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New York Attorney General Press Office/212-416-8060 nyag.pressoffice@ag.ny.gov
Alejandra Lopez, The Legal Aid Society/917-294-9348 ALopez@legal-aid.org
Oren Yaniv, Brooklyn District Attorney's Office/718-250-2304 YanivO@BrooklynDA.org

The Legal Aid Society, AG James, and DA Gonzalez Seek to Halt ICE Arrests in Courthouses

Two Lawsuits Argue ICE's Actions In and Around NY Courts are Unconstitutional, Among Other Claims

NEW YORK – **The Legal Aid Society and Cleary Gottlieb Steen & Hamilton LLP, and New York Attorney General Letitia James and Brooklyn District Attorney Eric Gonzalez** today filed two separate lawsuits in the United States District Court for the Southern District of New York (SDNY) against Immigration and Customs Enforcement (ICE), challenging the legality of the agency's practice of making civil immigration arrests without a judicial warrant or court order in and around New York State courthouses.

The first [lawsuit](#), filed jointly by Attorney General James and District Attorney Gonzalez, makes the case that ICE arrests in and around courthouses impede the administration of justice and adversely impact public safety. The suit seeks to halt a two-year pattern of civil immigration arrests by federal ICE agents in and around state courts, which have caused a major disruption to state court operations. By targeting witnesses and victims for arrests, noncitizens and immigrants are deterred from assisting in state and local law enforcement efforts or protecting their own rights in court. As a result, valid prosecutions have been abandoned, or never pursued, making communities less safe.

The second [lawsuit](#), filed by The Legal Aid Society and Clearly Gottlieb, seeks a permanent injunction ordering the halt of ICE courthouse enforcement on behalf of an individual plaintiff — a noncitizen domestic violence survivor who needed to appear in court for an order of protection, but feared the risk of an ICE arrest coming to a courthouse. Other plaintiffs include Make the Road New York, Urban Justice Center, Sanctuary for Families, The Door, and the New York Immigration Coalition.

“New York State is home to more than 4 million noncitizens who are vulnerable to deportation. In order for our judicial system — a pillar of our democracy — to operate effectively, it is fundamental that they have equal access to courts. ICE's courthouse enforcement blatantly

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violates the constitutional rights of our clients, as well as all immigrant New Yorkers, and we look forward to addressing this injustice in court,” said **Janet Sabel, CEO and Attorney-in-Chief of The Legal Aid Society.**

“ICE’s policy of arresting noncitizens at New York State courthouses has impeded effective access to justice in our communities. Immigrants are reluctant to exercise their rights to obtain relief through our judicial system due to justified fears that ICE will arrest them on their way into or out of a courthouse. This lawsuit challenges ICE’s unlawful use of its enforcement authority and seeks to restore equal access to our courts for all New Yorkers,” said **Jonathan I. Blackman of Cleary Gottlieb Steen & Hamilton LLP.**

“The administration of justice and public safety are among the most important functions of the state, and I will be relentless in their defense,” **Attorney General James** said. “When ICE targets witnesses and victims for arrests, it deters noncitizens and immigrants from assisting in state and local law enforcement efforts or protecting their own rights in court. This is a disastrous and dangerous break from previous policy and that’s why we are fighting to force them to end this practice.”

“If there’s one thing I’ve learned in my career as a prosecutor, it’s that law enforcement can’t keep people safe without the participation of the communities we serve,” said **Brooklyn District Attorney Eric Gonzalez.** “Over the past two years, numerous immigrant victims and witnesses have refused to come forward and assist in our prosecutions out of fear that they’ll be arrested in court by immigration agents, forcing my office to dismiss or reduce serious criminal cases. The refusal by ICE to treat courthouses as sensitive locations regularly disrupts court operations, creates a chilling effect in immigrant communities and erodes public safety. The policy is not only misguided — it exceeds their lawful authority, which is why we are now asking the judiciary to put an end to it. I’d like to commend Attorney General James for her leadership on this issue, and thank The Legal Aid Society and the advocacy groups for fighting on the front lines against this growing and intractable problem.”

“Unencumbered access to our courts is paramount to the administration of justice,” said **former New York Court of Appeals Chief Judge Jonathan Lippman.** “The presence of immigration authorities in and around our courthouses has had a chilling effect that impairs our ability to ensure that justice is carried out. I applaud Attorney General James, Brooklyn DA Gonzalez, and The Legal Aid Society for their commitment to protecting New Yorkers and the integrity of our legal system.”

In the lawsuit, Attorney General James and District Attorney Gonzalez argue that the ICE Courthouse Civil Arrest Directive implemented in 2018 violates the Administration Procedure Act and the U.S. Constitution in the following ways:

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1. ICE's 2018 directive exceeds Congressional authorization in violation of the Administrative Procedure Act because it violates centuries-old common law privileges against civil arrests in and around courthouses. ICE's statutory arrest authority does not extend to the areas protected by this well-established privilege.
2. ICE Courthouse Civil Arrest Directive is arbitrary and capricious and thus violates provisions of the Administrative Procedure Act. Specifically, the agency failed to consider the deep harm to state judicial proceedings or to justify the marginal benefits of the directive against such harm.
3. ICE's 2018 directive infringes on states' sovereignty. The Tenth Amendment to the U.S. Constitution grants states historic, sovereign autonomy to control the operation of their judiciaries and court system.

