

List of Methods Used to Stop ICE Courthouse Arrests

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- Many organizations, including the New York City Democratic Socialists of America, have sought to pressure the New York State Chief Judge, Janet DiFiore, to prohibit ICE agents from entering courts in the state by way of a letter-writing and signature campaign.¹ However, the Chief Judge has staunchly maintained that courthouses are public buildings and thus ICE cannot be prevented from entering or making arrests outside.²
- “In New York City, judges and public defenders have resorted to looking out for people that could be ICE agents—and hastily sending out email alerts to bring immigrants in through another door if they see one.”³
- Chief Judges from California, New Jersey, Oregon, Connecticut, and Washington have written letters to the Secretary of the Department of Homeland Security as well as the Attorney General to communicate that ICE arrests outside of courthouses chill justice and should therefore be severely curtailed.⁴ These letters did not result in any concrete action on the part of the Trump administration to

¹ See *Demand and End to ICE’s Courthouse Arrests in New York*, THE ACTION NETWORK, <https://actionnetwork.org/petitions/demand-an-end-to-ices-courthouse-arrests-in-new-york> (last visited Aug. 14, 2018).

² See Beth Fertig, *New York Courts Act Against Lawyers Protesting Immigration Agents*, WNYC NEWS (Apr. 10, 2018), <https://www.wnyc.org/story/new-york-courts-act-against-lawyers-protesting-immigration-agents/>.

³ Dara Lind, *Around the Country, ICE is Arresting Immigrants When They Show up to Court*, VOX (Aug. 7, 2018, 9:28 AM EDT), <https://www.vox.com/policy-and-politics/2017/4/11/15180140/immigrants-arrested-courthouses-ice>.

⁴ See Cathal Conneely, *Chief Justice Cantil-Sakauye Objects to Immigration Enforcement Tactics at California Courthouses*, CALIFORNIA COURTS NEWSROOM (Mar. 16, 2017), <https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>; S.P. Sullivan, *N.J.’s Chief Justice Asks ICE to Stop Arresting Immigrants at Courthouses*, NJ.COM (Dec. 12, 2017), https://www.nj.com/politics/index.ssf/2017/04/nj_top_judge_asks_ice_to_stop_arresting_immigrants.html; Ryan Haas & Conrad Wilson, *Oregon Supreme Court Chief Justice Tells ICE to Stay Out of Courthouses*, OREGON PUBLIC BROADCASTING (Apr. 7, 2017), <https://www.opb.org/news/article/oregon-supreme-court-justice-ice-courthouse-letter/>; Mary O’Leary, *Connecticut Judge Seeks to Protect Courthouses from ICE*, NEW HAVEN REGISTER (June 8, 2017), <https://www.nhregister.com/connecticut/article/Connecticut-judge-seeks-to-protect-courthouses-11316610.php>; Joseph O’Sullivan, *Chief Justice Asks ICE not to Track Immigrants at State Courthouses*, THE SEATTLE TIMES (Mar. 22, 2017), <https://www.seattletimes.com/seattle-news/politics/chief-justice-asks-ice-not-to-track-immigrants-at-state-courthouses/>.

slow ICE courthouse arrests or otherwise reconsider their policy regarding immigration enforcement in such areas.

- Extensive walkouts by public defenders in New York City courts have taken place over the course of the winter of 2017 spring and early summer of 2018 in response to courthouse arrests by ICE.⁵ Over time, however, the New York Office of Court Administration has treated these walkouts with less leniency, ultimately interpreting them as a failure by public defenders to comply with their ethical and professional duty to zealously advocate for their clients.⁶
- On May 30, 2018, the New York State Assembly introduced an assembly bill that came to be known as the Protect Our Courts Act.⁷ The purpose of this legislation is to prohibit ICE agents from making arrests in New York courthouses unless they have an arrest warrant signed by a judge.⁸ Initially, the legislation was anticipated to have some difficulty passing the state Senate,⁹ however, if it does so successfully, it is predicted that Governor Cuomo will likely sign it into law.¹⁰ The bill was introduced late in the state's current legislative session and therefore it

⁵ See Gwynne Hogan, *Public Defenders Walk Out of Bronx Courthouse After College Student Detained by ICE*, WNYC NEWS (Feb. 8, 2018), <https://www.wnyc.org/story/public-defenders-walk-out-bronx-courthouse-after-college-student-detained-ice/>; Fertig, *supra* note 2; Amanda Ottoway, *Attorneys Hold Chilly Protests as Immigration Arrests Surge*, COURTHOUSE NEWS SERVICE (Dec. 7, 2017), <https://www.courthousenews.com/attorneys-hold-chilly-protest-as-immigration-arrests-at-court-surge/>.

