



Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State





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Executive Summary

The ICE Out of Courts Coalition (the Coalition) is comprised of over 100 organizations and entities across New York State. As community-based organizations, unions, civil legal services providers, public defenders, family defenders, anti-violence advocates, law schools, and civil rights and liberties groups serving New Yorkers of all ages, races, and immigration statuses, we have been alarmed and appalled by Immigration and Customs Enforcement's (ICE) increasing dependence on our State's court system as its preferred venue for surveilling and detaining immigrant New Yorkers.

For over two years, the Coalition has gathered qualitative and quantitative data from affected stakeholders across issue areas and roles within the justice system. Following meetings with the Chief Judge and the Chief Administrative Judge, the Coalition has spent significant energy compiling the data collected in this report. The data collected in this report demonstrates the full breadth of the negative impact ICE courthouse operations have had on the administration of justice, as well as equal access to justice, in New York State. This report demonstrates just how widespread this problem is — affecting not just New York City but the whole state, affecting not just criminal but problem-solving and civil courts as well. Information presented here attests to how systemic this issue has become in the fair and efficient administration of justice, and how ICE courthouse operations have had an outsized effect on the most vulnerable New York State residents, including victims and survivors of domestic and gender-based violence, single mothers, those eligible for problem-solving courts and youth.

The report begins with an overview of the astronomical increase (1700%) in ICE courthouse operations since 2016 and shows the negative impact of this increase on countless stakeholders. Statewide, law enforcement agencies, from district attorney offices to the Attorney General's Office, have publicly condemned ICE for disrupting the trust between New York's immigrant residents and law enforcement. District attorney offices that participated in the Coalition's data-gathering describe how victims, survivors, and witnesses were often too fearful to pursue justice in courts or to participate in their services geared toward immigrant residents. Advocates similarly point out a pronounced chilling effect among victims, survivors, and witnesses in reporting abuses to law enforcement or pursuing legal claims. Most disturbingly, advocates also reported how ICE's highly publicized tactics have emboldened abusers, who use threats of deportation to keep their clients from seeking legal redress. Public defender organizations recount how disruptive ICE's recent tactics have been to not just their attorneys' daily work but also to their resource allocation and morale.

The report highlights how ICE courthouse operations thwart the intended outcomes of problem-solving courts and those designed for trafficking victims, youth, and other vulnerable populations. ICE's targeting of relief-eligible individuals induces fear around court-related activities, including alternatives to incarceration and other rehabilitation-focused programs run by the Center for Court Innovation. This atmosphere of fear has spread beyond criminal courts to civil courts. ICE's courthouse operations hinder these problem-solving and civil courts from carrying out their missions of providing opportunity and redress to vulnerable New Yorkers.

As recounted here, the widespread corrosive impact of ICE courthouse operations on New York State Courts has been documented and condemned by legal professional associations at the city, state, and national level. Numerous sitting and retired judges as well as elected officials have spoken up against ICE's tactics. Given the insidious and pervasive impact ICE courthouse operations have had on the function and mission of the New York justice system, the Coalition urges the Office of Court Administration to adopt two rules to address the problems identified in this report:

1. Employees of the Unified Court System shall not:

- i. **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 that the person who is the subject of such warrant be subjected to a civil arrest. "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.

These rules will help protect New Yorkers' access to the courts and ensure increased public safety and legal protections for all.

Overview of ICE Courthouse Operations from 2016-Present

The Immigrant Defense Project (IDP) has documented a sharp increase of 1736% in ICE courthouse enforcement in and around New York’s courts since 2016.¹ In particular, IDP documented an almost 1500% increase in ICE courthouse operations from 2016 to 2017, with a further 17% increase over the 2017 number of operations.²

IDP tracks two types of operations: arrests and sightings.³ An arrest refers to an operation where IDP was able to confirm that ICE took an individual into custody.⁴ Arrests include operations that occur both inside of a courthouse and in the immediate vicinity of a courthouse.⁵ A sighting refers to an operation where IDP confirmed that witnesses saw ICE agents or ICE vehicles, but were not able to verify an arrest.

IDP collects reports of ICE courthouse arrests and sightings through collaborations with community-based and legal services organizations across New York State, as well as through calls and reports received on IDP’s hotline. In addition, New York State uniquely houses Regional Immigrant Assistance Centers (RIACs) across the state and the New York Immigrant Family Unity Project (NYIFUP) in immigration courts. Both initiatives have provided a mechanism for IDP to collect firsthand accounts of courthouse enforcement.

¹ See Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York’s Courts in 2018* at 6 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf (comparing 202 ICE courthouse operations from 2018 to 11 reported in 2016).

² *See id.*

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.* The figures cited in the report are up-to-date as of January 20, 2019. Since individuals arrested by ICE may spend months in detention before they have a chance to see an immigration judge, IDP may not hear of an individual’s arrest until they finally resurface in immigration court.

IDP confirms details by speaking with the witnesses and the individuals arrested by ICE themselves, along with their family members and attorneys.⁶

In addition to the reports collected by IDP staff, IDP has obtained 66 “unusual occurrence reports” through a FOIL request with the Office of Court Administration.⁷ These reports cover the period from February 2, 2017 to August 13, 2018.⁸ Of the 66 reports, 32 matched an operation that was independently reported to IDP, 11 were possible matches, and 23 did not match a report documented by IDP.⁹ For this time period, IDP received reports of 241 ICE courthouse operations that were not documented in an OCA unusual occurrence report.¹⁰

Immigrant Defense Project Reports: ICE Courthouse Operations



⁶ *Id.*

⁷ See N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR).

⁸ See *id.* (App. RR).

⁹ See Immigrant Def. Project, ICE Courthouse Operations from 2/1/2017 to 8/13/2018: A Comparison of Operations Reported to IDP and Operations Documented by OCA’s Unusual Occurrence Reports (App. UU).

¹⁰ See *id.* (App. UU).

ICE courthouse operations increased by more than 1700% between 2016–2018

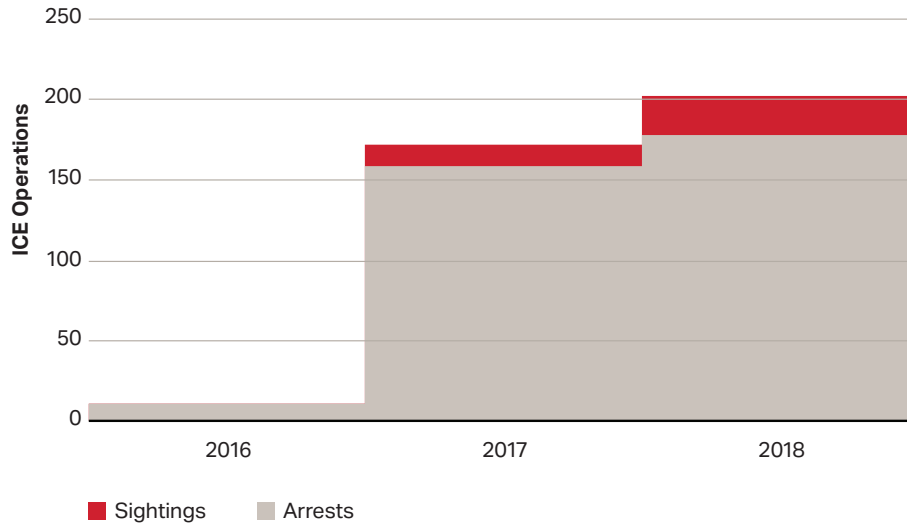


Fig 1

A majority of reports come from New York City.¹¹ In 2017, Brooklyn reported the largest number of arrests in the city, with 32 incidents, with Queens a close second at 27.¹² In 2018, Brooklyn and Queens were again the top two boroughs for ICE courthouse enforcement, with 35 arrests reported in Brooklyn and 33 in Queens.¹³ Staten Island reported the largest increase in arrests from 2017 to 2018, doubling from 6 to 12.

ICE also actively pursues individuals in many courts outside of the city. Since the beginning of 2017, IDP has received courthouse arrest reports from 19 counties outside of the city, with the largest number coming from Westchester.¹⁴ While most arrests in 2017 focused on larger county or city courthouses, ICE appeared to increase operations in town and village courts in 2018.¹⁵ Operations were reported in more than a dozen town and village courts scattered

¹¹ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* at 7 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf.

¹² *Id.*

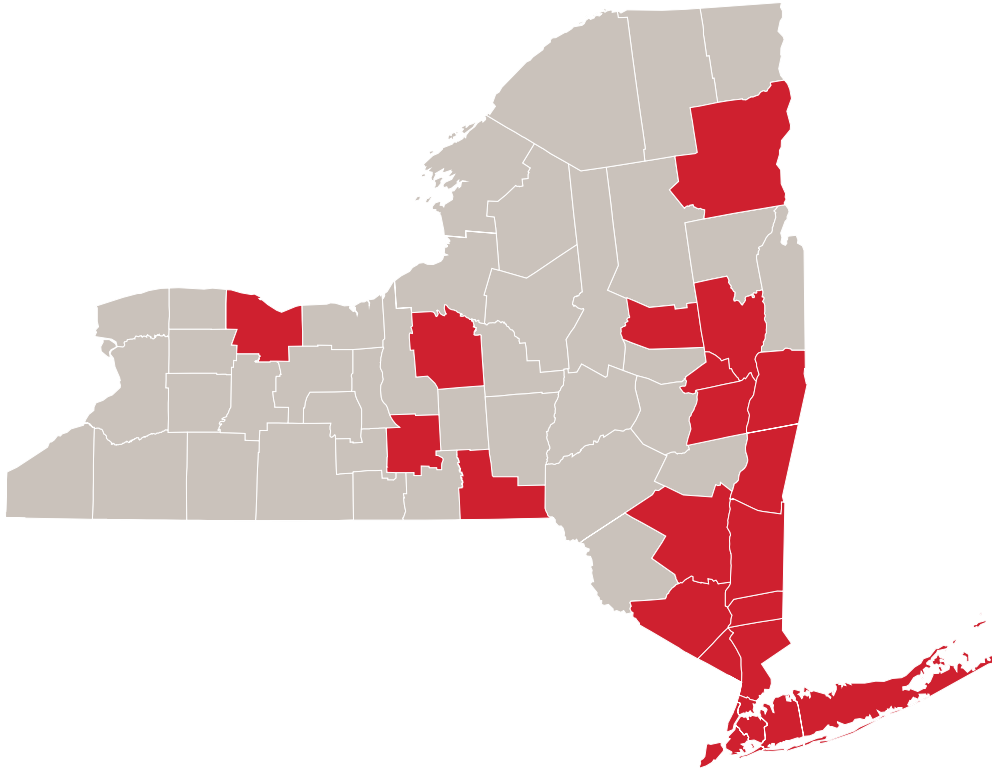
¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

across Westchester, Rockland, Columbia, Orange, Ulster, and Albany counties.¹⁶ In 2018, there was a significant surge in reports out of Westchester, with the county reporting 13 arrests, up from four the previous year.¹⁷

Counties Reporting ICE Courthouse Operations



Albany, Bronx, Broome, Columbia, Dutchess, Essex, Fulton, Kings (Brooklyn), Monroe, Nassau, New York (Manhattan), Orange, Onondaga, Putnam, Queens, Rensselaer, Richmond (Staten Island), Rockland, Saratoga, Schenectady, Suffolk, Tompkins, Ulster, Westchester.

As Albany Law School Professor **Sarah Rogerson** explains, “In New York City there is a volume of cases, but there are more eyes and ears. It could be happening upstate but we don’t know because we can’t be in every city and town court.”¹⁸

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Mallory Moench, *Immigrants In or Near Capital Region Courts Increasingly Fear ICE Arrests*, Times Union (Jan. 31, 2019), <https://www.timesunion.com/news/article/Capital-Region-courts-dangerous-for-immigrants-as-13578301.php>.

How ICE Courthouse Operations Complicate the Work of District Attorney Offices and Compromise Public Safety



District attorney offices from across New York State expressed how ICE courthouse operations complicate their ability to ensure fair and effective prosecutions of crimes. Below are four main areas in which the district attorney offices expressed concern.

Fearful Victims and Witnesses

District attorneys across the state have publicly stated their concern about how ICE presence in New York courts has discouraged noncitizen crime victims from reporting crime. They report that this fear has resulted in the reluctance of domestic violence victims, survivors, and witnesses to come to court to testify, as well as a reduction in the number of

participants in clean slate and other community outreach programs targeted at noncitizens. An alarming and natural consequence of this chilling effect, they stress, is the inability of district attorneys to prosecute perpetrators and other dangerous individuals, resulting in a serious public safety issue.

Concern around this issue is so prevalent that prominent New York District Attorneys have spoken out. Bronx County District Attorney **Darcel D. Clark** lamented that when a witness or a victim is arrested by ICE, the district attorney is often incapable of prosecuting a case. Dismissing such cases, she stressed, will result in “dangerous individuals being released back into the community.” Moreover, she stated, “This could have a chilling effect on getting witnesses to assist in our cases, potentially resulting in a threat to public safety.” **Cyrus Vance Jr.**, the Manhattan District Attorney, affirmed that all New Yorkers, whether documented or not under federal law, have the right to safely attend court proceedings, and that the fear of deportation inhibits crime victims from coming forward and disincentivizes defendants from responsibly attending court dates. He specifically noted that “Deporting New Yorkers who show up to court is antithetical to our values and detrimental to our public safety.”¹⁹

Brooklyn District Attorney **Eric Gonzalez** called upon ICE to designate courthouses as sensitive locations, like schools or places of worship. Discussing courthouse arrests made by ICE, he emphasized that, “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.”²⁰

Albany District Attorney **David Soares** stated, “The activities of Immigration Customs Enforcement is compromising our ability to hold accountable perpetrators who prey upon victims from vulnerable immigrant communities.”²¹ Westchester District Attorney **Anthony A. Scarpino, Jr.** reiterated the objections of his counterparts, contending that his office’s efforts are undermined by ICE’s presence in Westchester criminal courts. He stated, “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.”²² **Silvia Finkelstein**, the Executive Director of the Immigration Unit at the Nassau County District Attorney’s Office, has reported that the current administration’s enforcement prerogative contributed

¹⁹ Immigrant Def. Project, *Protect Our Courts Act: Prosecutor Statements*, <https://www.immigrantdefenseproject.org/wp-content/uploads/Prosecutor-Statements-Updated-02202019.pdf>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

substantially to the fear and disincentive of the immigrant population to come forward to report crime or to participate in the criminal justice system generally.²³ **Madeline Singas**, the Nassau County District Attorney, expressed concern for ICE's impact on crime reporting by noncitizens:

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.²⁴

Citizens and noncitizens alike are both vulnerable to criminal offenses. Noncitizens living in the U.S., regardless of status, are regularly the victims of the same crimes suffered by citizens. In fact, noncitizens are more likely to be the victims of crime in the United States than their U.S.-born counterparts.²⁵ Additionally, immigrants are victims of unique crimes that prey on their vulnerable statuses. For example, individuals in immigrant communities are particularly vulnerable to crimes,²⁶ and this concern, particularly for the Latinx community, has only increased since the 2016 presidential election.²⁷ Indeed, in 2017, FBI hate crime data revealed a 24% increase in attacks against the Latinx community, the target

²³ Peter Belfiore, *D.A.: Fear Rising Among Immigrant Witnesses to Crimes*, Long Island Herald (Feb. 1, 2018), <http://liherald.com/stories/da-fear-rising-among-immigrant-witnesses-to-crimes,99647> (“Given the current climate, there is a lot of fear in the immigrant communities to come forward or participate in any way in the criminal justice system,” Finkelstein said.”).

²⁴ Immigrant Def. Project, *The Protect Our Courts Act: Prosecutor Statements*, <https://www.immigrantdefenseproject.org/wp-content/uploads/Prosecutor-Statements-Updated-02202019.pdf>.

²⁵ Frances Bernat, *Immigration and Crime*, Oxford Research Encyclopedia of Criminology (Apr. 2017), <http://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-93> (“In regard to victimization, immigrants are more likely to be victims of crime. Foreign-born victims of crime may not report their victimization because of fears that they will experience negative consequences if they contact the police.”).

²⁶ Int'l Ass'n of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* at 28 (July 2007), <https://kymnradio.net/wp-content/uploads/2016/12/2-Police-Chiefs-Guide-to-Immigration.pdf>.

²⁷ Jessica Weiss, *Six Months of Hate: How Anti-Immigrant Sentiment Is Affecting Latinos in the United States*, Univision News (June 14, 2017), <https://www.univision.com/univision-news/united-states/six-months-of-hate-how-anti-immigrant-sentiment-is-affecting-latinos-in-the-united-states> (“In recent months, hate crimes have targeted Latinos around the country, in small towns and big cities, coast-to-coast. Though the weeks immediately before and after the presidential election saw the most reports, incidents have continued at a steady tick.”).

of significant anti-immigrant bigotry, compared to 2016.²⁸ In addition, immigrants are regularly targeted for fraudulent housing schemes and wage exploitation.²⁹ Immigrants are also recurring victims of notario fraud, where those who are not licensed attorneys promise green cards or visas in exchange for large sums of money and then fail to deliver, often leaving families worse off.³⁰ Such perpetrators operate with impunity in the current climate due to a decline in reporting rates.

District attorney offices participated in this report's data gathering by responding to a questionnaire drafted by Coalition members.³¹ The questionnaire asked for data on crime reporting, victim and witness participation in prosecutions, frequency of writ filing, and effect of ICE enforcement on office management, including the burden of producing immigration detainees for criminal court proceedings.³² Data gathered from questionnaire responses is set forth below.

