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Hon. Harvey Weissbard (ret.), Appellate Division, Superior Court of New Jersey
Hon. Sarah Zabel (ret.), Florida Circuit Court, Eleventh Judicial Circuit

Signatories added following initial publication:

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Hon. Karen E. Christenson (ret.), Wisconsin Circuit Court, Milwaukee County
Hon. James Dannenberg (ret.), Hawaii District Court, First Circuit
Hon. Leslie A. Hayashi (ret.), Hawaii District Court, First Circuit
Hon. Moria Krueger (ret.), Wisconsin Circuit Court, Dane County
Hon. Stuart Schwartz (ret.), Wisconsin Circuit Court, Dane County
Hon. Marcia J. Waldorf (ret.), Hawaii Circuit Court, First Circuit

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The Courthouse Trap

How ICE Operations Impacted
New York's Courts in 2018

January 2019



Summary of Findings

In 2018, Immigration and Customs Enforcement (ICE) substantially expanded arrest and surveillance operations in New York’s courts, continuing a disturbing trend that began with the inauguration of President Donald Trump. ICE operations increased not only in absolute number but grew in brutality and geographic scope. Agents, disguised in plainclothes, used intrusive surveillance and violent force to execute arrests. They also reached into many new areas of the state, conducting arrests in several upstate counties that were previously untouched. And ICE agents pursued New Yorkers in a broader range of courts—conducting operations in civil and criminal courts and in courts designed to be rehabilitative instead of punitive. All of these changes underline ICE’s increasing reliance on the state’s court system as a place to trap and detain immigrant New Yorkers.

The Immigrant Defense Project has been monitoring ICE courthouse raids since 2013 and first reported the sharp rise in a [2017 report](#) highlighting changes to enforcement under the Trump administration. The information below is culled

from hundreds of reports collected by IDP’s staff over the course of 2018. In addition to presenting key statistics, the report highlights new trends in ICE courthouse enforcement and provides a selection of stories of individual New Yorkers who have been arrested while attending court, many of which have never been shared publicly. For more on IDP’s courthouse work, visit immigrantdefenseproject.org/ice-courts/



Left: Plainclothes ICE agents leading a man into an unmarked car outside of the Brooklyn Criminal Court.

This report highlights six key changes in ICE courthouse operations in 2018

ICE made more arrests and increased the physical presence of its agents in New York's courts

1

From 2017 to 2018, ICE operations in and around the courts continued to increase, keeping arrests at an unprecedented level. These operations increased by 17% compared to 2017 and by 1700% compared to 2016. New York City continued to account for about 75% of arrests statewide with Queens and Brooklyn reporting the largest numbers.

ICE targeted several upstate counties that it had left untouched in 2017

2

Several upstate counties, including Orange, Rensselaer and Fulton reported ICE courthouse arrests for the first time. Westchester County reported the largest increase in arrests statewide.

The arrest and surveillance tactics employed by ICE agents became more violent and the brutality more commonplace

3

Reports of ICE using violent force to conduct arrests—slamming family members against walls, dragging individuals from cars, and even pulling guns on people leaving court—have become commonplace. Witnesses to ICE arrests have called 911 to report that they were witnessing a kidnapping. ICE has also turned to more aggressive surveillance, trailing attorneys to their offices and eavesdropping on confidential attorney-client conversations.

ICE targeted particularly vulnerable immigrants including survivors of human trafficking, survivors of domestic violence, and youth

4

ICE set no limits on who they targeted in New York’s courts—arresting immigrants who appeared in a diversion court for victims of human trafficking and going after survivors of domestic violence. ICE also stepped up arrests of youth, even when they were eligible for special forms of immigration relief like DACA.

ICE officers refused to provide basic information or documentation, ignoring their own regulations

5

In the vast majority of operations, ICE agents refused to identify themselves, explain why an individual is being arrested, or offer proof that they have reason to believe that the individual they’re arresting is deportable. This occurred despite the fact that internal agency regulations require them to provide this information.

ICE’s courthouse operations expanded in the same year that the agency issued its first formal policy on courthouse arrests

6

In January of 2018, ICE issued its first policy on courthouse arrests.¹ Reports to IDP show that after this policy was issued, ICE agents expanded the reach of courthouse arrests. ICE agents also appeared to ignore their own policy directive, continuing to conduct arrests in civil and criminal courts, and targeting friends and family members who accompanied a loved one to court.



Left: ICE agents preparing to put a young man into an unmarked minivan outside of the Queens Criminal Court.

1. See “Directive 11072.1: Civil Immigration Enforcement Actions Inside Courthouses,” U.S. Immigration and Customs Enforcement (Jan. 10, 2018). For a complete analysis of the policy, see the “Annotated Version of Directive 11072.1,” which was produced by IDP and the NYU School of Law Immigrant Rights Clinic. The annotated directive is available at www.immigrantdefenseproject.org/national-resources/.

Statistics

Collecting Reports from the Frontlines

During the past five years, IDP has collected reports of ICE courthouse raids through collaborations with community-based and legal services organizations throughout New York State, as well as through calls and reports received on our hotline. In addition, New York State uniquely houses both Regional Immigrant Assistance Centers (RIAC) in all counties across the state, as well as the New York Immigrant Family Unity Project (NYIFUP) in immigration courts. Both initiatives have provided a mechanism for IDP to collect firsthand accounts of raids from the individuals arrested by ICE (via their attorneys), whose experiences during ICE raids may otherwise not have been shared or reported. IDP confirms details of raids reports by speaking with witnesses of raids or those with direct knowledge, the individuals arrested by ICE themselves, or their attorneys.

What's the difference between an ICE arrest and an ICE sighting?

Arrest: We use the word arrest when we've been able to confirm that ICE took someone into custody during a courthouse operation.

Sighting: We use the word sighting when we've confirmed that witnesses saw ICE agents or ICE vehicles, but we weren't able to verify an arrest. This could mean a lot of things:

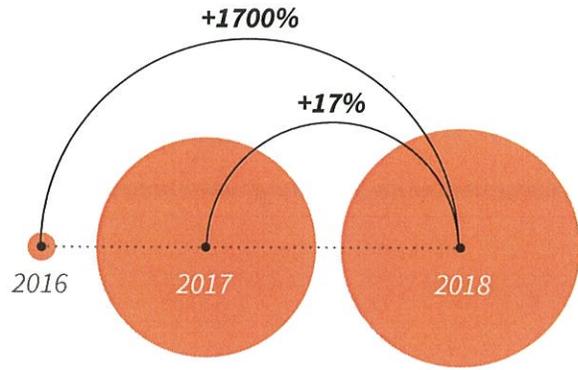
- ICE may have come looking for someone and not found the person;
- ICE may have made an arrest that simply wasn't reported; or,
- ICE may have come to the court for the purpose of conducting surveillance or collecting court records on people they are targeting.

The findings

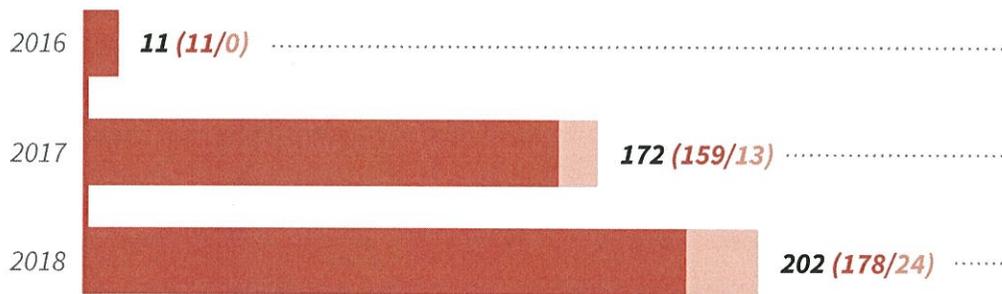
ICE Courthouse Operations (2016–2018)

A Marked Increase

From 2017 to 2018, ICE operations in and around the courts increased by 17%, keeping arrests at an unprecedented level. Compared to 2016, ICE courthouse operations increased by 1700% in 2018.



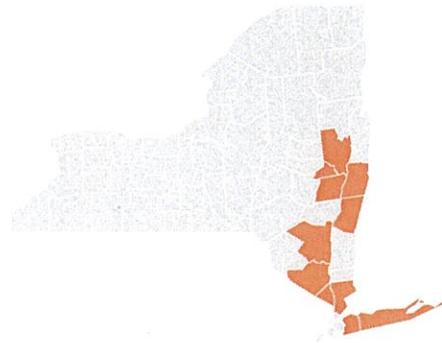
Total (Arrests/Sightings)



Why have the numbers from 2017 changed?

IDP has revised its figures for 2017 from 144 ICE operations to 172. The jump is due to the fact that IDP continued to receive many reports after the end of 2017. Because individuals routinely spend months in detention before they have a chance to see an immigration judge, we may not hear about an individual's arrest until they finally resurface in immigration court. Under current federal practices, that can take months. Note that several New York legal service organizations have sued federal immigration officials over the months long delay in immigration court appearances.

ICE Arrests Outside of New York City (2018)



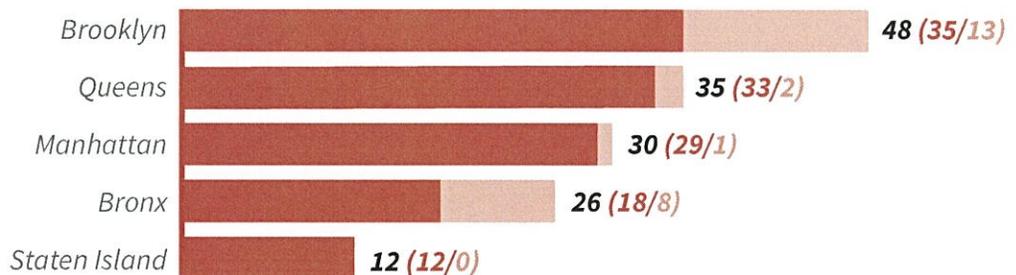
13 Westchester	3 Ulster
8 Orange	2 Rockland
6 Saratoga	2 Schenectady
6 Suffolk	1 Columbia
4 Albany	1 Nassau
4 Rensselaer	

New York with Counties Single Color
by FreeVectorMaps.com

ICE agents reached into new territory, stepping up courthouse operations counties outside of New York City. For the first time, IDP received reports of ICE courthouse arrests in Orange, Rensselaer, and Fulton counties. While most arrests in 2017 focused on larger county or city courthouses, ICE widened its net to town and village courts. Operations were reported in more than a dozen town and village courts across Westchester, Rockland, Columbia, Orange, Ulster, and Albany. Westchester reported the largest increase in arrests statewide, with ICE courthouse operations more than tripling from 4 in 2017 to 13 in 2018.

ICE Operations Within New York City (2018)

Total (Arrests/Sightings)



New York City continued to account for the majority of ICE operations statewide. Within New York City, Brooklyn reported the largest number of operations when accounting for arrests and sightings. However, Brooklyn and Queens were about tied when comparing just arrests with 35 arrests reported in Brooklyn and 33 in Queens. Staten Island reported the largest increase from 2017 to 2018 with arrests doubling from 6 to 12.

Trends

Use of Force

One of the most striking changes in ICE operations has been an increase in the use of force. ICE agents typically operate in large teams of 3 or 4 agents, with reports of up to 10 agents involved in a single arrest. Over the past year, IDP has received reports of ICE agents tackling individuals to the ground, slamming family members against walls, and dragging individuals from cars in front of their children. They have also pulled guns on individuals leaving court. In one incident, ICE officers physically assaulted an attorney who was 8 months pregnant.



A Mother's Cry for Help

A young man and his mother had just left the Brooklyn Criminal Court after the man's appearance in court. About a block from the court, two plain-clothes ICE officers appeared out of nowhere, grabbed the man and started to drag him towards an unmarked car. Thinking that her son was being kidnapped, the mother repeatedly asked who the agents were. The officers refused to answer her and when she asked if they were immigration, the officers said no. As the mother cried for help, a third plain-clothes ICE officer came over and pushed her against a wall, causing her head to hit the wall. The officer repeatedly told her to "shut up" and physically blocked her from going over to the unmarked car where her son had been pushed inside. The officers then drove away, leaving his mother sobbing on the street, panicked that her son had been kidnapped. She did not know it was ICE agents who arrested him until she received a call from her son in an ICE processing facility later that day.