⁶ See Fertig, *supra* note 2.

⁷ See *Assembly Bill A11013A*, THE NEW YORK STATE SENATE, <https://www.nysenate.gov/legislation/bills/2017/a11013/amendment/a> (last visited Aug. 14, 2018) (containing a bill tracker as well as the actual text of the bill in its original and amended formats); Madina Toure, *New York Could Institute Strongest Protections Against ICE Courthouse Arrests in US*, THE OBSERVER (June 1, 2018), <http://observer.com/2018/06/new-york-federal-immigration-courthouse-arrests/> (referring to the assembly bill as the "Protect Our Courts Act" and detailing the sociopolitical context surrounding the bill).

⁸ *Assembly Bill A11013A*, *supra* note 7.

⁹ See Zoe Azulay, *Assembly Bill Would Ban ICE Agents from Courthouse Arrests*, WNYC NEWS (June 5, 2018), <https://www.wnyc.org/story/bill-ban-ice-agents-arresting-inside-courthouses> ("The bill has yet to pass the Democratic-controlled Assembly, and would have an even harder time getting through the Senate, where Democrats and Republicans each have 31 votes.").

¹⁰ Colby Hamilton, *Assembly Bill Keeps ICE Out of NY Courts Without Warrant*, NEW YORK LAW JOURNAL (May 31, 2018), <https://www.law.com/newyorklawjournal/2018/05/31/assembly-bill-keeps-ice-out-of-ny-courts-without-warrant/?slreturn=20180715125051> ("Even if the bill passes the Assembly, it will need a vote out of the Senate, and a signature by Gov. Andrew Cuomo. The Governor's recent actions suggest he may be amenable to a change in the law. In April, he signed an executive order that seeks to impose a similar requirement . . . before an arrest [by ICE] can be made in a state facility.").

was unable to pass both houses of the state's legislature before the session ended on June 20, 2018.¹¹

- On September 15, 2017, the Governor of New York, Andrew Cuomo, signed Executive Order 170 into action.¹² Once in effect, the Order prohibited “state agencies and officers from inquiring about or disclosing an individual’s immigration status unless required by law or necessary to determine eligibility for a benefit or service.”¹³ In April of 2018, Governor Cuomo amended this Executive Order to prevent ICE agents from making arrests in state facilities without a warrant.¹⁴
- Following several ICE raids of agricultural facilities in New York, on April 25, 2018, the Governor of New York, Andrew Cuomo, issued a cease and desist letter to the director of ICE.¹⁵ The letter demanded that ICE immediately cease employing “reckless and unconstitutional enforcement actions” or the state would pursue action against the federal agency.¹⁶ In response, the director of ICE defended that the agency’s agents were not employing unlawful means to carry out their duties and asserted that the agency would continue its efforts to comply with its statutory mandate.¹⁷

¹¹ See *New York State - Legislative Session Calendar*, NEW YORK STATE ASSEMBLY, <http://assembly.state.ny.us/leg/calendar/> (last visited Aug. 14, 2018) (containing the legislative session calendar for the most recent New York legislative session).

¹² *Cuomo Signs Executive Order Banning Questions About Immigration Status*, ROCHESTERFIRST.COM (Sep. 15, 2017), <https://www.rochesterfirst.com/news/local-news/cuomo-signs-executive-order-banning-questions-about-immigration-status/811873625>.

¹³ *Id.* For the original text of Executive Order 170, see State of New York Executive Order 170 (Sep. 15, 2017), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_%23_170.pdf.

¹⁴ *No. 170.1: Amendment to Executive Order 170 – State Policy Concerning Immigrant Access to State Services and Buildings*, NEW YORK STATE (Apr. 25, 2018), <https://www.governor.ny.gov/news/no-1701-amendment-executive-order-170-state-policy-concerning-immigrant-access-state-services>. Note that this amendment to Executive Order 170 creates a barrier to ICE courthouse arrests similar to the barrier that the Protect Our Courts Act seeks to create. However, the Order, as amended, is more expansive than the proposed bill because it extends not only to courthouses but to all ‘state facilities’—“any building, or part thereof, owned or leased by any Affected State Entity.” *Id.*

¹⁵ See *Governor Cuomo Issues Cease and Desist Letter to ICE*, NEW YORK STATE (Apr. 25, 2018), <https://www.governor.ny.gov/news/governor-cuomo-issues-cease-and-desist-letter-ice>.