Manhattan District Attorney's Office

The Manhattan District Attorney, **Cyrus Vance, Jr.** stressed that judicial warrants should be required in order for ICE to make a courthouse arrest and has stated that such civil arrests engender fear in victims against reporting and cooperating in criminal prosecutions.³³ **Nitin Savur**, the Executive Assistant District Attorney for Strategic Initiatives and Deputy Chief of the Trial Division for the Manhattan District Attorney's Office, elaborated:

²⁸ Anti-Defamation League, *New ADL Study Details How Extreme Anti-Immigrant Hate Has Been Thrust Into the Mainstream* (Nov. 29, 2018), <https://www.adl.org/news/press-releases/new-adl-study-details-how-extreme-anti-immigrant-hate-has-been-thrust-into-the>.

²⁹ Alexandra Ricks, *Latinx Immigrant Crime Victims Fear Seeking Help*, Urban Inst. (Sept. 25, 2017), <https://www.urban.org/urban-wire/latinx-immigrant-crime-victims-fear-seeking-help> ("Immigrants are often victims of labor violations, such as labor trafficking and wage theft, because some employers see them (especially undocumented immigrants) as particularly vulnerable to exploitation. Latinx immigrants are six times more likely that their US-born white counter parts to suffer minimum-wage violations.").

³⁰ Anna M. Hill & Susan E. Reed, *Immigration Scams: Good Feelings and Double-Dealing*, Am. Bar Assoc. (Oct. 25, 2017), https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/immigration-law/immigration-scams-good-feelings-and-doubled dealing/ ("In best-case scenarios, scam victims lose only a few hundred dollars. In the worst situations, victims pay thousands of dollars, never recover original documents, and incur irreversible immigration consequences, including deportation.").

³¹ *See, e.g.*, Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project ¶¶ 1-2, dated Feb. 14, 2019 (App. NN); Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y, & Reg'l Immigration Assistance Ctr. Attorney ¶ 7, dated Feb. 21, 2019 (App. JJ).

³² *See, e.g.*, Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project ¶¶ 1-2, dated Feb. 14, 2019 (App. NN); Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y & Reg'l Immigration Assistance Ctr. Attorney ¶ 7, dated Feb. 21, 2019 (App. JJ).

³³ *See, e.g.*, Attachment to Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project, dated Feb. 14, 2019 (App. OO).

We see [the effects of fear] often when victims of crimes report to the NYPD, but give fake names, addresses and phone numbers out of fear that ICE will somehow track them down. Unfortunately, when we then need them to come to our office for grand jury, or trial preparation, we cannot locate them because their contact information was not real.³⁴

The Trial Division of the Manhattan District Attorney’s Office reported a heightened fear among noncitizens of testifying in criminal court since 2017.³⁵ As part of trial preparation, noncitizen witnesses are notified that their immigration status must be divulged to the defense before trial, which, in turn, causes undocumented noncitizen witnesses to fear that ICE will gain access to this information.³⁶ Assistant District Attorney Savur indicated that there is confusion among the immigrant population with respect to the relationship between the District Attorney’s Office and ICE: “We have to assure them — that we do not work for ICE, we do not have ICE agents in our office or in our buildings.”³⁷ In certain areas of Manhattan, such as Washington Heights, some immigrants were less likely to attend community events sponsored by law enforcement.³⁸

Even more troubling have been reports that noncitizens experience such tremendous fear around any aspect of the justice system that the fear goes well beyond attending court to testify or reporting a crime. In fact, the Manhattan District Attorney’s Office has reported that noncitizen victims have expressed fear of availing themselves of certain victim services including counseling, developing safety plans, and relocation.³⁹

Bronx District Attorney’s Office

The Domestic Violence Bureau of the Bronx District Attorney’s office (Bronx DV Bureau) reports that numerous complaining witnesses expressed fear of testifying or otherwise participating in criminal proceedings due to ICE presence in the courthouse.⁴⁰ In one

³⁴ See, e.g., *id.* (App. OO).

³⁵ See, e.g., *id.* (App. OO).

³⁶ See, e.g., *id.* (App. OO).

³⁷ See, e.g., *id.* (App. OO).

³⁸ See, e.g., *id.* (App. OO).

³⁹ See, e.g., *id.* (App. OO).

⁴⁰ Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 3, 2019 (App. S).

instance, the Bronx DV Bureau reported that a previously cooperative complaining witness became extremely reluctant to testify following several news reports regarding ICE arrests occurring in courthouses.⁴¹ In another case, the complaining witness was reluctant to report a violation of an order of protection because the alleged violator threatened to report her immigration situation to ICE if she called the police.⁴² When she appeared to report the violation, she was visibly terrified.⁴³ The Bronx DV Bureau has also seen witnesses express fear of ICE arrest in the courthouse.⁴⁴ In one case cited, a complaining witness's mother was very reluctant to testify because she feared ICE would be in the court.⁴⁵

The Bronx District Attorney Appeals Bureau reports that defendants refuse to testify in post-conviction relief hearings due to fear of ICE in courts.⁴⁶ In one case, a sex abuse victim's mother was terrified to testify because the defendant had been arrested and detained by ICE.⁴⁷ In that same case, two outcry witnesses, the defendant's wife and daughter, were initially cooperative and planned to testify, but after the defendant's ICE arrest and detention, became uncooperative and refused to testify.⁴⁸

Brooklyn District Attorney's Office

As Brooklyn District Attorney, **Eric Gonzalez**, says, “[w]e now work in an atmosphere of fear and intimidation that discourages victims and witnesses, both documented and undocumented, from coming forward to report crimes.”⁴⁹ District Attorney Gonzalez affirms that in several cases before his office, victims and witnesses have expressed fears of coming to criminal court due to ICE in courts.⁵⁰ In one instance, a victim robbed at gunpoint refused to testify because he feared an ICE arrest in court.⁵¹ In another case, a man robbed at knifepoint refused to testify because he was not a US citizen, and without his testimony,

⁴¹ *Id.* (App. S).

⁴² *Id.* (App. S).

⁴³ *Id.* (App. S).

⁴⁴ *Id.* (App. S).

⁴⁵ *Id.* (App. S).

⁴⁶ *Id.* (App. S).

⁴⁷ *Id.* (App. S)..

⁴⁸ *Id.* (App. S).

⁴⁹ Eric Gonzalez & Judy Harris Kluger, *How ICE Harms the Justice System: The Feds' Aggressive Tactics in our Courthouses are Emboldening Violent Criminals*, N.Y. Daily News (Aug. 2, 2018), <https://www.nydailynews.com/opinion/ny-oped-how-ice-harms-the-justice-system-20180801-story.html>.

⁵⁰ *Id.*

⁵¹ *Id.*

the assistant district attorney (ADA) was forced to reduce the charges to a misdemeanor.⁵² In another case, the Brooklyn District Attorney's Office was forced to dismiss assault charges because the eyewitness would not testify due to similar fears.⁵³ The Brooklyn Special Victims Bureau struggled to prosecute a sexual abuse case where the witness, an undocumented mother of the victim, feared cooperation due to ICE in courts.⁵⁴

Decline in Calls to Immigrant Affairs Unit Hotlines

In recent years several District Attorney's Offices across the state, including Manhattan, Bronx, Brooklyn, Queens, Nassau, Westchester, and Orange counties, have established Immigrant Affairs Units and Offices (IAUs).⁵⁵ These IAUs serve various purposes, such as, for example in Nassau County, the acceptance and investigation of crimes reported by noncitizens, U visa certifications (visas available for noncitizen crime victims who have cooperated in the prosecution of the perpetrator), criminal complaint walk-in services, fraud prevention education, referral services, and community outreach to noncitizen crime victims.⁵⁶

Among the resources offered to the immigrant communities in participating counties, IAUs operate hotlines for noncitizens to report crimes, ask questions, and obtain referrals for access to legal or other resources.⁵⁷ The IAUs that have been open the longest have seen the most dramatic declines in call rates since January 2017.⁵⁸

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ N.Y. State Dist. Attorneys League of Immigrant Affairs Flyer (App. WW).

⁵⁶ Nassau Cty. Dist. Attorney's Office, Office of Immigrant Affairs Flyer (App. VV).

⁵⁷ N.Y. State Dist. Attorneys League of Immigrant Affairs Flyer (App. WW).

⁵⁸ *See, e.g.*, E-mail from Jose Interiano, Deputy Chief, Immigrant Affairs Unit, Kings Cty. Dist. Attorney's Office, to Seth Hoy, Dir. Of Commc'ns, Legal Servs. N.Y.C., dated Apr. 9, 2019 (App. LL).

Calls to Brooklyn DA’s IAU Decreased by 67% Post-Election
After increasing in 2016, call volume decreased precipitously

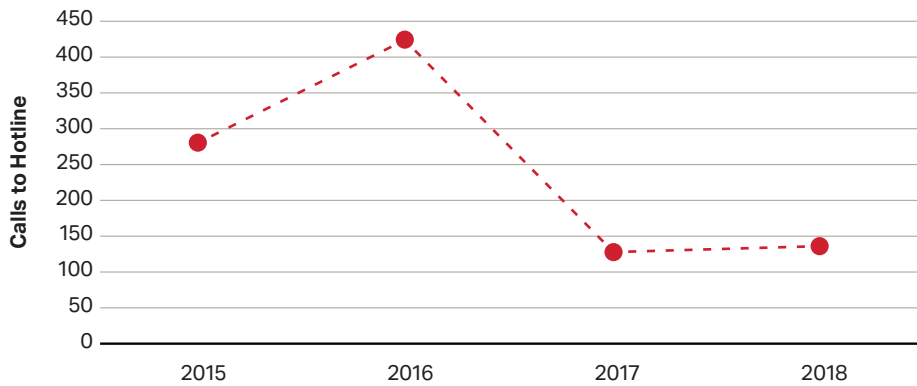


Fig 2

As seen in Figure 2, during the last year of the Obama Administration, calls to the Brooklyn IAU hotline increased from 281 to 431 calls, an increase of 53%.⁵⁹ In 2017, however, the trend reversed: call volume dropped to 132 calls and remained roughly the same the following year.⁶⁰ The number of calls received by the Brooklyn IAU dropped 67% in 2018, compared with calls received before in 2016.⁶¹

Calls to Nassau DA’s IAU Decreased by 90% Post-Election
Calls decreased at a much faster rate starting in 2017

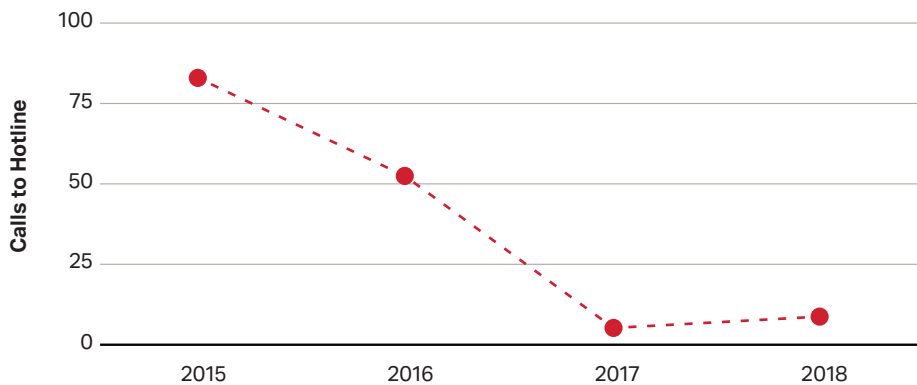


Fig 3

⁵⁹ *Id.* (App. LL).

⁶⁰ *Id.* (App. LL).

⁶¹ *Id.* (App. LL).

The Nassau District Attorney’s IAU saw similar trends. From March to December 2015, the hotline received 82 calls.⁶² The following year, in 2016, the calls dropped 30% to 51.⁶³ The decline was most severe in 2017, in which call volume — a mere three calls — decreased 96%.⁶⁴ In 2018, call volume recovered only slightly, to 8, still only 16% of pre-2017 numbers.⁶⁵

Walk-in Complaints in Nassau Decreased Notably Post-Election
 Unsolicited walk-in criminal complaints decreased by half

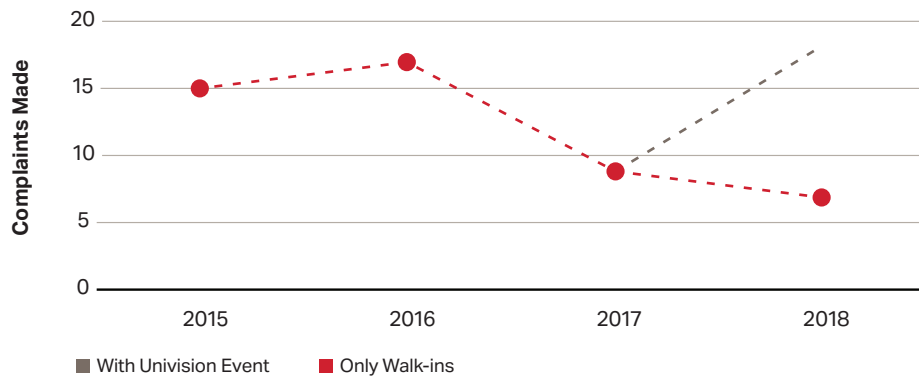


Fig 4

Added to its hotline call data, the Nassau IAU has observed a notable decrease in walk-in complaints by noncitizens since 2017.⁶⁶ From March through December 2015, the Nassau IAU confirmed 15 walk-ins.⁶⁷ In 2016, its first full year, the Nassau IAU saw 17 walk-ins.⁶⁸ The following year, the number of walk-ins dropped by more than half, to 9 in 2017, and 7 in 2018.⁶⁹

⁶² Attachment I to Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc’y & Reg’l Immigration Assistance Ctr. Attorney, dated Feb. 21, 2019 (App. KK).

⁶³ *Id.* (App. KK).

⁶⁴ *Id.* (App. KK).

⁶⁵ *Id.* (App. KK).

⁶⁶ *Id.* (App. KK).

⁶⁷ *Id.* (App. KK).

⁶⁸ *Id.* (App. KK).

⁶⁹ The Nassau IAU hosted a joint public event with Univision in 2018, which brought in 11 complaints. Figure 4 includes both a count of unsolicited walk-ins and a count including the complaints from the Univision event. *Id.* (App. KK).

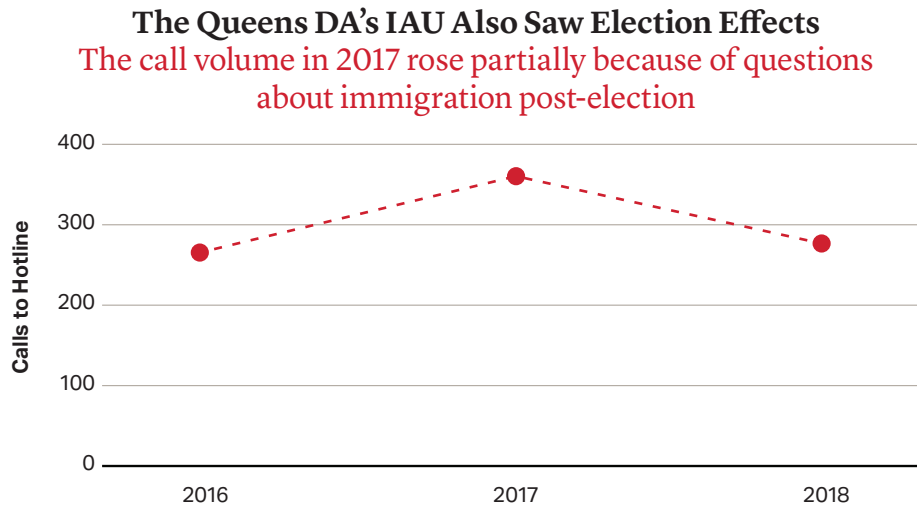


Fig 5

The Queens IAU experienced a somewhat different pattern of calls, attributable, in part, to county-specific factors and the 2017 election.⁷⁰ As shown in Figure 5, call volume increased, from 268 in 2016 to 358 calls in 2017, following increased awareness of the unit.⁷¹ Many of the 2017 calls cited concerns related to President Trump's election.⁷² In 2018, the number of calls decreased to 277.⁷³

The Bronx IAU hotline was installed in Spring of 2017, too short a period to determine yearly trends before and after President Trump's election and resulting ICE enforcement changes.⁷⁴ Additionally, while there were more calls in 2018 than 2017, that difference appears to be due to a news segment that aired on Univision.⁷⁵

⁷⁰ Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y & Reg'l Immigration Assistance Ctr. Attorney, dated Feb. 21, 2019 (App. JJ).

⁷¹ *Id.* (App. JJ).

⁷² *Id.* (App. JJ).

⁷³ *Id.* (App. JJ).

⁷⁴ Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 3, 2019 (App. S). Additional 2018 data was provided by the Bronx District Attorney's Office for this report. *See* Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 7, 2019 (App. U).

⁷⁵ Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 3, 2019 (App. S).

Decline in Clean Slate Participation

District Attorney offices often offer Clean Slate events in churches or community centers to allow individuals to resolve their summons warrants on-site without risk of arrest. The Manhattan District Attorney’s office reported that since 2017, the number of people who participate in its program has decreased considerably.⁷⁶ A Clean Slate event held on November 21, 2015 drew 700 people; yet a similar event on June 17, 2017 drew only 380 people — a 46% decrease.⁷⁷ With increased reporting of ICE courthouse arrests, the attendance has decreased further: A similar event held on April 28, 2018 drew a mere 200 attendees, a decrease of about 72%.⁷⁸

According to the Deputy Chief of the Manhattan District Attorney’s Trial Division, the office attributes such sudden drop off in attendance “in part due to the fear that ICE will show up and round people up,” stating further that “although undocumented witnesses were always nervous about coming to our office prior to 2017, the concerns have increased with the current administration and there is a general fear of law enforcement due to their immigration status and fear of deportation.”⁷⁹

In addition, both the Manhattan and Bronx District Attorneys’ offices noted that, since 2017, they have experienced a decline in those who sought their victim-related assistance via the adjacent Family Justice Centers.⁸⁰ More data on the drop off in Family Justice Center participation is covered in section IV(B) below.