Guns on the Van Wyck

A man with no prior arrests had just left the Queens Criminal Court where he had made a brief appearance before a judge. After getting into his car with a friend he noticed a strange car trailing him. When he got onto the Van Wyck Expressway, the car followed. Suddenly, the car flashed its lights. The man pulled over and three unmarked cars suddenly surrounded him and his friend. Seven ICE officers jumped out of the cars and surrounded them with guns drawn. They asked him and his friend for ID and then pulled him from the car and arrested him.

“911: There’s a Kidnapping!”

A man was leaving the Brooklyn Supreme Court with his attorney and family when he was suddenly surrounded by plainclothes ICE agents. He had just exited the courthouse when two agents threw him against a wall and put his hands behind his back. Two other plainclothes agents and a court officer blocked him from his attorney. When the attorney demanded to know who they were, the agents refused to identify themselves and simply replied that they were doing their jobs. The ICE officers pulled the man into an unmarked car with no plates. Several bystanders witnessed the commotion and one woman, believing that the man was being kidnapped, called 911.

Increased Surveillance

ICE agents are not just making arrests at courthouses, they are also using the courts as places to surveil immigrants. Agents have been spotted sitting in courtrooms, and lurking in hallways, where they watch and wait for individual cases to be called. ICE agents also loiter by security lines at courthouse entrances, and stand directly



outside of the courthouse. Individuals appearing in court have been followed in and out of courtrooms, down elevators, into bathrooms, and even out of the court to the subway. ICE officers have also trailed family members, eavesdropped on privileged attorney-client conversations, and followed individuals all the way from the courthouse to their attorney’s office.

Attorney Followed Out of Court

A Brooklyn attorney asked a judge to excuse her client's appearance for the day; the judge granted the request, but asked the attorney to personally serve the client with an order of protection. She left the Brooklyn Supreme Court, and headed toward a nearby McDonald's, where she had arranged to meet her client. Unbeknownst to her, undercover ICE agents had followed her. After meeting with her client and serving him with the order, the attorney and the client left the McDonald's and went their separate ways. Suddenly, five undercover ICE officers surrounded her client and arrested him. The client, who is married to a U.S. citizen, languished in immigration detention for more than four months before being scheduled for his first hearing in immigration court.

Targeting Vulnerable Immigrants

ICE agents aggressively targeted immigrants who are survivors of domestic violence, survivors of human trafficking, and youth. Despite public outcry from a series of high profile arrests in 2017, ICE continued to conduct operations in special courts for human trafficking, arresting at least one man appearing in the Queens Human Trafficking Court in 2018.

ICE also arrested survivors of domestic violence, arresting one woman after her case had been dismissed. Young people also appeared to be a growing ICE target. In one case, ICE went after a 20 year-old who had already submitted an application for a special visa for minors who are abused, neglected or abandoned by their parents. In other cases, ICE arrested young people who were brought to the United States as toddlers and were eligible for DACA (Deferred Action for Childhood Arrivals).



A DREAM Deferred

A 23 year-old man was walking into the New Paltz Town court with a friend when a man he had never seen before asked him for his name. When he declined to answer, two more men surrounded him, handcuffed him, and took him to an unmarked SUV. It wasn't until he was in the car that the three men revealed that they were ICE. The young man is an LGBT activist in his community who came to the United States when he was 6 years old. He is a DREAMER who previously had Deferred Action for Childhood Arrivals (DACA).

A Survivor of Domestic Violence Held for ICE

A survivor of domestic violence had just appeared in the Yonkers City Court for a hearing at which all charges were dismissed. The woman had no prior criminal history. After the hearing ended, a local law enforcement officer (either a court officer or jail employee) returned to the court and said that ICE was waiting for her. The officer suddenly re-arrested her and took her to a holding cell inside the courthouse which is maintained by the Yonkers police. She was held there for several hours until ICE agents came to pick her up that evening.

Friends and Family at Risk



Although ICE said in a 2018 memorandum that it would only go after specific “targets” and avoid “collateral arrests” of their friends and family members, IDP has received several reports of ICE agents questioning friends and family members who accompany their loved ones to court. In a handful of cases, this has led ICE agents to arrest family members.

A Tale of Two Brothers

When his brother had to go to criminal court in Queens, the young man decided he would go too. He believed in supporting his family. The man and his brother were just leaving the Queens courthouse when they were suddenly approached by plainclothes ICE agents. The agents asked his brother for identification and then turned to him with the same question. When he presented a Mexican ID, the ICE agents handcuffed him and took the two brothers into custody.

No Courts Off Limits



Despite a pledge made in a January 2018 memorandum to stay away from non-criminal courts, ICE arrested at least one individual who was attempting to attend a Family Court hearing. ICE also pursued individuals appearing in community justice courts, which are designed to be rehabilitative instead of punitive. In one case, ICE targeted a young man attempting to participate in a parole reentry program in Manhattan.

No Justice in the Community Justice Court

A young woman was leaving the Midtown Community Court in Manhattan after appearing on the court's quality of life docket. She had just received an adjournment in contemplation of dismissal when two ICE agents surrounded her outside of the courthouse and arrested her.

A Father in Family Court

A father went to a Westchester Family Court to appear on a case. He was waiting for his case inside the courthouse when several ICE officers approached. He asked if he could talk to the Family Court judge, his lawyer, or his partner. The officers would not let him. They took him into custody and placed him into removal proceedings.

Court Officer Involvement



New York State court officers have participated in several ICE operations. This has included physically assisting arrests, allowing ICE to use private areas of the court to make arrests, and providing information to ICE agents about individuals. A new decision from New York's appellate courts suggests that this type of participation in ICE operations violates states law.²

² In *People ex rel. Wells v. DeMarco*, a New York appellate court held that it is unlawful for New York state and local officers to detain people for civil immigration violations because New York law does not authorize them to enforce civil immigration law. See *People ex rel. Wells v. DeMarco*, No. 2017-12806, 2018 WL 5931308 (N.Y. App. Div. Nov. 14, 2018).

Court Officer Does ICE's Job

A man was in the Chatham Justice Court, and after his case was called, a Chatham police officer, who was providing security for the court, arrested him. The police officer handcuffed the man without giving him a reason or Miranda warnings and refused to answer questions asked by his attorney. The police officer then took the handcuffed man out of the court's back door, where ICE agents were waiting in the parking lot. When the ICE agents began questioning the man, his attorney asked if they had a warrant and the ICE officers refused to provide any documentation.

Caught on Tape

A father was on his way into the Queens Criminal Court when he was arrested by ICE. He never got to appear on his case. A bystander outside of the Queens Criminal Court caught several plainclothes ICE agents working with uniformed court officers to arrest him directly outside of the courthouse. The [video](#) shows at least three uniformed court officers helping the ICE agents to hold the father down as he screams, "Why are you doing this to me?" One uniformed court officer is then seen holding the man with an ICE agent and walking the man to an unmarked car parked on the curb. He has been detained by ICE, transferred to an ICE facility in Oklahoma.

Derailing Criminal Cases

ICE operations are derailing criminal cases, preventing individuals from attending hearings, and threatening to undermine court operations. Many individuals attempting to attend required court proceedings are arrested before they even get to the courtroom. After ICE arrests and detains individuals, they may refuse to return that person to court again, even when a state court orders that ICE produce the person.

Increasingly, ICE is also transferring New Yorkers to far away facilities, forcing people to fight their cases from detention in New Mexico, Massachusetts, or Oklahoma. In practice, this means that once individuals are disappeared into the immigration detention system, their criminal cases remain in limbo.



From Queens to Oklahoma

After several ICE agents were caught on tape tackling a man outside of the Queens Criminal Court, the man faced long odds. He was torn from his family, locked up in a New Jersey immigration jail and facing deportation with an open criminal case. But a few days later, things got worse when ICE transferred him to a detention facility in Oklahoma. In the New York area he had been eligible to get a free immigration attorney through a special program that assigns attorneys to indigent immigrants. But in Oklahoma, he had to go it alone in immigration court. Without an attorney, he was quickly deported, but his criminal case remained open. Even though he was now out of the country, a Queens judge issued a bench warrant for his arrest because he failed to appear in court.

ICE Ignoring ICE Regulations



ICE routinely ignored its own regulations, which require that they answer basic questions about their identity and provide information justifying arrests. In almost every report received by IDP, ICE agents were described as dressing in plain clothes without visible badges. Individuals and attorneys frequently reported that agents would refuse to identify themselves or answer questions about why they were taking an individual into custody, a violation of ICE’s own regulations. ICE’s internal regulations also require that they provide documentation that they have reason to believe that someone is indeed subject to deportation. This documentation—often referred to as an “administrative warrant”—does not meet the standard of a criminal warrant and merely requires another ICE officer’s signature, not a judge’s. But despite this minimal requirement, IDP has found that ICE agents almost never provide these documents, even when directly asked by attorneys.

Where’s the Warrant?

Of the 317 ICE courthouse arrests IDP has documented in 2017 and 2018, ICE has only once presented a judicial warrant signed by a federal Article III judge.



The Immigrant Defense Project (IDP) was founded 20 years ago to combat an emerging human rights crisis: the targeting of immigrants for mass imprisonment and deportation. As this crisis has continued to escalate, IDP has remained steadfast in fighting for fairness and justice for all immigrants caught at the intersection of the racially biased U.S. criminal and immigration systems. IDP fights to end the current era of unprecedented mass criminalization, detention and deportation through a multipronged strategy including advocacy, litigation, legal advice and training, community defense, grassroots alliances, and strategic communications.

@ImmDefense
immdefense.org

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April 10, 2019

Oversight - ICE Out of New York Courts.

Res - Calling on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S.425), in order to protect certain interested parties or people from civil arrest while going to, remaining at, or returning from the place of such court proceeding.

My name is Miriam Martinez, I am here today because I want to share with the City Council how immigration has affected my life, and why we need the state legislature to pass, and for Governor Cuomo to sign, the "Protect Our Courts Act." My husband Plutarco Ramirez was arrested by immigration on July 2018 after being falsely charged with a crime that was later dropped. His detention drastically shifted my everyday life, for the first time my family was torn apart. The way that Plutarco was detained was very difficult, and thanks to the work of Make the Road New York, Plutarco is now back with us, and continuing to fight his case from the outside. I have heard the stories of people who have been detained outside the court, and while my husband was in immigration detention he also heard similar stories. The day before Plutarco was arrested by immigration, he had a court appointment, after the appointment was over, we accidentally left the courthouse through the back, but I am sure if Plutarco and I had left through the front immigration would have detained him right there. Immigration detains people, without letting them know who they are, while people are trying to fix their cases in court. The Protect the Courts Act will help mitigate arrests outside the courts, require immigration agents to show judicial warrants, before arresting someone. It will help people not be afraid to go to court, which can be risky for their cases. I support this bill for these reasons, as an immigrant and a New York resident.

The presence of Immigration and Customs Enforcement (ICE) in New York courthouses is a tactic being used to terrorize our immigrant community, and undermines their constitutional right to access courts and our judicial system. Trump's deportation machine has no place in our courthouses and New Yorkers should not fear being ripped away from their families when accessing our courts. My husband and I support the Protect Our Courts Act, which will allow all New Yorkers, regardless of immigration status, to have equal and safe access to New York courts.

(Spanish on the other side)

April 10, 2019

Oversight - ICE Out of New York Courts.

Res - Calling on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S.425), in order to protect certain interested parties or people from civil arrest while going to, remaining at, or returning from the place of such court proceeding.

Me llamo Miriam Martínez, hoy estoy aquí porque quiero compartir con el Concejo Municipal como inmigración ha afectado mi vida y por qué necesitamos que la legislatura estatal apruebe y que el Gobernador Cuomo firme la "Ley de Protección de nuestros Tribunales." Mi esposo Plutarco Ramírez fue arrestado por inmigración en Julio del 2018 luego de ser acusado falsamente de un crimen que luego fue retirado. Su detención cambió drásticamente mi vida diaria, por primera vez mi familia fue separada. La forma en que Plutarco fue detenido fue muy difícil, y gracias al trabajo de Make the Road New York, Plutarco está de regreso con nosotros y continúa luchando su caso desde afuera. He escuchado las historias de personas que han sido detenidas fuera de la corte, y mientras mi esposo estuvo en el albergue, él también escuchó historias similares. El día anterior de cuando Plutarco fuera arrestado por inmigración, él tenía una cita en la corte, después de que la cita había terminado, accidentalmente salimos de la corte por la parte de atrás, pero estoy segura de que si Plutarco y yo hubiéramos salido por el frente inmigración lo hubiera detenido justo ahí. Inmigración detiene a las personas, sin dejarles saber quiénes son, mientras que las personas están tratando de resolver sus casos en los tribunales. La Ley de Protección de las Cortes ayudará a mitigar los arrestos fuera de las cortes, exigirá que los agentes de inmigración muestran las órdenes judiciales antes de arrestar a alguien. Esto ayudará a las personas a no tener miedo de acudir a los tribunales, lo que puede ser peligroso para sus casos. Apoyo esta acta por estas razones, como inmigrante y residente de Nueva York.