¹⁶ *Id.* For the text of the letter, see Letter from New York State Governor, Andrew M. Cuomo, to the Director of Immigration and Customs Enforcement, Thomas D. Homan (Apr. 25, 2018), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Ltr_from_GAMC_to_ICE.pdf.

¹⁷ See Meagan Flynn, *New York Gov. Cuomo Sends ICE Cease-and-Desist Letter, Calls Arrests ‘Illegal,’* THE WASHINGTON POST (Apr. 26, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/04/26/that-is-un-american-new-york-gov-cuomo-sends-ice-cease-and-desist-letter-calls-arrests-illegal/?noredirect=on&utm_term=.ed9d9879d712.

- On March 24, 2017, the Governor of New York, Andrew Cuomo, launched the Liberty Defense Project, a public-private partnership between the New York Department of State, two dedicated philanthropic allies—the Carnegie Corporation of New York and the Ford Foundation—and a statewide coalition of 182 advocacy organizations and legal entities [all of which] will be coordinated by the State’s Office for New Americans to provide pro bono legal and additional resources for immigrants threatened by recent changes in immigration policy.¹⁸ The Project began operations almost immediately and, at the time of its creation, was funded by upwards of one million dollars.¹⁹ In 2018, Governor Cuomo increased the Project’s funding by ten million dollars under the state’s budget for the 2019 fiscal year.²⁰ The project is touted as the first of its kind in the nation and its services include assisting immigrants in deportation hearings and educating parents at risk of deportation about how to prepare for such an emergency.²¹
- In May of 2018, the Governor of the State of California, Jerry Brown, signed into law a bill that prevents discussion of a person’s immigration status in open court unless a judge has already determined that such evidence is admissible following an *in camera* hearing regarding the matter.²² The bill was originally proposed after a highly-publicized letter written by California’s Chief Judge, Tani Cantil-Sakauye, to the Secretary of the Department of Homeland Security and Attorney General Sessions urged an end to ICE courthouse arrests as they impeded equal access to justice.²³ The legislation extends this protection to both civil and criminal contexts²⁴ and passed by a wide margin, experiencing strong bipartisan support.²⁵ The bill is characterized as an ‘urgency statute’ and therefore takes effect immediately but is to be automatically repealed as of January 1, 2022.²⁶

¹⁸ *Governor Cuomo Launches First-in-The Nation Public-Private Liberty Defense Project*, NEW YORK STATE (Mar. 24, 2017), <https://www.governor.ny.gov/news/governor-cuomo-launches-first-nation-public-private-liberty-defense-project>.

¹⁹ *Id.*

²⁰ See *Governor Cuomo Issues Cease and Desist Letter to ICE*, *supra* note 15.

²¹ See *Governor Cuomo Launches First-in-The Nation Public-Private Liberty Defense Project*, *supra* note 18.

²² See Ashley Hackett, *A New California Law Makes it Harder for ICE to Arrest Immigrants From Courthouses*, PACIFIC STANDARD (May 17, 2018), <https://psmag.com/social-justice/a-new-law-makes-it-harder-for-ice-to-arrest-immigrants-from-courthouses>.

²³ *Id.*

²⁴ *SB-785 Evidence: Immigration Status – Text*, CALIFORNIA LEGISLATIVE INFORMATION (May 17, 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB785.

²⁵ *SB-785 Evidence: Immigration Status – Votes*, CALIFORNIA LEGISLATIVE INFORMATION (May 17, 2018), https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201720180SB785.

²⁶ *SB-785 Evidence: Immigration Status – Text*, *supra* note 24.

