

# ***Blocking the Courthouse Doors:***

## **ICE Enforcement at Massachusetts Courthouses and Its Effects on the Judicial Process**

*Northeastern University School of Law*

*Immigrant Justice Clinic*

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## Acknowledgements

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## Introduction

**Immigration enforcement** has intensified on all fronts since Donald Trump took office as president. One aspect of this rise in enforcement is a new practice of arresting immigrants at state courthouses. Immigration and Customs Enforcement (“ICE”) has dramatically increased its activity in and around courthouses across the country over the past year, apprehending noncitizens who are appearing in court for a range of proceedings unrelated to their immigration status.<sup>1</sup>

The legal community has voiced serious concerns about the effects of ICE presence at courthouses. Hundreds of public defenders in New York staged walk-outs in recent months to oppose ICE’s presence in the courts.<sup>2</sup> Judges across the country have similarly denounced this enforcement tactic, including the chief justice of the California Supreme Court, Tani Gorre Cantil-Sakauye, who wrote a letter to the Department of Homeland Security (“DHS”) decrying the use of courthouses as “bait.”<sup>3</sup>

Courthouse enforcement is a particularly pressing issue in Massachusetts.<sup>4</sup> There are indications that the Trump Administration is targeting certain areas of the country for increased immigration enforcement in retaliation for state and local policies that are protective of immigrants.<sup>5</sup> Massachusetts is among these places. A number of

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<sup>1</sup> See, e.g., James Queally, “ICE Agents Make Arrests at Courthouses, Sparking Backlash from Attorneys and State Supreme Court,” *L.A. Times*, March 16, 2017, available at <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>; Maria Cramer, “ICE Courthouse Arrests Worry Attorneys, Prosecutors,” *Boston Globe*, June 16, 2017, <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMi8gl/story.html>.

<sup>2</sup> Christina Carrega, “Defense attorneys protest outside Brooklyn courthouse after ICE cuffs one lawyer’s client,” *New York Daily News*, Nov. 28, 2017, available at <http://www.nydailynews.com/new-york/brooklyn/defense-attorneys-protest-client-ice-arrest-brooklyn-article-1.3663018>; ABC News, “Public Defenders Walk Out in Protest of ICE Court Arrests,” Feb. 9, 2018, <http://abcnews.go.com/US/wireStory/public-defenders-walk-protest-ice-court-arrests-52956396>.

<sup>3</sup> Madison Park, “Judge on ICE Arrests: ‘Courthouses should not be used as bait,’” *CNN*, Mar. 17, 2017, available at <https://www.cnn.com/2017/03/17/us/immigration-ice-courthouse-arrests/index.html>.

<sup>4</sup> See Lawyers Committee for Civil Rights and Economic Justice, “Immigration Enforcement at Massachusetts Courthouses: A Fact Sheet,” available at <http://lawyerscom.org/wp-content/uploads/2017/11/Immigration-Enforcement-at-Massachusetts-Courthouses-FINAL-FOR-PUBLIC-RELEASE.pdf>; Maria Cramer, “ICE Courthouse Arrests Worry Attorneys, Prosecutors,” *Boston Globe*, June 16, 2017, available at <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMi8gl/story.html>.

<sup>5</sup> See *Boston Globe*, “State Democrats Blast ICE Raid Targeting Sanctuary Cities,” Sept. 29, 2017, <https://www.bostonglobe.com/metro/2017/09/29/families-immigrants-arrested-ice-raid-calling-advocates-for-help/ukvgXI9g5FTqF8DCSpULIK/story.html>; ICE Directive 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses*, Jan. 10, 2018, available at <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> (asserting that “courthouse arrests are often necessitated by the unwillingness of

Massachusetts communities have adopted sanctuary policies. Additionally, in a July 2017 case, *Lunn v. Commonwealth*,<sup>6</sup> the Massachusetts Supreme Judicial Court held that state court officers in Massachusetts do not have the authority to hold immigrants for pick-up by ICE beyond the termination of their criminal custody. In accordance with this decision, the Chief Justice of the Trial Court issued guidance in November 2017 reaffirming that state court employees may not honor ICE detainer requests.<sup>7</sup>

This report provides a snapshot of ICE courthouse enforcement in Massachusetts based on three sources of information: observation of ICE enforcement activity at Chelsea District Court in Chelsea, Massachusetts, in January and early February 2018; information gathered from December 2017 through February 2018 from immigration detainees held at the Suffolk County House of Correction; and examples of courthouse arrests gathered through outreach to Massachusetts criminal defense attorneys.<sup>8</sup>

## Findings

### I. ICE Presence at Chelsea District Court

The Northeastern University School of Law Immigrant Justice Clinic (“IJC”) coordinated an initiative in which law student volunteers monitored ICE activity at Chelsea District Court on eleven days between January 10, 2018, and February 6, 2018. Chelsea is a low-income community just outside Boston with a significant immigrant population.