La presencia de Inmigración y Control de Aduanas (ICE) en los juzgados de Nueva York es una táctica utilizada para aterrorizar a nuestra comunidad de inmigrantes y pone en peligro su derecho constitucional a acceder a los tribunales y a nuestro sistema judicial. La máquina de deportación de Trump no tiene lugar en nuestros juzgados, y los neoyorquinos no deben temer que sus familias se los roben cuando acceden a nuestros tribunales. Mi esposo y yo apoyamos la Ley de Protección de Nuestras Cortes, que permitirá que todos los neoyorquinos, sin importar su estatus migratorio, tengan acceso igual y seguro a las cortes de Nueva York.



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**Testimony of Sanctuary for Families
Submitted to the New York City Council, Committee on Immigration
Chair, Council Member Carlos Menchaca
April 10, 2019**

Good afternoon. My name is Yvonne Chen, and I am the Outreach Manager at the Anti-Trafficking Initiative at Sanctuary for Families, one of New York City's leading providers of comprehensive services exclusively for survivors of domestic violence and trafficking. We are so grateful to the Committee on Immigration and its Chair, Council Member Menchaca, for the opportunity to testify today—and for holding a hearing on the critical issue of immigration enforcement agents making arrests in our courthouses. Needless to say, this represents a threat to our fundamental constitutional right to due process, and is having a disastrous effect on our justice system's ability to serve some of our most vulnerable neighbors.

Sanctuary has long prioritized services to at-risk, isolated immigrants, including scores of undocumented individuals and families: our staff speak over 30 languages to ensure that we are able to provide culturally and linguistically competent services to clients. Sanctuary is home to the nation's largest immigration legal practice for domestic violence and trafficking survivors, and also provides a comprehensive range of shelter, clinical, workforce, and legal services to immigrants. Currently, over 75% of our adult clients are immigrants, hailing from more than 140 countries, and some 30-40% of them are undocumented.

As members of this Committee know, City Council has supported Sanctuary's work with immigrants in the Human Trafficking Intervention Courts (HTICs), New York State's innovative program that recognizes defendants charged with prostitution or unlicensed massage offenses may be crime victims. The HTICs offers a range of supportive services to defendants that, when accessed, provide a path toward dismissal of the underlying charges and the opportunity for a fresh start. Since 2014, Sanctuary and our pro bono partners have conducted information sessions and intakes for more than 1,000 immigrant

defendants in the Queens and Brooklyn HTICs. A high percentage of these individuals were identified either as victims of human trafficking or domestic violence or, in many cases, both. Many of these immigrant victims chose to continue with representation by Sanctuary and pro bono counsel, and we are happy to report that a number of them have legal status today as a direct result of the HTIC.

The success of the HTIC relies on confidentiality and absolute trust in the HTIC's mandate to identify and protect victims of human trafficking. When defendants meeting with counsel were able to speak freely, perhaps for the first time, their information not only assisted with securing legal status for themselves, but in some cases have led to the investigation and prosecution of their traffickers. This was a win-win situation: vulnerable immigrants received vital legal protections, and their decision to trust the legal system enabled law enforcement to shut down violent and dangerous trafficking operations, thereby protecting the community.

That trust in a safe, confidential environment, however, has been greatly eroded by the presence of ICE in state courts. As Sanctuary's Executive Director, the Honorable Judy Kluger, and Brooklyn District Attorney Eric Gonzalez noted in their Op-Ed in the *New York Daily News* in August 2018, "we now work in an atmosphere of fear and intimidation that discourages victims and witnesses, both documented and undocumented, from coming forward to report crimes."

This chilling effect applies to any noncitizen seeking justice through the court system. But the effect on domestic violence and trafficking survivors—characteristically isolated, traumatized, and frightened about what their abusers might do if they discover they are seeking legal assistance—is especially devastating. Our client, "Anna," was identified by defense counsel as a potential trafficking victim. "Anna" wanted to participate in a program to receive services but was too terrified to appear in court and to meet with Sanctuary staff in a safe location. She tried many times to overcome her fear to come meet with us, but in the end was paralyzed by fear of ICE each time and unable to meet. Unfortunately, the fear of detention and deportation, along with misinformation about immigration processes, led her to avoid further participation as well as in-person

meetings. After many adjournments for her case due to missed court appearances and attempts for sessions, there is currently a warrant out for her arrest.

While successful participation in the HTIC results in a dismissal of charges, victims like "Anna" that are too frightened to appear in court because of ICE activity risk further legal jeopardy for themselves. Victims are discouraged from accessing the very services that could help them leave situations of labor and sexual exploitation for good. For individuals and families already deeply mistrustful of systems that have failed them too often, the presence of ICE making warrantless arrests in courthouses creates the appearance that the New York State courts are part of the immigration enforcement system.

We strongly support the New York State Legislature's proposed Protect Our Courts Act, which would put an end to warrantless arrests of noncitizens both in the courthouses and in the vicinity before and after their court proceedings. And we thank the City Council and all members present today for their steadfast commitment to protecting the rights of immigrant New Yorkers. Your support of the Protect Our Courts Act will make this City safer for all of us, showing our most vulnerable neighbors that freedom, not fear, prevails in New York City.

Testimony: Susanna Saul, Managing Attorney
Hearing: Oversight -- ICE Out of New York Courts Resolution Calling on State Legislature
Cohosted: Committee on Justice System and the Committee on Immigration
Date: Wednesday, April 10, 2019

Good afternoon.

I want to thank the City Council and the Committee on Immigration and the Justice System for the opportunity to testify today. My name is Susanna Saul and I am a Managing Attorney 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 from the City's premiere law firms who enable our clients to access the legal system and obtain the justice they so deserve. We practice in the areas of family, matrimonial and immigration law. I want to focus my testimony today on the impact that the Protect Our Courts Act has on the pro bono attorneys we work with. We believe that this legislation restores the integrity of the court system as a place where pro bono attorneys can confidently assist our clients in seeking life-saving remedies for themselves and their children.

Our clients come from all five boroughs of New York City. Approximately 80% of our clients are domestic violence survivors and three-quarters of our clients are mothers. 70% of our clients were born abroad. The increase in ICE arrests at civil courts over the last couple of years has created a paralyzing climate of fear for our clients and a cloud of confusion for the pro bono attorneys we work with.

Before ICE started arresting people in the civil courts, our staff and pro bono attorneys would encourage their clients to seek help in the courts, no matter what their immigration status. We could confidently tell our clients and pro bono attorneys that they could access the courts and the protections to which they are legally entitled without regard to immigration status. We have had to shift our advice to our clients and to our volunteer attorneys since ICE has started arresting people in and around courts. Many pro bono attorneys have asked us about the risks of ICE arresting their clients in the courts when they show up for court appearances as witnesses in criminal cases or as litigants in family court cases. We have not been able to give them much reassurance because there is no judicial oversight of ICE in and around the courts. Pro bono attorneys who take on representation of non-citizens not only face the routine complications of highly fraught litigation, but the additional uncertainty of the ramifications of ICE in and around the courts. We don't know if ICE will be around the courthouse. We don't know if ICE will be targeting our client or another party to the case. Even if not targeting our clients, we don't know if ICE will make "collateral" arrests or question people whom they suspect of being in the country unlawfully. The most we can do is advise our clients and their pro bono attorneys of the risks of going to court and their rights in confrontations with law enforcement. We also help clients develop emergency plans for the care of their children in the event that they are arrested by ICE.

All of these conversations engender a sense of extreme uncertainty and fear in both our clients and the pro bono attorneys we work with.

While we cannot rule out ICE arrests in the civil courts completely, the Protect Our Courts Act will allow us to reassure our clients and the volunteer attorneys who work with them, that there are protocols in place so that these arrests are more limited in scope and transparent in nature. We cannot completely repair the eroded trust in the court system that ICE has created but this legislation will go a long way towards quelling the fear of courts that our clients, and the pro bono attorneys dedicated to representing them, have experienced.

Thank you



Testimony of Evan R. Bernstein

ADL New York / New Jersey Regional Director
Committee on Immigration and Committee on Justice System
New York City Council
April 10, 2019

Good afternoon. My name is Evan R. Bernstein, and as Regional Director of ADL's New York / New Jersey Office, it is an honor to be here today to support a New York City Resolution calling on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S. 425). This groundbreaking legislation would ensure equal access to New York State courthouses regardless of immigration status, upholding core tenants of our democracy, restoring confidence in the integrity of our criminal justice system, and protecting the safety and security of all New Yorkers.

Since 1913, the mission of ADL (the "Anti-Defamation League") has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all." Through legislative advocacy, litigation, and public awareness campaigns, ADL has called for fair and humane immigration policies since its founding. This includes consistently speaking out against practices and policies that undermine critical trust between law enforcement and the communities they serve.

That is why, as a proud member of the ICE Out of Courts Coalition here in New York, we remain extremely alarmed by the dramatic escalation in ICE enforcement in and around New York courthouses. Indeed, since 2016, the Immigration Defense Project

("IDP") has documented a 1700% increase in ICE operations in courthouses throughout the state. This has had a chilling effect on the reporting of crime and on the ability of victims and witnesses to access our justice system. Immigrants, who are already reluctant to interact with law enforcement in the current political climate, are even more afraid to come forward to report crime and seek assistance. This means domestic violence survivors aren't getting orders of protection, tenants aren't bringing complaints against abusive landlords, and victims of violent crime (including hate crimes) are denied their fair day in court.

Compounding the issue even further, we know that noncitizens are more likely to be the victims of crime relative to their U.S.-born counterparts, and that immigrants are particularly susceptible to crimes that prey on their vulnerable statuses. By way of example only, FBI data from 2017 revealed a 24 percent annual increase in hate crime attacks against the Latinx community, a community already the target of significant anti-immigrant bigotry.

When victims or witnesses are reluctant to come forward out of fear of deportation or other immigration-related repercussions, perpetrators are more likely to escape the justice system without consequence. Crime increases when perpetrators have nothing to fear. This vicious cycle makes it that much more difficult — if not impossible — for local police to rebuild the bonds of trust and cooperation within immigrant communities. This compromises the safety and security of us all.

The Protect Our Courts Act is critical to disrupting these trends. By making it unlawful for any law enforcement officer, including ICE, to arrest a person for a civil violation while that person is

going to, attending, or leaving court, absent a judicial warrant or court order, this legislation would help restore confidence in our criminal justice system and in its ability serve and protect us all.

We strongly urge the New York City Council to vote in favor of this Resolution and join the growing number of individuals, organizations and entities across New York State, including public defenders, district attorneys, retired judges, community-based organizations, unions, civil legal services providers, family defenders, anti-violence advocates, law schools, and civil rights groups, in calling on our elected officials to pass the Protect Our Courts Act.

Thank you.



**TESTIMONY BEFORE NEW YORK CITY COUNCIL'S COMMITTEE ON
IMMIGRATION**

Presented on April 10, 2019

My name is Jill Waldman and I am a Criminal Immigration Specialist in the Immigration Law Unit (ILU) at The Legal Aid Society (LAS). Throughout our more than 140-year history, LAS has been a tireless advocate for those least able to advocate for themselves. Over 2,000 staff members operate across all five boroughs in our Civil, Criminal Defense, and Juvenile Rights Practices – guided by the fundamental principle that nobody should be denied justice because of poverty. Combining the expertise gained from representing clients across diverse areas of law with the broader public policy perspective of an advocacy group, we lift up marginalized individuals and remove the barriers preventing them from advancing in New York City. Part direct legal services provider, part social justice defenders, we have a unique ability to go beyond individual issues to effect change at a societal level.