- In February of 2018, the Mayor of Oakland, California, Libby Schaaf, issued a public press release tipping off immigrant communities about an imminent ICE raid.²⁷ Though the raid ultimately took place, the director of ICE, Thomas Homan, indicated that the press release assisted over 800 immigrants in evading ICE agents.²⁸ Despite significant national criticism, Mayor Schaaf reiterated her commitment to protecting immigrant communities and her intention to stand by her actions.²⁹ In response, President Trump urged Attorney General Sessions to initiate efforts to prosecute the Mayor for obstruction of justice, however, the Attorney General declined to do so.³⁰

On May 18, 2018, Representative Steve King of Iowa introduced House Bill 5884—the Mayor Libby Schaaf Act of 2018.³¹ The bill seeks to punish “any local or state government official who alert[s] residents of pending immigration raids . . . [with] up to 5 years in prison.”³² The bill has yet to be voted on by the House of Representatives.³³
- In New Jersey, volunteers led by Seth Kaper-Dale, a pastor and former gubernatorial candidate, are engaged in court watching.³⁴ They wear distinctive vests and patrol outside of courthouses for the purpose of distributing pamphlets detailing immigrants’ rights; documenting any ICE arrests that take place; contacting the relatives of immigrants arrested by ICE outside of courthouses; and warning immigrants inside courthouses to be wary of ICE agents outside the building.³⁵
- In partnership with the Michigan Immigrant Rights Center, the ACLU has created and made generally available an advisory pamphlet entitled “Immigration

²⁷ See *H.R. 5884: Mayor Libby Schaaf Act of 2018*, GOVTRACK (May 25, 2018), <https://www.govtrack.us/congress/bills/115/hr5884/summary>.

²⁸ *Id.*

²⁹ Meagan Flynn, *Oakland Mayor who Tipped Off Immigrants to ICE Raid Draws Justice Department Scrutiny*, THE WASHINGTON POST (Mar. 2, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/03/02/justice-department-reviewing-actions-of-oakland-mayor-who-tipped-off-immigrants-of-ice-raid-white-house-says/?utm_term=.6690c3b58f0f.

³⁰ See *H.R. 5884: Mayor Libby Schaaf Act of 2018*, *supra* note 27.

³¹ Luis Gomez, *How Oakland Mayor Schaaf Inspired GOP Bill Seeking Jail for Tipping Off ICE Sweeps*, THE SAN DIEGO UNION TRIBUNE (May 22, 2018), <http://www.sandiegouniontribune.com/opinion/the-conversation/sd-how-oakland-mayor-libby-schaaf-inspired-bill-to-jail-officials-warn-ice-raids-20180522-htmistory.html#>.

³² *H.R. 5884: Mayor Libby Schaaf Act of 2018*, *supra* note 27.

³³ *Actions Overview – H.R. 5884: Mayor Libby Schaaf Act of 2018*, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/5884/actions> (last visited Aug. 16, 2018).

³⁴ Matt Katz, *With Yellow Vests and ‘ICE-Sniffing Dog,’ Activists Watch for Immigration*, NJ SPOTLIGHT (Apr. 2, 2018), <http://www.njspotlight.com/stories/18/03/30/with-yellow-vests-and-an-ice-sniffing-dog-activists-watch-for-immigration-agents#>.

³⁵ *Id.*

Enforcement at Courthouses: A Resource for Attorneys.”³⁶ The purpose of this pamphlet is to “provide guidance for attorneys whose clients may be affected by immigration enforcement at courthouses.”³⁷ The brief resource contains information regarding minimizing risks to clients vulnerable to such a courthouse arrest by ICE as well as how an attorney should proceed if ICE agents appear at a courthouse or arrest their client at a courthouse.³⁸ The ACLU of Nebraska has published a similar guide for attorneys, however, it is much more in-depth and refers specifically to Nebraska laws and local resources available to immigrants and attorneys.³⁹

- Many immigrants’ rights advocacy groups across the country have urged that Congress codify the Department of Homeland Security’s non-binding guidelines regarding arrests in “sensitive locations” and expand the definition of “sensitive location” to include courthouses.⁴⁰ Currently, the Department’s guidelines indicate that, absent a showing of exigent circumstances, ICE agents must refrain from arresting persons in “sensitive locations”—places of worship, schools, health care

³⁶ IMMIGRATION ENFORCEMENT AT COURTHOUSES: A RESOURCE FOR ATTORNEYS, ACLU & MICHIGAN IMMIGRANT RIGHTS CENTER, <http://www.aclumich.org/sites/default/files/KYR-Attorneys-ICE-MI.pdf> (last visited Aug. 16, 2018).

³⁷ *Id.* at 1.

