

Access to Justice Denied: Fighting ICE (Courthouse) Arrestsⁱ

- The immigration-related Executive Orders issued by the Trump Administration in January 2017 eliminated guidelines established by the Obama Administration, which had prioritized people with serious convictions for ICE apprehension and deportation.
- Under the Trump Administration’s policies, there are no ICE “enforcement priorities.” *Any* noncitizen is now a target for ICE apprehension, detention and deportation. These new policies resulted in a **40% increase in overall arrests by ICE** between January and April 2017, compared to the same period in 2016. Arrests of people with criminal convictions rose over 18%, while arrests of “non-criminal” individuals increased by 150%, according to ICE statistics.ⁱⁱ
- Since this new ICE dragnet was unleashed, communities around the country have witnessed a spike in ICE agents arresting people coming to and going from court for both civil and criminal proceedings. This includes Washington State. Advocates and attorneys also report a dramatic increase in people afraid to come to court for both civil and criminal proceedings.ⁱⁱⁱ
- Washington Chief Justice Mary Fairhurst (and other State Supreme Court Chief Justices) called upon ICE officials to designate courthouses as “secure locations”, a move that would significantly limit ICE courthouse arrests to ensure access to justice for all.^{iv} To date ICE has refused to do so. Public defenders, judges and community advocates report continued ICE presence and ICE arrests at courthouses across Washington State. Courthouse enforcement is anticipated to increase, particularly in jurisdictions that do not cooperate with ICE.^v

Stopping ICE (Courthouse) Arrests: WDA Needs Your Help

- WDA’s Immigration Project is collaborating with local and national partners to develop advocacy strategies (including litigation) to stop ICE courthouse arrests. As defense lawyers, you are in the best position to identify the impact of ICE enforcement in and around courthouses and other places where clients interact with the criminal justice system. We need your help in gathering the critical data to move these efforts forward.
- Please provide us with documentation of the following (using the tools below):
 - Incidents of ICE presence and/or arrest at Washington courthouses (your client or someone else you witness being arrested by ICE at a courthouse).
 - Encounters with clients who are afraid to appear for court due to possibility of ICE arrest.
 - Cases involving noncitizens whom you know (or suspect) failed to appear for court out of fear of ICE arrest.^{vi}
- Please use the following [link](https://goo.gl/forms/mpqb9RaE8vFg4CRj1) to provide us with this critical information:

<https://goo.gl/forms/mpqb9RaE8vFg4CRj1>
- The link is to a survey that can quickly be filled out using a smartphone, tablet or computer.
 - If you need assistance using the form, or are more comfortable reporting the incident in another format, please contact Sara Sluszka at sara@defensenet.org or (206) 623-4321 x 112.

Strategies to Protect Immigrant Clients at the Courthouse^{vii}

- ✓ First, always identify clients who are not U.S. citizens and contact WDA's Immigration Project for a *Padilla* consult as soon as possible. www.defensenet.org/immigration-project.org
- ✓ For clients at risk of deportation, ask them to wait inside the courtroom on court dates. Avoid calling their names aloud in the hallways. ICE may use this to identify and detain clients before they appear on the criminal case. Minimize the number of court dates and consider resolving the case off-calendar so ICE cannot anticipate when they are in court.
- ✓ Stay current on local law enforcement cooperation with ICE. If ICE is in court, you may need to advise your client on the possibility of immediately going ICE custody even if they resolve their criminal case.
- ✓ If your client is at risk of deportation, advise them to make an emergency plan and share Know Your Rights information on encounters with ICE at home and in public - available at: <https://www.nwirp.org/>.

IF YOU WITNESS ICE AGENTS ARRESTING YOUR CLIENT:

- **Invoke your client's rights.** Identify yourself as the person's lawyer. Tell ICE not to question your client. Tell your client not to sign anything and to exercise his/her right to remain silent. Answering questions will only help ICE deport him/her. Request to call or recall the criminal case while your client is present to avoid the issuance of a warrant.
- **Get info from ICE.** Ask for agents' names and contact info. Ask for the basis of the arrest and to see a warrant (note if signed by a judge vs. ICE supervisor). Ask where they are taking your client.
- **Get on the record.** Explaining the situation may prevent a bench warrant and possibly help in immigration court. If possible, talk to your client about the impact that going into criminal custody via bail or a plea instead of ICE custody would have on his/her interests.

WHAT TO DO AFTER A CLIENT IS ARRESTED BY ICE:

- **Document what happened**, including: where arrest took place (e.g. in vestibule at court part, hallway, outside the courthouse); # of ICE agents, how they were dressed & identified themselves; how they responded when you asked questions, incl. for a warrant; and whether any court staff were involved in the arrest or aware of ICE presence.
- **Report it** to advocates pushing back against this practice.
- Search ICE Online Detainee Locator to **locate your client** and then **figure out how to resolve the criminal matter** with client in ICE custody. Contact an immigration lawyer for more information.

ⁱ To be able to most efficiently extend future advocacy efforts beyond courthouses, we are collecting data now on all locations where ICE is arresting your clients.

ⁱⁱ DHS, ICE Statistics (at <https://www.ice.gov/features/100-days>) (last updated Aug. 2, 2017).

ⁱⁱⁱ See Maya Rhodan, TIME, *Deportation Fears Silence Some Domestic Violence Victims*, May 30, 2017 (at <http://time.com/4798422/domestic-violence-deportation-immigration/>) (reporting a decrease in alleged survivors accessing courts for protection as well as dramatic decrease in reporting of sexual assault).

^{iv} See Joseph O'Sullivan, *Chief justice asks ICE not to track immigrants at state courthouses*, N.Y. TIMES, Mar. 22, 2017 (at <http://www.seattletimes.com/seattle-news/politics/chief-justice-asks-ice-not-to-track-immigrants-at-state-courthouses/>).

^v See, e.g., Noelle Phillips, DENVER POST, "ICE official tells Denver Mayor Michael Hancock that courthouse arrests will continue," June 8, 2017, at <http://www.denverpost.com/2017/06/08/ice-denver-courthouse-arrests-will-continue/> (accessed Oct. 2, 2017).

^{vi} It may not be possible to discern precisely when fear of ICE arrest is the cause of an FTA, but sufficient data of noncitizen FTA could reveal a trend that will greatly assist advocacy.

^{vii} Reprinted from *Practical Tips for Defenders on ICE at Courts* with permission of the Immigrant Defense Project, New York, NY. www.immigrantdefenseproject.org.