Since the start of the Trump Administration, LAS has been on the front line of efforts to defend New Yorkers against an overtly anti-immigrant federal administration that threatens to tear our communities apart. This year alone, we filed over two dozen habeas petitions in federal court, seeking to end prolonged detention by U.S. Immigration and Customs Enforcement (ICE) and to prevent imminent deportation. We filed multiple class actions, including one on behalf of young people 18-21 years of age who were wrongfully denied Special Immigrant Juvenile Status by U.S. Citizenship and Immigration Services (USCIS), and another on behalf of children forcibly separated by their families and facing removal by ICE. We joined amicus briefs against the administration's harmful policies on administrative closure and continuances in immigration court, on access to abortions by young women detained by the Office of Refugee Resettlement, on the immigration consequences of vacated criminal convictions, and on the legality of Deferred Action for Childhood Arrivals.

Keeping ICE Out of New York Courts

Substantially increased ICE enforcement activities have been a further facet of the federal administration's overtly anti-immigrant policies. Since 2016, ICE has shifted its focus from individuals who pose a threat to national security to targeting immigrants indiscriminately. This shift in enforcement priorities has been combined with a refusal to exercise discretion and an increasingly belligerent and adversarial approach to enforcement. This shift is part of a broader, hostile campaign by the federal administration against marginalized communities. As part of this new, hyper-aggressive approach, ICE has substantially increased its enforcement activities at courts across New York, and has abducted many LAS clients, including both those fighting their own cases and those appearing as witnesses. Since 2016, ICE courthouse operations have increased by over 1700%: in 2018, there were over 200 ICE courthouse operations, 178 of which involved arrests – up from only 11 in 2016. The vast majority of these operations are in New York City, with Brooklyn and Queens the top two boroughs for ICE courthouse enforcement.¹ These operations target an already marginalized and underserved population, and create even more inequality and barriers to justice.

This astronomical increase in ICE courthouse enforcement activities has severe negative impacts for vulnerable populations across New York, and there is a significant chilling effect among defendants, victims, and witnesses. Non-citizen defendants frequently feel pressured to take unfavorable pleas rather than fight their cases in court, for fear that repeated court appearances will expose them to apprehension by ICE. Similarly, non-citizens will sometimes forego rehabilitative

¹ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* at 6 (Jan. 2019), <http://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>

programs, such as drug and alcohol treatment programs, in favor of jail time for the same reasons. Finally, defendants are often apprehended on their way to court and are unable to communicate with their attorneys. As a result, Judges will issue warrants, leaving the non-citizen with an unresolved case and active warrant when they appear before an immigration judge. These non-citizens are then likely to face prejudice in immigration court due to their unresolved case.

Further, immigrant New Yorkers are often an extremely vulnerable population, and noncitizens nationally are more likely to be victims of crime than their U.S.-born counterparts. Immigrant communities in New York are more vulnerable to particular crimes that prey on their precarious immigration statuses – including, among others, wage exploitation, fraudulent housing schemes, and domestic violence. ICE’s increased courthouse operations make our clients extremely reluctant to report crimes or engage with the justice system out of fear that they may risk exposing themselves or their families to enforcement actions by immigration authorities. These populations often already experience high levels of institutional distrust and courthouse immigration enforcement operations further marginalize these populations and create additional barriers to accessing vital public services. This is particularly the case for survivors of gender-based violence, who through being discouraged from seeking legal protections are made more vulnerable to abusive partners and prevented from escaping cycles of coercive control and violence. ICE’s highly publicized tactics embolden abusers who use threats of deportation to keep their clients from seeking legal redress. At the same time, the reluctance of crime victims to engage with the criminal justice system means that it is unable to operate effectively and perpetrators are increasingly able to operate with impunity and continue exploiting an already marginalized population.

The impacts of ICE courthouse operations extend far beyond the criminal justice system and immigrant New Yorkers are also increasingly discouraged from accessing New York State civil courts. According to one survey of legal service providers and advocates in New York, some 56% of respondents said that their clients had expressed reservations about filing a housing court complaint due to fear of ICE.² Seeking recourse via the civil courts is often one of the only avenues available to vulnerable New Yorkers to resolve their problems in vitally important areas such as housing. However, increased immigration enforcement actions create additional barriers to accessing the court systems - often forcing immigrant New Yorkers to make the impossible choice between not resolving issues that keep them trapped in cycles of poverty or risking potential deportation for themselves and family members. Through conducting its courthouse enforcement operations, ICE has succeeded in weaponizing what are intended to be independent public institutions against the most marginalized in our city.

The New York State “Protect Our Courts Act”

Courthouse enforcement operations are a central component of a broader campaign by the federal administration aimed at terrorizing vulnerable immigrant communities and preventing them from advancing across our city. ICE presence in the courts fundamentally runs counter to the principal of equal justice for all. We wholeheartedly support this proposed law, which would help protect vulnerable individuals’ access to the court system and impair ICE’s ability to continue its indiscriminate campaign against immigrant New Yorkers.

² Immigrant Def. Project, Key Findings: ICE in NYS Courts Legal Service and Advocates Survey, <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-out-of-courts-survey-final-1.pdf>.

The “Protect our Courts Act” would codify the long history of judicial decisions prohibiting the civil arrest of those attending court through requiring a judicial warrant or court order to conduct a lawful civil arrest of an individual going to, remaining at, and returning from court. Requiring judicial warrants would prevent ICE from acting unilaterally and ensure that it is only able to act in cases where a neutral, federal court judge has determined that there is probable cause for an arrest. This would place significant restrictions on civil arrests of those attending court and protect parties, potential witnesses, and family of household members of a party or potential witness.

In addition to protecting clients appearing in criminal proceedings, this act will also protect a wider group of vulnerable clients: Individuals who received deficient legal advice and representation and are eligible for post-conviction relief under New York Criminal Procedure Law section 440 will be able to pursue their claims without fear of ICE apprehension in the courthouse. Additionally, domestic violence survivors appearing in either Criminal or Family Court to seek orders of protection against their abuser would be protected as would parents currently afraid of appearing in Family Court for child support, custody, and/or visitation petitions. This act should dramatically reduce the number of courthouse arrests and help to reverse the chilling effect of ICE’s current stalking of our courthouses - ensuring that the constitutional right of all New Yorkers to access the court system is protected to a greater degree. It would also help rebuild confidence in the legal system among our client communities and restore the courts to their rightful position as a safe and independent place to protect and vindicate their rights. The act would also curtail the ability of ICE to continue its politically motivated attacks on marginalized communities across our city through which they force our clients to live in a climate of constant fear. Without intervention, continued ICE enforcement operations in New York risks creating two classes of New York residents, where only

some are able to benefit from the legal protections and opportunities for redress afforded by the court system.

Respectfully submitted,

Jill Waldman
Criminal Immigration Specialist
Immigration Law Unit
The Legal Aid Society



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

**Richard Bailey – Supervising Attorney, Immigration Practice
BROOKLYN DEFENDER SERVICES**

Presented before

The New York City Council

Committees on Immigration and the Justice System

Oversight Hearing on ICE Out of New York Courts

Resolution 0828-2019 regarding Protect Our Courts Act (A.2176 / S.425)

April 10, 2019

My name is Richard Bailey. I am a Supervising Attorney in the *Padilla* Unit in the Immigration Practice at Brooklyn Defender Services (BDS). I thank the City Council Committees on Immigration and the Justice System, and in particular Chair Menchaca and Chair Lancman, for this opportunity to testify about the impact of Immigration and Customs Enforcement (ICE) in the New York City Courts.

BDS is one of the largest legal services providers in New York City, representing approximately 30,000 low-income Brooklyn residents each year who are arrested, facing child welfare allegations or challenging deportation. Since 2009, BDS has counseled, advised or represented more than 10,000 immigrant clients. About a quarter of BDS' criminal defense clients are foreign-born, roughly half of whom are not naturalized citizens and therefore at risk of deportation or other disproportionate collateral consequences as a result of their criminal case.

BDS' *Padilla* Unit, named after the US Supreme Court case that held that effective assistance of counsel requires competent advice about the impact of a guilty plea on a defendant's immigration status, advises BDS' criminal defense attorneys and their noncitizen clients on the immigration consequences of guilty pleas to help avoid or minimize negative immigration consequences. Part of the consultation and analysis about immigration consequences in criminal proceedings involves evaluating a noncitizen defendant's exposure to being arrested by ICE, detained, and placed in immigration proceedings. These consequences often result from being charged or simply arrested on particular offenses, and occur even if the charges remain pending.

ICE in Courts

Immigration and Customs Enforcement (ICE) and its predecessor, the Immigration and Naturalization Service (INS), has long relied upon state and local criminal legal systems to find noncitizens who may be removable in order to detain them and subject them to the civil deportation process. Historically, ICE and the legacy INS would identify undocumented or deportable people in jails and prisons and issue an "immigration detainer" to hold a person for up to 48 hours beyond their mandated release time so that ICE could assume custody of the person and transfer them to an immigration detention facility.

With the NY City Council's passage of groundbreaking legislation that removed ICE from Rikers Island and prevented the NY Department of Corrections, NYPD, and Department of Probation from unlawfully detaining noncitizens without a judicial warrant, we saw a reduction in detention and deportations. However, under the Trump Administration, we are experiencing the harshest and most broad-sweeping immigration enforcement regime in modern history, as well as an unprecedented undermining of due process in immigration courts. On the national level, we are witnessing the highest rate of immigrants in detention in history at 48,000¹ and the highest immigration court backlog at over 1 million cases.²

Since we last testified about ICE arrests in courts, arrests in and around New York City courthouses have increased 1,700%, according to the Immigrant Defense Project report.³ The majority of people caught up in this wave of enforcement were reporting to court on low-level offenses, many for traffic violations. Since the beginning of 2019 alone, Brooklyn Defender Services has had more than 18 clients arrested by ICE in or outside the courthouse or in the community because of pending criminal allegations, mostly misdemeanors.

¹Patricia Alvarez, *Budget talks sticking point: How many people ICE can detain*, CNN, February 2019, available at <https://www.cnn.com/2019/02/11/politics/ice-detention-immigration/index.html>

²TRAC, Syracuse University, *Immigration Court Backlog Surpasses One Million Cases*, November 2019, available at <https://trac.syr.edu/immigration/reports/536/>

³Immigrant Defense Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018*, January 2019, available at <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>

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 naturalized citizens. They are often confused about the entanglement between ICE and the criminal legal system. They express fear of collusion between ICE and other officials, including court staff, judges, prosecutors, and even their own defense counsel. BDS's in-house immigration attorneys, who specialize in advising our clients about the immigration consequences of criminal legal system contact, are routinely required to describe to our clients the very real possibility of ICE's presence at court as well as the serious and definite risks of not appearing for their proceedings.

We are certain this fear, which is perpetuated by ICE's deliberate 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 are mounting a defense against criminal allegations, potentially 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.

Client Stories

- Stepping onto 120 Schermerhorn Street in front of Kings County Criminal Court should be a nonevent. For Beth, an asylum-seeker, when two large men put their hands on her without identifying who they were, it catapulted her back to memories of being viciously abused – grabbed, attacked and subdued – her entire life. First by her father as a child, then her relatives when she came out as a lesbian, and most recently, by a relentlessly abusive ex-girlfriend. She never wants her 6-year-old son to feel the same sense of abandonment that haunts her, and was determined to be home when he got back from school that day. Literally grasping for her freedom, Beth clutched onto the waist of her immigration attorney who had accompanied her to court that day. In the midst of the physical scuffle, the men finally identified themselves as ICE, but only by taking out their badges and waving them around.
- Last fall, another BDS client was arrested by ICE outside Kings County Criminal Court. The client appeared for his hearing and as he was exiting the courthouse two men approached him and said they were arresting him. The client asked if they were ICE, but they did not respond. The client felt like he was being kidnapped because they did not identify themselves or show a badge.
- On another occasion, a Brooklyn Supreme Court justice excused our client's appearance for the day, but instructed the attorney to personally serve the client with an order of protection. The attorney thereafter arranged to meet her client in a McDonald's a few

blocks from the court. Unbeknownst to her, undercover ICE agents had followed her out of the courthouse. After meeting with her client and serving him with the protection order, the attorney and the client departed from the McDonald's and went their separate ways, at which point five ICE officers suddenly surrounded the client and arrested him. The client, who is married to a U.S. citizen, languished in immigration detention for more than four months before being scheduled for his first hearing in immigration court.

Recommendations

The surest way for local policymakers to protect immigrant New Yorkers from federal immigration enforcement is to set firm limits on federal intervention in the state criminal legal system. Ending so-called "Broken Windows" policing is urgent, now more than ever, as the Trump Administration uses 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 and court appearances.