Clean Slate Event Participation (Number of people)

November 21, 2015

700

June 17, 2017

380

April 28, 2018

200



⁷⁶ Attachment to Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project, dated Feb. 14, 2019 (App. OO).

⁷⁷ *Id.* (App. OO).

⁷⁸ *Id.* (App. OO).

⁷⁹ *Id.* (App. OO).

⁸⁰ *Id.* (App. OO).

Burden of Filing Writs to Produce

Increased ICE operations in New York State courts require law enforcement to expend substantial resources to file and execute writs to produce litigants held in ICE custody.⁸¹ District attorney offices have the burden of drafting and filing these writs as well as retrieving detainees from ICE custody.⁸² Usually, two detectives from a New York City law enforcement agency are sent to ICE Enforcement and Removal Operations at the Manhattan Immigration Court on Varick Street where detainees are held in order to pick them up and transport them to the criminal court.⁸³

Despite Criminal Procedure Law 580.30, which articulates the writ process, district attorneys across New York have found the procedure to be erratic, confusing, and cumbersome.⁸⁴ Often ICE does not honor the writ to produce the defendant in a timely manner, if it does so at all.⁸⁵

ICE purports that its reluctance or failure to produce a defendant has been a concern that the writ is a ploy to recoup the defendant to New York's jurisdiction in order to dismiss the conviction and release the defendant back into a sanctuary city.⁸⁶ ICE also routinely refuses to send a detainee to New York for a post-conviction relief motion hearing, where the underlying crime was a basis for deportability.⁸⁷

⁸¹ Where noncitizen defendants with pending criminal cases have been arrested and detained by ICE, an application for a writ of habeas corpus ad prosequendum, or writ of production, must be filed by prosecuting offices and subsequently ordered by the presiding state court judge. The writ requests retrieval of the detainees from federal immigration detention to attend their criminal court proceedings. *See, e.g.*, U.S. Marshals Serv., *Service of Process: Writ of Habeas Corpus* (last visited Mar. 27, 2019), <https://www.usmarshals.gov/process/habeas.htm>.

⁸² Attachment to Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project, dated Feb. 14, 2019 (App. OO).

⁸³ *Id.* (App. OO).

⁸⁴ *Id.* (App. OO).

⁸⁵ ICE's toolkit for prosecutors, a resource created by ICE for state and federal prosecutors to facilitate cooperation between agencies, explicitly notes that as a federal agency, it is not bound by state court orders, but that it will "generally" honor such writs. *See* U.S. Immigration & Customs Enf't, *Protecting the Homeland: Toolkit for Prosecutors* at 9 (Apr. 2011), <https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>.

⁸⁶ Attachment to Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project, dated Feb. 14, 2019 (App. OO).

⁸⁷ *Id.* (App. OO).

The Manhattan District Attorney Trial Division reports that ICE detentions, resulting from New York State court ICE arrests, frustrate prosecutions that require writs to produce in three ways:

1. **the severity of the charges do not warrant a writ, i.e., most are misdemeanors;**
2. **the defendant is no longer in its jurisdiction;** and
3. **ICE fails to produce the defendant per the writ.**⁸⁸

In 2018, the Nassau District Attorney's office was forced to file 53 writs to produce ICE detainees for their court dates in District Court, though only 23 were produced.⁸⁹ In County Court, where felonies are prosecuted, the Nassau District Attorney's Office filed 47 writs for defendants in ICE custody with pending felony charges.⁹⁰

The Bronx DV Bureau observes that, "To say navigating ICE is a labyrinthine endeavor would be an understatement. There is no publicly available information about how to produce a person from ICE. I had to go up the flag pole to the Chief Counsel for New York to figure out the process."⁹¹ In one case, after ICE arrested and detained a defendant charged with criminal mischief with no attorney present, it took two and a half months for ICE to produce him to take a plea.⁹² In another case, the ADA made several attempts to have the defendant produced from ICE custody, but was unsuccessful because ICE refused to release the defendant to the detectives who had been sent to pick him up.⁹³ **The Bronx DV Bureau** reports that ICE refuses to comply with writs, citing suspicions of the District Attorney's intentions:

⁸⁸ *Id.* (App. OO).

⁸⁹ Attachment I to Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y, & Reg'l Immigration Assistance Ctr. Attorney, dated Feb. 21, 2019 (App. KK) (revealing that some of the detainees who were not produced had already been deported or had bonded out of ICE custody).

⁹⁰ *Id.* (App. KK).

⁹¹ Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 3, 2019 (App. S).

⁹² *Id.* (App. S).

⁹³ *Id.* (App. S).

...up until recently, ICE has always complied with the writ requests so long as we send officers to pick up the defendant. However, recently, an ICE handler informed us that they are no longer producing defendants to state custody because they don't trust the state officials to return them to federal custody.⁹⁴

The experiences of the district attorney offices across New York demonstrate how ICE courthouse operations hinder their work and mission. Their significant dedicated attempts to cultivate trusting relationships with their immigrant residents through initiatives such as IAUs, Clean Slate events, and Family Justice Centers are undermined daily by ICE courthouse operations.

⁹⁴ *Id.* (App. S).

How ICE Courthouse Operations Instill Fear and Undermine Gender-Based Violence Prevention



Increased ICE enforcement operations in and around New York State courthouses deter many immigrant survivors from seeking relief in court. When those harmed are discouraged from seeking legal protections, they are pushed further into the shadows and made more vulnerable to abusive partners who threaten to call ICE. New York agencies and anti-violence advocates have collected data on the chilling effect of ICE courthouse operations since January 2017. Seven observable trends in the data include:

1. **a drop in orders of protection issued against intimate partners;**
2. **a drop in survivors seeking assistance at Family Justice Centers, located in the vicinity of New York State Courts and district attorneys' offices;**
3. **fewer survivors seeking civil legal assistance;**
4. **reduced communication with law enforcement;**
5. **reluctance to pursue affirmative petitions in Family and Supreme Courts;**
6. **increased fear of compliance with court orders; and**
7. **a rise in ICE-related threats from abusive partners.**

Decrease in Orders of Protection

Orders of protection issued against intimate partners or family members⁹⁵ dropped from 235,282 in 2016 to 232,803 in 2017.⁹⁶ This decline coincides with the dramatic rise in ICE courthouse operations in 2017. A closer look at the data reveals how this decrease is greater in the local criminal courts. In particular, in New York City Criminal Courts and City and District Courts outside of New York City, there were 109,091 orders of protection issued against intimate partners or family members in 2016, compared with 103,201 in 2017 — a decline of 5.4%.⁹⁷

⁹⁵ “Under Executive Law § 221, the Office of Court Administration calls orders that must be filed with the registry ‘required.’ These orders involve intimate partners or family members. Other orders of protection issued against unrelated parties such as neighbors are ‘not required’ to be filed with the registry . . .” N.Y. State Office for the Prevention of Domestic Violence, *New York State Domestic Violence Dashboard 2017* at 3 n.2 (Oct. 2018), <http://www.opdv.ny.gov/statistics/nydata/2017/2017-dv-dashboard.pdf>.

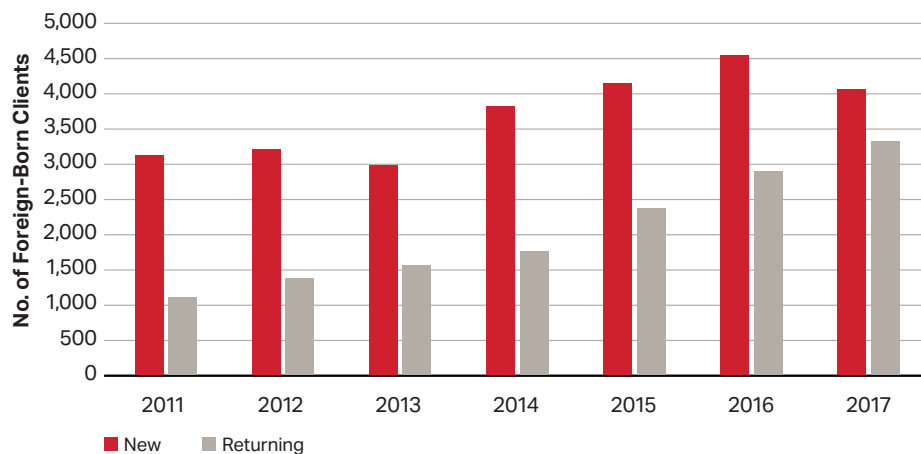
⁹⁶ *Compare* N.Y. State Unified Court Sys., Orders of Protection in UCS’s Domestic Violence Registry with an Issue Date 1/1/16-12/31/16, dated May 1, 2017 (App. XX) *with* N.Y. State Unified Court Sys., Orders of Protection in UCS’s Domestic Violence Registry with an Issue Date 1/1/17-12/31/17, dated Jan. 8, 2018 (App. YY).

⁹⁷ *See* N.Y. State Unified Court Sys., Orders of Protection in UCS’s Domestic Violence Registry with an Issue Date 1/1/17-12/31/17, dated Jan. 8, 2018 (App. YY).

Decline in Visits to Family Justice Centers

In New York City, Family Justice Centers (FJCs) are operated by the New York City Mayor’s Office to End Domestic and Gender-Based Violence (ENDGBV) and are generally located in the vicinity of New York State courts and the local district attorney office. In 2017, the City’s five FJCs saw a 10% decline in the number of new, foreign-born client visitors compared to 2016.⁹⁸ According to the Mayor’s Office to End Domestic and Gender-based Violence (ENDGBV)⁹⁹, “foreign-born New Yorkers who have not yet visited a Center may face additional barriers to seeking FJC services compared to the prior year.”¹⁰⁰

New vs. Returning Foreign-Born FJC Clients By Year
2011–2017



Source: OCDV in Focus: A Closer Look at Foreign-Born Clients Visiting the New York City Family Justice Centers, <https://www1.nyc.gov/assets/ocdv/downloads/pdf/Foreign-Born-FJC-Client-Report.pdf>.

Fig 7

⁹⁸ FJCs are open, public facilities that provide a space for non-profit organizations, including legal-aid providers, to meet with survivors of domestic violence and sex trafficking. FJCs are available to anyone, regardless of “language, income, gender identity, or immigration status.” See N.Y.C. Mayor’s Office to Combat Domestic Violence, *OCDV in Focus: A Closer Look at Foreign-Born Clients Visiting the New York City Family Justice Centers* (2018), <https://www1.nyc.gov/assets/ocdv/downloads/pdf/Foreign-Born-FJC-Client-Report.pdf> (emphasis added).

⁹⁹ Formerly known as the Mayor’s Office to Combat Domestic Violence (OCDV).

¹⁰⁰ See N.Y.C. Mayor’s Office to Combat Domestic Violence, *OCDV in Focus: A Closer Look at Foreign-Born Clients Visiting the New York City Family Justice Centers* (2018), <https://www1.nyc.gov/assets/ocdv/downloads/pdf/Foreign-Born-FJC-Client-Report.pdf>.

Fewer Survivors Seeking Civil Legal Assistance

Fewer immigrants harmed by intimate partner and gender-based violence are seeking civil legal assistance in New York. Between 2017 and 2018, Sanctuary for Families (Sanctuary) closed 1,350 fewer cases and assisted 226 fewer clients seeking orders of protection, compared to the previous year.¹⁰¹ Sanctuary saw a substantial decrease in the number of clients seeking assistance for family law matters.¹⁰² Conversations with current and prospective clients lead Sanctuary staff to conclude that ICE courthouse operations were largely to blame.¹⁰³

Civil legal services providers across New York saw similar effects of ICE courthouse operations on survivors' willingness to access their services. For example, in May 2017, **Atossa Movahedi**, of the Domestic Violence Project of the Urban Justice Center (UJC), reported at least two incidents where clients stopped working with UJC due to ICE courthouse operations.¹⁰⁴ UJC supervising immigration attorney **Joy Ziegeweid** explained her experience with a woman reluctant to access her services: "Two days before Celia's scheduled consultation, her therapist called me and told me that Celia was afraid of being arrested by ICE at our offices and was afraid to come to her appointment with me."¹⁰⁵ Likewise, **Andrea Panjwani**, former Immigration Practice Managing Attorney at My Sisters' Place, recounted similar experiences with survivors who chose not to seek their services.¹⁰⁶ In the case of a woman who had been brutally attacked by her children's father:

When I asked her what happened, she reported that the father of her children raped her in a parking lot and then severely beat her about the head with his fists and "metal things." She has neurological damage and what appears to be permanent vision loss as a result. When I asked her why she did not report it or

¹⁰¹ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women's Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS).

¹⁰² See *id.* (App. SS).

¹⁰³ See *id.* (App. SS).

¹⁰⁴ Decl. of Atossa Movahedi, Esq., Dir., Legal Servs. & Dev., Domestic Violence Project, Urban Justice Ctr. ¶¶ 5-6, dated May 31, 2017 (App. Y).

¹⁰⁵ Decl. of Joy Ziegeweid, Supervising Immigration Attorney, Domestic Violence Project, Urban Justice Ctr. ¶ 5, dated May 31, 2017 (App. QQ).

¹⁰⁶ Decl. of Andrea Panjwani, Managing Attorney, Immigration Practice, My Sisters' Place ¶ 3(b), dated May 26, 2017 (App. CC).

ask us to help her get a restraining order at Family Court, she told me she was afraid of being picked up by ICE.¹⁰⁷

New York Legal Assistance Group (NYLAG) represents an increasing number of clients who express fear in accessing our courts to seek orders of protection.¹⁰⁸ One woman, Lisa, who met with NYLAG spoke about wanting to separate from her husband, who frequently hits and pushes her in front of their three children.¹⁰⁹ After learning that she would have to appear in court to get an order of protection, Lisa decided not to file a case.¹¹⁰ Lisa specifically said that she had heard stories of ICE coming to courts in New York, and she didn't feel safe there.¹¹¹ Lisa had to weigh her and her children's safety, against the safety of being in court as an undocumented person.

Reduced Communication with Law Enforcement

Immigrant survivors of intimate partner and gender-based violence experience overwhelming fear of engaging with law enforcement as a direct result of increased ICE courthouse operations.¹¹² Surveys of legal services professionals conducted over the past two years provide quantitative data on the decreased willingness of survivors to communicate with law enforcement due to ICE in the courts. According to an internal Sanctuary survey, 78.6% of staff surveyed reported an increase in noncitizen clients who are fearful of seeking assistance from law enforcement (at least 200 clients in total) since early 2017.¹¹³ Key findings from the 2017 ICE in NYS Courts Legal Service and Advocates Survey show that 46% of providers surveyed worked with immigrants who expressed fear of serving as a complaining witness.¹¹⁴

Anti-violence advocates also provided substantial qualitative data on survivors who decline to communicate with law enforcement (police, district attorney offices, criminal courts) due

¹⁰⁷ *Id.* (App. CC).

¹⁰⁸ Decl. of Victoria Goodlof, Senior Staff Attorney, N.Y. Legal Assistance Grp. ¶ 6, dated Feb. 27, 2019 (App. K).

¹⁰⁹ *Id.* (App. K).

¹¹⁰ *Id.* (App. K).

¹¹¹ *Id.* (App. K).

¹¹² See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women's Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 2, dated July 6, 2018 (App. SS).

¹¹³ Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

¹¹⁴ 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>.

to ICE courthouse operations in New York.¹¹⁵ For example, in May 2017, **Andrea Panjwani** explained that, in the Lower Hudson Valley:

We have several cases with pending investigations and clients are expected to appear for interviews at the District Attorney's Office, local police departments, local FBI offices and so forth. We have two cases with the Westchester District Attorney right now and their office is housed at the Courthouse. These clients, who have survived horrific crimes, including child rape and aggravated assault, are asking me to help them get the charges dropped against the defendants because they are afraid that one of the ways the defendants would retaliate would be by alerting ICE to the court dates.¹¹⁶

Similarly, **Evangeline Chan**, Director of Safe Horizon's Immigration Law Project, explained in June 2018 that a Safe Horizon client had to be hospitalized due to injuries inflicted by her husband and that the police were called by hospital staff when the client disclosed the abuse. But while discussing the case with her Safe Horizon attorney, the client expressed fear "that her husband would disclose her immigration status in open court or to immigration officials as retaliation for his arrest."¹¹⁷ As a result, Chan explained, "the client decided not to cooperate with the DA's office and is advocating with the DA to drop the charges against her husband."¹¹⁸ According to **Dorchen Leidholdt** of Sanctuary, "[O]ne of our clients declined to report domestic violence to the New York Police Department and declined to obtain an order of protection for her and her children for fear of negative immigration repercussions for herself."¹¹⁹

Attorneys at Sanctuary "overwhelmingly report that their clients are fearful of going to the police and that their clients' expressions of fear that accessing police protection will result in

¹¹⁵ The appendix contains numerous affidavits describing more firsthand accounts with survivors.

¹¹⁶ Decl. of Andrea Panjwani, Managing Attorney, Immigration Practice, My Sisters' Place ¶ 3(a), dated May 26, 2017 (App. CC).

¹¹⁷ Decl. of Evangeline M. Chan, Dir., Immigration Law Project, Safe Horizon ¶ 12, dated June 29, 2018 (App. G).

¹¹⁸ *Id.* (App. G).