³⁸ *See generally id.*

³⁹ IMMIGRATION ENFORCEMENT IN COURTHOUSES: A RESOURCE FOR ATTORNEYS, ACLU OF NEBRASKA (July 1, 2018), https://www.aclunbraska.org/sites/default/files/field_documents/ice_resource_0.pdf.

⁴⁰ *See* RESOLUTION 10C, AMERICAN BAR ASSOCIATION (Aug. 2017), <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/10C.pdf> (“Resolved, That the American Bar Association, in recognition of the critical importance of the fair and unfettered administration of justice and in order to protect the right of persons to access to . . . courthouses, urges Congress to amend Section 287 of the Immigration and Nationality Act to expand and codify guidelines regarding immigration enforcement actions to include courthouses as “sensitive locations”. . . .”); FREEZING OUT JUSTICE: HOW IMMIGRATION ARRESTS AT COURTHOUSES ARE UNDERMINING THE JUSTICE SYSTEM, AMERICAN CIVIL LIBERTIES UNION 6–7 (2018) (urging that Congress “[p]ass the [p]rotecting [s]ensitive [l]ocations [a]ct (S. 845/H.R. 1815) [t]he bill prohibits CBP, along with ICE, from arresting, interviewing, searching, or surveilling anyone for the purpose of immigration enforcement within 1,000 feet of a courthouse or *other* sensitive location.”) (emphasis added). It is important to note that on April 5, 2018, Senator Richard Blumenthal of Connecticut introduced Senate Bill 845, known as the Protecting Sensitive Locations Act. *See S. 845: Protecting Sensitive Locations Act – Overview*, GOVTRACK.COM, <https://www.govtrack.us/congress/bills/115/s845> (last visited Aug. 16, 2017). The bill is aimed at codifying the current Department of Homeland Security Guidelines limiting ICE enforcement action in sensitive locations as well as expanding the definition of sensitive locations to include courthouses. *See S. 845: Protecting Sensitive Locations Act – Text*, GOVTRACK.COM, <https://www.govtrack.us/congress/bills/115/s845/text> (last visited Aug. 16, 2017). “The bill is currently in the first stage of the legislative process.” *S. 845: Protecting Sensitive Locations Act – Overview*, GOVTRACK.COM, <https://www.govtrack.us/congress/bills/115/s845> (last visited Aug. 16, 2017).

facilities, religious or civil services, and public demonstrations.⁴¹ At this time, these guidelines are non-binding.⁴² In an effort to curtail the recent surge in ICE courthouse arrests, such groups are now advocating that Congress not only codify these guidelines but expand the definition of “sensitive locations” to include courthouses.⁴³

- On March 15, 2018, a coalition of advocacy groups in Massachusetts filed a petition for a “writ of protection” on behalf of seven immigrant clients with the State’s Supreme Judicial Court.⁴⁴ The common law writ protects parties coming before the court regarding a civil matter from arrest.⁴⁵ It seems that the coalition is seeking to utilize the “writ of protection” as an injunction against ICE courthouse arrests, eliminating the risk of arrest not only in the courthouse but on the way to and from the courthouse.⁴⁶ At this time, the court has yet to issue the writ.
- On September 5, 2017, the ACLU filed a Freedom of Information Act Request with the Department of Homeland Security, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.⁴⁷ The request sought information regarding, amongst other things, “ICE arrests at courthouses.”⁴⁸ However, the ACLU alleges that the agencies did not adequately respond to the requests and, on

⁴¹ See *Enforcement and Removal Operations: FAQ on Sensitive Locations and Courthouse Arrests*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Jan. 31, 2018), <https://www.ice.gov/ero/enforcement/sensitive-loc>.

⁴² Raven Quesenberry, *Immigration Enforcement and Sensitive Locations: Where can ICE Make Arrests?*, BIPARTISAN POLICY CENTER (Dec. 14, 2017), <https://bipartisanpolicy.org/blog/immigration-enforcement-and-sensitive-locations-where-can-ice-make-arrests/>.

⁴³ See *supra* 40 and accompanying text.

⁴⁴ See Alanna Durkin Richer, *Advocates Petition Massachusetts Supreme Judicial Court to Stop Courthouse Immigration Arrests*, BOSTON GLOBE (Mar. 15, 2018), <https://www.boston.com/news/local-news/2018/03/15/advocates-petition-massachusetts-supreme-judicial-court-to-stop-courthouse-immigration-arrests>.