The Legal Aid Society and Cleary Gottlieb, with the assistance of the Immigrant Defense Project, bring their lawsuit under New York's common law privilege of immunity from civil arrest while appearing in court, the Administrative Procedure Act, and the following provisions of the U.S. Constitution:

1. The First Amendment right of noncitizens to petition the government for a redress of grievances. This right to petition includes the right to access state courts and to participate in state court proceedings as a witness, party, or complainant.
2. The Fifth Amendment rights of noncitizens to due process and equal protection, which includes the right to access state courts and to participate in state court proceedings as a witness, party, or complainant.
3. The Sixth Amendment rights of noncitizens accused of a crime to a speedy and public trial, compulsory process, assistance of counsel, and to be confronted with witnesses against them.

Background

Since President Trump's inauguration, ICE courthouse arrests have skyrocketed by over [1700%](#) in New York, leading to a widespread chilling effect on noncitizens' willingness to initiate and participate in the judicial system. Nearly 400 immigrants — both undocumented and those with legal status — have been arrested while appearing in and around state courts since January 2017, including those accused of a crime; parents appearing in child support matters; survivors of domestic violence, sexual assault, human trafficking, and other crimes; people who are mentally ill or homeless; and LGBTQ+ individuals; among others.

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Moreover, ICE courthouse arrests disrupt court functions, trample the due process rights of the accused, imperil public safety, and deter immigrants from [reporting crimes](#). By using the court system to trap immigrants for detention and deportation, ICE is effectively keeping immigrants from ever accessing state courts in the first place and actively interfering with and violating the rights of individuals, associations, and organizations across the state.

Luba Cortés, Immigrant Defense Coordinator at Make the Road New York, said, “The predatory presence of Immigration and Customs Enforcement (ICE) in and around our courts hinders immigrant New Yorker’s from full and equal access to justice. The unprecedented surge of ICE arrests at our courts seeks to instill fear and deprive our community access to due process. Vulnerable survivors, witnesses, and all residents, regardless of immigration status, should have safe access to our courts — without fear of detention and separation from their families.”

Honorable Judy Harris Kluger, Executive Director of Sanctuary for Families, said, “ICE’s presence in New York State courthouses has a chilling effect on the fair administration of justice. Our courts must remain safe havens where all people have equal access to justice regardless of immigration status. At Sanctuary for Families, 75% of the gender violence and sex trafficking survivors we serve are immigrants who rely on the courts for orders of protection against their abusers and child custody and support determinations, all crucial to their and their children’s safety. As this lawsuit asserts, the threat of detention and deportation spreads fear, and deters many survivors from seeking the protections they need and deserve.”

Alisa Wellek, Executive Director the Immigrant Defense Project, said, “Since 2017, the ICE Out of Courts movement has shown through information provided by public defenders, advocates for survivors of violence, district attorneys, judges, and others that ICE’s manipulation and exploitation of our courts threaten us all. The lawsuits filed today send a powerful message that New York will not tolerate ICE’s increased targeting of people at courthouses, which are part and parcel of the federal government’s systematic racist policies that target Latinx New Yorkers and other communities of color.”

Atossa Movahedi, Director of Legal Services & Development at the Domestic Violence Project at the Urban Justice Center, said, “ICE in the courts is a clear message that our legal protections are an illusion of safety, reminiscent of the very government systems many fled. As advocates, we always make safety plans when advising survivors of domestic violence whether or not to file in court. Before, that safety analysis only included one bad actor — their abusive partner. Now, it also includes ICE. By the time you find yourself in the court system, you are already desperate for help. You’re often already marginalized, discriminated against, and impoverished. ICE in these courts impacts everybody and impedes access. Those seeking help deserve order and reliability rather than panic and instability.”

Kaavya Viswanathan, Director of Legal Services Center at The Door, said, “The Door’s clients are vulnerable youth, who — because of the threat of illegal ICE arrests and deportation — are too afraid to seek basic legal protections in the New York courts. These young people are left without legally appointed adult caretakers or are unable to obtain state court documents necessary for their immigration cases and general welfare. We are proud to be part of this lawsuit and hope that it will vindicate our clients’ fundamental rights to access the justice system.”

Steven Choi, Executive Director of the New York Immigration Coalition, said, “ICE agents are already targeting our immigrant community-members at home, at work, and on the streets, forcing individuals to choose between the safety of their families and seeking access to justice. This lawsuit challenges ICE’s unlawful enforcement authority in and around courthouses and aims to ensure that all New Yorkers have equal access to due process. Our communities will only be stronger when all people can live their lives freely and without fear.”

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The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 140 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities.

<https://www.legalaidnyc.org>

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