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jurisdictions to cooperate with ICE in the transfer of custody of [non-citizens] from their prisons and jails.”).

<sup>6</sup> 78 N.E.3d 1143 (Mass. 2017).

<sup>7</sup> Executive Office of the Trial Court, Policy and Procedures Regarding Interactions with the Department of Homeland Security, Nov. 10, 2017.

<sup>8</sup> There have been reports from around the country that ICE has detained others besides criminal defendants at courthouses, including those appearing for traffic violations and those seeking protective orders or testifying as witnesses. See, e.g., Richard Gonzalez, “ICE Detains Alleged Victim Of Domestic Abuse At Texas Courthouse,” NPR, February 16, 2017, available at <https://www.npr.org/sections/thetwo-way/2017/02/16/515685385/ice-detains-a-victim-of-domestic-abuse-at-texas-courthouse>; Devlin Barrett, “DHS: Immigration agents may arrest crime victims, witnesses at courthouses,” *Washington Post*, April 4, 2017, available at [https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08\\_story.html?utm\\_term=.ed854473c1e1](https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.ed854473c1e1). Massachusetts Attorney General Maura Healey has expressed concern about the effects of ICE courthouse enforcement on victims and witnesses, and has noted that reporting of sexual assault and domestic violence offenses has dropped since the advent of such enforcement tactics. See Cramer, *supra* note 1. See also James Queally, “Fearing Deportation, Domestic Violence Victims are Steering Clear of Police and Courts,” *L.A. Times*, Oct. 9, 2017, available at <http://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html>. This aspect of courthouse enforcement is beyond the scope of the present report.

Observers noted the presence of ICE officers at the courthouse on three of the eleven monitored days; on two other days, observers were informed by court officers that ICE presence had been heavy the previous day. Observers saw ICE officers waiting outside the entrance to the courthouse. They also saw ICE officers inside the courthouse in the waiting room and lobby area. The officers were dressed in plain clothes. They were distinguishable from the general population in the courthouse primarily due to their use of cell phones, which are otherwise prohibited for non-lawyers inside the court. Observers spoke with numerous courthouse employees and attorneys who confirmed that ICE officers have become a regular presence at the courthouse.

Observers witnessed an arrest on January 11, 2018. The arrest was made by four ICE officers outside of the courthouse as the individual was leaving the building. The officers took the individual away in an unmarked sedan with tinted windows that was parked across the street from the courthouse.

## **II. Courthouse Enforcement Reported by Detained Immigrants**

Students from the IJC conduct intakes on a regular basis among immigration detainees held at Suffolk County House of Correction. In the course of four visits to the detention center between December 2017 and February 2018, IJC students encountered eight individuals who reported being taken into ICE custody at Massachusetts courthouses. The courthouses at which detainees reported having been arrested included Brockton District Court, Cambridge District Court, Chelsea District Court, Dedham District Court, Fitchburg District Court, Framingham District Court, and Worcester District Court.

## **III. Examples of ICE Enforcement at Massachusetts Courthouses**

The IJC conducted outreach to Massachusetts criminal defense attorneys to gather information regarding clients who were apprehended by ICE at courthouses. Examples of cases reported include the following:

- **“H”**<sup>9</sup> is a lawful permanent resident who is married to a U.S. citizen. He and his spouse have a four-year-old son who has been diagnosed with autism. H’s spouse recently moved to Florida in order to be closer to extended family and to receive support for their son, and H planned to follow her after completing probation for an OUI offense. In October 2017, H was found to have violated his probation, and was consequently re-probated and instructed to comply with various requirements including continuous alcohol monitoring and an alcohol education course. Upon leaving a meeting with his probation officer, H was apprehended by ICE officers

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<sup>9</sup> The IJC did not ask attorneys for names or other identifying information regarding their clients; random initials have been assigned to each example.

outside Lynn District Court. As a direct result of his ICE detention, H was unable to comply with the alcohol monitoring and education conditions of his probation; the court consequently issued a default warrant and a police arrest warrant. H was held in ICE detention until January 2018. The day after his release from detention, he was arrested by police pursuant to the warrant. Due to his unavoidable violation of his probation conditions, H was held in custody pending a final probation violation court hearing and ultimately sentenced to a six-month term in prison rather than to a new term of probation.