¹¹⁹ Aff. of Claire R. Thomas, N.Y. Law Sch. ¶ 4, dated July 9, 2018 (App. II).

arrest and deportation are greater than ever before.”¹²⁰ A Sanctuary client stated that “previously she felt no fear about cooperating with the police but the presence of ICE in the neighborhood she lives in and rumors that the police cooperate with ICE have convinced her that reporting her husband’s abuse and cooperating with his prosecution will place her at great risk from immigration authorities in the U.S.”¹²¹ Sanctuary’s internal survey also found that its clients often choose not to serve as complaining witnesses, with 53.8% of staff reporting an increase in noncitizens expressing fear of serving as a complaining witness since January 2017.¹²²

Survivors’ family members are also unwilling to communicate with law enforcement, as illustrated by **Carolina Guiral**, staff attorney at Bronx Legal Services: “I have also seen how some of my clients who have had the courage to come forward to report a crime that has been committed against them are impeded from doing so due to their family members’ unwillingness to cooperate in their cases because they do not want to place themselves at a higher risk of being discovered by ICE.”¹²³ The ripple effects of ICE courthouse operations go on and on for survivors of violence.

Reluctance to Pursue Remedies in Family and Supreme Court

Immigrant survivors of intimate partner and gender-based violence are increasingly reluctant to pursue available remedies in Family and Supreme Court, due in part to ICE courthouse operations.¹²⁴ According to the 2017 ICE in NYS Courts Legal Service and Advocates Survey, 67% of providers

2017 ICE in NYS Courts Legal Service and Advocates Survey

67%

of providers surveyed have had clients who decided not to seek help from the courts

48%

worked with immigrants who failed to seek custody or visitation

37%

worked with someone who failed to pursue an order of protection

¹²⁰ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS).

¹²¹ See *id.* at 4 (App. SS).

¹²² See Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

¹²³ Decl. of Carolina Guiral, Staff Attorney, Family & Immigration Unit, Bronx Legal Servs. ¶ 3, dated Aug. 9, 2018 (App. L).

¹²⁴ See, e.g., Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D) (“Fear of ICE interaction or deportation plays a role in the overwhelming majority of my non-citizen clients’ decisions in reporting or going forward with a case.”); Written Testimony of Carmen Maria Rey, Esq. Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs., Chair, Council Member Rory Lancman at 2, dated June 29, 2017 (App. DD); Decl. of Andrea Panjwani, Managing Attorney, Immigration Practice, My Sisters’ Place ¶ 3(a), dated May 26, 2017 (App. CC).

surveyed have had clients who decided not to seek help from the courts, 48% worked with immigrants who failed to seek custody or visitation, and 37% worked with someone who failed to pursue an order of protection, all due to fear of ICE.¹²⁵

Anti-violence advocates provide additional details about the post-January 2017 decline in participation in civil court proceedings by immigrant survivors. **Claire Thomas** says that “[o]ur clients are now anxious to enter New York State Courts for fear that they will be apprehended simply because they are not U.S. citizens.”¹²⁶ Describing his interactions with survivors at Queens Family Justice Center, UJC staff attorney **Salar Rivani** says “[a]bout half the clients [screened] are undocumented and it has become a regular occurrence that they will ask about their risk of deportation from beginning a case in any of the New York courts.”¹²⁷ **Hamra Ahmad**, Director of Legal Services at Her Justice, explains that their clients have declined to pursue Family Court actions:

One client who had filed for a U Visa with assistance from Her Justice withdrew her Family Court petitions because she was afraid of ICE enforcement in the courts. Another undocumented client whom Her Justice advised on Family Court matters over the phone was too afraid to even come to our office to seek pro bono representation because of the pervasive fear of increased immigration enforcement.¹²⁸

Carolina Guiral of Bronx Legal Services relays what happened with one of her clients who filed a family offense petition in Family Court:

During the months leading up to her hearing, my client showed signs that she did not want her case to go forward. She eventually disclosed to me that she was afraid to go forward with her case and that it was causing her an enormous amount of stress. As a result of her fear, she has requested that her

¹²⁵ 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>.

¹²⁶ Aff. of Claire R. Thomas, N.Y. Law Sch. ¶ 4, dated July 9, 2018 (App. II).

¹²⁷ Decl. of Salar Rivani, Esq., Staff Attorney, Urban Justice Ctr., Domestic Violence Project ¶ 4, dated May 31, 2017 (App. EE).

¹²⁸ Aff. of Hamra Ahmad, Dir., Legal Servs., Her Justice ¶ 4, dated July 12, 2018 (App. B).

family offense petition be withdrawn. The testimony of a close family member who witnessed the abuse inflicted on my client would have been essential evidence in her case and perhaps it would have encouraged her to go forward with her case. If there were court rules prohibiting arrests of undocumented persons in the courthouse without a warrant, my client's family may have been willing to testify on her behalf and my client would have had the support she needed to proceed with her family offense petition.¹²⁹

Guiral's client spoke anonymously to Law360 regarding her fear of pursuing her rights in Family Court.¹³⁰ She explained that she knew that she could request a U visa if she continued with her Family Court matter, "[b]ut I couldn't sleep because I was fearful to go to the courthouse."¹³¹

Data from the Office of Court Administration demonstrates that Guiral's client is not alone. In 2016, there were 110 requests for U visa certifications made to the New York City Family Courts.¹³² In 2017, that number dropped to 62 requests, a 44% decline.¹³³ The number of requests recovered slightly in 2018 to 83, still a 25% decline from the 2016 number of requests.¹³⁴ While overall New York City U visa certification request numbers seem stronger in 2018, though, a closer look at the borough-specific data reveals a bleak picture for Manhattan, Staten Island, and Queens Family Courts.¹³⁵ From 2016 to 2018, there was a 100% decline in U certification requests in Manhattan (15 in 2016, 0 in 2017 and 0 in 2018); an 83% decline in Staten Island (6 in 2016, 0 in 2017, 1 in 2018); and a 72% decline in Queens (25 in 2016, 12 in 2017, and 7 in 2018).¹³⁶ The dramatic drop-off of undocumented

¹²⁹ Decl. of Carolina Guiral, Staff Attorney, Family & Immigration Unit, Bronx Legal Servs. ¶ 4, dated Aug. 9, 2018 (App. L).

¹³⁰ RJ Vogt, *With Courthouse Arrests, Is Justice Too Risky for Immigrants?*, Law360 (Mar. 3, 2019), <https://www.law360.com/articles/1133777>.

¹³¹ *Id.*

¹³² Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 5, 2019 (App. T).

¹³³ *Id.* (App. T).

¹³⁴ *Id.* (App. T).

¹³⁵ *Id.* (App. T).

¹³⁶ *Id.* (App. T).

survivors of violence who seek U visa certifications demonstrates that survivors are not seeking available remedies from New York City Family Court.

With increased ICE courthouse operations, attorneys have been forced to change the way they advise survivors. According to **Dorchen Leidholdt** of Sanctuary:

Previously when clients expressed concern that a lack of immigration status might place them at risk of arrest and deportation if they petitioned for protective orders, custody or visitation, child support, divorce, and/or special immigrant juvenile status, or made appearances in cases for such protection and relief, we attempted to correct what was then a misapprehension. Now we must carefully review our clients' immigration status before providing legal advice and if we learn that our clients are not fully documented, we must explore with them the possibility that pursuing these remedies may place them and their children at risk of arrest, detention, and eventual deportation. Our lawyers struggle with balancing clients' often urgent needs for legal remedies against the danger that pursuing these remedies may place them in.¹³⁷

Hamra Ahmad also reports that in the eighteen-month period following January 2017:

Her Justice has changed the nature of advice to foreign-born clients and to pro bono attorneys working with our clients. We can no longer assure Her Justice clients that they will be free from apprehension by ICE in New York's courthouses . . . We help foreign-born clients weigh the risks of pursuing civil court relief or appearing as a witness in court given increased ICE enforcement in and around courthouses. Pro bono attorneys working with Her Justice are more concerned than they once

¹³⁷ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women's Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 4, dated July 6, 2018 (App. SS).

were about how to present their clients' immigration status in Family Court.¹³⁸

Joy Ziegeweid of UJC recounts similar experiences, relaying the story of what happened when she met with her client, Celia:

At our appointment, Celia, a victim of severe domestic violence at the hands of the father of her child, told me that she had filed for custody and an order of protection, but she was not sure if she should continue the case, because she was afraid that she might be arrested at the next Family Court hearing. I used to be able to tell my fearful clients that it was extremely unlikely that ICE would show up at a New York courthouse. I no longer can tell them that. Celia is a woman who has not committed a crime. She is a single mother attempting to raise her child in safety. An order of custody and an order of protection would help her to do that, but because of ICE enforcement at courthouses, she is now fearful of accessing the justice to which she is entitled.¹³⁹

Carmen Maria Rey, Brooklyn Law School professor and former Sanctuary attorney, explains her heartbreaking experience of working with a woman who lost her daughter to her abusive partner and chose not to go to Family Court for help because he threatened “that if she tries to get her daughter back, he will call immigration and have her deported” and “if she files for custody, he can tell ICE where she will be on the day of her Court hearing, and they will likely come to arrest her.”¹⁴⁰

¹³⁸ Aff. of Hamra Ahmad, Dir., Legal Servs., Her Justice ¶ 5, dated July 12, 2018 (App. B).

¹³⁹ Decl. of Joy Ziegeweid, Supervising Immigration Attorney, Domestic Violence Project, Urban Justice Ctr. ¶ 5, dated May 31, 2017 (App. QQ).

¹⁴⁰ Written Testimony of Carmen Maria Rey, Esq., Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs., Chair, Council Member Rory Lancman at 2, dated June 29, 2017 (App. DD).

Chelsea Whipp at UJC explains that “even my clients who have legal status fear accessing the courts, because they believe it makes them visible to ICE and thus susceptible to detention.”¹⁴¹ Others explain that survivors express fear about walking past New York State courthouses alone (i.e., without legal representation). As one Sanctuary advocate explains: “I work at the Queens FJC and have had numerous clients ask me (a stereotypically “American” looking white woman) to walk them to the subway after our appointments because they are fearful of walking past the court alone.”¹⁴²

Shani Adess, Associate Director of NYLAG’s Matrimonial and Family Law Unit, states that an increasing number of immigrant survivors express fear about whether it is safe to appear in civil courts to seek orders of protection, or file for custody, support or divorce against their abusers.¹⁴³ “We used to evaluate safety in terms of survivor’s safety in relation to the abuser being brought to court. Now, . . . we have to look to whether their physical safety in this country is at risk if they come forward. We work with clients to develop safety plans that encompass all of their fears, but anytime you limit resources and options for survivors who are looking for protection, you are making survivors and their children, and our communities, less safe.”¹⁴⁴

Antoinette Delruelle at NYLAG, speaks about a client in her twenties and now raising two children as a single mom having fled physical violence at the hands of their father, who 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. “[M]y 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 her abuser as his wife.¹⁴⁵

Even for clients who are still willing to come forward with claims, they face obstacles in pursuing their cases when witnesses to the case refuse to appear in court out of fear of immigration enforcement. NYLAG represented a client who sought an order of protection against their husband. The sole witness in her case was a friend, who refused to testify in the case fearing she would be arrested by ICE in the courthouse and deported for being

¹⁴¹ Decl. of Chelsea Whipp, Esq., Immigration Staff Attorney, Domestic Violence Project, Urban Justice Ctr. ¶ 3, dated May 31, 2017 (App. PP).

¹⁴² See Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

¹⁴³ Decl. of Shani Adess, Esq., Assoc. Dir., Matrimonial & Family Law Unit, N.Y. Legal Assistance Grp. ¶ 5, dated Feb. 28, 2019 (App. A).

¹⁴⁴ *Id.* (App. A).

¹⁴⁵ Decl. of Antoinette Delruelle, Senior Staff Attorney, N.Y. Legal Assistance Grp. ¶ 5, dated Feb. 27, 2019 (App. I).

here without status.¹⁴⁶ Not being able to produce the witness weakened the client's case substantially in the eyes of the court and other counsel.¹⁴⁷

Increased Fear of Compliance with Court Orders

ICE courthouse operations discourage trafficking survivors from complying with court orders.¹⁴⁸ After ICE agents attempted to arrest a woman in the Queens Human Trafficking Intervention Court in June 2017, **Yvonne Chen**, Outreach Manager for Sanctuary's Anti-Trafficking Initiative, described an interaction with two women scheduled to appear in the court that day:

[A]fter court broke for lunch, two Chinese women approached me anxiously, questioning why ICE was there and if they were going to be deported next. They were terrified to even exit the courtroom and asked me to escort them outside so they could get some food, as they had been waiting since early morning for their case to be heard. As we were about to exit the courthouse, they panicked and decided to remain huddled inside the courthouse rather than risk arrest. I could tell they were famished, but because they could not bring themselves to step outdoors, the best I could do was bring them some stale bagels. As I sat with them for a few minutes, they wondered how they

¹⁴⁶ Decl. of Micah Horwitz, Esq, Staff Attorney, N.Y. Legal Assistance Grp. ¶ 5, dated Feb. 28, 2019 (App. M).

¹⁴⁷ *Id.* (App. M).

¹⁴⁸ Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women's Legal Servs., Sanctuary for Families, to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 2, dated July 6, 2018 (App. SS).

could possibly finish their sessions and return to court given the risk that doing so could cause them to be deported.¹⁴⁹

The woman whom ICE sought to detain on June 16, 2017 “was on track to have the charges against her dismissed after completing her mandated services” but in coming to court to “comply[] with the legal requirement to appear in court as scheduled, she suddenly risked detention and deportation.”¹⁵⁰ Because “[a]ll of this occurred in front of dozens of other immigrant defendants in the same situations,” the Sanctuary staff opined, “many surely resolved at that moment never to return or complete their services.”¹⁵¹

Abusers Threatening to Call ICE

Increased ICE enforcement in New York, especially in and around courthouses, emboldens abusive partners who weaponize threats to call ICE.¹⁵² Sanctuary’s internal survey reveals that 78.6% of survey respondents have clients (at least 100) who reported an increase in abusers threatening to call ICE.¹⁵³ **Susanna Saul**, Managing Attorney at Her Justice, explains:

Another trend that I have noticed in the past few months is that undocumented clients are increasingly reporting that their

¹⁴⁹ Written Testimony of Carmen Maria Rey, Esq. Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs. Chair, Council Member Rory Lancman at 3, dated June 29, 2017 (App. DD). *See also* Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., Sanctuary for Families, to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 2, dated July 6, 2018 (App. SS). The Human Trafficking Intervention Court is one of eleven such problem-solving courts in New York State that adjudicate the cases of people arrested for prostitution, recognizing that many have been subjected to sex trafficking and all are at high risk of trafficking and other forms of gender violence. *See* N.Y. State Unified Court Sys., *Human Trafficking Intervention Courts: Overview* (last updated July 30, 2014), https://www.nycourts.gov/courts/problem_solving/htc/index.shtml; *see also* N.Y. State Unified Court Sys., *Problem-Solving Courts Overview* (last updated Dec. 18, 2017), https://www.nycourts.gov/COURTS/problem_solving/index.shtml.

¹⁵⁰ Written Testimony of Carmen Maria Rey, Esq., Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs. Chair, Council Member Rory Lancman at 2, dated June 29, 2017 (App. DD).

¹⁵¹ *Id.* (App. DD).

¹⁵² *See, e.g.*, Aff. of Hamra Ahmad, Dir., Legal Servs., Her Justice ¶ 3, dated July 12, 2018 (App. B) (“In the current climate of increased enforcement, abusers’ threats to report undocumented clients to the immigration authorities feel even more real to our clients than they once did.”).

¹⁵³ *See* Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

abusive former partners are threatening to “take them to court and have them deported” if they don’t do what their former partners want. In one example, a client reported that her former partner threatened to “take her to court and have her deported” if she did not allow him to see their daughter. In some instances, their partners have actually made false allegations against my clients using the family court and criminal systems. This is a trend that I have seen in the past but it takes on an extraordinary significance to my clients now because of the extreme immigration consequences that can arise from these accusations.¹⁵⁴

Evangeline Chan of Safe Horizon states:

From our domestic violence shelters, [Child Advocacy Centers] and [Crime Victim Assistance Program], we receive constant referrals for clients . . . who want to know what options and rights they have if they are too afraid to enter government buildings because of ICE, but need protection from their abusers who threaten to report them to ICE and/or take their children away from them.¹⁵⁵

Micah Horwitz at NYLAG represented a client who routinely threatened to call ICE on her and deport her whenever she “disobeyed him”; disobeying him included leaving the house without his permission, or speaking with friends or family on the telephone.¹⁵⁶ Until she spoke with an attorney, she believed that getting a divorce or filing for an order of protection would cause her to be deported.¹⁵⁷ “ICE presence in courthouses builds on this belief that abusers often tell survivors: that they have complete power over them, that if they disobey them, or try to flee, or go to court: all their abuser has to do is make a call and ICE will detain

¹⁵⁴ Decl. of Susanna Saul, Esq., Managing Attorney, Her Justice ¶ 5, dated May 31, 2017 (App. GG).

¹⁵⁵ Decl. of Evangeline M. Chan, Dir., Immigration Law Project, Safe Horizon ¶ 10, dated June 29, 2018 (App. G).

¹⁵⁶ Decl. of Micah Horwitz, Staff Attorney, N.Y. Legal Assistance Grp. ¶ 4, dated Feb. 28, 2019 (App. M).

¹⁵⁷ *Id.* (App. M).

and deport them. True or not, the presence of ICE in courthouses makes this threat all the more real.”¹⁵⁸

Advocates have countless stories about these threats.¹⁵⁹ One Sanctuary advocate reports that “[s]everal clients mentioned their abusers were directly using the news to instill fear in clients” and that “[o]ne client mentioned her abuser screamed at her during a violent abuse ‘If Trump is president then I can do whatever I want.’”¹⁶⁰

¹⁵⁸ Decl. of Shani Adess, Esq. Assoc. Dir., Matrimonial & Family Law Unit, N.Y. Legal Assistance Grp. ¶ 3, dated Feb. 28, 2019 (App. A).