⁴⁵ Dan Cadman, *ICE Courthouse Arrest Controversy Continues to Swirl*, CENTER FOR IMMIGRATION STUDIES (May 1, 2018), <https://cis.org/Cadman/ICE-Courthouse-Arrest-Controversy-Continues-Swirl>.

⁴⁶ See Shannon Dooling, *Advocates Ask SJC to Block Immigration Arrests at Mass. Courthouses*, WBUR (Mar. 15, 2018), <http://www.wbur.org/news/2018/03/15/blocking-arrests-at-courthouses>; *CPCS Atty. Wendy Wayne and Other Advocates File Writ of Protection Asking SJC to Block Immigration Arrests at Massachusetts Courthouses*, COMMITTEE FOR PUBLIC COUNSEL SERVICES (Mar. 16, 2018), <https://www.publiccounsel.net/blog/2018/03/16/cpcs-atty-wendy-wayne-and-other-advocates-file-writ-of-protection-asking-sjc-to-block-immigration-arrests-at-massachusetts-courthouses/> (“[P]etitioners plan to ask the full Supreme Judicial Court to consider the matter and to issue an order protecting **anyone** having business with the courts from civil arrest, including ICE arrest.”) (emphasis added).

⁴⁷ *New England ACLU Affiliates Sue for Immigration Enforcement Records*, ACLU (May 8, 2018), <https://www.aclu.org/news/new-england-aclu-affiliates-sue-immigration-enforcement-records>.

⁴⁸ *New England ACLU Affiliates Sue for Immigration Enforcement Records*, *supra* note 47.

May 8, 2018, “ACLU affiliates in Main, New Hampshire and Vermont filed a lawsuit to require [the three] government agencies to turn over records about civil rights violations arising from immigration enforcement in their states,” including information pertaining to ICE enforcement action in and near courthouses.⁴⁹ As of February of 2018, The ACLU of Oregon became embroiled in a similar suit against U.S. Immigration and Customs Enforcement with regards to a similar Freedom of Information Act request made in October of 2017, to which it also alleges the agency has not adequately responded.⁵⁰

- On February 27, 2018, Connecticut Senator Richard Blumenthal sent a letter to the Secretary of Homeland Security urging U.S. Immigration and Customs Enforcement to desist in arresting immigrants in and outside of courthouses, which he characterized as “sensitive locations.”⁵¹ Moreover, the Senator requested that ICE provide a wide variety of information and records pertaining to “enforcement actions in or near courthouses,” including information regarding local law enforcement’s involvement in the action.⁵²
- In July of 2018, the New York City Bar issued a report detailing recommendations aimed at reducing federal immigration enforcement in state courthouses.⁵³ In an effort to provide solutions outside of merely urging what it perceived to be unlikely congressional action, the report focuses on administrative rules that the chief judge can adopt to stem the onslaught of courthouse arrests.⁵⁴ Such rules include: requiring judicial warrants rather than merely administrative warrants for ICE

⁴⁹ *Id.*

⁵⁰ See *ACLU of Oregon Demands Documents on ICE Practices in Oregon*, ACLU (Oct. 12, 2017), <https://www.aclu.org/news/aclu-oregon-demands-documents-ice-practices-oregon> (describing the original Freedom of Information Act request made by the ACLU of Oregon); Conrad Wilson, *ACLU Files Suit Against ICE for Details on Courthouse Arrests*, OREGON PUBLIC BROADCASTING (Feb. 7, 2018), <https://www.opb.org/news/article/aclu-files-suit-against-ice-for-details-on-courthouse-arrests/> (describing the subsequent suit filed by the Oregon ACLU against U.S. Immigration and Customs Enforcement).

⁵¹ Letter from Connecticut Senator Richard Blumenthal to the Secretary of Homeland Security, Kirstjen Nielsen (Feb. 27, 2018), <https://www.blumenthal.senate.gov/imo/media/doc/Letter%20to%20Nielsen%20re%20courthouses%20-%20Signed.pdf>.

⁵² *Blumenthal to ICE: Back off Courthouses*, RICHARD BLUMENTHAL: UNITED STATES SENATOR FOR CONNECTICUT (Feb. 28, 2018), <https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-to-ice-back-off-courthouses>.