- **“Y”** is a longtime lawful permanent resident in her fifties who has two U.S. citizen sons. She formerly worked as a certified nursing assistant. A number of years ago, she was prescribed pain medication by a doctor and subsequently developed an addiction to the medication. Her drug dependency, coupled with severe depression, led her to become unemployed and homeless. In February 2018, she appeared in Roxbury District Court on charges of simple assault and malicious destruction of property. Her attorney had secured a placement for her in a drug treatment program, and the court allowed for her release in order to enter the program. However, ICE took her into custody at the courthouse immediately following her hearing. Because of her detention, she is unable to receive the intensive drug treatment and mental health treatment that she needs.
  
- **“B”** is a formerly undocumented immigrant with a wife and young son who are both U.S. citizens. In March 2017, B was arrested by ICE officers on the steps of Malden District Court prior to a court hearing on a charge of assault and battery. The judge entered a default warrant for B’s non-appearance. Although B ultimately prevailed in his immigration court proceeding and gained lawful status in the United States, the default warrant entered by the court as a result of his ICE detention caused a significant delay in the adjudication of his immigration case.
  
- **“L”** has been under an order of supervision from ICE and has been attending regular check-ins with ICE every six months. In February 2018, L was in Worcester District Court to stand trial on charges of negligent operation of a motor vehicle, assault, and resisting arrest. While L’s attorney was upstairs waiting for him, ICE arrested L on the ground floor of the courthouse and transferred him to an ICE detention center. Because L failed to appear in court, the judge issued a default warrant.
  
- **“R”** is an undocumented immigrant with a significant history of mental illness who was charged with breaking and entering and was released on his own recognizance at Quincy District Court in November 2017. Immediately following R’s release, his attorney requested a competency evaluation by a psychologist. ICE officers interrupted the competency evaluation while it was underway. Ignoring requests from R’s attorney to let the evaluation proceed, the ICE officers arrested R.

## Conclusions

### I. ICE Courthouse Enforcement is Widespread

ICE is conducting arrests at numerous Massachusetts courthouses. The data contained in this report relates to ICE activity at twelve different courthouses within recent months.<sup>10</sup> ICE is targeting both documented and undocumented immigrants, with no apparent regard for the seriousness of the pending charge. Many of those who have been arrested are longtime residents with U.S. citizen family members.

### II. ICE Courthouse Enforcement Interferes with the Judicial Process

ICE policy holds that “[w]hen practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.”<sup>11</sup> However, the examples above show that in actuality, ICE enforcement practices routinely interfere with court proceedings. ICE frequently arrests immigrants prior to the resolution of their criminal case. ICE detention can have grave impacts on a criminal proceeding, resulting in probation violations, default warrants, and other adverse consequences. ICE interference with the criminal process does not just harm defendants. It also harms victims, whose rights are compromised when defendants are not available to stand trial, and it disrupts the entire operation of the courts. In addition, the climate of fear created by ICE courthouse enforcement deters immigrant victims and witnesses from seeking assistance or participating in legal proceedings.<sup>12</sup>

ICE has justified courthouse arrests by asserting that “civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents” because “[i]ndividuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband.”<sup>13</sup> However, our research has shown that ICE frequently arrests individuals outside courthouses, before they have even entered.

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<sup>10</sup> See also “Immigration Enforcement at Massachusetts Courthouses: A Fact Sheet,” *supra* note 4 (documenting ICE enforcement at additional Massachusetts courthouses).

<sup>11</sup> See ICE Directive 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses*, *supra* note 5.

<sup>12</sup> Massachusetts Attorney General Maura Healey has expressed concern about the deterrent effects of such enforcement. See *supra* note 8.

<sup>13</sup> See ICE Directive 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses*, *supra* note 5.

### **III. ICE Courthouse Enforcement Harms Vulnerable Populations**

Several of the cases described above concern individuals with significant mental health issues. ICE arrests have interfered with the efforts of the judicial system to address mental health and addiction issues through such means as psychological evaluation and drug treatment.

In summary, this report concludes that ICE's aggressive tactics are disrupting the Massachusetts judicial system in a variety of ways. These deeply troubling new enforcement practices are having harmful effects on defendants, victims, witnesses, and the judicial system itself.