¹⁵⁹ *See, e.g.*, Decl. of Susanna Saul, Managing Attorney, Her Justice ¶ 5, dated May 31, 2017 (App. GG).

¹⁶⁰ *See* Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

How ICE Courthouse Operations Disrupt the Work and Mission of Public Defender Offices



ICE courthouse operations disrupt longstanding best practices of public defender offices and inhibit zealous representation of those facing criminal charges in New York State courts. The vast majority of ICE courthouse operations in New York involve people with cases in criminal court.¹⁶¹ Institutional public defenders

¹⁶¹ See N.Y.C. Bar Assoc., *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses* at 4 (Jul. 2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf> (noting that although ICE has primarily targeted New York’s criminal courts, they have also executed arrests in civil courts and problem-solving courts).

identify five systemic disruptions to the administration of justice in New York:

1. **clients' rising fears of attending court and increased issuance of bench warrants;**
2. **barriers to mounting a zealous defense;**
3. **litigants disappearing into ICE detention;**
4. **resource drain in public defender offices; and**
5. **ICE's escalating use of force and surveillance.**

Fear of Attending Court and Increasing Issuance of Bench Warrants

The public defender offices report that noncitizen clients fear an ICE arrest at their scheduled court dates.¹⁶² Clients regularly express fear to their advocates that court appearances will result in ICE detention.¹⁶³ The ICE in NYS Courts Legal Service and Advocates Survey, which surveyed 225 legal service providers statewide, found that 3 out of 4 legal services providers worked with clients who expressed fear of going to court.¹⁶⁴ **Matt Knecht**, Managing Director of Neighborhood Defender Service of Harlem (NDS), explains “[o]ur attorneys are reporting an increased fear of our non-citizen clients to appear in court, contrary to their own legal interests and the efficiency interests of the Court.”¹⁶⁵ **New York County Defender Services** (NYCDS) elaborates:

Many of our noncitizen clients feel that they cannot risk the potential exposure to ICE in court, so they prioritize their own liberty over allowing the criminal justice process to play out.

¹⁶² See, e.g., Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc’y ¶ 5, dated Feb. 21, 2019 (App. V).

¹⁶³ See, e.g., Aff. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶ 7, dated Mar. 1, 2019 (App. BB).

¹⁶⁴ Immigrant Def. Project, *Key Findings: ICE in NYS Courts Legal Service and Advocates Survey*, <https://www.immdefense.org/ice-courts-survey>.

¹⁶⁵ Decl. of Matt Knecht, Managing Dir. of Neighborhood Def. Serv. of Harlem, dated Oct. 2, 2018 (App. P).

As a result, after being advised of the potential immigration consequences, many of our noncitizen clients choose to take a plea at arraignments so that they need not return to court and risk a potential ICE arrest.¹⁶⁶

Kathy Rodriguez, a former Arraignment Clerk and Administrative Assistant for NYCDS, describes the effects on clients and staff:

Clients are now calling our office to ask about the consequences of making their court dates (as opposed to missing their court dates) because they are afraid ICE is outside waiting for them. They are terrified, hysterical, and untrusting of any governmental employee because they feel like we were all out to get them. Our jobs as administrative assistants went from sources of information to counselors — a job that I am not mentally prepared to handle. These phone calls replay in my head way too often.¹⁶⁷

Cynthia C. Darrell, the Bureau Chief of Suffolk County Legal Aid Society’s East End Bureau, adds that “[t]his anxiety occurs even on minor traffic offenses where the plea bargain is only a fine.”¹⁶⁸ These fears disproportionately effect vulnerable populations: “My clients who are mothers, especially single mothers, worry about their children. If they are detained in court who will pick up their children at school? How will the children know what happened to them? Who will care for them?”¹⁶⁹

Clients do not attend court out of fear of ICE at an alarming rate: according to NYCDS’s internal survey, 95% of respondents said that they have had clients fail to appear in court due to fear of ICE presence.¹⁷⁰ When noncitizen clients do not attend scheduled court

¹⁶⁶ Decl. of the Immigration Unit, N.Y. Cty. Def. Serv. ¶ 4, dated July 13, 2018 (App. AA).

¹⁶⁷ Decl. of Kathy Rodriguez, Arraignment Clerk & Admin. Assistant, N.Y. Cty. Def. Servs. ¶ 3, dated July 10, 2018 (App. FF).

¹⁶⁸ Decl. of Cynthia C. Darrell, East End Bureau Chief, Suffolk Cty., Legal Aid Soc’y at 4, dated July 9, 2018 (App. H).

¹⁶⁹ *Id.* (App. H).

¹⁷⁰ Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT).

appearances, they have bench warrants issued against them.¹⁷¹ But bench warrants stall resolution of cases indefinitely and task the New York Police Department (NYPD) warrant squad with finding and arresting those who do not appear.¹⁷²

Justice Distorted in the Criminal Courts and Barriers to Zealous Defense

ICE courthouse operations negatively impact outcomes in clients' criminal cases. The Immigration Unit at NYCDS observes that their noncitizen clients choose to take pleas at arraignments, rather than litigate their cases, because they know that ICE may be at future court dates.¹⁷³ This phenomenon was reported across boroughs and public defender offices.

Over half of the NYCDS attorneys who responded to an internal survey stated that their clients have taken less favorable pleas to avoid having to return to court for fear of ICE.¹⁷⁴

Sarah Deri Oshiro, Managing Director of the Immigration Practice at The Bronx Defenders, notes that “attorneys report that their clients accept plea bargain offers that they otherwise would have declined in order to end a criminal case sooner, and reduce the risk of arrest by ICE in court.”¹⁷⁵ **Matt Knecht** observes the same phenomenon at NDS:

[M]any . . . clients' cases would be dismissed or otherwise resolved favorably, but because of ICE's presence in and around criminal court, clients are more likely to take unfavorable pleas to avoid returning to court. Clients are foregoing their right to have a trial or have a full investigation in their case because

¹⁷¹ Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc'y ¶ 4, dated Feb. 21, 2019 (App. V).

¹⁷² Decl. of Matt Knecht, Managing Dir. at Neighborhood Def. Serv. of Harlem, dated Oct. 2, 2018 (App. P) (“for clients who do not return to court, warrants are issued for their arrest and their cases remain in limbo indefinitely”).

¹⁷³ Decl. of the Immigration Unit, N.Y. Cty. Def. Servs. ¶ 4, dated July 13, 2018 (App. AA) (“As a result, after being advised of the potential immigration consequences, many of our noncitizen clients choose to take a plea at arraignments so that they need not return to court and risk a potential ICE arrest.”).

¹⁷⁴ Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT).

¹⁷⁵ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶ 8, dated Mar. 1, 2019 (App. BB).

they feel pressured to get a case resolved as soon as possible for fear of ICE contact.¹⁷⁶

Josh Epstein, Supervising Immigration Attorney at Queens Law Associates (QLA), adds that “[i]n many cases, these at-risk clients could have received a form of a dismissal (i.e. CPL § 30.30 dismissal, adjournment in contemplation of dismissal (ACD)) at a subsequent adjournment date.”¹⁷⁷ **Justine Luongo**, Attorney-in-Charge of the Criminal Defense Practice at The Legal Aid Society (LAS), sees the same trend at LAS:

[Our] clients are so fearful of ICE’s presence in the courts that they sometimes reject dispositions which involve programs or community service, because of the additional court appearances. Non-citizen clients may even choose to remain incarcerated rather than accept a program which will involve monitoring because of the risk of ICE detention and removal from the United States. Attorneys have also observed a decrease in clients’ participation in “Clean Slate” events which allow clients to resolve old summons warrants.¹⁷⁸

The frequency of ICE courthouse operations forces public defenders to balance their duty to pursue the best possible criminal justice outcome for their clients with the risk of ICE detention, as **LAS** attests:

Non-citizens often feel pressured to accept unfavorable dispositions in their cases, because litigating will entail repeated court appearances. These non-citizens must balance their desire to exercise their due process rights in criminal court with their fear that they will be apprehended by ICE in

¹⁷⁶ Decl. of Matt Knecht, Managing Dir. of Neighborhood Def. Serv. of Harlem, dated Oct. 2, 2018 (App. P).

¹⁷⁷ Decl. of Joshua Epstein, Esq., Supervising Immigration Attorney, Queens Law Assocs. ¶ 4, dated Feb. 28, 2019 (App. J).

¹⁷⁸ Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc’y ¶ 6, dated Feb. 21, 2019 (App. V).

the courthouse, even when the charges are ultimately likely to be dismissed or result in acquittal.¹⁷⁹

Non-citizens are also forced to accept unfavorable pleas because ICE detention blocks their ability to participate in community service, anger management, or substance abuse programs, common conditions of more favorable pleas.¹⁸⁰ Appellate Advocates attorneys are also forced to advise their clients that pursuing a legal claim involves a risk of ICE detection or arrest in the courthouse: According to an internal survey, more than half of Appellate Advocate attorneys surveyed had to provide this advice.¹⁸¹

Distortions to the functioning of New York’s criminal justice system, caused by ICE courthouse operations, create serious due process and equal access issues.¹⁸² ICE courthouse operations create a separate class of litigants who experience New York’s criminal justice system very differently than their fellow New York residents with US citizenship.¹⁸³

Disappearing Litigants

When conducting courthouse operations, ICE frequently arrests and detains litigants without alerting their attorney, the district attorney’s office, or the criminal court.¹⁸⁴ **Molly Kalmus**, Staff Attorney at NYCDS, reports that she only learned of her client’s courthouse ICE arrest because her client’s friend was going through his belongings and found her business card.¹⁸⁵ ICE arrested her client on the courthouse steps as he attempted to appear

¹⁷⁹ *Id.* ¶ 5 (App. V).

¹⁸⁰ Decl. of Joshua Epstein, Esq., Supervising Immigration Attorney, Queens Law Assocs. ¶ 5, dated Feb. 28, 2019 (App. J) (“Clients in ICE detention frequently receive worse plea offers from the Queens County District Attorney’s office because the clients cannot access programs that are contingent on receiving ACDs or non-criminal dispositions such as disorderly conduct violations. These programs include assistance for anger management, parenting skills, sex-offenders, and alcohol and substance abuse.”).

¹⁸¹ Decl. of Sarah Vendzules, Esq., Staff Attorney, Appellate Advocates ¶ 7, dated Feb. 5, 2019 (App. MM).

¹⁸² Sarah Hill Rogerson, *Sovereign Resistance to Federal Immigration Enforcement in State Courthouses* 32 Geo. Immigr. L. J. 275 (2018).

¹⁸³ *Id.*

¹⁸⁴ Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc’y ¶ 4, dated Feb. 21, 2019 (App. V) (“While arrests used to take place in common, and sometimes restricted, areas of the courthouse, ICE apprehensions have expanded to the area right outside the courthouse while clients are going to and from court. Attorneys are often unaware that their clients have been apprehended by ICE and find out days or many weeks later after the client does not make their scheduled court appearance.”)

¹⁸⁵ Decl. of Molly Kalmus, Staff Attorney, N.Y. Cty. Def. Serv. ¶ 11, dated July 10, 2018 (App. N).

for his criminal court case, failing to inform Ms. Kalmus, the district attorney's office, or the court.¹⁸⁶

LAS reports similar experiences:

At times, our clients have been detained without our knowledge. In one such incident from summer 2018, one of our clients was arrested as he left a court appearance. He missed his subsequent appearance. After the resulting bench warrant, it took a month before we discovered that he had been in ICE custody and could take appropriate action.¹⁸⁷

Cynthia Darrell of LAS, East End Bureau, echoes her colleagues' experiences: "The only reason anyone knew why [our client] did not appear in court was because the family of this person was present when ICE detained them and the family advised the lawyer."¹⁸⁸

ICE often fails to produce clients who are in immigration custody for their criminal court dates.¹⁸⁹ Even when a New York court issues a writ ordering production of an individual in ICE custody, ICE maintains that as a federal agency, it is "not bound by state court orders."¹⁹⁰ 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.¹⁹¹

¹⁸⁶ *Id.* (App. N).

¹⁸⁷ Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc'y ¶ 7, dated Feb. 21, 2019 (App. V).

¹⁸⁸ Decl. of Cynthia C. Darrell, East End Bureau Chief, Suffolk Cty., Legal Aid Soc'y ¶ 2, dated July 9, 2018 (App. H).

¹⁸⁹ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶¶ 11-12, dated Mar. 1, 2019 (App. BB); Decl. of Molly Kalmus, Staff Attorney, N.Y. Cty. Def. Serv. ¶ 13, dated July 10, 2018 (App. N).

¹⁹⁰ See U.S. Immigration & Customs Enf't, *Protecting the Homeland: Toolkit for Prosecutors* (Apr. 2011), <https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>.

¹⁹¹ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶¶ 11-12, dated Mar. 1, 2019 (App. BB).

Furthermore, in several cases, ICE has transferred clients to facilities far outside of the New York region, making it virtually impossible for clients to meet with their criminal defense attorneys and making the likelihood of ICE producing a client for future appearances even more remote.¹⁹²

The Immigrant Defense Project described the consequences of one man's arrest outside of a courthouse and subsequent transfer 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.¹⁹³

By arresting litigants in the New York Courts before they can resolve criminal cases and then failing to produce them for court appearances, ICE routinely suppresses the due process rights of New Yorkers.

¹⁹² Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* (Jan. 2019), <http://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>.

¹⁹³ *Id.*

Resource Drain for Public Defender Offices

ICE presence in the criminal courts requires that public defenders devote significant resources to respond. Addressing the risk of an ICE arrest in court requires additional staff time and resources to be directed towards client advisals.¹⁹⁴ Many criminal defense attorneys escort clients out of the courthouse and to the train in order to witness and invoke their clients' rights in case of ICE arrest. As **Josh Epstein** of QLA affirms:

QLA attorneys escort extremely high risk clients in and out of court. This takes a vast amount of attorney time. Additionally, this is a very stressful process and impacts the anxiety levels of clients and attorneys.¹⁹⁵

Other defenders explain how monitoring the court for ICE presence detracts from representation of other clients:

Both [my client] and I were anxious throughout the morning, and it made it difficult for me to focus on the other cases I had to handle. I was constantly scanning the courthouse for ICE presence.¹⁹⁶

Further, public defenders must develop and implement trainings and protocols to address ICE courthouse arrests.¹⁹⁷ For example, at The Bronx Defenders, the management team has had to create and deliver training on staff's ethical and professional responsibilities regarding the presence of ICE and ICE arrests in and around the courthouses.¹⁹⁸

¹⁹⁴ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶¶ 6-7, 12, dated Mar. 1, 2019 (App. BB).

¹⁹⁵ Decl. of Joshua Epstein, Esq., Supervising Immigration Attorney, Queens Law Assocs. ¶ 6, dated Feb. 28, 2019 (App. J).

¹⁹⁶ Decl. of Sarah Kaufmann, Esq., Staff Attorney, N.Y. Cty. Def. Serv. ¶ 5, dated July 13, 2018 (App. O).

¹⁹⁷ Brooklyn Def. Servs., Responses to Questions for Data Collection, dated July 18, 2018 (App. F).

¹⁹⁸ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶ 7, dated Mar. 1, 2019 (App. BB).

ICE’s Escalating Use of Force and Surveillance

The public defender offices report that ICE arrest and surveillance tactics in and around courthouses have become increasingly brazen.¹⁹⁹ QLA reports that ICE agents in unmarked cars followed their client’s car when leaving criminal court, and when the agents pulled the client over, seven agents, with guns drawn, surrounded his car.²⁰⁰ In another incident, a mother and her son were leaving criminal court in Brooklyn when plainclothes ICE agents appeared out of nowhere, grabbed the son, and started dragging him into an unmarked car.²⁰¹ Confused and alarmed, the mother began to ask the agents who they were.²⁰² The agents refused to answer, and when she cried out for help, an ICE agent shoved her against a wall, causing her head to hit the wall, while repeatedly telling her to “shut up.”²⁰³ A bystander who witnessed an ICE arrest in Brooklyn called 911 to report that she had seen a man being kidnapped.²⁰⁴ As **Luis Bautista** of Make the Road New York observes:

ICE raids disregard the family members and loved ones accompanying an individual and the traumatic experience of witnessing such raids. Community members have reported being scared, confused, and not sure how to respond when plainclothes ICE officers are physically detaining their loved one. Once an ICE custody, the impact on their family is tremendous. Fernando*, an MRNY community member, was arrested by plainclothes ICE officers outside of Kings County Criminal Court on January 2019. Fernando is currently in immigration detention and says that “being in here [immigration detention center] is difficult not only for me, but also on my son.” Fernando’s family member, Isabel*, states

¹⁹⁹ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York’s Courts in 2018* at 7 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf.

²⁰⁰ Decl. of Joshua Epstein, Esq., Supervising Immigration Attorney, Queens Law Assocs. ¶ 7(a), dated Feb. 28, 2019 (App. J).

²⁰¹ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York’s Courts in 2018* at 7 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf.

²⁰² *Id.* at 8.

²⁰³ *Id.*

²⁰⁴ *Id.* at 9.

that “Fernando’s son is so sad” and that he “keeps asking us when Fernando is coming home and we just tell him soon.” Fernando’s family is now scared of going to any court or making a report to the police because of fear of ICE.²⁰⁵

ICE agents use courthouses as a venue to surveil New York’s immigrant residents. There have been numerous sightings of ICE agents sitting in courtrooms or roaming the hallways of courthouses to wait for individual cases to be called.²⁰⁶ While surveilling individuals at the courthouse, ICE agents also eavesdrop on privileged attorney-client conversations and follow attorneys, litigants, and their family members.²⁰⁷ In Brooklyn, after a judge excused a party’s appearance for the day, the attorney left to meet the party at a nearby fast food restaurant.²⁰⁸ Unbeknownst to the attorney, ICE agents followed her from the court, and as soon as she and her client parted ways, five plainclothes agents arrested the client.²⁰⁹

Violent and surreptitious courthouse operations make clients and attorneys anxious and paranoid at the prospect of court appearances.²¹⁰ ICE courthouse operations cast a dark shadow over defenders’ case strategies, advice, and use of office resources.