Resolution 0828-2019 Regarding "Protect Our Courts Act" (A.2176 / S.425)

BDS strongly supports the "Protect Our Courts Act," which would place significant restrictions on civil arrests of those attending or traveling to or from court. ICE's courthouse arrests have undermined our clients' fundamental right to have their fair day in court. New York State Legislators have the power to enhance the safety of our courthouses and take important steps towards ensuring that all New Yorkers, regardless of immigration status, can actively participate in their own cases without the specter of fear hanging over their heads. We ask the City Council to pass Resolution 0828-2019 calling on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S.425), in order to protect certain interested parties or people from civil arrest while going to, remaining at, or returning from court proceedings.

In addition to the proposed resolution, we call on the Council to consider the following campaigns that would limit immigrant New Yorkers' contact with the criminal legal system:

I. End Arrests of Human Trafficking Victims and Decriminalize Sex Work

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, family separation, and broken communities. Courthouse arrests are just one of many ways this occurs. Diversion courts like Human Trafficking Intervention Courts (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 should not have to fear ICE arrest at a HTIC part, but policymakers should also ask why victims of human trafficking are 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 purportedly aimed at helping people leave the sex trade. BDS is a member of the Decrim NY Coalition, which is working to decriminalize sex trade related offenses, decarcerate people who have been arrested for sex trade related offenses, vacate criminal records related to prostitution, and protect the health and safety of those involved in the commercial sex industry by circumstance, coercion, or choice, and those exploited in all forms of labor. We encourage the City Council to work with Decrim NY to hold an oversight hearing on Comprehensive Decriminalization of the Sex Trades.

II. *Provide Equal Access to Drivers Licenses for All*

Many of our clients become entangled in the criminal and immigration legal systems simply for minor traffic violations. Currently, over 750,000 undocumented immigrant New Yorkers over the age of 16 are barred from obtaining driver's licenses due to their immigration status.⁴ Without access to licenses, immigrants are unable to register and insure their vehicles or obtain and carry valid identification. Unlicensed immigrants often risk driving to meet their basic daily and travel to school, worship, and work. Immigrants without valid identification or permission to drive fear simple interactions with police, such as a traffic violation, will put them at risk of arrest and deportation. This leads to avoiding police, even when they are a victim or witness of a crime. We call on the New York City Council to work together with the New York State Legislature and the Governor to ensure equal access to driver's licenses by passing legislation S.1747/A.3675 to ensure that standard licenses be accessible to all state residents, regardless of immigration status.

III. *Support Legalization and Regulation of Marijuana Access*

Low-level marijuana possession offenses make up the fourth and fifth most common arrest charges in New York City. 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. When issued a DAT or summons in lieu of arrest, our immigrant clients are placed at risk when they present at court to pay a fine—an admission of guilt—without ever speaking to an attorney or receiving a *Padilla* advisal. 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. We thank the Council for your attention to this issue and for calling on the NYS Legislature to pass the Marihuana Regulation and Taxation Act (S.1527/A.1617) which would legalize, regulate, and tax the sale of marijuana in New York State.

⁴ New York Immigration Coalition, Green Light NY: Driving Together, available at <https://greenlightny.files.wordpress.com>

IV. *Limit Family Separation through ending Automatic Orders of Protection*

In Brooklyn Criminal Court, full Orders of Protection are typically issued at arraignments in all cases involving a domestic dispute, assault, or endangerment of a child. These routine Orders of Protection, in effect, render many clients homeless; they are unable to return home, go near, or speak to the named family member. For undocumented clients, without access to legal employment or identification, there are many barriers to accessing housing when unable to return home. This presumption of family separation is often triggered by well-meaning mandatory reporters making judgements about Black and Latinx families.

If then placed in immigration proceedings, clients who received full Orders of Protection face the bias of an immigration judge who are not be familiar with the routinized issuance of orders in Brooklyn. Immigration judges look at our clients with an idealized expectation of how Americans treat one another; a DV or endangering the welfare of a child charge are interpreted as inability to adapt to American culture. A judge may be unwilling to set Bond in a detained deportation proceeding due to an Order of Protection, which was likely set at the request of the DA and not a victim.

Conclusion

Our immigrant clients and their family members are rightly terrified to appear in court. But they cannot modify their immigration status if they have an open criminal case, and they cannot resolve their criminal or family case if they fail to appear in court. The impact of enforcement policies at the federal level are still felt every day by our immigrant clients, their families and New York City communities. New Yorkers must come together and make the necessary changes to build the sanctuary as promised.

Thank you for considering my comments. If you have any questions, please feel free to reach out to Kathleen McKenna, Policy Social Worker, at 718-254-0700 ext. 210 or kmckenna@bds.org.

**The Bronx
Defenders**

**Redefining
public
defense**

**New York City Council
Committee on Immigration Jointly with the Committee on Justice System
Hearing re: Oversight - ICE out of New York Courts
April 10, 2019
Written Testimony of The Bronx Defenders
By Rosa Cohen-Cruz**

Good afternoon, my name is Rosa Cohen-Cruz and I am a *Padilla* Supervisor in the Immigration Practice at The Bronx Defenders. In this role I oversee the practice of advising non-citizen defendants on the immigration consequences of their criminal cases. The Bronx Defenders pioneered the model of immigration services embedded in a public defender office over fifteen years ago. Today, our robust immigration practice is comprised of over forty attorneys, social workers, advocates and administrators. We provide deportation defense in both detained and non-detained court settings. Our *Padilla* practice provides advice and counsel to nearly 1,000 non-citizen clients each year throughout the pendency of their cases in both Criminal and Family Court to avoid or mitigate negative immigration consequences and we are sometimes able to improve our clients' immigration statuses, and help them become lawful permanent residents or U.S. citizens. I am testifying today to voice our support for the resolution calling on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S.425), in order to protect the due process rights of all New Yorkers, regardless of immigration status.

Introduction

Over the past two years, we have seen a disturbing trend of our clients being arrested by ICE in and around New York courts. In the Bronx we witness ICE agents using the court house as a venue to surveil New York's immigrant residents. ICE agents sit in court rooms and listen to private attorney/client conversations in the hallways to identify targets. As defenders, we have watched, often helplessly, as ICE agents use scheduled court appearances to arrest and detain our clients who have come to court to defend themselves. The rampant arrests of New Yorkers who are responsibly attending court hearings damage the fair delivery of due process to our immigrant community members, creating an unwelcoming and indeed terrifying environment for non-citizens accused of crimes.

The practice of arresting non-citizens in court creates fear and distrust in the criminal justice system and inhibits public defenders ability to zealously represent their clients in criminal court. The resulting fear of courts undermines the legal system in the following ways: 1) clients accept

unfavorable plea deals to avoid coming to court; 2) ICE uses excessive force and disregards due process and right to counsel; and 3) open cases create delay and disruption to the immigration court process. The Protect our Courts Act provides important measures to maintain courts as safe spaces for all New Yorkers, regardless of immigration status, thus equally protecting everyone's right to fairly access the court system.

ICE Arrests in Court Leads to Bad Case Resolutions

Overwhelmingly, our non-citizen clients fear ICE arrests at each scheduled court date and feel an urgency for hasty resolution. The inordinate pressure this causes interferes with the criminal court process and undermines the proper administration of justice. As *Padilla* attorneys, we must incorporate the risk of an ICE arrest in court when advising a client who is considering whether to accept a plea or take a case to trial. Many clients choose to accept pleas so they will not need to return to court even if that plea is likely to get better overtime or they are likely to be successful in winning their case at trial, because pursuing a case to trial will require multiple court appearances over a longer period of time.

Clients who choose to quickly resolve their case with a plea to avoid having to come back to court often have to accept unfavorable dispositions. Our office has represented clients who were likely to win at trial but instead plead guilty to avoid having to return to court. We have had clients with no criminal record resolve their case with a misdemeanor at arraignments when a non-criminal violation would have been likely at a later court date. At times clients have even accepted plea offers that result in the loss of future eligibility for lawful status or relief from deportation. Some clients have chosen to accept a plea offer with an incarceration sentence instead of a program or class because they did not want to have come back to court to demonstrate compliance. These clients knew that a jail sentence meant they would be returned to their families after a time-limited period of incarceration, rather than facing the risk that at their compliance dates in court they would be arrested by ICE officers who could detain them indefinitely until deportation. What does it say about our city that our jails provide more sanctuary to immigrants at risk of deportation than our courthouses?

The Protect our Courts Act will provide immigrant defendants with the security to focus on the trajectory of their criminal cases without the additional fear of ICE detention by declaring unlawful the civil arrest of an individual attending a court proceeding while going to, remaining at, and returning from court, absent a judicial warrant. This resolution messages that all New Yorkers deserve to feel that the courthouse is a safe space where they can experience the same freedom as U.S. Citizens to make these potentially life-altering decisions.

ICE Arrests in Court Disregard Clients' Rights

The fear of an ICE arrest is justified. The Bronx Defenders has witnessed our clients arrested by ICE at the Bronx Hall of Justice. We have had clients arrested with excessive force. I have watched as four or five ICE officers converged upon a client inside the court and violently

pinned him against the glass doors of the entrance despite the fact that he was complying with officer orders.

ICE officers demonstrate no respect for the right to counsel. ICE does not alert attorneys when they have arrested a client in court. ICE has arrested clients mid-conversation with attorneys, forcing our clients into cars and driving off. ICE officers then attempt to question our clients outside of attorney presence -- even after their *Padilla* counsel has invoked their rights to silence and counsel -- then introduces any statements obtained against our clients in immigration court.

ICE uses our courts to detain our clients, but then demonstrates no regard for our justice system by routinely failing to produce them to their court appearances. At The Bronx Defenders, the majority of immigration attorneys who represent clients detained by ICE who have open criminal cases report that ICE has not produced their clients for criminal court hearings.

Essentially, ICE officers treat our clients as less than human during court house arrests. They have arrested our clients and taken them away from their young children who had accompanied them to court. For one client, after recognizing an ICE officer following us in the hallways of court, I had to facilitate an opportunity for my client to hug his children goodbye in the courtroom before being arrested, thrown into a vehicle outside the courthouse, and placed in immigration detention, where he remains today, seven months later.

Importantly, The Protect our Courts Act prohibits entry into state courthouses for purposes of civil immigration enforcement absent a judicial warrant or court order, and carefully defines the process by which the state courts must execute this provision and review the requisite warrants and order. By providing more process and scrutiny for civil arrests in court, the Protect our Courts Act messages that the protection of individual's rights in accessing court is critical, and violation of this process can result in penalties to ICE.

Courthouse Arrests Disrupt Immigration Proceedings

When a client is arrested by ICE it begins a kafkaesque cycle of denials to their due process. As already mentioned, after an arrest in court, ICE keeps our clients in detention and the criminal case remains open while ICE rarely brings our client to court to resolve it. Then, after weeks or months of detention the client has a bond hearing in immigration court. At this hearing, bond is denied because the client is perceived to be a danger because of their open criminal case that they were never produced to resolve.

This has happened where clients were offered disorderly conduct violations that they were never produced to court to take. The clients denial of access to the court resulted in denial of bond and lengthy separation from their family.

The Protect our Courts Act authorizes judges to issue appropriate orders to ensure individuals' access to the courts, ensuring that individuals will be available to resolve their case and not be forced to continue in immigration proceedings with unresolved but relevant criminal cases.

Moreover, if ICE agents violate the rules laid out in The Protect our Courts Act and executes a courthouse arrest without a judicial warrant it will create a stronger basis termination of the immigration case.

Conclusion

In sum, ICE's arrest practices pit the fear of deportation against the desire to exercise one's rights in the criminal justice system. Then, when our clients are swept up in courthouse raids before they have the opportunity to resolve their criminal matters they languish in ICE detention with open criminal charges, which often prolong the amount of time they spend in deportation proceedings. The Protect our Courts Act addresses this problem by ensuring that courts are safe spaces for all New Yorkers, and creating measures that allow for judges to exercise more control over their cases in the face of an ICE arrest.

Accordingly, we call on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S.425), in order to protect the due process rights of all New Yorkers, regardless of immigration status.

My name is Mae Lee. I am the executive director of the Chinese Progressive Association.

FOR THE RECORD

We serve new immigrants in the Lower East Side and Chinatown area with English classes, legal assistance, help with navigating and finding resources. Many are new immigrants who have been in this country 5 years or less. Some are undocumented

We partner with the Asian American Federation's Liberty Defense Fund project and provide immigration services in Chinatown.

