

CDF-NY Summer Policy Series

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Keeping immigrant children and families safe in New York courthouses

With the signing of several executive orders affecting immigrants in the first few months of the new administration, immigration policy is now front and center in American politics. In January, the administration released Executive Order 13768 entitled “Enhancing Public Safety in the Interior of the United States,” which among other things, called for hiring 10,000 more Enforcement and Removal Operation (ERO) agents, increasing enforcement of all immigration laws, and penalizing sanctuary jurisdictions. The Department of Homeland Security released two implementation memos on the executive order on February 20th and May 22, 2017 which essentially restate the extensive authority given to Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP) and US Citizenship and Immigration Services (USCIS) to prioritize enforcement activities for a broad category of immigrants. The Executive Order has led to a spike in ICE raids across the country. These raids target the immigrant community in general, as there are no longer categories of immigrants exempt from enforcement. Upstanding parents can be caught up in sweeps of immigrants with actual or perceived criminal offenses. The estimated 292,000 children of undocumented parents in New York State are now at risk of being separated from their parents because of the executive order.¹

How has the new executive order impacted New York City courtrooms?

Although New York City has declared itself a sanctuary jurisdiction² and stated that it will protect individuals from ICE, there have been several reported cases of ICE’s presence in courthouses across the city. Courthouses are not considered “sensitive locations” like schools and churches – places where enforcement activities generally do not occur as per ICE policy.³ The sensitive locations policy was reaffirmed on the ICE website⁴ and by ICE spokeswoman Danielle Bennett on May 10,

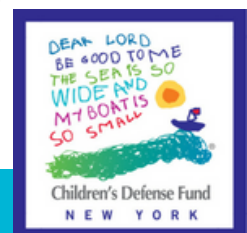
This summer CDF-NY interns worked with staff on the 2017 CDF-NY Summer Policy Series. Sabrina Lara is the primary author of this paper.

¹ Center for Migration Studies. <http://data.cmsny.org>

² Robbins, Liz, “Sanctuary City Mayors Vow to Defy Trump Order,” New York Times, January 25, 2017, <https://www.nytimes.com/2017/01/25/nyregion/outraged-mayors-vow-to-defy-trumps-immigration-order.html>

³ US Immigration and Customs Enforcement Memorandum dated October 24, 2011, “Enforcement at or Focused on Sensitive Locations.” <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>

⁴ FAQ on Sensitive Locations and Courthouse Arrests, retrieved from ICE Website, <https://www.ice.gov/ero/enforcement/sensitive-loc>



2017.⁵ With the increased enforcement by ICE, there will likely be more incidents like the reported incident of ICE officers being present at a Queens courthouse while a trafficking survivor was present in human trafficking intervention court. ICE confirmed that three individuals were arrested outside of the courthouse for “targeted enforcement action,” but no one inside the human trafficking court was arrested.⁶ Lawyers from that case stated that they had to take preventive measures to ensure that their client would be shielded from ICE, and they would not have been able to do that without having notification. The Legal Aid Society notes that there have been 38 arrests and attempted arrests within New York State courthouses, with 19 arrests and nine attempts occurring in New York City courthouses.⁷ There have also been unsubstantiated rumors that the NYPD and court officers are tipping ICE off about undocumented individuals’ presence within courthouses⁸, creating a harmful and toxic environment for both immigrants and law enforcement officials, who no longer trust one another.

What are the effects on immigrant families?

Courtrooms are places where individuals - citizens or immigrants - turn when they seek justice. There are a number of different reasons why immigrants with children may be in court. For example, parents may be involved in court cases regarding child custody or they may be seeking protection from an abuser. Knowing ICE may be present in the courts, undocumented immigrants may be less likely to attend their hearings. As a result, judges may rule in favor of the opposing party, leading to children possibly being placed with an alleged abuser or transitioned into the child welfare system – leaving children vulnerable to mental and physical health issues, such as higher rates of anxiety, depression, and socialization issues.⁹ Additionally, immigrants who do not appear for their hearings could be found in contempt of court, which may lead to the revocation of visa applications or criminal charges (possibly a class A misdemeanor).¹⁰ Any or all of these consequences may lead to increased stress on immigrant parents and children, who live in fear of imminent danger.

As a result of the executive order, the increased enforcement activity – particularly in and around courtrooms – compounds the existing fear that a parent could be deported at any time and creates an environment of stress and anxiety for the children and family. Undocumented parents may be less likely to participate in their everyday activities when they feel that their safety is being threatened by ICE. Immigrants may generally be fearful of ICE agents waiting for them wherever they go – including when interacting with government entities or applying for public programs to which their children may be eligible.¹¹

⁵ Henderson, Tim, “Cities, States Move to Calm Fear of Deportation,” Stateline, May 10, 2017. <http://www.governing.com/topics/politics/stateline-Cities-States-Fear-of-Deportation.html>

⁶ Fertig, Beth. "Outcry After Immigration Agents Seen at Queens Human Trafficking Court." WNYC. New York Public Radio, 16 June 2017. Web. 28 June 2017. <<http://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>>.