²⁰⁵ Aff. of Luis Bautista, Esq., Staff Attorney, *Make the Road N.Y.* ¶¶ 5-6, dated Feb. 28, 2019 (App. E).

²⁰⁶ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York’s Courts in 2018* at 9 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

How ICE Courthouse Operations Frustrate the Purpose of Problem-Solving Courts



By conducting numerous operations in New York’s problem-solving courts, ICE frustrates the creative, holistic, and rehabilitative mechanisms established by the New York Unified Court System and the Center for Court Innovation. For litigants in problem-solving courts, ICE presence deters participation in court proceedings, reduces attendance in related programs, increases anxiety, and heightens suspicions of case managers and other court staff.

ICE Presence in the Problem-Solving Courts

Federal immigration officers are a visible presence in and around New York’s problem-solving courts. Since 2016, operations by federal immigration agents have been seen in and around the following problem-solving courts:

- **Queens Human Trafficking Intervention Court;**
- **Harlem Community Justice Court;**
- **Midtown Community Court;**
- **Red Hook Community Justice Court;**
- **Brooklyn Young Adult Court;**
- **Brooklyn Mental Health Treatment Court.**²¹¹

ICE agents also frequent the programs run by the Center for Court Innovation (CCI) in connection with problem-solving courts. For example, in Bronx Criminal Court, CCI runs Bronx Community Solutions, a program that provides alternatives to incarceration and fines in non-violent cases.²¹² CCI staff report that ICE agents have been seen in the hallways near their Bronx Community Solutions offices in Bronx Criminal Court.²¹³ CCI staff for Brooklyn Justice Initiatives, a program that supports youth and individuals with mental health needs, have seen ICE agents walking the hallways outside of their offices and sitting outside of their offices.²¹⁴

²¹¹ See N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR) (documenting arrests at several problem-solving courts); Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT) (describing ICE operations in and around CCI-run programs).

²¹² See generally Ctr. For Court Innovation, *Bronx Community Solutions* (last visited Mar. 27, 2019), <https://www.courtinnovation.org/programs/bronx-community-solutions>.

²¹³ See Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT).

²¹⁴ *Id.* (App. TT).

A Deterrent to Participation

The increased presence of ICE agents in and around problem-solving courts affects participation in court proceedings and associated programs: **CCI staff** report that both youth and adult participants “have voiced concerns about coming to court appearances and clinic appointments.”²¹⁵ Participants who are not citizens “often state that they find the legal system to be increasingly unsafe and would do anything to avoid being court involved.”²¹⁶ Fears of ICE in court lead participants to decline voluntary fatherhood and workforce development programs held in the Midtown Community Court.²¹⁷ Participants also voice apprehension about attending supervised check-ins with Brooklyn Justice Initiatives.²¹⁸

Fears of ICE in the courts also cause participants to question the role of program staff.²¹⁹ With ICE agents regularly stationed outside arraignments and the Young Adult part in Brooklyn Criminal Court, a **CCI supervisor** reports that “participants have expressed concerns about our relationship with law enforcement.”²²⁰ Many staff have been asked by “if they work closely with ICE.”²²¹ Some participants ask if “agreeing to participate in the [CCI] program may be a trap of sorts.”²²²

Human Trafficking Court: ‘A Paralyzing Fear of Public Systems’ Exacerbated by ICE

Since January 2017, ICE has arrested four individuals at the Queens Human Trafficking Intervention Court (HTIC), and attempted to arrest at least one other.²²³ ICE continued these operations in 2018, arresting at least one individual as he attempted to enter the

²¹⁵ *Id.* (App. TT).

²¹⁶ *Id.* (App. TT).

²¹⁷ *Id.* (App. TT).

²¹⁸ *Id.* (App. TT).

²¹⁹ *Id.* (App. TT).

²²⁰ *Id.* (App. TT).

²²¹ *Id.* (App. TT).

²²² *Id.* (App. TT).

²²³ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS); Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc’y ¶ 3, dated Feb. 21, 2019 (App. V); Decl. of Molly Kalmus, Staff Attorney, N.Y. Cty. Def. Serv. ¶¶ 4-6, dated July 10, 2018 (App. N); Liz Robbins, *A Game of Cat and Mouse with High Stakes: Deportation*, N.Y. Times (Aug. 3, 2017), <https://www.nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html>.

Queens Criminal Court for an appearance in the human trafficking part.²²⁴ The arrests continued despite the widespread outrage of advocates for survivors of gender violence, elected officials, and jurists.²²⁵

On June 16, 2017, as discussed in section IV(F) above, three male ICE agents sought to detain a young Chinese woman who had been arrested for unlicensed massage and identified as a possible survivor of human trafficking.²²⁶ She had been “on track to have the charges against her dismissed” after completing her mandated services.²²⁷ While one ICE agent loitered at the back of the courtroom and two more stood outside of the court part, “dozens of other immigrant defendants” watched.²²⁸

After this and other incidents, “news of ICE in the courtroom spread through the communities served by the HTIC,” resulting in an increase in non-appearances all over New York.²²⁹ CCI staff in the Midtown Community Court report that concerns about court appearances are “particularly prevalent among defendants in the Human Trafficking Court.”²³⁰ Furthermore, due to the “menacing presence of immigration agents in the courts,” attorneys often conclude that they can “no longer responsibly encourage clients to seek the lifesaving help they need in the courts.”²³¹

ICE operations in HTICs and other courts designed to meet the specialized needs of trauma survivors allow “exploiters to flourish” by “giving them an “extra layer of fear they can use to coerce their victims into submission.”²³² The presence of ICE agents in the courts also

²²⁴ Decl. of Molly Kalmus, Staff Attorney, N.Y. Cty. Def. Serv. ¶¶ 4-6, dated July 10, 2018 (App. N).

²²⁵ CBS N.Y., *NY Officials Call for End to Immigration Raids at Courthouses* (June 22, 2017), <https://newyork.cbslocal.com/2017/06/22/ice-raids-at-courthouses/>; Liz Robbins, *A Game of Cat and Mouse with High Stakes: Deportation*, N.Y. Times (Aug. 3, 2017), <https://www.nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html>; Beth Fertig, *Outcry After Immigration Agents Seen at Queens Human Trafficking Court*, WNYC (June 16, 2017), <https://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>

²²⁶ Written Testimony of Carmen Maria Rey, Esq., Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs. Chair, Council Member Rory Lancman at 2 (June 29, 2017) (App. DD).

²²⁷ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS).

²²⁸ See *id.* (App. SS).

²²⁹ See *id.* (App. SS).

²³⁰ Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT).

²³¹ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS).

²³² See *id.* (App. SS).

compounds the “overwhelming anxiety and paralyzing fear of public systems” that many immigrants carry with them from “traumatic experiences in their home countries.”²³³ ICE presence in the courts thus exacerbates the anxieties that many face, with “alarming” mental health ramifications.²³⁴

Impact of ICE Courthouse Operations on Youth

ICE presence in Youth Courts frightens young people with limited or no history with the courts and threatens to derail their futures in uniquely tragic ways. For example, when the immigration attorney for a 19-year-old, due to appear for a traffic ticket in Albany, could not assure that ICE would not be present in the courthouse, the young person was unwilling to go until she could find *pro bono* counsel to accompany him.²³⁵ According to **James Milstein**, former Dir. of the Albany County Regional Immigration Assistance Center, the young person’s concern was well-founded:

ICE often arrests individuals appearing in local courts in connection with low-level offenses. In many instances, the charges these individuals faced were so minor that the arresting officer issued desk appearance tickets to the individual arrested. Nine of the arrests I documented targeted noncitizens who appeared in court in connection with traffic violations. These violations included charges related to broken tail lights and driving on an expired driver’s license.²³⁶

On May 15, 2017, three plainclothes ICE agents took a young person into custody after he appeared to face minor charges in the youth part.²³⁷ Particularly disturbing were reports that before the young person was arrested, ICE called the Administrative Judge of Suffolk County Court to warn against “obstructing justice.”²³⁸ Reportedly, the presiding judge then

²³³ *See id.* (App. SS).

²³⁴ *See id.* (App. SS).

²³⁵ Decl. of Mary Armistead, Esq., Clinical Fellow, Immigration Law Clinic, Albany Law Clinic & Justice Ctr. ¶ 5, dated June 9, 2017 (App. C).

²³⁶ Decl. of James Milstein, Esq., Dir., Albany Cty. Office of Immigration Assistance ¶ 8, dated Aug. 6, 2018 (App. X).

²³⁷ Immigrant Def. Project, *Building a Statewide Campaign – Fact Sheet: ICE in New York State Courts* (July 2017), <https://www.immigrantdefenseproject.org/wp-content/uploads/CourthouseToolkitSection3.pdf>.

²³⁸ *Id.*

promptly called the case, which allowed ICE to identify the young person.²³⁹ The young person, who had been brought here as an 11-year-old and applied for Special Immigrant Juvenile Status (SIJS), was surrounded and taken by ICE agents outside of the courtroom.²⁴⁰

ICE uses the courthouses as bait and a venue for surveillance, as illustrated by the arrest of Matthew Rojas on November 27, 2018 outside of the New Paltz Justice Court.²⁴¹ Reportedly, on November 27, 2018, ICE agents were inside the New Paltz Justice Court, where a sign-in sheet was posted at the front of the courtroom.²⁴² The agents left “presumably to await Rojas’s arrival.”²⁴³ The 23-year-old, brought to the U.S. as a toddler, was on his way into court to respond to his first ever appearance ticket and was unprepared for the ICE apprehension outside of the courthouse.²⁴⁴

As **Sarah Rogerson**, Director of the Immigration Law Clinic at Albany Law School, explains, such baiting tactics of arresting individuals on their way into or out of courthouses is damaging to New Yorkers’ access to justice: “Anytime that you have the threat of ICE agents at or near a place where the public frequents to obtain government services or access justice, you have a problem.”²⁴⁵ Furthermore, ICE officials have lied about their identity when apprehending youth in the immediate vicinity of courthouses, as they did in the case of a twenty-year-old SIJS client at The Door who was taken by ICE from a bus stop across the street from the Queens Criminal Court.²⁴⁶

The impact of ICE detention on youth, both for the individual and their community, cannot be overstated. For example, a young SIJS client of The Door became so depressed that he was placed in solitary confinement.²⁴⁷ As Matthew Rojas’s friend explained after seeing him in detention, “It’s a struggle for him to keep his head up (and think) that this might change

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Terence P. Ward, *New Paltz Resident Nabbed by ICE Agents Outside of Court*, *New Paltz Times* (Dec. 3, 2018), <https://hudsonvalleyone.com/2018/12/03/new-paltz-resident-nabbed-by-ice-agents-outside-of-town-court/>.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ Roger Hannigan Gilson, *New Paltz Takes on ICE*, *The Other Hudson Valley* (Dec. 19, 2018), https://theotherhudsonvalley.com/2018/12/19/new-paltz-ice/?fbclid=IwAR0Y2CdB2gDgNtkuDeRuDNeaOMLCHJzMBaRKzHjfcEaSinOwqXmHWWb_Svg.

²⁴⁵ *Id.*

²⁴⁶ Decl. of Eve Stotland, Esq., Legal Dir., The Door’s Legal Servs. Ctr. ¶ 3, dated July 5, 2018 (App. HH).

²⁴⁷ *Id.* (App. HH).

soon, when in reality he's sitting there with people who have been there for 18 months...it's definitely very tough on him in there."²⁴⁸

According to **Eve Stotland**, Director of The Door's Legal Services Center, "[a]s the young people we serve and their families confront news of courthouse arrests, their access to immigration relief shrinks."²⁴⁹ Potential caregivers for young people routinely decline to move forward with guardianship petitions due to their fear of ICE in the courts.²⁵⁰ A Bronx Legal Services client, a 17-year-old boy from Honduras, was unable to move forward on his guardianship and SIJS cases because his aunt, who houses, feeds, and clothes him, was afraid she would be arrested by ICE in Family Court.²⁵¹ An Urban Justice Center client struggled to get guardianship of her own child because her fellow household members were too afraid to be fingerprinted by the Queens Family Court.²⁵² One father declined to be the guardian for his own son when Professor **Vanessa Merton** of Pace University "could not reassure him there was no risk" of being taken into ICE custody, deciding that "if he is deported, he cannot be of any help to his son."²⁵³

The presence of ICE in and around courts also has a chilling effect on the practical training and education of New York law students. Professor **Claire Thomas** of New York Law School (NYLS) reports that her students who are not US citizens have expressed concerns about appearing in New York state courts.²⁵⁴ As Professor Thomas explains, "[s]uch observation is crucial to students' legal education and growth in the profession," but she is

²⁴⁸ Roger Hannigan Gilson, *New Paltz Takes on ICE*, The Other Hudson Valley (Dec. 19, 2018), https://theotherhudsonvalley.com/2018/12/19/new-paltz-ice/?fbclid=IwAR0Y2CdB2gDgNtkuDeRuDNeaOMLCHjzMBaRKzHjfcEaSn0wqXmHWWb_Svg.

²⁴⁹ Decl. of Eve Stotland, Esq., Legal Dir., The Door's Legal Servs. Ctr. ¶ 7, dated July 5, 2018 (App. HH).

²⁵⁰ *Id.* ¶ 6 (App. HH).

²⁵¹ Decl. of Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. ¶ 4, dated May 31, 2017 (App. R).

²⁵² Decl. of Salar Rivani, Esq., Staff Attorney, Urban Justice Ctr., Domestic Violence Project ¶¶ 3-4, dated May 31, 2017 (App. EE). *See also* Decl. of Atossa Movahedi, Dir., Legal Servs. & Dev., Domestic Violence Project, Urban Justice Ctr. ¶ 7, dated May 31, 2017 (App. Y) ("Our family court attorneys are experiencing push back with Judges and Referees when making their requests to waive fingerprints in Guardianship proceedings for household members. This has had an impact on the number of matters we have been able to file for SIJS (Special Immigrant Juvenile Status) out of fear of our clients that their loved ones will be picked up by ICE after being fingerprinted"); Decl. of Mary Armistead, Esq., Clinical Fellow, Immigration Law Clinic, Albany Law Clinic & Justice Ctr. ¶¶ 6-7, dated June 9, 2017 (App. C) (whose SIJS client almost lost her guardian sponsor due to guardian's fears of being arrested and separated from her USC children).

²⁵³ Decl. of Vanessa Merton, Esq., Faculty Dir., Immigration Justice Clinic, John Jay Legal Servs., Inc., Elisabeth Haub Sch. of Law, Pace Univ. ¶ 3, dated May 31, 2017 (App. W).

²⁵⁴ Aff. of Claire R. Thomas, N.Y. Law Sch. ¶ 5, dated July 9, 2018 (App. II).

“unable to reassure NYLS students who are not U.S. citizens that they will not be at risk for apprehension by ICE upon entering New York State Courts.”²⁵⁵

As illustrated above, when they enter problem-solving courts, ICE agents arrest the most vulnerable individuals, including youth, survivors of human trafficking, the mentally ill, and reentry program participants.

²⁵⁵ *Id.* ¶¶ 6-7 (App. II).

How ICE Courthouse Operations Discourage Claimants in Civil Courts



ICE courthouse operations discourage immigrants and their family members from accessing New York State civil courts. This effect is pronounced in housing courts where landlords threaten to call ICE on immigrant tenants, pressuring them to resolve their cases sooner and against their best interests. According to the ICE in NYS Courts Legal Service and Advocates Survey, 56% of respondents said that their clients expressed fear of filing a

housing court complaint due to fear of ICE.²⁵⁶ As one respondent explained, “Tenants regardless of status are typically extremely scared and skeptical about fighting for their rights in court proceedings” and that “[t]his fear has transformed into crippling paralysis in the wake of ICE activity in New York State Courts.”²⁵⁷

Through its Universal Access to Counsel program, New York City provides free legal counsel to its residents in eviction proceedings.²⁵⁸ Since 2014, the number of citywide evictions has dropped 37%,²⁵⁹ with tremendous investment by New York City government.²⁶⁰ Yet, the success of this program depends on New Yorkers having access to the courts.

As **Norey Lee Navarro**, an attorney with Legal Services NYC, which receives funding under the Universal Access to Counsel program, explains, “[t]he cases that my office handle on a daily basis illustrate how [the proposed] court rules are critical to the general safety [and] well-being of our clients, due process of our client’s rights, and the preservation of affordable housing in New York.”²⁶¹ However, when some landlords suspect that their tenants are immigrants, they threaten to call ICE during the course of a housing proceeding.²⁶² “Landlords present in court often make derogatory statements towards tenants based on tenants’ actual or incorrectly assumed immigration status, such as ‘He wants an abatement in his rent? He is lucky that I don’t report him to ICE!’”²⁶³

Tenants who come to housing court to fight an eviction proceeding settle their cases quickly, agreeing to resolutions that do not account for all of their rights, due to fear of ICE in the courts. In Navarro’s experience:

²⁵⁶ 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>.

²⁵⁷ *Id.*

²⁵⁸ N.Y.C. Hous. Court, N.Y. State Unified Court Sys., *About the Universal Access to Legal Services Law*, (last updated Feb. 4, 2019), <https://www.nycourts.gov/COURTS/nyc/housing/aboutUniversalAccess.shtml>.

²⁵⁹ Will Drickey, *NYC Eviction Down Thanks to Legal Aid Program for Tenants*, Metro (Feb. 4, 2019), https://www.metro.us/news/local-news/new-york/universal-access-legal-counsel-evictions?fbclid=IwAR3ArCd-8Kwy4qVOgBqr9ZxWrrmjKr3rL_ZPBAdlFtIA-mJOlfWzqIJLHYE.