According to a February 19, 2019 report from Comptroller Scott Stringer, "The Demographics of Detention" Chinese immigrants make up the largest nationality of New York City immigrants with immigration court proceedings, with over 10,000 immigration cases (21 percent of cases) begun since FY 2016.

Community residents often have to go to court – for example housing court if they are having a dispute with their landlord or criminal court if they are a crime victim. Our community needs to be assured that they will not be detained by immigration authorities if they are in court to testify as a crime victim or against a landlord who might be denying them basic services. As it is, being in a courthouse can be an intimidating experience for anyone. Without protections such as those provided by the proposed “Protect Our Courts” act, we know that many of our community members would be afraid to show up in court even with a lawyer.

We commend the NYC Council Committee on Immigration and the Committee on the Justice System for holding this hearing. We cannot wait for people to be arrested or detained while going to court on important matters. We need the protections now.



CHINESE
PROGRESSIVE
ASSOCIATION

FOR THE RECORD

230 Grand Street - Suite 504 New York, New York 10013 212-274-1891 cpanyc@cpanyc.org

Testimony
New York City Council Committee on Immigration
New York City Council Committee on the Justice System
April 9, 2019

My name is Mae Lee. I am the executive director of the Chinese Progressive Association.

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CHINESE PROGRESSIVE ASSOCIATION TELEPHONE/WALK-IN LOG

CHINESE PROGRESSIVE ASSOCIATION TELEPHONE/WALK-IN LOG							How did you hear about CPA
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FOR THE RECORD

NEW YORK CITY COUNCIL FISCAL YEAR 2019

Hearing before the Joint Committee on Immigration & Justice System
Testimony Regarding Bill No. A11013A

April 10, 2019

Presented by:

Atossa Movahedi, Esq.

Director of Legal Services & Development, Domestic Violence Project at the Urban Justice Center

Contact

Amovahedi@urbanjustice.org

646.602.5618

Good afternoon to the Council and thank you to the Joint Committee on Immigration & Justice System for holding this hearing and allowing us to testify regarding the passage of Bill No. A11013A, also known as the "Protect Our Courts Act". Your help and partnership in addressing the needs of immigrants throughout NYC is critical to the stability of our city.

My name is Atossa Movahedi, I am the Director of Legal Services & Development at the Urban Justice Center's Domestic Violence Project. At my organization, we hold steadfast that being free of domestic violence is a basic human right, and as such our project serves all survivors of intimate partner abuse. Over 60% of our clients are non US citizens, all of which are survivors of intimate partner abuse. While our direct services focus on representation on family and immigration law matters, our clients almost always present with a wide range of issues. They are complaining witnesses on criminal matters, victim-defendants facing criminal charges, petitioners and respondents in family court, tenants in housing court and victims of identity theft and other crimes. While we help them navigate all of these intersecting systems, the presence of ICE in our community courts in NYC has impacted our ability to effectively do so.

Every day that we delay passage of the Protect Our Courts Act is another day we allow abusive partners to brutalize immigrant survivors. Failing to take action is a clear message that our legal protections are an illusion of safety, reminiscent of the very government systems many fled. Even when victims muster the strength to step out of the shadows to appear in court, safety is never guaranteed. We always conduct a safety analysis when advising clients whether or not to file in court. The difference is that previously, that safety analysis only included one bad actor- their abusive partner. Now, it also includes ICE. We are asking immigrant survivors to choose between enduring blows from their abusers or exposing themselves to potential deportation and separation from their families.

Client Story:

As an example of the direct impact of ICE in NYC courts, I want to tell you about what happened to one of our own survivors. One of our clients had just received the relief they requested from court when an ICE officer, who had been sitting in the back of the courtroom, followed them outside and arrested them. That survivor's worst fears and paranoias have been confirmed. That survivor is now hyper focused on being followed by ICE and has lost the trust of the systems in place to protect them. That survivor is now seriously considering reuniting with their abuser. In seeking safety, they lost their freedom.

Currently, in order to provide competent legal advice the new norm involves screening individuals who are at high risk for removal before filing in family court. Ethically, in my role as the Director of Legal, I feel compelled to have our family court clients screened for immigration issues. While luckily my organization benefits from an interdisciplinary team of immigration and family law, I often wonder how the 18b panel and other attorneys are doing this due diligence without the same support we have. Screening for these issues is no easy feat- it takes time, expertise and resources. While the necessity of these screenings is not eliminated with this legislation, passage of the bill would enable us to more accurately calculate the risk for our clients to file.

This is an access to justice issue. The public deserves order and reliability within the legal system. We have a responsibility to provide real access to justice, not just perceived access. The very purpose of this bill is to facilitate continued access to justice systems without fear of being punished. It is true that even with passage of the proposed bill, immigrants will still be vulnerable to ICE arrest in their communities. Inside the courthouses where we have the power to ensure smoother access to justice, we can and we must. You have repeatedly heard about the pervasive chilling effect that ICE presence in the courts has had. The Act protects immigrant New Yorkers from being arrested when going to, remaining at, or returning from a court appearance absent a judicial warrant authorizing such arrest. It provides guidelines and order. With that, it permits us to more confidently advise our clients.

For domestic violence clients, while we cannot protect them inevitably from ICE, we can allow them a venue to pursue a tool to protect them from one evil in their lives- their perpetrators. In passing this act, we can more confidently encourage victims to seek help. We can better reach victims who are too scared of leaving their abusers given the current climate. We can promote our legal remedies as ones that they can avail themselves of without unjustified intrusion during that process. At the very least

when they leave a courthouse, they are leaving a little more empowered and a little more secure in their lives.

Advocates can never ensure safety from perpetrators, but now we cannot even ensure victims a legal process free from our own government's willful and chaotic disruption. These clients are often not differentiating the differences between city, state, federal government or the judiciary. Government is government. If there is a chance they may be arrested while enlisting the assistance of the court, why should they be expected to trust any other governmental entity? This policy is one that breeds pervasive mistrust which consequentially disrupts society as a whole. The chilling effect undermines decades of advocacy that we as a community have all fought so hard for.

ICE in the court impacts every individual walking into the courthouse- not just immigrants. Community courts are often the only means of accessing justice for working poor and indigent families. By the time you find yourself in one of these courts, you are already desperate for help. You're most often already marginalized, discriminated against and improvised. While people wait for their cases to be heard and see someone apprehended by ICE, it spreads a feeling of panic and instability. It sends a message that you are not safe to seek help without being punished. It creates disorder in the one place where we ought to expect order. Passage of the bill will allow us to debunk the damaging rumors that run rampant in the communities preventing people from seeking help or reporting crimes. By prohibiting random ICE arrests in court we can provide know your rights workshops that genuinely allow folks to meaningfully exercise their right to file in court without fear. It will allow us to provide competent legal advice and to adequately weigh pros and cons in seeking legal intervention that go beyond ICE arresting people in the process.

In failing to pass this Act, we are telling immigrants to "proceed at their own risk"- a common theme in their lives. This is not the message New Yorkers want to send. The message to immigrants is not only that you are invisible, but that you are not worth protecting. The message to perpetrators everywhere is that it's ok to commit these crimes; that you have free reign to inflict whatever pain, torture and abuse you want on immigrant families. The message to the public is that we value being documented over protected. In fact, by failing to sign this Act, we confirm threats we hear so often that if you seek help, ICE will get you. By failing to act we are providing them, both perpetrators and ICE, a means to target the most vulnerable New Yorkers.

The Protect Our Courts Act puts the onus on ICE to obtain judicial warrants before executing arrests inside or around courthouses. Its impact is significant for all members of society considering enlisting the help of community courts. The result of the legislation is a semblance of order and predictability while people seek relief in court. That is the very least that we, as advocates and law makers, can promise our community members.

The Council has been a champion for survivors of DV and for immigrants in general. We urge you to pass this resolution calling for the State legislation to pass this bill and enable true access to justice.

To the entire Council, thank you for your dedication and commitment on these issues that affect all of us.



FOR THE RECORD

New York City Anti-Violence Project
116 Nassau Street, 3rd Floor
New York, New York 10038
212.714.1184 voice | 212.714.2627 fax
212.714.1141 24-hour hotline

Good afternoon, Chair Menchaca and thank you to the Committee on Immigration and Committee on the Justice System for hearing my testimony today on the importance of the **“Protect Our Courts Act”** (A.2176/S.425). My name is Virginia Goggin and I am the Legal Director at the New York City Anti-Violence Project (AVP). AVP’s mission is to empower lesbian, gay, bisexual, transgender, queer, and HIV-affected communities and allies to end all forms of violence through organizing and education, and supports survivors through counseling, direct legal services and advocacy. We envision a world in which all LGBTQ and HIV-affected people are safe, respected, and live free from violence. This of course, includes our immigrant communities who can be the most marginalized in the LGBTQ community.

Our Legal Department has seen a 35% increase in immigration cases since 2017. Most of these clients have experienced intimate partner violence and/or hate violence here in New York City. We see over and over that these survivors of violence are fearful of accessing our courts, which are there to keep them safe. Many clients who would normally access Family Court for an Order of Protection do not feel safe as their abusive partners have threatened time and again that they will contact ICE and make sure they are deported. Others who have witnessed violence, or been victimized themselves by hate violence are fearful of coming forward and interacting with the criminal justice system because they are aware that ICE has executed arrests in and around criminal courts.

As you know, there has been a dramatic increase in ICE courthouse activity since 2016 (over 1000% increase). This discourages immigrant victims, both documented and undocumented, from coming forward to report crimes or testify as witnesses of crimes.

Our LGBTQ immigrant communities, and especially our transgender immigrant communities are especially vulnerable as they are historically targeted by law enforcement and therefore at risk of becoming involved in the criminal system.

In a recent case of a gay immigrant man who experienced intimate partner violence (both physical and emotional), our client's abusive partner's *attorney* boasted that our client's identity documents were hand delivered to the ICE office at 26 Federal Plaza. In an email received from this attorney, he wrote, "...all of [your client's] important documents were left off at the ICE office in the custody of the supervising ICE agent...my client will continue to hand deliver everything, including but not limited to [your client's] W-2 forms to the same office." Needless to say, despite his eligibility to petition the Family Court for an Order of Protection, this client declined as he is fearful that an ICE officer will be there waiting to arrest, detain him and ultimately return him to a country where he has experienced violence, discrimination and death threats because of his sexual orientation.

I respectfully ask that you pass the "**Protect Our Courts Act**" so that New York City can become a safer place for all immigrant communities including LGBTQ and HIV-affected immigrant communities. Thank you.

Virginia M. Goggin
Director of Legal Services, New York City Anti-Violence Project
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April 10, 2019

**BRONX DISTRICT ATTORNEY DARCEL D. CLARK
STATEMENT TO CITY COUNCIL**

Res - Calling on the State Legislature to pass, and the Governor to sign,
The "Protect Our Courts Act" (A.2176 / S.425)

“I have been very vocal in my support for the “Protect Our Courts Act,” which would prohibit Immigration and Customs Enforcement from making civil arrests in and around state courthouses without a judicial warrant. Crime witnesses, survivors and their family members already deal with enough trauma and bravely show up to court. They should not have to worry about getting arrested in the courthouse. That is where justice is.

“Arrests by ICE could have a chilling effect on getting witnesses to assist in our cases, potentially resulting in a threat to public safety. We need everyone to cooperate in our fight to keep the Bronx safe, and we encourage people to take part in the criminal justice system. The “Protect Our Courts Act” will help make the courts more accessible to people regardless of their immigration status.”

#



New York County District Attorney's Office

Written Testimony by Manhattan District Attorney Cyrus R. Vance, Jr. for City Council

Committees on Immigration and the Justice System

Oversight Hearing on "ICE Out of New York Courts"

April 10, 2019

Chairs Menchaca and Lancman, and members of the Committees on Immigration and the Justice System, thank you for the opportunity to submit testimony for the City Council's oversight hearing on prohibiting Immigration & Customs Enforcement agents from making civil arrests at New York State courthouses without a judicial warrant or court order.

New York is the safest big city in America. It is also a city of immigrants. We regard undocumented New Yorkers as equal members of our community. Through this legislation, the Committees are seeking to help keep immigrants safe in the midst of an unsafe and threatening federal environment. District Attorney Vance supports the Protect Our Courts Act (A.2176/S.425), sponsored by Assemblymember Michaëlle Solages and Senator Brad Hoylman, because undocumented New Yorkers need to be protected while participating in, observing, or traveling to or from court proceedings.