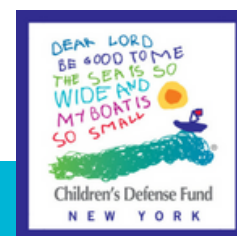
⁷ Whitford, Emma. "Courthouse ICE Arrests Are Making Immigrants 'Sitting Ducks,' Lawyers Warn". *Gothamist*, 2017, http://gothamist.com/2017/06/22/ice_immigrants_courts.php.

⁸New York City Council Committee on Immigration jointly with Committee on Education and Committee on Public Safety. *Committee on Immigration*. 26 April 2017

⁹Whitford.

¹⁰ NY Penal L § 215.50 (2016)

¹¹Menjivar, Cecilia, and Andrea Gomez Cervantes. "The Effects of Parental Undocumented Status on Families and Children." *American Psychological Association*. American Psychological Association, - Nov. 2016. Web. 07 July 2017. <<http://www.apa.org/pi/families/resources/newsletter/2016/11/undocumented-status.aspx>>.



Policy Recommendations to alleviate the impact of ICE presence on courthouses

- **ICE should establish courtrooms, especially family and trafficking intervention court(s), as sensitive locations**

Sensitive locations are classified as areas that are protected from ICE's Enforcement and Removal Operation agents (ERO) and actions. These locations include: schools, hospitals, religious ceremonies, public demonstrations and houses of worship. According to ICE's internal policies, ICE is not permitted to apprehend, arrest, interview, search or surveil individuals in these areas unless it is deemed necessary to ensure public safety.¹² Because these are internal procedures and practices, it is at ICE's discretion whether or not to enforce these procedures, which suggests that there is still a risk of arrest and deportation. However, the designation of courtrooms as a sensitive location could lead to decreased fear of arrest and deportation and more immigrants seeking justice by denouncing their abusers or fighting for child custody or petitioning for status because of abuse or trafficking, while being able to protect their families or themselves from deportation. (For example, protection and status under VAWA petitions¹³ or U visas, may extend to the children of petitioners).¹⁴ In 2016, New York Police Department's Uniform Crime Report found that there were over 10,984 victims of domestic violence in New York City, which included children.¹⁵ Allowing courtrooms, especially family and trafficking intervention courts, to be designated sensitive locations may allow local law enforcement agencies to apprehend individuals who pose a more significant threat and reduce the number of domestic violence victims in New York City.

- **Office of Court Administration should establish a protocol regarding ICE presence in courtrooms**

The Office of Court Administration ("OCA") has stated that it will monitor the presence of ICE within courtrooms and interactions with ERO agents.¹⁶ They have noted that ICE has reached out to them at least six times about certain defendants, which resulted in the arrests of three individuals. The OCA should establish a protocol that outlines what the court should do if ICE is present, as often only a few individuals are aware of their presence. The protocol should include notification of ICE presence to the lawyers, and use of the judge's discretion to decide whether or not ERO agents can enter or surround the courthouse. OCA, similar to the Department of Corrections¹⁷, should have limited information sharing with ICE in order to protect clients who are involved in trials in any of the courts across the city, including family court and trafficking court. The establishment of this protocol would be beneficial in ensuring a safe environment for both the individual present and their family members who may be affected by the case at hand.

¹² United States . U.S. Department of Homeland Security . *10029.2 Enforcement Actions at or Focused on Sensitive Locations* . By John Morton. U.S. Immigration and Customs Enforcement , n.d. Web. <<https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>>.

¹³ U.S. Citizenship and Immigration Services. *Battered Spouse, Children & Parents*. U.S. Citizenship And Immigration Services, Washington, D.C., 2016,.

¹⁴ U.S. Citizenship and Immigration Services. *Victims Of Criminal Activity: U Nonimmigrant Status*. U.S. Citizenship And Immigration Services, Washington, D.C., 2016,.

¹⁵ NYPD UCR. *DOMESTIC VIOLENCE VICTIMS REPORTED IN 2016 NEW YORK CITY*. NYPD Cognos Datawarehouse (As Of 4/2017), New York City, 2016, http://www.criminaljustice.ny.gov/crimnet/ojsa/domesticviolence/nypd_data_web.pdf.

¹⁶ Shayna Jacobs and Stephen Rex Brown. "Federal Immigration Agents Showing Up in NYC Courts to Arrest Defendants." New York Daily News. 26 March 2017. <http://www.nydailynews.com/new-york/federal-immigration-agents-showing-nyc-courts-article-1.3010003>

¹⁷ "Mayor Bill deBlasio signs into law bills to dramatically reduce NYC cooperation with US ICE Deportations." City of New York Website. 14. Nov 2014. <http://www1.nyc.gov/office-of-the-mayor/news/520-14/mayor-bill-de-blasio-signs-law-bills-dramatically-reduce-new-york-city-s-cooperation-with#0>