²⁶⁰ Office of Civil Justice, N.Y.C. Human Res. Admin., *Universal Access to Legal Services: A Report on Year One of Implementation in New York City* (Fall 2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>.

²⁶¹ Decl. of Norey Lee Navarro, Esq., Staff Attorney, Bronx Legal Servs. ¶ 3, dated July 27, 2018 (App. Z).

²⁶² *Id.* ¶ 5 (App. Z).

²⁶³ *Id.* (App. Z).

In an effort to avoid ICE in housing court during a first court appearance, a tenant will likely feel pressured to resolve a housing court case as quickly as possible and not ask for a new court date to seek advice of counsel — this in turn will likely result in the tenant unknowingly waiving defenses and counterclaims, and signing judgment agreements with unjust terms (i.e. an inaccurate amount of rent arrears, an overly harsh probationary period, an unnecessary move out agreement from a rent stabilized or rent controlled apartment, etc.). Or in the worst possible scenario, immigrant [and] refugee tenants will be unnecessarily evicted from their homes because such tenants avoid appearing in housing court all together in an effort to avoid ICE [and] the fear of deportation.²⁶⁴

Not only does the lack of court rules encourage landlords to continue to use scare tactics, it also discourages New Yorkers from going to court to seek repairs. Navarro says, “[m]any of our clients often adamantly decline to sue their landlords in HP actions for repairs and instead continue to live in deplorable and unsafe conditions in their apartments.”²⁶⁵ **Justin La Mort**, Supervising Attorney at Mobilization for Justice, likewise explains:

It has been increasingly challenging to convince immigrant tenants to organize and assert their rights in court. When I’m asked if we can promise their safety I have to honestly respond that I cannot make any guarantees. Many tenants are given the choice from their landlords to abandon their rent stabilized home or risk forcible deportation. My office has clients who were courageous enough to fight back but who are now hesitant or outright refuse to return to court after being explicitly threatened by their landlords or agents of the landlord that ICE will be contacted. Their voices will go unheard if their cases go

²⁶⁴ *Id.* (App. Z).

²⁶⁵ *Id.* ¶ 4 (App. Z).

to trial as housing court is no longer a place they feel safe from immigration enforcement.²⁶⁶

Navarro would like to see court rules to address her clients' fears of ICE in the Courts: "As a housing attorney that regularly represents low-income immigrant [and] refugee tenants in Bronx Housing Court, I strongly support the creation and implementation of court rules that would prohibit/regulate the presence of United States Immigration & Customs Enforcement (ICE) in New York State Courts."²⁶⁷

²⁶⁶ Aff. of Justin La Mort, Supervising Attorney, Mobilization for Justice, dated Feb. 28, 2019 (App. Q).

²⁶⁷ Decl. of Norey Lee Navarro, Esq., Staff Attorney, Bronx Legal Servs. ¶ 3, dated July 27, 2018 (App. Z).

How ICE Courthouse Operations Complicate the Protocol and Duties of Courthouse Staff



Increased ICE courthouse operations complicate the duties of court officers and other courthouse staff. In response to Freedom of Information Law (FOIL) requests, the New York State Office of Court Administration (OCA) disclosed 66 unusual occurrence reports (UOR) covering the period from February 2, 2017 to August 13, 2018.²⁶⁸ These UORs revealed disparities in the

²⁶⁸ Mazin Sidahmed & Felipe De La Hoz, *Documents Show New York Officers Alerted ICE About Immigrants in Court*, Documented (Jan. 26, 2019), <https://documentedny.com/2019/01/26/documents-show-new-york-court-officers-alerted-ice-about-immigrants-in-court/>.

documentation, or lack thereof, that ICE agents provided to court officers when executing courthouse arrests.²⁶⁹ They also showed cooperation between court officers and ICE agents.²⁷⁰

When conducting operations, ICE agents utilize administrative warrants, issued by the agency itself, rather than judicial warrants.²⁷¹ Recently, in *People ex rel. Wells v. DeMarco*, No. 2017-12806, 168 A.D.3d 31, 88 N.Y.S.3d 518 (2d Dep’t Nov. 14, 2018), the Second Department recognized the difference, describing ICE “detainers” and “warrants” as civil, and “administrative, not judicial.”²⁷² Further, ICE administrative warrants are often based on outdated information and require only internal, supervisory review.²⁷³ In contrast, judicial warrants contain information reviewed and approved by a judge, which helps prevent collateral arrests like the one on October 24, 2017 at the Saratoga City Court.²⁷⁴

Further, the UORs indicate that most often, ICE agents presented neither administrative nor judicial warrants, nor any authorizing documentation whatsoever.²⁷⁵ Only one of the 66 arrests documented in the UORs referenced a judicial warrant.²⁷⁶ In other cases, the UORs reference documents presented by ICE but provide no details regarding their substance or

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ Statement of Supreme Court of Ill. Chief Justice Lloyd A. Karmeier, ICE Arrests Threaten to Chill Access to Justice (Aug. 28, 2017), http://www.illinoiscourts.gov/Media/enews/2017/082517_chief_justice.asp (explaining that ICE warrants are “merely civil administrative documents” that “are issued without review by a neutral magistrate, do not meet the requirements necessary to support issuance of warrants in criminal cases, and do not confer authorization for entry into locations where persons have a reasonable expectation of privacy.”).

²⁷² *People ex rel. Wells v. DeMarco*, No. 2017-12806, 168 A.D.3d 31, 88 N.Y.S.3d 518 (2d Dep’t Nov. 14, 2018).

²⁷³ N.Y.C. Bar Assoc., *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses at 21* (July 2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf>.

²⁷⁴ See N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR) (showing that an individual went to answer a traffic ticket at the Saratoga City Court, with an “unknown companion,” and despite having no scheduled appearance and submitting a not guilty plea, two ICE agents arrived and arrested them both).

²⁷⁵ On July 17, 2017, a court officer in the Queens Criminal Court reported that an agent informed him that he planned to arrest the subject in court but “no warrant was presented by agent.” On May 15, 2017, court officers in the Suffolk County District Court reported that “no warrant was presented to court staff” by Homeland Security Investigations agents, who “were present inside courtroom D31 to detain the [defendant].” See *id.* (App. RR).

²⁷⁶ On May 22, 2018, in the Bronx Supreme Court, “agents referenced a US District Court Arrest Warrant” and the subject was arrested. See *id.* (App. RR).

validity.²⁷⁷ The UORs describe the documentation as an “ICE detainer warrant,” “warrant for deportation,” or “worksheet.”²⁷⁸ These descriptions suggest that some court officers may not understand the distinctions between federal judicial warrants, ICE administrative warrants, ICE detainer requests, and other agency documents.

The *Wells* court made three key holdings with respect to ICE warrants and cooperation between state and federal officials related to immigration: 1) New York state law does not authorize state and local law enforcement to effectuate warrantless arrests for civil immigration law violations; 2) New York state and local officers do not have inherent police power authority to make civil arrests, including civil immigration arrests; and 3) an administrative warrant, such as those issued by ICE, is not issued by a judge or a court, and thus does not give state and local officers the authority to arrest, seize, or detain someone for civil immigration purposes.²⁷⁹ Accordingly, New York court officers are not authorized by New York State or federal law to make or participate in civil immigration arrests.²⁸⁰

The UORs show, however, that some New York State court staff have assisted ICE agents in making their civil arrests.²⁸¹ According to the UORs, court staff have physically assisted with

²⁷⁷ In cases where ICE has provided documentation, UORs describe the documentation as an “ICE detainer warrant,” “warrant for deportation,” or “worksheet.” *See id.* (App. RR). These descriptions suggest that some court officers may not understand the distinctions between federal judicial warrants, ICE administrative warrants, ICE detainer requests, and other agency documents. Recent guidance from the California Attorney General’s office on implementation of California Senate Bill SB 54 includes a model policy regarding the training of court staff as well as examples of commonly used ICE documents. *See* Cal. Dep’t of Justice, Office of the Attorney Gen., *Securing Equal Access to Justice for All: Guidance and Model Policies to Assist California’s Superior Courts in Responding to Immigration Issues* (Oct. 2018), <https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/court.pdf>.

²⁷⁸ *See* N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR).

²⁷⁹ *People ex rel. Wells v. DeMarco*, No. 2017-12806, 168 A.D.3d 31, 88 N.Y.S.3d 518 (2d Dep’t Nov. 14, 2018).

²⁸⁰ *Id.*; *see also* N.Y. Crim. Proc. Law § 2.10(21)(a)-(f).

²⁸¹ *See* N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR).

the arrests,²⁸² called ICE agents to notify them when a particular case would be called,²⁸³ and provided information to immigration officials by phone.²⁸⁴ Court staff and judges have also given ICE agents access to non-public areas of the courthouse, leading individuals to those areas where ICE agents were waiting to make the arrest.²⁸⁵

The UORs make clear that ICE courthouse operations create a work environment rife with confusion and guesswork for court officers and staff. Inadequate and nonexistent documentation forces court officers to guess at the ICE agents' authority and jurisdiction, leading inevitably to wrongful and collateral arrests. Further, under *Wells*, court officers are at risk of participating in civil immigration arrests, contrary to New York law, leaving them open to civil liability for rights violations, when they cooperate with ICE in the absence of a judicial warrant.

²⁸² On September 21, 2017, four court officers from an unspecified NYC Civil Court in Brooklyn “assisted [ICE agents] in effecting the arrest” of an individual outside of the courthouse. On November 9, 2017, a participant in the Center for Court Innovation Parole Re-Entry program at the Harlem Community Justice Center was taken into custody by ICE officers “with the assistance of [the reporting officer] and Sgt. [].” On November 28, 2017, four court officers in the Kings County Criminal Court observed ICE officers attempting to handcuff an individual in the hallway outside of a courtroom. The court officers separated the individual from his attorney and “instructed ICE officers” to take the individual to a restricted area of the court. *See id.* (App. RR).

²⁸³ On February 21, 2017, a court officer from the New York County Criminal Court noted: “[ICE agents] left a business card and asked to be notified before the case was called, which [the court officer] did.” On March 19, 2017, another court officer from the New York County Criminal Court, reported: “[ICE] Officer Outlaw gave R/O [reporting officer] his business card and left at approximately 1045 hours. [Defendant] appeared in the courtroom for his court date and R/O called [ICE] Officer Outlaw[.]” *See id.* (App. RR).

²⁸⁴ On August 1, 2017, a clerk in the Suffolk County Court “received a call from Homeland Security inquiring if [defendant] was on the calendar and Clerk [] stated he was and the caller hung up. At 1400 hours, Defendant’s attorney [], reported that his client was taken into custody by Homeland Security in the parking lot during lunch recess.” *See id.* (App. RR).

²⁸⁵ On February 3, 2018, in the Cortland City Court, a court officer informed a Judge that two ICE agents were present to arrest an individual scheduled to appear before her. The report notes: “I informed Judge [] of the situation in her chambers prior to the case and we agreed that she would proceed with the case with immigration officers waiting in the conference room next to the courtroom. At the conclusion of the court case, [the defendant] went to the courtroom where he was taken into the conference room where he was taken into custody.” On November 28, 2017, in the Kings County Criminal Court, the reporting officer notes that he “separated the subject from [defense counsel] and instructed the ICE officers to take the subject to the DV Pen area which is a restricted, safe, and secure area.” On January 31, 2018, a court officer notes that ICE agents arrested a 26-year-old man outside of a courtroom. A report issued by the Department of Homeland Security in this case notes that ICE agents exited the building using a “non-public elevator escorted by New York State Court Officers.” *See id.* (App. RR).

How Legal Professional Associations Have Responded to ICE Courthouse Operations



Since ICE courthouse operations began in earnest, national, state, and local legal professional associations have publicly condemned them, issuing their own reports and recommendations.

On July 6, 2017, the **Association of Pro Bono Counsel** (APBCo), a professional organization of the pro bono departments of 107 leading law firms, wrote a letter urging Chief Judge Janet DiFiore to “exercise [her] authority pursuant to the State Constitution” to issue certain protective court rules to “preserve the professionalism and dignity of the

courtroom while safeguarding immigrants' access to justice."²⁸⁶ As reported in section IV above, APBCo noted how alleged criminals can weaponize their accusers' immigration statuses as "a de facto form of witness intimidation, abetted by ICE."²⁸⁷ APBCo also bolstered claims that lawyers are "now faced with the difficult choice of being obligated to encourage [their] immigrant clients to attend court appearances, while knowing that doing so may result in their arrest and deportation."²⁸⁸ APBCo laid out the repercussion of intensifying ICE courthouse operations: "The rising ICE presence in our courts says to New York's huge immigrant community — and those that represent, work with, employ and rely upon them — that the removal of a few is more important than safety for all, that even our courts will step back and allow spot arrests to trump even-handed justice for all."²⁸⁹

On August 15, 2017, the **American Bar Association's** (ABA) House of Delegates passed a resolution calling for: 1) ICE to add courthouses to the list of sensitive locations in which immigration enforcement actions can be taken only in emergency circumstances, and 2) Congress to amend the Immigration and Nationality Act (INA) to codify this expanded definition of sensitive locations.²⁹⁰ The ABA passed this resolution in recognition of "the critical importance of the fair and unfettered administration of justice and in order to protect the right of all persons to access [courthouses]."²⁹¹ The ABA described ICE's courthouse arrest tactics as "impact[ing] some of our most vulnerable populations and interfer[ing] with the proper administration of justice."²⁹²

On December 5, 2017, the **Fund for Modern Courts** (the Fund) issued a report on the impact of ICE courthouse arrests on the administration of justice.²⁹³ The Fund report details the efforts of Chief Judge Janet DiFiore and OCA to meet with Department of Homeland Security (DHS) officials to urge designation of courthouses as sensitive locations and issuance of a protocol governing activities in courthouses by law enforcement agencies. However, the Fund pointed out that such positive steps unfortunately were not enough to

²⁸⁶ Letter from Kevin J. Curnin, President, Ass'n of Pro Bono Counsel, to N.Y. State Court of Appeals Chief Judge Janet DiFiore (July 6, 2017), <https://apbco.org/wp-content/uploads/2018/11/2017-07-06-Ltr-to-Judge-DiFiore-fr-APBCo-re-ICE-INcursions-in-NYS-Courthouses.pdf>.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Am. Bar Assoc., *ABA House Urges Congress Add Courthouse to 'Sensitive Locations' to ICE Guidelines* (Aug. 15, 2017), https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/aba_house_urgues_cong/.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ 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. 2017), <http://moderncourts.org/wp-content/uploads/2017/12/Modern-Courts-Report-December-2017-ICE-and-NY-COURTHOUSES2-1.pdf>.

ameliorate the concerns and forcefully stated that “it falls to the New York State judiciary to do what is within their power to protect New Yorkers” by enacting “policy changes.”²⁹⁴ The Fund recommended that: 1) OCA require judicial warrants for civil immigration law enforcement actions conducted in New York State courthouses; 2) the presiding judges be required to notify the targets of civil enforcement of the presence of agents; 3) OCA limit cooperation of court employees in civil immigration enforcement to those actions required by law; and 4) OCA reduce the frequency with which parties need to appear in court.²⁹⁵

In January 2018, the **New York State Bar Association**’s House of Delegates adopted a resolution similarly calling on ICE to include courthouses in its list of sensitive locations and on Congress to amend the INA to codify the policy around this expanded list of sensitive locations.²⁹⁶

In July 2018, the **New York City Bar Association** (City Bar) published an extensive report including recommendations for OCA regarding ICE courthouse operations. The City Bar acknowledged OCA’s close monitoring of these types of civil enforcement actions and its dialogue with ICE on the practice as well as ICE’s January 2018 directive.²⁹⁷ However, the City Bar also observed that “[d]espite these steps, ICE’s courthouse arrests continue to adversely impact the administration of justice and leave many individuals fearful of going to court.”²⁹⁸ The City Bar voiced serious concern that ICE courthouse arrests will have the effect of “creating a class of state residents who are denied access to the justice system” and “erod[ing] the effectiveness of the state’s justice and court system.”²⁹⁹ Given these serious concerns, the unlikelihood of a response or solution being generated at the federal level, and the “essential rights at issue,” the City Bar recommended that “the Chief Judge exercise her authority under the New York State Constitution and Judiciary Law to issue five administrative rules to better protect access to justice and the due process rights of all New Yorkers.”³⁰⁰ The first four largely tracked the recommendations for policy changes proposed by the Fund for Modern Courts. However, the City Bar expressly tied the need for judicial,

²⁹⁴ *Id.* at 4, 18.

²⁹⁵ *Id.* at 18-19.

²⁹⁶ N.Y. State Bar Assoc., *January 26, 2018: NYS Bar Association Approves Domestic Violence Initiative, Resolution to Protect Immigrants in Courts* (Jan. 26, 2018), <https://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=79676>.

²⁹⁷ U.S. Immigration & Customs Enf’t, *Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses* (Jan. 10, 2018), <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

²⁹⁸ N.Y.C Bar Assoc., *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses at 1-2* (July 2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf>.

²⁹⁹ *Id.* at 2.

³⁰⁰ *Id.*

not administrative warrants, for civil immigration enforcement actions to the common law privilege against civil arrests while attending judicial proceedings.³⁰¹ The City Bar added a recommendation that OCA should make available for public review the information obtained and recorded by court personnel with respect to ICE enforcement activities in courthouses.³⁰²

³⁰¹ *Id.* at 2, 11.

³⁰² *Id.* at 2.

How Judicial Stakeholders Have Responded to ICE Courthouse Operations



As reports of ICE courthouse operations increase, many sitting and former judges have spoken out against ICE's tactics.