Deporting New Yorkers who show up to court is antithetical to our values and detrimental to our public safety. The fear of unjust deportation stops crime victims from coming forward, and stops defendants from responsibly attending their court dates. These policies threaten to marginalize immigrant New Yorkers to the point where they no longer report crimes or terror plots. And so, local prosecutors like me now have to work twice as hard to assure immigrants that our office is a safe place to report crime without fear of getting deported.

This isn't merely an anecdote. Statistics demonstrate that undocumented individuals are afraid to come forward and speak to law enforcement in this climate. Last year, the Manhattan DA's Office received just 153 applications for U-visas from crime victims or witnesses, down from 185 requests in 2016 and 186 requests in 2017. The decline in applications reflects the alarming reality that victims of serious crimes are not coming forward thanks to increased federal immigration enforcement. And it is essential that immigrants can once again feel safe coming to court, and help us take dangerous or violent criminals off our streets.

To combat this troubling downturn, the Manhattan DA's Office has dramatically ramped up our outreach to undocumented New Yorkers to remind them that our office is a safe place to report crime – and get connected with services – without fear of deportation. This work includes deepening our relationships with foreign consular offices in Manhattan, building new partnerships with community-based organizations on the front lines of serving undocumented New Yorkers, and delivering presentations which encourage undocumented New Yorkers to report crimes to our

office without fear of deportation. In these presentations, we also inform undocumented New Yorkers that we have opened Manhattan DA neighborhood offices in Washington Heights and Harlem where they can safely report crime.

I thank the Council for drawing attention to this important issue. We urge the immediate passage of the Protect Our Courts Act in the state legislature.

COMMITTEES

CITIES

CULTURAL AFFAIRS, TOURISM, PARKS
& RECREATION

FINANCE

HEALTH

RULES



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Testimony of New York State Senator Brad Hoylman Before the New York City Council Immigration Committee and the New York City Council Committee on the Justice System in Support of Council Resolution No. 828

Thank you for the opportunity to submit testimony before this joint committee in support of Council Resolution No. 828 which urges passage of the Protect Our Courts Act (S.425/A.2176), a bill I carry with Assemblymember Michaelle Solages. Passing this important legislation as soon as possible is of the utmost importance as we face unprecedented levels of Immigrations and Customs Enforcement (ICE) targeting of immigrant communities in and near our courthouses. I wholeheartedly welcome the support of the New York City Council and hope my fellow lawmakers in Albany recognize that we cannot afford to wait any longer to pass this bill.

The Protect Our Courts Act would ensure that all members of our community are safe when accessing New York's court system. Retired judges, public defenders, district attorneys (including Westchester DA Anthony A. Scarpino Jr., Nassau DA Madeline Singas, Albany DA David Soares, Bronx DA Darcel D. Clark, Brooklyn DA Eric Gonzalez, and Manhattan DA Cyrus Vance, Jr.) and advocates all agree that the presence of ICE in or near our courthouses deters people from engaging our justice system thereby putting every New Yorker at risk. We're all safer when everyone can feel comfortable participating in the justice system, regardless of their immigration status. President Trump's racist immigration policy, carried out by federal immigration agents serving as his personal deportation force, is instead undermining trust and forcing undocumented New Yorkers who have witnessed or been the victims of crimes into the shadows.

New findings from the ICE Out of Courts Coalition paint a startling portrait of ICE's deleterious effects on New York's justice system. ICE courthouse operations increased by more than 1700% since Donald Trump was elected. This has led to a decrease in immigrants seeking legal services and protection from violence and abuse through the justice system. For instance, in Manhattan, we've seen a 100% decline in U Visa certification requests from immigrant victims of crime. These visas are granted to crime victims who have suffered abuse and who are willing to work with law enforcement to hold perpetrators accountable. New York City Criminal Courts and City and District Courts outside of New York City, there was a 5.4% decrease in Orders of Protection issued. Family Justice Centers operating out of the NYC Mayor's Office to End Gender-Based Violence saw a 10% decrease in new, foreign-born visitors. The report shows that between 2017 and 2018, Sanctuary for Families, which works with survivors of intimate

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partner and gender-based violence, closed 1,350 fewer cases and assisted 226 fewer clients seeking orders of protection. Disturbingly, we have learned that 67% of providers surveyed have had clients who decided not to seek help from courts, 48% said they worked with clients who failed to seek custody or visitation, and that 37% worked with someone who failed to pursue an order of protection, all out of fear of ICE.

These downward trends reflect the growing fear of deportation in our immigrant community when it comes to being anywhere near a courthouse. The report found that 46% of surveyed legal service providers reported “working with immigrants who expressed fear of serving as a complaining witness.” Furthermore, ICE’s highly public courthouse operations have also served as an effective tool for abusers to prevent their victims from seeking judicial redress. A Sanctuary for Families internal survey found that 78.6% of respondents have clients who reported an increase in abusers threatening to call ICE. These figures reveal ICE’s success in destroying the fabric of trust between our courthouses and our communities. The result of their success is a world in which society’s most marginalized communities endure increasing abuse.

This crisis is ongoing and without immediate passage of the Protect Our Courts Act the damage will only continue to grow. Just this week, the current occupant of the White House fired the head of ICE because he was not taking the agency in a “tough” enough direction. This is only further evidence that New York must act rapidly to prevent increased ICE presence near our courthouses.

The bill protects individuals from civil arrest when going to, remaining at, or returning from a court appearance or proceeding unless a specific judicial warrant or judicial order authorizing such arrest has been issued. Without such a warrant, ICE will need to stay out of our courthouses. Prosecutors and public defenders alike agree with each other that passing this legislation is the smart thing to do because of the inarguably harmful impact ICE has had on the efficacy of justice. There simply isn’t time to wait. Thank you for supporting this legislation, and to Council Member Menchaca and Council Member Lancman for your leadership on these issues.



Asian American Federation

Testimony for New York City Council Joint Immigration and Justice System Hearings on “Protect Our Courts Act” (A.2176 / S.425)

April 10, 2019

Thank you to Chair Menchaca, Chair Lancman, and the Committees on Immigration and Justice System for convening this hearing. My name is Jo-Ann Yoo and I am the executive director at the Asian American Federation (AAF). AAF’s mission is to raise the influence and well-being of the pan-Asian American community through research, policy advocacy, public awareness, and organizational development.

On behalf of our 70 member and partner agencies, and nearly 900,000 Asian immigrants in New York City, we support this City Council’s resolution calling for the State Legislature and Governor Cuomo to pass the “Protect Our Courts Act” which would keep ICE out of our courthouses. Over the past two years, Asian families in New York City have increasingly come under attack as a result of immigration enforcement activities. In fact, City Comptroller Scott Stringer’s recent report, *The Demographics of Detention*, showed that Chinese immigrants comprise over 10,000 immigration court cases (21% of cases) begun since FY 2016, the highest percentage of any ethnic group. Immigrants from India comprise roughly 10% of all cases, and from Bangladesh about 8% of cases. We’re also seeing a rise in deportations of refugees and asylees from Vietnam, Laos, and Cambodia, many of whom are lawful permanent residents.

The increase in enforcement by the federal government has brought fear and uncertainty to New York City’s Asian community, which is 70% foreign-born. Based on the Migration Policy Institute’s estimates, about one in five Asian immigrants may be undocumented in New York City. With the 2014 American Community Survey showing that 95% of NYC’s Asian children have at least one immigrant parent, we can conclude it to be likely that thousands of Asian families will be impacted by the current immigration policies.

Our member and partner agencies work with some of the most vulnerable members of our community, including the undocumented, the underemployed, survivors of domestic abuse and human trafficking, and those living with mental health conditions due to violence in their home countries. Their clients are also everyday New Yorkers navigating family law, commercial law or housing-related issues, seeking to clear minor offenses, or serving as witnesses in various legal matters. All of these individuals require access to the justice system, yet the threat of an ICE arrest will certainly dissuade a broad swath of immigrants from showing up to court, and worse yet, deepen distrust of government institutions.

We must not allow an erosion of the immigration system nationally to impact the justice system locally. Although we believe that additional, ongoing support for immigration legal services is critical to achieving justice in the long run, we believe that passing the “Protect Our Courts Act” now is imperative for ensuring that law and order can be ethically and equally carried out in the State of New York. We therefore urge the City Council to pass this resolution.

**Stephanie Gomez
Director of Immigration Initiatives
Hispanic Federation**

Testimony on: Resolution - Calling on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S.425), in order to protect certain interested parties or people from civil arrest while going to, remaining at, or returning from the place of such court proceeding.

Submitted to: NYC Council, Committee on Immigration and Committee on Justice System

April 10, 2019

Good Afternoon. My name is Stephanie Gomez and I am the Director of Immigration Initiatives at the Hispanic Federation. Thank you for the opportunity to testify on behalf of the Federation and Latinx communities across New York State.

Hispanic Federation is the nation's premier Latino membership organization founded over 25 years ago to address the many inequities confronting Latinos and the nonprofits that serve them and advocating for the fair and just treatment of immigrant communities nationwide. More than ever, we are committed to protect and defend Latino immigrant communities, both documented and undocumented, who live in New York State and who are in danger of intimidation, harassment, incarceration and deportation. It is for this reason and a plethora of others that we stand before the council today to address pressing concerns.

Since president Trump's inauguration, the presence of Immigration and Customs Enforcement (ICE) in New York's courthouses has increased by 1700%, according to a report issued by the Immigrant Defense Project. While these attacks are taking place across the state, the majority of immigrants under seize are in New York City, with most incidents occurring in Queens and Brooklyn. That number alone is abhorrent, but we must also acknowledge the extreme tactics being used to infiltrate our communities. Specifically, ICE officers are conducting these arrests while in civilian clothing to disguise themselves and avoid anyone from running away. Additionally, they are using brute force in public areas causing confusion and unrest amongst witnesses.

Furthermore, internal agency regulations require ICE officers to identify themselves, explain why an individual is being arrested, or offer proof that they have reason to believe the detainee is deportable. However, reports indicate that agents are failing to comply with such regulation. They are bypassing policies in order to go after our immigrant community. This is completely unacceptable, and they must be held accountable.

What is worse is that many ICE officers see no boundaries when it comes to arresting immigrants. Victims of domestic violence, victims of human trafficking, and even youth are targeted; youth that could qualify for temporary relief such as Deferred Action for Childhood Arrivals, also known as DACA. Even lawful permanent residents are being targeted in this wave of anti-immigrant

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actions. These actions have significantly increased the pool of vulnerable community members at risk of an ICE arrest. In the past year we have witnessed their tactics expand further upstate to counties untouched before, reaching a far more vulnerable immigrant community. The number of ICE arrests reported in 2018 was over 100, a dramatic jump from those reported in 2016 and these numbers will only continue to increase so long as ICE officers have access to courthouses.

Increased immigration enforcement at the hands of ICE in NY courthouses has created a chilling effect within immigrant communities, preventing them from accessing and obtaining necessary services, and intimidating those most vulnerable from accessing state and federal courts to seek orders of protection, defend against criminal charges, or to vindicate their rights as tenants. This has particularly affected victims of domestic violence. According to a survey developed by the Immigrant Defense project, 67% of advocates and attorneys who work with survivors of violence reported having clients that decided not to seek protection from courts due to fear of ICE. This not only puts those most vulnerable at a higher risk, but also undermines the constitutional right for ALL New Yorkers to access the courts regardless of immigration status.

Other immigrants abiding by law and choosing to appear in court for minor cases such as a misdemeanor have the opportunity to settle their cases without producing criminal records. Once they are in immigration custody, however, criminal cases are opened, and deportation relief becomes all but impossible to obtain. These tactics are hindering the chances our community members have to utilizing the justice system set in place by this country.

The "Protect Our Courts Act" would set important restrictions on civil arrests and limit unlawful practices at the hands of ICE. Such protections include: declaring unlawful the civil arrest of any person attending a court proceeding (this includes witnesses, family or household members), prohibit the entrance of any immigration enforcement agents without a valid judicial warrant or court order. These restrictions are key in ensuring the protection of immigrant communities across the state and protect the fundamental right for all New Yorkers to access the courts.

Hispanic Federation urges city council to stand in support of the "Protect our Courts" Act and put pressure on the New York State legislature and the Governor to stand with our immigrant communities and protect them from any unlawful actions at the hands of the federal government. In such a critical time for immigrants in our country, we must stand on the right side of history and do everything in our power to protect those most vulnerable.

Thank you for your time.



