

January 30, 2019

Hon. Janet DiFiore
Chief Judge of the Court of Appeals and State of New York
25 Beaver Street
New York, NY 10004

VIA U.S. Postal Service and Electronic Mail

Dear Chief Judge DiFiore:

As longtime and passionate advocates for immigrants, we are calling for a ban on U.S. Immigration and Customs Enforcement (ICE) in our courthouses. When we met to discuss this very issue in 2016, I urged you to act quickly. Unfortunately, our fears have been realized. We are horrified by reports of increased arrests and surveillance at New York State courthouses by ICE. The increased frequency of arrests and surveillance, brutality of arrests, and involvement of court officers in ICE operations are tremendously concerning. According to a new [report](#) released by the Immigrant Defense Project, a legal advocacy organization, this involvement has led to a **1,700 percent increase in ICE arrests** in and around courthouses in New York state.

Beyond unjustly terrorizing immigrants, these actions seem very likely to undermine access to justice across the state by discouraging immigrants to participate in judicial proceedings and otherwise participate in the judicial system—an outcome that I know is unacceptable to you. Arrests in courthouses erode public trust in the judicial system, as the courts become hostile locations for immigrants.

We urge you to take immediate steps to halt these actions, and we know you have the authority to do so. No one disputes that courthouses are public buildings and exigent circumstances sometimes require law enforcement to make arrests inside or around courts without warrants to keep the public safe. Nevertheless, judges have discretion and power to remove any person or group who is or may disrupt legal proceedings particularly when there are no exigent circumstances involved.

Judges hold a critical responsibility to improve access to the judicial system, effectively manage court dockets, and emphasize the court's service ethos.

Whether it's someone who refuses to turn off their cellphone, a protestor chanting, or a reporter who fails to stop recording, judges can and have remove these individuals from and around the court premises to advance the court's goals.

This same authority underlies the justification for removing ICE agents from and around our courts inside. We have heard countless stories from defense and immigration attorneys whose clients are being deprived of their due process rights. When a client is too afraid to come to court, this disrupts access to justice, disrupts court dockets, and disrupts the court's service ethos.

You can promulgate clear policies to ensure public safety and due process are observed. In particular, you can take the following actions:

- prohibit ICE from operating in and around court houses;
- prohibit court personnel from disclosing citizenship or immigration status information of any person;
- prohibit court officers from assisting ICE unless there's express approval from a judge and only when there is an immediate danger to the public;
- prohibit court personnel from inquiring about the immigration status of an individual, including a crime victim, a witness, or a person who calls or approaches the police seeking assistance;
- direct court personnel to inform defense counsel that ICE has contacted the court and may be present to defense counsel an opportunity to appraise victims, family members, and defendant.

Lastly, scores of judges have [indicated](#) that they “cannot do their jobs if victims, defendants, witnesses, and family members do not feel secure in accessing the courthouse. ICE's reliance on immigration arrests in courthouses instills fear in clients and deters them from seeking justice in a court building.” Similarly, prosecutors around the country — including in California, Colorado, Massachusetts, and New York — have publicly condemned immigration enforcement actions in courthouses given the chilling effect on immigrants including [preventing](#) women from pursuing domestic violence cases against their abusers for fear of deportation.

We are calling for your leadership to ensure that no New Yorker is deprived of their due process rights.

We are also calling on the legislature to pass and the governor to sign the Protect Our Courts Act sponsored by AM solages and senator Hoylman that would put in place important restrictions on ICE's activities in courthouse across the state.

Thank you for your immediate attention to this urgent issue.

Sincerely,

Melissa Mark-Viverito