Statements of Sitting Judges Across the Country

According to a May 2018 report by the **American Civil Liberties Union (ACLU)**, 54% of the 103 judges surveyed reported interruptions due to an immigrant crime survivor's fear of coming to court.³⁰³

³⁰³ See Am. Civil Liberties Union, *Freezing Out Justice: How Immigration Arrests at Courthouses are Undermining the Justice System* (2018), https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf.

Judges have been vocal about how ICE’s courthouse operations are disruptions to the paramount purpose of courthouses — the fair and equitable administration of justice.³⁰⁴ Chief judges across the country have spoken out against ICE’s courthouse operations.³⁰⁵ Chief Justice **Lloyd A. Karmeier** of The Supreme Court of Illinois called attention to the erosion of equal access to justice for all Illinois residents caused by ICE’s tactics:

Concerns over the negative effects of ICE enforcement actions on access to state judicial services may have particular resonance in Illinois, where our state constitution enshrines the philosophy that every person, not just citizens, ‘shall obtain justice by law, freely, completely, and promptly’ and guarantees to all persons, not just citizens, that they shall not be ‘deprived

³⁰⁴ See generally Letter from Supreme Court of Wash. Chief Justice Mary E. Fairhurst to the Sec’y of the Dep’t of Homeland Sec. John F. Kelly (Mar. 22, 2017), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf> (“When people are afraid to access our courts, it undermines our fundamental mission. I am concerned at the reports that the fear now present in our immigrant communities is impeding their access to justice Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice.”); Press Release, R.I. Judiciary, *Courts Must Remain Open and Accessible to All, Chief Justice Tells Lawyers, Judges* (June 16, 2017), <https://www.courts.ri.gov/PublicResources/media/PDF/ICE%20enforcement%20061617%20web.pdf> (Chief Justice Paul A. Suttell spoke at the annual meeting of the Rhode Island Bar Association about his concern regarding ICE arrests “either inside or near state court buildings,” remarking that “[i]f people in our immigrant communities are afraid to come to court, out of fear of federal apprehension, our core mission is compromised and there is a risk of our neighborhoods becoming less safe.”).

³⁰⁵ See generally Letter from Supreme Court of Cal. Chief Justice Tani G. Cantil-Sakauye to Sec’y of the Dep’t of Homeland Sec. John F. Kelly (Mar. 16, 2017), <https://www.ncsc.org/-/media/Files/PDF/Topics/ICE/CA%20Letter.ashx> (“[E]nforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair. They not only compromise our core value of fairness but they undermine the judiciary’s ability to provide equal access to justice.”); Letter from Supreme Court of N.J. Chief Justice Stuart Rabner to Sec’y of the Dep’t of Homeland Sec. John F. Kelly (Apr. 19, 2017), <https://www.ncsc.org/-/media/Files/PDF/Topics/ICE/NJ%20Letter.ashx> (“To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum. Enforcement actions by ICE agents inside courthouses would produce the opposite result and effectively deny access to the courts.”); Letter from Supreme Court of Or. Chief Justice Thomas A. Balmer to Sec’y of the Dep’t of Homeland Sec. John F. Kelly (Apr. 6, 2017), http://res.cloudinary.com/bdy4ger4/image/upload/v1506703695/CJ_ltr_to_AG_Sessions-Secy_Kelly_re_ICE_rrubnc.pdf (“I trust that [DHS] understand[s] as well the central role that the Oregon courts play in our state’s criminal justice system, our efforts to protect children and families, and our daily work to ensure the rule of law for all Oregon residents. ICE’s detention or arrest of undocumented residents in and near Oregon’s courthouses seriously impedes those efforts. It deters individuals, some undocumented and some not, from coming to court when they should.”); Letter from Supreme Court of Conn. Chief Justice Chase T. Rogers to Sec’y of the Dep’t of Homeland Sec. John F. Kelly (May 15, 2017), <https://www.ncsc.org/-/media/Files/PDF/Topics/ICE/CT%20Letter.ashx> (“I believe that having ICE officers detain individuals in public areas of our courthouses may cause litigants, witnesses and interested parties to view our courthouses as places to avoid, rather than as institutions of fair and impartial justice.”).

of life, liberty or property without due process of law nor be denied the equal protection of the law.³⁰⁶

Statement from Retired Judges from Across the Country

Recently, a group of nearly **70 former state and federal judges**, including **26 state supreme court justices** and **12 chief justices** from across the ideological spectrum, wrote a letter to Ronald D. Vitiello, Acting Dir. of ICE, urging the agency to stop making civil immigration arrests at our nation’s courthouses.³⁰⁷ With decades of experience presiding over thousands of cases in trial and appellate courts, these judges explained 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.”³⁰⁸

According to the **judges**, “ICE’s reliance on immigration arrests in courthouses instills fear in clients and deters them from seeking justice in a court building. . . .”³⁰⁹ This fear “has meant valid law enforcement prosecutions are abandoned, or never pursued.”³¹⁰ In addition, it has 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. The environment created by these incidents, in addition to the delays and rescheduling that result when fear prevents parties from

³⁰⁶ Statement of Supreme Court of Ill. Chief Justice Lloyd A. Karmeier, ICE Arrests Threaten to Chill Access to Justice (Aug. 28, 2017), http://www.illinoiscourts.gov/Media/enews/2017/082517_chief_justice.asp (internal citations omitted).

³⁰⁷ Letter from Hon. Wallace B. Jefferson et. al. to Ronald D. Vitiello, Acting Dir. of U.S. Immigration & Customs Enf’t (Dec. 12, 2018), https://www.scribd.com/document/395488473/Letter-From-Former-Judges-Courthouse-Immigration-Arrests#fullscreen&from_embed.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

appearing in court, only makes it more difficult for judges and court staff to do their jobs.³¹¹

The **judges** also noted that:

[I]nterrupting criminal proceedings with civil immigration arrests undermines the justice system. 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.³¹²

For these reasons, the judges urged ICE to take steps to restore confidence in safe access to the courts, including by treating courthouses as “sensitive locations,” similar to hospitals, schools, and religious centers.³¹³ The letter was signed by six former state and federal judges who served in New York: **Hon. Jonathan Lippman (ret.), Chief Judge of the New York Court of Appeals, Hon. Howard Levine (ret.), Associate Judge, New York Court of Appeals, Hon. Katherine B. Forrest (fmr.), U.S. District Court, Southern District of New York, Hon. John Gleeson (ret.), U.S. District Court, Eastern District of New York, Hon. Shira A. Scheindlin (ret.), U.S. District Court, Southern District of New York, and Hon. Gloria Sosa-Lintner (ret.), New York City Family Court.**³¹⁴

³¹¹ *Id.*

³¹² *Id.* (emphasis added).

³¹³ *Id.*

³¹⁴ *Id.*

How Elected Officials Have Responded to ICE Courthouse Operations



Elected officials from across New York State have also expressed strong concerns regarding the escalation in ICE operations in and around New York courthouses, and the chilling effect that this activity has had on access to justice in our state. For example:³¹⁵

³¹⁵ Press Release, Immigrant Def. Project, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Act-press-release-6.5.2018-FINAL.pdf>.

Thirty-eight Members of the New York State Assembly wrote in a letter to the Secretary of the Department of Homeland Security: “The increasingly aggressive actions of Immigration and Customs Enforcement (ICE) agents over the past year, especially in New York State courthouses, has raised serious concerns in our districts throughout New York, including in our immigrant communities, and threatens to sow distrust in the relationship among our constituents and state and local law enforcement. The aggressive behavior and nature of ICE’s recent activities exhibits a lack of respect for fairness and for due process and other rights afforded under the New York and United States Constitution.”³¹⁶

New York City Comptroller Scott M. Stringer published an investigation of ICE enforcement in New York City that concluded that ICE courthouse arrests were part of an aggressive new push to detain and deport New Yorkers. The report, which found that deportations from the New York City area surged by 150% during the first years of the Trump administration, recommended passage of the Protect Our Courts Act. “ICE’s predatory targeting of people who appear in State court for any reason is harmful to New York’s justice system,” the report noted. “[The Protect Our Courts Act] would add additional protections for immigrants and ensure that they could appear in court and obtain justice without being arrested for an unrelated civil immigration matter.”³¹⁷

³¹⁶ Letter from Member of N.Y. State Assembly Patricia Fahy et. al. to Sec’y of U.S. Dept. of Homeland Sec. Kristjen M. Nielsen (Feb. 5, 2019), <https://www.scribd.com/document/399491138/DHS-Secretary-Nielsen-Letter>.

³¹⁷ Office of N.Y.C. Comptroller Scott M. Stringer, *The Demographics of Detention: Immigration Enforcement in NYC Under Trump* (Feb. 2019), https://comptroller.nyc.gov/wp-content/uploads/documents/Demographics_of_Detention_022019.pdf.

Assemblymember Michaelle C. Solages said: “Residents of our State rely on the court system to address important legal issues that affect our communities. All New Yorkers regardless of income, race, religion or immigration status should have the opportunity to use the court system to advocate for themselves and their interests. Federal immigration agents searching and detaining immigrants inside our courts, deters individuals from interacting with the court system which in turns has a chilling effect on our rights. I join the Immigrant Defense Project, SEIU 32BJ and all other advocates to ensure that our courts remain safe for all New Yorkers.”³¹⁸

Assemblymember Ron Kim said: “While President Donald Trump and ICE continue to target and punish law abiding immigrants, here in New York, we stand strong together to protect all New Yorkers.”³¹⁹

Assemblymember Harvey Epstein said: “Emboldened by Donald Trump’s xenophobia, ICE has accelerated the contemptible tactic of courthouse arrests, which pervert the course of justice for immigrant and undocumented New Yorkers and have a chilling effect on victims and witnesses attending proceedings. New Yorkers, regardless of immigration status, should not be afraid to seek justice.”³²⁰

³¹⁸ Press Release, Immigrant Def. Project, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Act-press-release-6.5.2018-FINAL.pdf>.

³¹⁹ *Id.*

³²⁰ *Id.*

Assemblymember Dan Quart said: “ICE has no place in our courts — their presence severely threatens equal access to justice. Everyone, regardless of their immigration status, should feel safe to seek help from the legal system. New York’s state court system should not be used as a tool by ICE agents to arrest and deport people. As federal authorities ramp up their enforcement of deportation orders, we must work together on the state level to ensure immigrants are not fearful of entering a courtroom.”³²¹

Senator Brad Hoylman said: “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. Since the start of the Trump Administration, we’ve seen an outrageous 1700% increase in ICE arrests and attempted arrests in and around courts in New York. That’s unacceptable.”³²²

Senator Jamaal Bailey said: “Having ICE in our courts has the potential to force individuals to not appear because of fear. The presence of ICE agents in a court is not related to the instant proceedings one may face in our justice system. No witness or individual should feel intimidated because of the presence of individuals who do not belong there.”³²³

³²¹ *Id.*

³²² Press Release, Immigrant Def. Project, DAs, Defenders & Community Stand Together as Hoylman, Solages Intro ICE Out of Courts Bill (Jan. 31, 2019), <http://www.immigrantdefenseproject.org/wp-content/uploads/Press-Release-POCA-1.31.2019.pdf>.

³²³ *Id.*

New York State Attorney General Letitia James said: “Safe and universal access to the court of law is key to a fair, democratic society and a basic requirement in the vindication of individual rights. ICE’s indiscriminate campaign of courthouse arrests puts all New Yorkers at risk and goes against everything we stand for.”³²⁴

Former Attorney General Eric Schneiderman said, “Targeting immigrants at our courthouses undermines our criminal justice system and threatens public safety. If the Trump Administration continues to arrest people in the heart of our justice system, immigrants will be less likely to serve as witnesses or report crimes – and that leaves us all at risk. I join District Attorney Gonzalez in calling for ICE to stop immigration raids in our courthouses. Everyone, regardless of their immigration status or the status of their loved ones, should have access to equal justice under the law.”³²⁵

NYC Councilmember, Chair Immigration Committee, Carlos Menchaca said: “ICE must go through the rigorous process of obtaining a judicial warrant as required under our Constitution. In a dangerous move, our New York City Mayor De Blasio has decided that some immigrants are worthy of legal representation and some are not and Chief Judge Janet DiFiore has refused to act even though she has the authority to ban ICE from disrupting judicial proceedings. Both need to understand that they are standing in the way of justice and facilitating the emerging deportation machine President Trump has been setting up since day one in office.”³²⁶

³²⁴ Press Release, Immigrant Def. Project, New York Assembly Introduces Groundbreaking New Bill to Protect Immigrants From Unlawful ICE Arrests at Courthouses (June 1, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Act-Press-Release-6.1.2018.pdf> (Letitia James was a public advocate when she made this statement.).

³²⁵ Press Release, N.Y. State Office of the Attorney Gen., New York AG Eric Schneiderman and Acting Brooklyn DA Eric Gonzalez Call for ICE to End Immigration Enforcement Raids in State Courts (Aug. 3, 2017), <https://ag.ny.gov/press-release/new-york-ag-eric-schneiderman-and-acting-brooklyn-da-eric-gonzalez-call-ice-end>.

³²⁶ Press Release, Office of the Bronx Borough President, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <http://bronxboropres.nyc.gov/2018/06/05/elected-officials-advocates-and-public-defenders-gather-to-introduce-groundbreaking-new-bill-to-protect-immigrants-from-unlawful-ice-arrests-at-courthouses/>.

NYC Councilmember, Chair Committee on the Justice System, Rory Lancman said: “ICE enforcement activity at city courts undermines our justice system and creates fear within immigrant communities. We won’t have a system of justice if people are afraid to come and be a part of that system.”³²⁷

Manhattan District Attorney Cy Vance, Jr. said: “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.”³²⁸

Brooklyn District Attorney Eric Gonzalez said: “I have been calling on ICE for months to treat our courthouses as sensitive locations and to stop arresting people inside those buildings. 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.”³²⁹

³²⁷ Press Release, Immigrant Def. Project, DAs, Defenders & Community Stand Together as Hoylman, Solages Intro ICE Out of Courts Bill (Jan. 31, 2019), www.immigrantdefenseproject.org/wp-content/uploads/Press-Release-POCA-1.31.2019.pdf.

³²⁸ Press Release, Office of the Bronx Borough President, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <http://bronxboropres.nyc.gov/2018/06/05/elected-officials-advocates-and-public-defenders-gather-to-introduce-groundbreaking-new-bill-to-protect-immigrants-from-unlawful-ice-arrests-at-courthouses/>.

³²⁹ Press Release, Immigrant Def. Project, New York Assembly Introduces Groundbreaking New Bill to Protect Immigrants From Unlawful ICE Arrests at Courthouses (June 1, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Act-Press-Release-6.1.2018.pdf>.

Bronx District Attorney Darcel D. Clark said: “I encourage people to report crimes so that they can be processed through the criminal justice system. 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. We need everyone to cooperate in our fight to keep the streets of the Bronx safe.”³³⁰

Nassau County District Attorney Madeline Singas said: “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.”³³¹

Albany County District Attorney David Soares said: “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 confusion 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.”³³²

³³⁰ Press Release, Office of the Bronx Borough President, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <http://bronxboropres.nyc.gov/2018/06/05/elected-officials-advocates-and-public-defenders-gather-to-introduce-groundbreaking-new-bill-to-protect-immigrants-from-unlawful-ice-arrests-at-courthouses/>.

³³¹ Immigrant Def. Project, The Protect Our Courts Act: *Endorsements from New York Prosecutors, Statements from Prosecutors Nationwide*, https://www.immigrantdefenseproject.org/wp-content/uploads/prosecutors-pro_308923131.pdf.

³³² *Id.*

Brooklyn Borough President Eric L. Adams said: “ICE’s overaggressive behavior in and around our courts has been counterproductive to public safety in our city and our state.”³³³

Bronx Borough President Ruben Diaz Jr. said: “ICE’s presence in the New York State Court System has a chilling effect on justice. The agency’s presence in our courts is preventing the fair adjudication of cases within our system, and is an affront to the concept of impartial justice. . . I will continue to work with immigration advocates, attorneys and others to protect our immigrant community from needlessly splitting up families through detention and deportation.”³³⁴

³³³ Press Release, Office of the Bronx Borough President, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <http://bronxboropres.nyc.gov/2018/06/05/elected-officials-advocates-and-public-defenders-gather-to-introduce-groundbreaking-new-bill-to-protect-immigrants-from-unlawful-ice-arrests-at-courthouses/>.

³³⁴ *Id.*

Recommendations for Court Rules

This report identifies the vast array of stakeholders in New York’s justice system negatively affected by ICE’s enforcement operations in and around the state’s courthouses, extending far beyond crime victims, witnesses, defendants, and family members arrested at courthouses. The impacted stakeholders include every actor involved in ensuring the functioning and upholding of the justice system: district attorney offices, anti-violence advocates, public defender offices, problem-solving courts and staff, and current and former judges.

This report also quantifies and clarifies the disruptions to the New York State judicial system, as experienced by these stakeholders. Taken together, the picture that emerges is a systemic denial to New York state residents of their full and equal access to courts and guaranteed protections of their state, federal, and constitutional rights.

In a state where one in five residents is an immigrant, where there are over 750,000 undocumented immigrants, where one in twelve US-born children lives with at least one undocumented family member, immigrants are integral to New York.³³⁵ When so many of our residents, especially the most vulnerable among us, are unsafe, we are all unsafe. When so many of our residents, especially family members, friends, and co-workers of other New Yorkers, are denied access to justice and equal opportunity to exercise their rights, we are all less free. To address the systemic hindrance to the administration of New York’s justice system that ICE courthouse operations have become, the Coalition strongly urges OCA to promulgate the following court rules.

³³⁵ Am. Immigration Council, *Immigrants in New York* (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_york.pdf.

1. Employees of the Unified Court System shall not:

- i. **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 that the person who is the subject of such warrant be subjected to a civil arrest. "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.

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