⁵³ RECOMMENDATIONS REGARDING FEDERAL IMMIGRATION ENFORCEMENT IN NEW YORK STATE COURTHOUSES, NEW YORK CITY BAR, <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf> (July 2018).

⁵⁴ *City Bar Issues Recommendations in Response to ICE Arrests in New York State Courthouses*, NEW YORK CITY BAR (July 11, 2018), <https://www.nycbar.org/media-listing/media/detail/city-bar-issues-recommendations-in-response-to-ice-arrests-in-new-york-state-courthouses>.

arrests to be valid in courthouses; requiring “the presiding judicial officer[s] to notify the targets of . . . [ICE arrests] of the presence of ICE agents who intend to detain them;” limiting “the cooperation and assistance of court personnel in civil immigration enforcement actions to those actions required by law;” providing “training to court personnel as to how ICE arrests differ from criminal arrests . . . [and] what court personnel can and cannot do vis-à-vis ICE encounters;” reducing “the frequency with which parties appear in court;” and making publically available that information recorded by court personnel regarding ICE activities in courthouses.⁵⁵

- The Immigration Defense Project, a New York-based advocacy group, has provided a ready-to-use amicus brief to be filed by immigrants arrested at courthouses for the purpose of terminating immigration proceedings against them.⁵⁶ The Project argues that removal proceedings may be terminated if during the course of an immigrant’s detention ICE has acted in a manner that shocks the conscience “or violates fundamental rights.”⁵⁷ The group characterizes courthouse arrests as both and urges immigrants detained in this way to seek termination of subsequent proceedings against them.⁵⁸ In addition to the general motions that a party must file to seek an end to such proceedings, the Project has provided an amicus brief for immigrants to file that contains general information about ICE’s practice of courthouse arrests.⁵⁹ The brief asserts that not only are such arrests violative of the long-held common law tradition that “rejects civil arrests in courthouses so as to protect the effective administration of justice,” but these actions are an unconstitutional infringement of the fundamental right to access courts and the implicit Tenth Amendment ban on federal government involvement in the local administration of state courts and resources.⁶⁰
- As of April 27, 2017, New York State’s Office of Court Administration “has released guidelines for dealing with ICE entering courts to arrest people.”⁶¹ Of the protocols instituted in the guidelines, the Office now requires that “law enforcement agents identify themselves to court officers upon entry to a courthouse and state their ‘specific law enforcement purpose.’”⁶² These officers must then notify a supervising

⁵⁵ *Id.*

⁵⁶ See *Courthouse Legal Resources: Amicus Brief in Support of Motion to Terminate*, IMMIGRATION DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/courts-legal-resources/> (last visited Aug. 17, 2018).

⁵⁷ *Id.*

⁵⁸ See *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* See also, Brief of Amicus Curiae Immigrant Defense Project in Support of Respondent’s Motion to Terminate Proceedings (last visited Aug. 17, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Courthouse-Arrests-Amicus-FINAL-COMPILED.pdf>.

⁶¹ Patrick Young, *NY State Courts Seek to Block ICE Arrests in Court*, LONG ISLAND WINS (June 30, 2017), <https://longislandwins.com/es/news/national/ny-state-courts-seek-block-ice-arrests-court/>.

⁶² *Id.*

authority, who, in turn must notify “the [relevant] judge of the agents’ presence.”⁶³ The Office also prohibits such agents from taking law enforcement action in courtrooms absent exigent circumstances.⁶⁴ Following these events, court officers must complete and file an “unusual occurrence report’ for each ‘law enforcement action’ taken in the courthouse.”⁶⁵ These protocols have done little to stymie ICE courthouse arrests and therefore advocates have urged that the Office issue stronger guidelines.⁶⁶

⁶³ *Id.*

⁶⁴ Erin Durkin, *Newly Public Guidelines Bar ICE from Arresting Immigrants Inside Courtrooms*, DAILY NEWS (June 30, 2017), <http://www.nydailynews.com/new-york/newly-public-guidelines-bar-ice-making-arrests-courtrooms-article-1.3288566>.

⁶⁵ Young, *supra* note 61.

⁶⁶ *See id.*; Emma Whitford, *Existing Rules to Regulate ICE Officers in Courts are ‘Pretty Much Useless,’ Lawyers Say*, GOTHAMIST (July 1, 2017), http://gothamist.com/2017/07/01/ice_courts_ny_immigration.php.