LATINOJUSTICE PRLDEF STATEMENT submitted for NYC Council Committees on Immigration and Justice System Joint Committee Oversight Hearing on *“ICE Out of New York Courts”* and Resolution Calling on the State Legislature to pass, and the Governor to sign the *“Protect Our Courts Act”* (A.2176/S.425), in order to protect immigrant New Yorkers from civil immigration arrest and detention while going to, remaining at, or returning from the place of such court proceeding held on Wednesday, April 10, 2019

LatinoJustice PRLDEF, founded in 1972 as the Puerto Rican Legal Defense and Education Fund, is a national civil rights legal defense fund, dedicated to championing an equitable society by protecting and defending the rights of the greater pan-Latinx community in the United States.

LatinoJustice joins with our fellow *ICE Out of Courts Coalition* members and other community-based legal services and advocacy organizations that work with immigrant and citizen New Yorkers to express our strong support for the *Protect Our Courts Act* (A.11013/S.08925).

New York State, and particularly New York City, have a deep history of welcoming immigrants and fostering diversity.¹ With approximately 40 percent of NYC’s population born outside of the United States, New York City takes immense pride in being one of the most diverse cities in the country. Similarly, New York State boasts of its diversity with immigrants comprising approximately 20 percent of all New York State resident in 2017.²

As a state and city that prides itself in not only welcoming immigrants, but integrating them into our society, we have taken many steps to ensure *“justice and equal access for all”* are not just words or a platitude. Among those steps, NYS recently passed legislation that would mandate jury trials for immigrants charged with misdemeanors that could result in possible deportation; reduced sentences of more than one year for certain misdemeanor convictions to 364 days in order to avoid mandatory deportation collateral consequences; provided state financial aid assistance for undocumented students; and in New York City, municipal identification cards for anyone to enable them to engage with city agencies and take advantage of the City’s many cultural institutions without fear or repercussion.³ It is imperative that New York pass the *Protect Our Courts Act* and prioritize the safety of the Latinx and other immigrant communities and secure their continuing equal access to our courts.

For the past two years, Federal immigration officers have stalked immigrants who were victims of crime, domestic violence, witnesses, and particularly those charged with a crime – intentionally disregarding their constitutional presumption of innocence – who were accessing our state courts to seek redress, assistance and to respond and contest charges. We have witnessed ICE officers arrest immigrants and separate them from their families; and have had many difficult conversations with our clients and family members about the immigration risks associated with seeking their day in court.

¹ MAYOR’S OFFICE OF IMMIGRANT AFFAIRS, STATE OF OUR IMMIGRANT CITY (2018).

² AMERICAN IMMIGRATION COUNCIL, IMMIGRANTS IN NEW YORK (2017).

³ *8 Million New Yorkers. 1 Card For All Of Us!*, ID NYC, <https://www1.nyc.gov/site/idnyc/index.page> (last visited Apr. 9, 2019).



These courthouse arrests which started after Trump's inauguration have unfortunately become more commonplace in our state and country as increasing federal immigrant enforcement practices proliferates. It is unfortunately now a regular occurrence that we hear about and see plainclothes ICE agents accessing our state courts, checking court calendar and roaming courthouses seeking to arrest and detain immigrant New Yorkers for deportation removal. In 2018 alone, a total of 178 individuals were arrested inside of our state courts.⁴ It is likely that many more undocumented arrests happen every day outside our courthouses as individuals come to or leave their court appearances.

Despite ICE in January 2018 publishing formal guidelines governing courthouse arrests, there are no apparent boundaries or limits to whom ICE will target for arrest. ICE agents routinely arrest people in the state's criminal courts, even targeting people in family courts and courts designed for victims of human trafficking.⁵ Among those arrested are survivors of violence seeking orders of protection or testifying against their abusers, youth, people with mental illnesses, guardians of U.S. citizen children, parents trying to pay child support or seeking custody of their U.S. citizen children, witnesses, cooperators, individuals exercising their constitutional right to defend themselves against criminal charges, and many others.

Access to the courts and to legal proceedings cannot, and should not, depend on an individual's place of birth, citizenship status, skin color or wealth. Our justice system depends on the equal unfettered ability of everyone in our community, regardless of immigration status, to access the courts, and simply cannot function when a significant percentage of our population believes they run the risk of being detained simply by going to court to face unrelated deportation proceedings.

ICE's growing presence in the court has spread great fear in New York's Latinx immigrant communities, making many Latinx residents fearful to access and participate in our court systems. Given this chilling effect, many immigrants are now afraid and unwilling to report crimes, serve as witnesses, or cooperate with law enforcement. *The ICE Out of Our Courts Coalition* surveyed 225 legal services providers across New York State over the past year and found widespread fear of ICE presence in our courts.⁶ Seventy-five percent of legal service providers reported that clients have expressed fear of going to court; forty-eight percent reported clients have expressed fear of calling the police; and twenty-nine percent have worked with immigrants who have failed to appear in court due to fear of ICE. Those who work with survivors of violence reported that sixty-seven percent of their clients decided and not to seek help from the courts and forty-six percent fear serving as complaining witnesses against their abusers.⁷ Those who work with tenants in housing court reported that fifty-six percent of client's fear filing a housing court complaint because of ICE's presence in the courts.⁸

⁴ IMMIGRANT DEFENSE PROJECT, THE COURTHOUSE TRAP 6 (2019).

⁵ Immigration Defense Project, Protect Our Courts Act: Overview, 1 <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-FAQ-061118.pdf> (last visited April 9, 2019).

⁶ Immigration Defense Project, ICE in New York State Court Survey, June 29, 2017, www.immdefense.org/ice-courts-survey.

⁷ *Id.*

⁸ *Id.*

As members of the community hear continuing news accounts about ICE's presence in our state courts, they are frightened and less willing to report crimes, work with law enforcement and seek legal remedies for fear that they or their loved ones will be detained by immigration. Instead of seeing the courts as an avenue for justice, they see it as yet another arm of law enforcement that will tear them apart from their families and everything they've been working towards, simply for having the courage to come forward and seek legal intervention. This concern is not irrational. From 2016 to 2018, there was a 1700 percent increase in ICE operations in courthouses.⁹

As a result, during this period, law enforcement has reported the most dramatic drop in outreach from and cooperation with, immigrants and limited English proficiency communities.¹⁰ In a study conducted by the Immigrants Defense Project, approximately twenty-two percent of police officers surveyed reported that immigrants were less likely in 2017 than in 2016 to make police reports; twenty-one percent said immigrant crime survivors were less likely to help in investigations when police arrived at the scene of a crime; twenty percent reported that they were less likely to help in post crime scene investigations and nineteen percent said immigrant crime survivors were less willing to work with prosecutors.¹¹ As a result, law enforcement officers explained, many crimes have become more difficult to investigate and prosecute.

As evidenced, many immigrants and citizens of New York are now choosing to endure the abuse and injustices at the hands of their abusers, rather than seeking legal recourse and possibly being punished for it. ICE's current practice not only poses a problem for victims and witnesses who seek to come forward, but also for individuals who are stripped of their presumption of innocence, and the right to confront their accuser and be tried by a jury of their peers. When a criminal defendant is arrested by ICE in court and taken into immigration custody before their criminal case is resolved, ICE is under no legal obligation to continue producing the individual in criminal court. Thus, many of these courthouse arrests leave criminal cases unresolved.

The New York Court of Appeals in *People v. Suazo*, 2018 NY Slip Op 08056 [32 NY3d 491], recently recognized the importance of a fair day in court by granting immigrant defendants facing misdemeanor charges in New York City, and who would face possible collateral consequences of deportation if convicted, the right to a jury trial under the sixth amendment. Allowing ICE into New York courthouses without a judicial warrant or court order of arrest undermines the courts intent in *Suazo* to guarantee equal protections to citizens and noncitizens alike and prevent the collateral consequences of a criminal conviction.

ICE's courthouse arrests policy and practices in fact does the opposite, punishing immigrants who have chosen to present themselves in court either to defend the charges against them or seek protection from the court. Given the ultimatum of showing up in court and possibly being detained, or failing to appear in court, many immigrant New Yorkers choose to skip their court appearances and avoid the judicial process altogether.

⁹ Immigrant Defense Project, *supra* note 4, at 6.

¹⁰ AMERICAN CIVIL LIBERTIES UNION, FREEZING OUT JUSTICE: HOW IMMIGRATION ARRESTS AT COURTHOUSES ARE UNDERMINING THE JUSTICE SYSTEM 1 (2018).

¹¹ *Id.*

ICE presence in our courthouses undermines the immigrant community's trust in law enforcement and our justice system, creating a class of silent victims and eliminating the potential for assistance from immigrants in solving crimes.¹² If we have a situation where nobody comes to court because they are afraid of being deported, then where can anyone seek justice?

For all of the reasons stated above, we strongly support the *Protect Our Courts Act* and the NYC Council Resolution calling upon the State Legislature to pass and the Governor to sign the bill.

Respectfully submitted.

s/

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By: Melissa Castillo
Legal Intern
Columbia University School of Law, JD Class of 2019

¹² MCCA Immigration Position (Oct. 2011) https://majorcitieschiefs.com/pdf/news/immigration_position112811.pdf; 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/>.

act

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 8 Res. No. 6828

in favor in opposition

Date: 4/10/2013

(PLEASE PRINT)

Name: Evan Bernstein

Address: 605 3rd Ave

I represent: Anti-Defamation

Address: LEAGUE

**THE COUNCIL
THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. A11013A Res. No. _____

in favor in opposition

Date: 4/10/19

(PLEASE PRINT)

Name: Atossa Movahedi

Address: 40 Rector St. 9th Fl NY NY

I represent: The Urban Justice Center

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Protect our courts Act Res. No. _____

in favor in opposition

Date: 4/10/2019

(PLEASE PRINT)

Name: Shani Adess

Address: NYLAG, 7 Harover Square, 18th NY NY 10004

I represent: New York Legal Assistance Group

Address: 7 Harover Sq 18th Fl, NY, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Protect our Courts Act Res. No. _____

in favor in opposition

Date: 4/10/19

(PLEASE PRINT)

Name: Jill Waldman

Address: Legal Aid Society, 49 Thomas Street

I represent: New York, NY 10013

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 4/10/19

(PLEASE PRINT)

Name: Susanne Saul

Address: Her Justice 100 Broadway 10th Fl NY

I represent: Her Justice

Address: same 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: ROSA COHEN-CRUZ

Address: 360 E 161st St, Bronx NY 10459

I represent: The Bronx Defenders

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**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: 4/10/2019

(PLEASE PRINT)

Name: YVONNE CHEN

Address: _____

I represent: SANCTUARY FOR FAMILIES (DRO ON 4/FedPicking)

Address: 30 WALL ST, 8TH FLOOR, NEW YORK, NY 10005

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Richard Bailey

Address: _____

I represent: Brooklyn Defender Services

Address: 177 Livingston Street Brooklyn

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

Date: _____

(PLEASE PRINT)

Name: Greg W. Hman

Address: _____

I represent: G1 Quantum

Address: (one)

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: 4-10-2019

(PLEASE PRINT)

Name: MIRIAM MARTINEZ (SPANISH) LUIS BRUNHA (TRANSLATING)

Address: 301 GROVE STREET, BROOKLYN NY 11237

I represent: MAKE THE ROAD 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: _____

(PLEASE PRINT)

Name: MIZUE AIZEKI

Address: _____

I represent: IMMIGRANT DEFENSE PROJECT

Address: 40 W 39th St NY NY 10018

THE COUNCIL
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Appearance Card

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 in favor in opposition

protect our courts
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Date: 4/10/2019

(PLEASE PRINT)

Name: Fernanda Hipskind

Address: 1077 Wey Island Ave

I represent: COO - Council of People's Org.

Address: 1077 Wey Island 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: 4/10/19

(PLEASE PRINT)

Name: Terry Lawson

Address: 349 E. 149 St. 10th Fl, Bronx, NY 10451

I represent: Legal Services NYC

Address: same

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**THE COUNCIL
THE CITY OF NEW YORK**

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: BITTA MOSTOFI

Address: _____

I represent: COMMISSIONER, MOIA

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. A2176/5425 Res. No. _____

in favor in opposition

Date: 5/11/19 *Protect our COURTS ACT*

(PLEASE PRINT)

Name: Virginia Goggin / NYC Anti-Violence Project

Address: 116 NASSAU ST. 3rd FL.

I represent: NYC Anti-Violence Project

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: Mae Lee

Address: 230 Grand Street

I represent: Chinese Progressive Association

Address: _____

Please complete this card and return to the Sergeant-at-Arms